



**UKCP's Complaints and Conduct Process
Complaint Hearing**

**21, 22 January 2025
ONLINE**

Name of Registrant: Mark Kirwin

Heard by: Adjudication Panel

Panel Members: Harry Bower
Jane Knights (HIPC)
Claire Barry (UTC)

Legal Assessor: Rebecca Tuck KC, Old Square Chambers

Panel Secretary: Bethany Rees

UKCP Presenting Officer: Dr Raj Joshi, Great James Street Chambers

Registrant's Representative: Self-represented

Charges found proved: 1, 2, 3, 4, 5, 6, 8d, 8f, 8g, 8i, 8j.

Charges found not proved: 7, 8a, 8b, 8c, 8e, 8h

Panel decision: Misconduct found proved: current impairment found.

Sanction: Removal from register

Detail of allegations

That being a UKCP registered psychotherapist since at least 1998, you, Mark Kirwin (The Registrant):

1. Between approximately 2013 and 2015, you were in a therapeutic relationship with Client A, a vulnerable adult with a history of mental health issues.

Admitted and found proved by way of admission

2. After the termination of the therapeutic relationship, you commenced a personal and social relationship with Client A, and described yourself as an encouraging presence, friend, advisor, mentor and guide to her.

Admitted and found proved by way of admission

3. Your personal and social relationship with Client A included the following:

- (a) you purchased jewellery for her;

Admitted and found proved by way of admission

- (b) fed her cat and cleaned her flat when she has been unwell;

Admitted and found proved by way of admission

- (c) accompanied her to choose a puppy;

Admitted and found proved by way of admission

- (d) looked after her dog at your house for at least 2 months;

Admitted and found proved by way of admission

- (e) taken her on short trips;

Admitted and found proved by way of admission

- (f) taken numerous walks with her;

Admitted and found proved by way of admission

- (g) rescued her abandoned animals;

Admitted and found proved by way of admission

- (h) made her a vegetable trug;

Admitted and found proved by way of admission

- (i) taught her basic gardening skills;

Admitted and found proved by way of admission

- (j) bought her groceries;

Admitted and found proved by way of admission

- (k) took her dog to Bristol on 3 occasions for an operation;

Admitted and found proved by way of admission

(l) did her washing for her;

Admitted and found proved by way of admission

(m) collected a new washing machine for her;

Admitted and found proved by way of admission

(n) drove her to dog physiotherapy appointments and training classes and paid for them;

Admitted and found proved by way of admission

(o) loaned her money to buy a scooter;

Admitted and found proved by way of admission

(p) and took her to a choral concert for her birthday.

Admitted and found proved by way of admission

4. In or around July 2023, you engaged in sexual activity with Client A.

Admitted and found proved by way of admission

5. You discussed the wellbeing of Client A with her neighbours.

Admitted and found proved by way of admission

6. Your actions, as outlined in paragraphs 2-5 above, were:

(a) Inappropriate; and/or

Proven

(b) Unprofessional; and/or

Proven

(c) Exploitative.

Proven

7. Your actions outlined in paragraphs 2-5 above were sexually motivated.

Not proven

8. The behaviours set out in paragraphs 2-6 above are in breach of UKCP's Code of Ethics and Professional Practice (2019 Code) and UKCP's Ethical Principles and Code of Professional Conduct (2009). In particular, you:

- (a) Failed to act in Client A's best interests, thereby breaching paragraph 1.1 of the Code (2009) and paragraph 1 of the Code (2019). **Not proven**
- (b) Failed to treat Client A with respect, thereby breaching paragraph 1.2 of the Code (2009) and paragraph 2 of the Code (2019). **Not proven**
- (c) Engaged in a sexual relationship with Client A, thereby breaching paragraph 1.4 of the Code (2009) and paragraph 4 of the Code (2019). **Not proven**
- (d) Abused and/or exploited your relationship with Client A for your own sexual or emotional gain, thereby breaching paragraph 1.3 of the Code (2009) and paragraph 5 of the Code (2019).
Proven in relation to the 2019 Code.
- (e) Harmed Client A, thereby breaching paragraph 1.8 and 1.9 of the Code (2009) and paragraph 6 of the Code (2019). **Not proven**
- (f) Engaged in a dual relationship with Client A, thereby breaching paragraph 1.5 of the Code (2009) and paragraph 8 of the Code (2019). **Proven in relation to the 2009 Code**
- (g) Failed to take all reasonable care, taking into account the time that had lapsed since therapy ended, before entering into a personal relationship with Client A, thereby breaching paragraph 1.6 of the Code (2009) and paragraph 9 of the Code (2019). **Proven**
- (h) Failed to respect, protect, and preserve your client's confidentiality, thereby breaching paragraph 3.1 of the Code (2009) and paragraph 18 of the Code (2019). (in relation to any disclosure of private or sensitive information about the personal relationship). **Not Proven**
- (i) Failed to act in a way which upholds the profession's reputation and promotes public confidence in the profession and its members, including outside of your professional life as a UKCP practitioner, thereby breaching paragraph 32 of the Code (2019). **Proven**
- (j) Failed to challenge questionable practice in yourself and report potential breaches of the Code to UKCP, thereby breaching paragraph 10 of the Code (2009) and paragraph 37 of the Code (2019). **Proven**

For the reasons set out herein, your fitness to practise is impaired by reason of misconduct.

