

**UKCP's Complaints and Conduct Process
Adjudication Panel Hearing**

Wednesday 23 and Thursday 24 January 2019

IN PRIVATE

Name of Registrant: David Clancy

Heard by: Adjudication Panel

Panel Members: Rena Sheperd [Lay Chair]
Jonathan Salisbury [HIPC]
Charmian Beer [CSRP]

Legal Assessor: John Donnelly [2 Bedford Row]

Panel Secretary: Eloise Cadman

UKCP Presenting Officer: Nick Bonehill [2 Bedford Row]

Registrant: Registrant present. Represented by Gabriel Adedeji [3 Paper Building]

Charges found proved: All proved by admission

Charges found not proved: None

Panel decision: Misconduct found proved; current impairment found.

Sanction: 12 Month Conditions of Practice Order

Detail of allegations

That being a UKCP psychotherapist between 2015 and 2018 Mr David Clancy (the registrant) you:

1. Were dismissed from your position as a Psychotherapist at Leeds and Yorkshire Partnership NHS Foundation Trust (LYPFT) due to gross misconduct on 27 March 2018;

2. Entered into an online and electronic personal relationship with Patient A, a vulnerable service user, between January and June 2017 which was:

- a. Unprofessional and/or
- b. Inappropriate.

3. [redacted]

4. The behaviour set out at 1.-3. above is in breach of the UKCP Ethical Principles and Code of Conduct (the Code). In particular you:

- a. Failed to respect the best interests of Patient A, thereby breaching clause 1.1 of the Code;
- b. Failed to treat Patient A with respect, thereby breaching clause 1.2 of the Code;
- c. Abused or exploited the relationship you had with Patient A, for any purpose, including the psychotherapist's sexual, emotional or financial gain, thereby breaching clause 1.3 of the Code;
- d. Engaged in behaviour that confused the boundaries of the therapeutic relationship with Patient A, thereby breaching clause 1.5 of the Code;
- e. Failed to take into account the length of the therapy and time lapsed since therapy before entering into any personal relationship, thereby breaching clause 1.6 of the Code;
- f. Failed to respect Patient A's autonomy, thereby breaching clause 1.7 of the Code;
- g. Cause harm and distress to Patient A, thereby breaching clause 1.8 of the Code;
- h. Failed to recognise that your behaviour outside your professional life may have an effect on the relationship with Patient A and take responsibility for working with those potential negative or positive effects to the benefit of Patient A, thereby breaching clause 1.10 of the Code;
- i. Failed to recognise that your professional and personal conduct may have both a positive and negative effect on the way you were experienced by Patient A, thereby breaching clause 4.1 of the Code;
- j. [redacted];
- k. [redacted];
- l. Failed to report potential breaches of the Code by themselves to the relevant member organisation of the UKCP, thereby breaching clause 10 of the Code.

In light of the above your fitness to practice is impaired by reason of your misconduct [redacted].

Background

a. Mr Clancy has been registered with the UKCP since 8 May 2007. Mr Clancy was employed by Leeds and York Partnership Foundation NHS Trust (LYPFT) as a psychotherapist.

b. [redacted]

c. Mr Clancy wrote to the UKCP on 28 March 2018 advising that he had been dismissed from his employment at LYPFT.

d. Mr Clancy was dismissed from LYPFT on 27 March 2018 following allegations that he had behaved in an unprofessional and inappropriate manner and had breached professional boundaries by engaging in a personal relationship with a client who was in receipt of therapy from him. The allegations related to social media and phone contact only. Mr Clancy appealed against his dismissal but it was upheld on 2 July 2018. [redacted]

e. [redacted]

f. [redacted]

Preliminary Matters

a. The agreed bundle amounted to 134 pages. The bundle will herein be referred to as Exhibit A.

b. The Legal Assessor advised the Panel, by agreement between the parties to exclude from their considerations the following pages 41, 42, 43, 45 and 46.

Preliminary Applications

a. Joint application for the entirety of this hearing to be held in private due to the nature of this case.

The Panel determined that under the provisions of rule 7.8 that the entirety of the hearing should be conducted in private. [redacted]

b. Mr. Bonehill invited the Panel to delete allegation 4(l) on the grounds that this had already in effect been covered by preceding allegations and would be duplicitous to pursue. This application was not opposed, and the Panel considered it an appropriate amendment to be made.