Documents

The Panel had placed before it the following documents:

- A principal bundle on behalf of UKCP amounting to 138 pages, hereafter referred to as C1;
- A supplementary bundle of emails amounting to 14 pages hereafter referred to as C2.

Hearing

1. The complaint was heard under the UKCP Complaints and Conduct Process 2022, and the Panel considered the alleged breaches of the UKCP Code of Ethics and Professional Conduct 2019 and Ethical Principles and Code of Professional Conduct 2009 (the Code).

Preliminary Matters

2. The Panel considered Mr Joshi's preliminary application to admit a further 14 page bundle; you did not object to this inclusion. Ms Tuck gave legal advice; the documents were clearly relevant and there was no objection to their inclusion. They were therefore admitted and marked "C2".

Determination of Facts

3. The Panel considered all of the documentary evidence before it and heard oral submissions from Dr Joshi on behalf of UKCP, and the Registrant.
4. Given a central issue in this matter was whether "A" ought to be referred to as "Client A" or "ex-Client A", we have herein referred to her solely as 'A'.
5. In June 2024 'A' made an allegation of rape against the Registrant to the police. On 24 June 2024 a Detective Constable ("DC") emailed the UKCP with a "safeguarding update" setting out that the Registrant had been accused of rape. The report states that the complainant had met the Registrant 11 years previously when she sought help in a professional capacity, seeing the Registrant intermittently for 2 years before becoming a friend / mentee. Her allegation was that the Registrant had been paying her for sex and would hypnotise her to have sex with the Registrant. The DC reported that the Registrant denied all allegations and in particular denied ever having trained, practiced or attempted hypnosis. The Registrant confirmed to the police that he had in the last 12 months started a sexual relationship with his previous client, 'A'.
6. 'A' later withdrew her allegation of rape. In an email dated 20 January 2025 'A' wrote "I shouldn't of said those bad things about him [sic]. I have been going through a lot of stress with my neurology conditions and I tend to fight back at the ones closest to me. Mark is a genuine kind and caring man. He is my hero, and my strength." She went on to say "He has never raped me. I got it wrong".
7. The panel were taken through each document in bundle C1. It read all of those documents carefully. At page 36 it saw the Registrants responses to the safeguarding notes; the Registrant admitted the sexual relationship with 'A' but said "from my perspective the enquiry pivots on the point as to whether she can legitimately be said to have been a 'client' and therefore me her Psychotherapist, at the time of the sexual contact. To my way of thinking, eight years, two or three of those a regular

friendship, says very much an ex-client. 'A' has had four or five other therapeutic relationships both long and short term, since seeing me".

8. The emails, which were provided by the Registrant and are from 2023 and 2024 evidenced the matters listed in charge 3 which the Registrant admitted to having done, the Registrant told us, "as a friend" (save for 3a, which was when the Registrant and 'A' were "more than" friends).
9. Dr Joshi suggested that the emails demonstrated, inter alia, that 'A' was an extremely vulnerable person – known to the Registrant by their previous therapeutic relationship. She became reliant on you in relation to outside relationships including with her family, and at times when she expressed suicidal feelings. Some emails were sent (May 2024) when 'A' was receiving inpatient treatment. Dr Joshi suggested that this demonstrated a controlling and manipulative relationship with 'A', who was vulnerable, which was unprofessional.
10. The Registrant responded to the case set out against them. The Registrant said that he conducted 8 – 10 sessions of therapy with 'A' in 2013, she was then hospitalised and saw the Registrant for a few sessions thereafter. The Registrant said they could not recall exactly when the therapeutic relationship ended, whether 2014 or 2015. The Registrant received several emails and phone calls from her between 2016 and 2018, a period in which she was hospitalised for shorter stays, a period the Registrant characterised as the "in between period". The Registrant told us that they commenced a friendship with her in around 2018 – 2019, some five years after the end of their formal therapeutic relationship when she moved to the town where the Registrant lives with her then boyfriend. Between 2018 and 2023 you were friends, a period in which 'A' had a long period of wellness. This was a long time after the end of the therapeutic relationship. The Registrant denied that any of the interactions demonstrated manipulative or exploitative behaviours. Rather, when 'A' is well, the Registrant said she was "delightful" and they enjoyed each other's company. The Registrant said that they considered defining 'A' as a 'vulnerable person' took a limited view of her humanity. The Registrant said that she could swing from idealising to denigrating those who support her when unwell, which included the Registrant. The sexual relationship the Registrant said had been initiated by 'A', at a period of time when she was at her most well. The Registrant told us they were twice 'A's age and had more life experience than her, but that did not render the relationship exploitative, and said the Registrant had not had a sexual relationship with her since around February 2024 when the Registrant ended it, save for a "single occasion in around April 2024". The Registrant and 'A' remain friends, having very recently helped her with completing forms. This, the Registrant said, demonstrated that they never had any improper motive, as they remained friends beyond the end of the sexual relationship.
11. After a short break in the hearing, the Registrant went through each of the factual matters in charge 3 and explained that each of the matters listed had taken place in the course of their friendship in the context of a supportive relationship (save for purchasing jewellery for her which was when the Registrant and 'A' were "more than" friends). The Registrant said that had 'A' been a client he would

have considered the matters outlined in charges 2 and 3 to have been inappropriate and unprofessional (though not exploitative), but that it was very much in the context of their friendship and long after their therapeutic relationship had ended. In terms of the context the Registrant told us that 'A' says things which are untrue when she is unwell, and then retracts them.

12. The panel asked questions and then heard submissions.

13. Dr Joshi made closing submissions. He noted that there was no denial of the facts in allegations 1-5. The denial is effectively to say that while it all happened, it was not how the regulator interpreted the matters. If, a member of the public were to look at the registrant and the actions of the registrant and what was said today, then the allegations from 6-8 would be proven. It has become clear, and there is no denial, that 'A' was in an incredibly vulnerable position. He said that 'A' had approached him during a period of hospitalisation, and indeed he attended a multidisciplinary team meeting while she was hospitalised as her therapist. This should, he submitted, have made it clear that 'A' had a number of issues which needed to be dealt with. One of the matters raised is that the registrant stated "I will always be more powerful than 'A'" – and he referred to her education, age and life experience. He described 'A' as being "full of erotic energy". At paragraph 1.4 the Code of Ethics states that a registrant must not enter into a sexual relationship with a client. The term "client" is all encompassing. From the beginning the Registrant knew of the background, knew of the imbalanced power dynamic, and the registrant kept up the relationship in between hospital stays. It is of great concern that the Registrant did not take a step back and think about his professional obligations, not least when he was aware that 'A' idealised him. But not only did it not stop there, but the Registrant became involved in 'A's' life in a greater and greater capacity. She turned from a friend into a lover – but it seems that at no point in fact had he stopped interacting with her as a therapist. When he realised in fact that their relationship was "ambiguous" as opposed to a purely therapist /client relationship, he ought to have raised the point in supervision and reflected. He described 'A' as a client who could not cope with everyday life, and person who see-sawed. On 19 January 2025 'A' described the registrant as a "predator" and said that as he was about to retire he did not care about the outcome and teased her about it. Dr Joshi said that the registrant's control over 'A' was clear, for example when discussing 'A's' sister it is apparent that 'A's' dependence on him was growing. Rather than A receiving objective and constructive help, he continued. He knew that a sexual relationship might be harmful to 'A' but he continued in any event. The approach of the registrant today in answering questions showed that he had not considered appropriate boundaries, nor reflected on his conduct. The sexual relationship in fact only ended when 'A' was hospitalised again – though there was a further occasion even after that. The suggestion that the registrant and 'A' were friends in between hospital admissions is not reflected in the emails which show her dependence on the Registrant. The emails in C2 demonstrate A's seeming confusion – on the one hand saying the Registrant should not face regulatory charges and on the other saying that the Registrant is a "predator". The boundaries were confused. The charges should be made out.

14. The Registrant had the opportunity to make submissions. The Registrant told us that the fact they maintain a relationship with 'A' now shows the falsity of the allegations. If the motivations were sexual, why still be friends? There has never been any financial gain, in fact it has 'cost me money'. The Registrant told us that by the time of the sexual relationship 'A' was a long way from being a client. There had been a 'hiatus' between the therapeutic relationship and later the friendship and then sexual relationship. The Registrant confirmed that they were fully aware that 'A' was a vulnerable person, but the relationship was joyful with him being generous to her. The Registrant said there was no evidence of being coercive or controlling, rather he had had an affair with a friend. As for interactions with neighbours, this was not the disclosure of any sensitive information but normal interactions chatting about when 'A' would return home. The Registrant said that they were happy to have been part of 'A's' healing and said she was probably alive because you had cared to help. The Registrant noted that they were at the end of their therapy career and had never lost anyone to suicide despite a number being suicidal.
15. The Panel heard and accepted the advice of the Legal Assessor.