Admissions

- a. The allegations were read into the record and each allegation was admitted by the Registrant.

The Chair entered the allegations as formally proved by admission.

- b. The Panel confirmed that they had the opportunity to fully consider Exhibit A and accordingly Mr. Bonehill outlined the case on behalf of the UKCP [redacted]. By way of background Mr. Bonehill confirmed that the Registrant had joined the UKCP in May 2007 and had practised five years prior to that time.

- c. Mr. Bonehill provided the Panel with a chronology, effectively the critical date commencing July 2017 and identified Patient A's complaint, response and questions that had been put to her by the UKCP.

Mr. Bonehill separated "contact" the Registrant had with Patient A as falling within and outside of the treatment setting. Thereafter, he detailed extended sessions with Patient A which lacked goals, treatment that had not been fully explained, and an inherent failure to build a rapport, or indeed to address transference. This, coupled with a lack of information given during therapeutic sessions gave rise to a clear risk of exploitation of power imbalance. [redacted].

- d. Mr. Bonehill invited the Panel to consider the Registrant's response from his legal representatives dated 1st October 2018 and the statement provided by the Registrant dated 9th January 2019.

The Registrant exercised his right not to give evidence before the Panel and Mr. Adedeji confirmed that the Registrant conceded that his behaviour amounted to misconduct. It was of course understood that it remained for the Panel to determine whether or not his behaviour amounted to misconduct.

The Panel heard and accepted the advice of the Legal Assessor.

Determination on misconduct

1. This determination should be read in accordance with the Panel's previous determinations.

2. In accordance with rule 7.23 of UKCP's Complaints and Conduct Process, the Panel then went on to consider the question of misconduct. In addressing this question the Panel took into account of the relevant information before it.

3. The Panel heard further submissions from Mr. Bonehill on behalf of UKCP and Mr. Adedeji on behalf of the Registrant.

4. Mr. Bonehill on behalf of UKCP invited the Panel to conclude that the facts found proved constitute misconduct.

5. [redacted]. Mr. Adedeji conceded that the Registrant accepted his behaviour as reprehensible and qualified this by stating that the Registrant had noted the devastating effect on Patient A namely, distrusting of therapy and her perception of him.

6. Mr. Adedeji submitted that the Registrant wanted to make it clear that such behaviour would not happen again as reflected in the reports before the Panel and in his statement.

7. [redacted].

8. [redacted].

Mr Adedeji reminded the Panel that the Registrant had hitherto had an unblemished career.

9. [redacted].

10. [redacted]

11. The Panel accepted the advice of the Legal Assessor as to the approach it should adopt in considering the question of misconduct. The Panel recognised that the question of misconduct is a matter of independent judgement and is not a matter of proof for the parties.

12. In addressing whether the facts proved amounted to misconduct, the Panel had regards to the words of Lord Clyde in the case of *Roylance v. General Medical Council*. He stated:
“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required by...a practitioner in the particular circumstances.”

13. The Panel was satisfied that the Registrant’s behaviour fell far below the standard expected of a psychotherapist and amounted to serious failings, in that his inappropriate behaviour had impacted upon a vulnerable patient over a period of time. The Panel was satisfied that each allegation, both individually and collectively, amounted to misconduct [redacted].

Determination on impairment

1. The Panel then went on to consider the question of impairment. This determination should be read in accordance with the Panel's previous determinations.

2. The Panel applied the approach as set out in the 5th Shipman Enquiry and Dame Janet Smith's approach to determine the question of impairment.

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

3. The Panel considered whether the Registrant's misconduct is easily remedied; has already been remedied; and whether it is likely to be repeated.

4. In addressing the issues of current impairment, the Panel also had regard to issues of insight. The Registrant displayed remorse for his actions and the impact caused to Patient A and had indicated that he would like to apologise directly to Patient A although that would not be permitted in the current circumstances. The Panel also noted the Registrant's full admissions at an early stage in these proceedings and his engagement with the UKCP as a regulator.

5. The Panel was satisfied that as of today, the Registrant remains currently impaired. [redacted].

6. The Panel considered that the Registrant's condition is capable of remediation and noted the support network available to the Registrant coupled with his commitment to the various courses, supervision [redacted]. He has made significant and cogent progress in his remediation [redacted].

7. [redacted].

In all the circumstances the Panel considered that the Registrant's fitness to practise remains currently impaired.