Findings of fact

16. The Registrant described to us being approached by 'A' to provide therapy to her in around 2013; and during the course of that therapy the Registrant discovered 'A' had previously been in hospital. The initial therapy was interrupted by a second period of hospitalisation during which the Registrant attended a multidisciplinary meeting as her therapist. The Registrant had some further sessions after that hospitalisation, possibly in around 2015 but the Registrant was unsure when. In 2016 during an additional period of hospitalisation 'A' asked to visit the Registrant for a coffee being accompanied by a mental health nurse. She travelled for about an hour from the hospital she was resident in, to the town in which the Registrant then worked. The Registrant said that at that time 'A' probably idealised the Registrant as her former therapist.
17. After 2016 the Registrant said they became friends with 'A' via telephone calls and emails. In 2018 'A' moved with her then boyfriend and was living nearer to the Registrant's home address, and after this time they saw her socially more often.
18. The Registrant did not demonstrate to the panel that they exercised any 'great attention' or show 'reasonable care' in delineating a change of status from therapist to friend. The clear boundaries required to delineate an alteration of roles were not evident. The panel asked the Registrant a number of questions about supervision and their reflective practices. While the Registrant confirmed that they have had the same supervisor for many years and also have peer supervision regularly, the Registrant did not recall ever discussing their interactions with 'A' - whom the Registrant knew at all times to have a significant history of mental ill health such that she has always been described as a vulnerable adult, and who the Registrant met as a client.

19. From 2018 the Registrant described themselves as being a friend of 'A', and in that context admitted the behaviour set out in allegations 3(b) – (p) which took place over the period between 2018 and 2024. The Registrant were also a witness to 'A's baptism as her friend, and she referred to the Registrant as her Godfather.
20. The evidence the Registrant submitted to the panel by way of emails are overwhelmingly from May to September 2023, with some additional ones from February 2024. We had no information as to how these emails were selected, but from the Registrant's oral evidence it is apparent these were not a comprehensive record. The emails evidenced the interaction between the Registrant and 'A' which the Registrant described as part of their friendship, and quite a close friendship with the Registrant caring for 'A's animals, loaning her money, assisting her in life events.
21. In August 2023 the Registrant told us that they entered into a sexual relationship with 'A'. A few weeks prior to this the Registrant had exchanged emails in which the Registrant had told 'A', "were it not potentially so harmful to you and to me and my (other) loved ones I'd be an enthused participant!". The Registrant said that they thought it was potentially harmful to 'A' because it "wouldn't lead to what she hoped for. A more possessive relationship". It was during the period when the Registrant were in a sexual relationship with 'A' that the Registrant purchased jewellery for 'A' (charge 3a). It appeared to the panel that by the summer of 2023 'A' was quite isolated (having become distrustful of people at her church) and very dependent on the Registrant, for example to take her to appointments, assist her financially and care for her pets. The Registrant's sexual relationship continued, they told us, until approximately February 2024 when 'A' was again hospitalised, and once or twice more after she was released from hospital in April 2024, it was unclear as to whether the Registrant had sexual intercourse with 'A' once or more than once in April 2024.
22. The panel asked the Registrant about his practice and use of a supervisor and the Registrant explained that he paid for individual supervision fortnightly and also additionally had peer supervision. The Registrant also acts as a supervisor. The Registrant did not however tell us that they had used his supervisions at any point in time to consider the transition of 'A' from being a client, who had significant vulnerabilities, was isolated from her family, the Registrant said was someone who was "idolising" them, to a friendship and later to an intimate relationship.
23. As set out above, in May 2024 'A' made an allegation to the police that the Registrant had raped her. This allegation has been withdrawn by her, but the police raised the Registrant's relationship with 'A' as a safeguarding concern and made this report to the UKCP. The panel read carefully the Registrant's responses to the safeguarding team as well as to these charges.

Conclusions in relation to the charges

24. The Registrant admitted the matters set out in charges 1 – 5.
25. In relation to each of the other charges, the panel were reminded that the burden of proof is on the UKCP, and that the civil burden of proof, whether matters are established on a balance of probabilities, applies.

Charge 6: Proven.