Determination on Sanction

1. In accordance with rule 7.25 of UKCP's Complaints and Conduct Process, the Panel then went on to consider the question of sanction. This determination should be read in accordance with the Panel's previous determinations.

2. The Panel received a bundle that includes references and testimonials on behalf of the Registrant (Exhibit B).

3. The Panel considered a joint proposal from both parties who indicated that the proposed sanction from each party could be combined into one document and sought the Panel's leave to draft a document along these lines.

The Panel considered this to be both proper and sensible and invited Counsel to attempt to draft an agreed proposal of sanction. The Panel reminded both parties that the ultimate sanction will always be a matter for the Panel but welcomed the proposed draft.

4. The Panel heard and accepted the advice of the Legal Assessor. The Panel recognised that the purpose of any sanction is not to punish the Registrant, although that may be the consequence of a carefully weighted decision. The Panel recognised that any sanction must be proportionate and weigh the public interest with that of the Registrant.

5. The public interest includes the protection of members of the public, including clients; the maintenance of public confidence in the profession; and the declaring and upholding of proper standards of conduct and behaviour within the profession.

6. The Panel considered the sanctions available to it under rule 7.25 of the Complaints and Conduct Process in ascending order, and was mindful that any sanction imposed should be the minimum that would be considered proportionate and appropriate in the circumstances.

7. The Panel considered the sanctions in the following order:

- a. *Apology*
- b. *Warning*
- c. *Written report or oral statement*
- d. *Further training*
- e. *Further supervision or therapy*
- f. *Conditions of Practise order*: The Panel then considered whether the impairment could be addressed by placing conditions on the Registrant's practise.
- g. *Suspension Order*
- h. *Removal from UKCP Register*

8. The Panel received a joint proposed sanction and considered that this was both appropriate and reasonable. The proposed twelve month Conditions of Practice Order addressed all matters that the Panel deemed appropriate save for one additional condition.

9. The Panel determined that the appropriate sanction is:

12 MONTH CONDITIONS OF PRACTICE ORDER

CONDITIONS:

(1)

Attend weekly 1hr psychotherapy sessions with a UKCP psychotherapist, who has been registered and in practice for a minimum of 5 years and who is to be selected by Mr Clancy approved by the UKCP. The psychotherapy is to be monitored and every 6 months a report is to be provided to the UKCP Case Manager, confirming whether the therapy has been satisfactory

The goals to be achieved include, but are not limited to: Achieving an understanding of any issues that led to/caused the conduct which is the subject of the charges found proved in this case; Addressing any ongoing issues which have the potential to lead to a repetition of the conduct which is the subject of the charges found proved in this case.

(2)

Undertake clinical supervision with a ratio of one hour of supervision to every six client hours undertaken, with a supervisor who has been registered and in practice for a minimum of 5 years, who is to be nominated by Mr Clancy and confirmed by UKCP. The supervisor must be a different person from the psychotherapist referred to above (if he is a therapist). The supervision is to be monitored and every six months a report is to be provided to UKCP, confirming whether the supervision has been satisfactory. The goals to be achieved include, but are not limited to:

- i. Being willing to engage in a thorough and complete review of all client work currently being undertaken;
- ii. Being able to undertake a frank and open discussion about any potential short-comings in any client work currently being undertaken; and
- iii. Being prepared to discuss and consider strategies for improvement in relation to client work currently being undertaken.

(3)

Within the twelve month period undertake Continuing Professional Development (CPD) or professional training on the subject of developing Therapeutic Alliance within the psychodynamic tradition.

12. The Panel has been advised that the Registrant has been the subject of an Interim Suspension Order since 3rd August 2018. The Panel has considered the proportionality of that Interim Suspension Order in light of the sanction that has been imposed.

13. In accordance with the provisions of rule 7.30 the Panel has determined that the Interim Order should remain in place until the period allowed for lodging an appeal has passed. If an appeal is lodged that Interim Suspension Order will remain in place until the appeal has been heard. If no appeal is lodged within 28 days of this decision any sanction imposed by the Panel will come into effect automatically the following day.

Right of Appeal

1. Both the Registrant and UKCP have 28 days from when the written decision is served in which to exercise their right of appeal.

2. The sanction outlined above will not take effect until after the 28 day period has lapsed. If no appeal is received the decision will take effect after the 28th day.

Signed,

Rena Sheperd, Lay Chair
24/01/2019