26. The panel considered whether the matters listed in 3(b) – (p) were, as alleged in paragraph 6 of the charges, inappropriate and/or unprofessional and/or exploitative. The panel considered that the lack of any clarity that the nature of the Registrant's and 'A's' relationship had expressly changed from being one of therapist to friend was such that it was inappropriate and unprofessional. The Registrant said that had not considered this in any supervision so far as the Registrant could remember, but when the panel asked what relevant factors the Registrant would have raised had it been discussed, the Registrant said they were the power imbalance, erotic transference and idealisation. The Registrant said there was a significant power imbalance between the Registrant and 'A' given the Registrant's greater age, life experience, educational attainments, wealth as well as having been her therapist. The Registrant were also alive to erotic transference, describing 'A' as being "full of erotic energy when we met", and considered that certainly in 2016 when the Registrant met 'A' for coffee, she was idealising the Registrant, or perhaps idolising him. The Registrant told us that he and 'A' had exchanged emails and telephone calls after the coffee meeting in 2016 and their friendship developed; it is unclear to the panel as to how 'A' would have understood or perceived this alteration in status.
27. The panel concluded that the Registrant's behaviours were both inappropriate and unprofessional because of the lack of clarity about boundaries when the therapeutic relationship ended and this 'friendship' began.
28. The panel considered very carefully whether the behaviour the Registrant admitted was exploitative. The panel were very concerned about the apparent lack of any reflection or presence of any clear boundary between the end of a therapeutic relationship and an intimate friendship and then sexual relationship. There was also an entire absence of consideration as to how 'A' perceived this relationship. On balance the panel did consider that this was exploitative given her very vulnerable position, the power imbalance and lack of clarity.

Charge 7: Not proven.

29. Charge 7 is that the Registrant's actions towards 'A' were "sexually motivated". The panel did not consider that this was proven by UKCP on a balance of probabilities.

Charge 8

30. In relation to charge 8, the Registrant said that he considered that after 2015 'A' was an ex-client such that the Code of Ethics did not apply to the situation. Whilst the Code is primarily concerned with ongoing therapeutic relationships, some provisions expressly deal with former clients – specifically para 1.6 of the 2009 and para 9 of the 2019 Code both state that in relation to former clients, psychotherapists must take into account the length of therapy and the time lapsed since therapy, and pay great attention to exercise reasonable care before entering into any personal or business relationship. The panel had no evidence whatsoever as to how or when the Registrant's therapeutic relationship with 'A' terminated and their work was considered to have ended. Nor did the panel have any evidence of any consideration or reflection on your part before entering into a personal friendship with 'A'. Paragraph 1.5 of the Code warns against 'dual or multiple relationships' and says "when dual or multiple relationships are unavoidable, for example in small communities, psychotherapist take responsibility to clarify and manage boundaries and confidentiality of the therapeutic relationship". The panel noted that while the Registrant were clear that their therapeutic relationship had ended, it was not clear how this was understood by 'A' or how the Registrant had sought to make it clear to her.

31. The panel considered carefully in relation to each paragraph within Charge 8 which Code of Practice was applicable at the time of the conduct alleged.

- (a) Failed to act in Client A's best interests, thereby breaching paragraph 1.1 of the Code (2009) and paragraph 1 of the Code (2019). **Not proven.**

Paragraph 1.1 of the 2009 code refers to respecting the client's best interests "when providing therapy". There was no suggestion of any breach or failure on the Registrant's part during the early therapeutic relationship. While the panel were concerned that the Registrant was unable to tell us about how the therapeutic relationship was brought to an end, it recognised that this was almost 10 years ago. The panel did not consider that UKCP had proven this charge.

As to paragraph 1 of the 2019 Code, this requires practitioners to "act in your client's best interests". This appeared to the panel to refer to present clients – as distinct, for example, to paragraph 5 or 9 which expressly refer to former clients. We had no evidence of any failure to have regard to A's best interests during the their contracted therapeutic relationship.

- (b) Failed to treat Client A with respect, thereby breaching paragraph 1.2 of the Code (2009) and paragraph 2 of the Code (2019). **Not proven**

Under both codes, this appears to the panel to refer to current clients engaged in formal therapeutic work. This is not evidenced.

- (c) Engaged in a sexual relationship with Client A, thereby breaching paragraph 1.4 of the Code (2009) and paragraph 4 of the Code (2019). **Not proven**

Under both codes, this appears to the panel to refer to current clients engaged in formal therapeutic work. This is not evidenced.

- (d) Abused and/or exploited the relationship with Client A for the Registrant's own sexual or emotional gain, thereby breaching paragraph 1.3 of the Code (2009) and paragraph 5 of the Code (2019). **Upheld in part.**

There is no detailed evidence about the Registrant's relationship prior to 1 October 2019 when the 2009 code was in force, we therefore do not find this element of charge (d) to have been upheld.

Paragraph 5 of the 2019 code states that psychotherapists must not "exploit or abuse your relationship with clients (current or past) for any purpose including your emotional, sexual or financial gain".

A, a former client, was a vulnerable individual with multiple hospital admissions due to her mental health, the emails the Registrant disclosed from 2023 indicate that she was increasingly dependent on the Registrant in the period up to and during their sexual relationship. The Registrant recognised the significant power imbalance between the Registrant and A, and as set out above, there was a lack of clarity as to how the Registrant ended the therapeutic relationship and made clear it was changing to a friendship. The panel consider the charge of abusing and/or exploiting the Registrant's relationship with 'A' for their own sexual or emotional gain is found proven on a balance of probabilities.

- (e) Harmed Client A, thereby breaching paragraph 1.8 and 1.9 of the Code (2009) and paragraph 6 of the Code (2019). **Not proven**

The UKCP did not evidence the “harm” it relies upon in this regard; this is not proven.

- (f) Engaged in a dual relationship with Client A, thereby breaching paragraph 1.5 of the Code (2009) and paragraph 8 of the Code (2019). **Proven in part**

The Registrant told us about the occasion in 2016 when they met ‘A’ for coffee in the presence of her mental health nurse. The Registrant said it was a social meeting as a friend, but the Registrant only knew ‘A’ because she had been his client and said she had contacted the Registrant as her therapist, and that she ‘idealised’ or ‘idolised’ the Registrant. This meeting at the very least was confused and confusing for A, as a social relationship is being embarked upon in circumstances where there is no evidence about how the therapeutic relationship has ended, and whether it was clear to ‘A’ that it had in fact come to an end. By 2019 there is no evidence of an ongoing formal therapeutic relationship; there is insufficient evidence of a breach of the 2019 code post 1 October 2019.

- (g) Failed to take all reasonable care, taking into account the time that had lapsed since therapy ended, before entering into a personal relationship with Client A, thereby breaching paragraph 1.6 of the Code (2009) and paragraph 9 of the Code (2019). **This is proven.**

For the reasons set out above, this charge is upheld.

- (h) Failed to respect, protect, and preserve their client's confidentiality, thereby breaching paragraph 3.1 of the Code (2009) and paragraph 18 of the Code (2019). (in relation to any disclosure of private or sensitive information about the personal relationship). **Not proven**

This allegation is concerned with the Registrant talking to neighbours about an anticipated hospital release date, though we have no evidence as to exactly what was said or on what date. It does appear to be from 2023 or 2024, such that the 2009 code is not relevant.

The panel have considered paragraph 18 of the 2019 code, but there is no evidence that the Registrant have disclosed sensitive information obtained in the course of the Registrant's professional work.

- (i) Failed to act in a way which upholds the profession's reputation and promotes public confidence in the profession and its members, including outside of the Registrant's professional life as a UKCP practitioner, thereby breaching paragraph 32 of the Code (2019). **Proven**

The panel consider that its findings in relation to charge 6 and the parts of charge 8 which it has found proven are such that the Registrant have failed to uphold the profession's reputation and promote public confidence in the profession and its members.

- (j) Failed to challenge questionable practice in your and report potential breaches of the Code to UKCP, thereby breaching paragraph 10 of the Code (2009) and paragraph 37 of the Code (2019). **Proven**

The panel considered this charge to be somewhat circular in nature, because had you questioned your practice and reflected on the end of a therapeutic relationship and the need for clarity around boundaries to 'A', who the Registrant saw as an "ex client", the Registrant would not in fact have been in breach of the code and therefore there would have been no need to make any self report. The panel was however very concerned about the Registrant's lack of insight and reflection – even to the date of this hearing in which the Registrant told the panel he did not consider himself to have done anything wrong at all. The panel therefore finds this charge proven.

- 32. In total the Panel found five breaches of UKCP's Code of Ethics and Professional Conduct 2019 and Ethical Principles and Code of Professional Conduct 2009.

Determination of Misconduct

- 33. This determination should be read in accordance with the Panel's previous determinations.
- 34. 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.

35. The Panel heard further submissions from Dr Joshi on behalf of UKCP and the Registrant.
36. Dr Joshi on behalf of UKCP invited the Panel to conclude that the facts found proved constitute misconduct. He submitted that the seriousness of the incidents was underlined by the long standing period of the issue going on and lack of insight. 'A' was at all material times a vulnerable person who had had numerous stays in hospital who was unable to cope with everyday life. The real issues are in relation to the contact the Registrant have and the very real power imbalance between the Registrant and 'A'. He highlighted the breaches of the 2019 Code of Ethics, and in particular paragraphs 8 and 9, the Registrant's seeming disregards for 'A's vulnerability and the difficulty in seeing where their professional relationship ended and their personal relationship began. Dr Joshi submitted that the Registrant had shown virtually no insight into their actions. He said that the Registrant seem to have dealt with 'A' in an off hand manner, blaming her for the situation she was in.
37. The Panel accepted the advice of the Legal Assessor as to the approach it should adopt in considering the question of misconduct. This advice was given in advance of Mr Kirwin's submissions so that he would be aware of the test the panel would apply.
38. The Panel recognised that the question of misconduct is a matter of independent judgement and is not a matter of proof for the parties.
39. 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."*
40. The Registrant submitted he had reached out to 'A' when she had separated from her boyfriend and was very isolated. He said that there had been a long hiatus since the coffee incident in 2016 which had been ambiguous, and the start of that friendship. The Registrant had assisted her in periods when she was unwell, and noted that it was a strange position in which a complainant was not complaining and asked rhetorically whether the panel's determination suggested the Registrant could never have a relationship with a vulnerable person. The Registrant denied entirely any 'victim blaming', noting that he had commented on her lack of truthfulness when unwell, but were not blaming her for that.

41. The Panel considered that the Registrant's conduct has fallen short of what is proper in the circumstances. In particular in the Registrant's failure to take reasonable care after the end of their formal therapy sessions with 'A', before embarking on what the Registrant describes as their 'friendship'. Despite the Registrant saying there was a 'hiatus' between when 'A' knew the Registrant as, and saw the Registrant as a therapist in 2016, and their friendship from 2018 (which you have said both that she instigated, and that you had instigated), you told the panel that in fact telephone calls and emails, though sporadic, had been exchanged during that 2016-2018 period, which the Registrant described as the "in between period". While the Registrant noted that the "complainant was not complaining", the panel saw the contradictions in 'A's' emails, at some point making complaints and at others withdrawing them.
42. The panel also noted that the Registrant could not recall having discussed the change of status /role vis a vis 'A' with their supervisor or in peer supervision and that it is not apparent that the Registrant had reflected on that to date. This was relevant to its conclusion that the Registrant conduct amounts to misconduct, because as found in relation to charge 8(j), had you challenged your own practice, some of the breaches of code could have been avoided.
43. In light of the above, the Panel determined that the Registrant's conduct amounts to misconduct.

Determination of Impairment

44. The Panel then went on to consider the question of impairment. This determination should be read in accordance with the Panel's previous decisions in this case.
45. In reaching its decision, the Panel was mindful that the question of impairment is a matter for the Panel's professional judgement. The Panel was required to determine whether the Registrant's fitness to practise is currently impaired. The Panel had to assess the current position looking forward not back, however in order to form a view of the Registrant's fitness to practise today, the Panel will have to take account of the way in which the Registrant has acted or failed to act in the past. The Panel acknowledged that a finding of misconduct does not necessarily mean that there is impairment of fitness to practise. There must always be situations in which a panel can properly decide that the act of misconduct was, on the part of the Registrant, isolated and the chance of it being repeated in the future is so remote that his or her fitness to practise has not been impaired.
46. The Panel applied the approach to determine the question of impairment by Dame Janet Smith as set out in the 5th Shipman Enquiry and cited with approval in the case of CHRE v Grant (2011) EWHC 927 (Admin):

“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*
- d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

47. The Panel next considered whether the Registrant was liable to act in such a way in the future. The Panel had regard to any level of insight shown by the Registrant. The Panel also had regard to the decision in the case of *Cohen v GMC (2008) EWHC 581* and considered whether the Registrant’s misconduct is easily remedied; has already been remedied; and whether it is likely to be repeated.

48. The Panel was also mindful that when considering impairment, it is entitled to have regard to the wider public interest in the form of maintaining public confidence in the profession and declaring and upholding proper standards. The Panel had regard to the following part of the judgement in the case of *Grant*:

“In determining whether a practitioner’s fitness to practice is impaired by reason of misconduct, the panel should generally consider not only whether the practitioner constitutes a present risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

49. Dr Joshi also referred to the case of *Cheatle v GMC [2009] EWHC 645* at paragraph 21:

“There is clear authority that in determining impairment of fitness to practise at the time of the hearing regard must be had to the way the person has acted or failed to act in the past. As Sir Anthony Clarke MR put it in *Meadow v General Medical Council [2006] EWCA Civ 1390; [2007] 1 QB 462*:

“In short, the purpose of [fitness to practise] proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past”.

50. Dr Joshi said that the reputation of the profession had been undermined. His professionalism was called into question, as was his integrity. Those matters along with his lack of insight, shown in the past and also in the last two days, means that the registrant should be found to be impaired at this stage.

51. The Registrant told us that they had ceased working as a psychotherapist and had ceased UKCP membership. The Registrant now has just two supervisees who they see intermittently. The Registrant intends to cease that by Easter 2025.

52. In considering the four questions a – d above, the Panel considered

- 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*

Whilst we have not found that the Registrant have harmed 'A', the panel was concerned about the lack of insight or any reflection as to the Registrant's conduct. The panel had concerns that future clients, or indeed supervisees, could be placed at an unwarranted risk of harm if appropriate boundaries are not implemented and upheld, and dual relationships avoided.

- b. Has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

The panel did consider that the Registrant's conduct in the past brought the profession of psychotherapy into disrepute, and their lack of insight means that there is a risk of repetition.

This panel suggested neither that a psychotherapist can never have a relationship with a former client nor that they cannot have a relationship with a vulnerable person. Rather, in this particular case, the Registrant failed to demonstrate that they had set clear boundaries at the beginning and end of A's formal therapeutic relationship. Thereafter, it appears to the panel that the Registrant failed to think about the consequences of agreeing to embark on a friendship with a former client, failed to reflect on this in supervisions or otherwise, and failed to provide sufficient clarity to 'A'.

- 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*

The panel did consider that the Registrant's conduct breached a fundamental tenant of acting in the best interests of their client, and again the Registrant's lack of insight means that there is a risk of repetition.

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel did not consider there to be dishonesty in this case.

53. The Panel therefore determined that at present the Registrant's fitness to practice is impaired.

Determination on Sanction

54. 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 on the facts, misconduct and impairment.

55. The Panel heard further submissions from Dr Joshi on behalf of UKCP and from the Registrant.

56. In reaching its decision, the Panel had regard to the UKCP's Indicative Sanctions Guidance 2019 ("the ISG") but exercised its own independent judgement.

57. The Panel heard and accepted the advice of the Legal Assessor prior to submissions being made so that the Registrant were aware of the legal framework to be applied.

58. 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.

59. 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.

60. 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.

61. The Panel then heard further submissions from Dr Joshi on behalf of UKCP and from the Registrant.

62. Dr Joshi on behalf of UKCP submitted that the difficulty in this case is that the behaviour took place over a long period of time and he demonstrated little or no insight. He considered the potential sanctions in term; he said that the seriousness and vulnerability of 'A' were such that apologies, warnings, and training were not proportionate. He said that it was difficult to see how training could remedy this misconduct. He also said that a fitness to practice order would not provide for a safe practice. He said that a striking off order was the only appropriate remedy. The boundary setting was

wholly absent and to date confusion remains. Dr Joshi highlighted paragraph 5.4 of the indicative sanctions guidance; there was a sexual relationship with a vulnerable adult. He said that whether the registrant intended to have clients or not was an irrelevant factor as without sanction he would remain on the register.

63. The Registrant submitted that they had not acted in any malicious manner. The Registrant considered the issue to be academic as the Registrant has no intention as resuming as a psychotherapist. The Registrant told us that they had enjoyed a successful practice over many years, including having clients return to the Registrant for therapy, and had good success rates and helped many people.

64. The legal assessor confirmed she had no further legal advice in light of the submissions.

65. The Panel considered the following aggravating and mitigating factors:

Aggravating factors:

- Very longstanding practitioner
- Lack of insight
- Risk of repetition
- There was a sexual relationship with a former client who was vulnerable.
- Maintaining a sexual relationship with a former client for a period of months.
- The Registrant embarked on that sexual relationship weeks after sending an email to 'A' saying that it was "potentially harmful to you and to me and my (other) loved ones".
- It was a deliberate course of action, resumed after a period 'A's' of hospitalisation.
- The Registrant has, in our view, undermined the public confidence in the profession
- The Registrant has failed to demonstrate overall adherence to good practice
- The panel have found an apparent failure on the Registrant's part to use supervisory arrangements appropriately. The panel noted that even after being accused of rape, being interviewed by the police under caution, and being reported to their regulator by a police officer, the Registrant has still not given any evidence of reflecting in supervisions or otherwise on whether their conduct was ill judged.
- It appeared to this panel that during this hearing the Registrant has not engaged as fully and seriously as they might have, for example by preparing for a full statement of facts, trying to find any records (eg administrative records of appointments or payments) of the formal therapy with 'A', failing to have to hand the documents provided by the UKCP, seeking any testimonials from peers, supervisors or others. The Registrant also adopted the approach of telling the panel that he considered its determination to be 'academic', seeming to have no desire to stay on the register.
- While subject to an Interim suspension order, the Registrant appears to still have membership of the UKCP on professional website entries.

Mitigating factors :

- The Registrant's immediate admission of factual allegations.
- The Registrant considered that they had a sufficient gap of around three years between the end of formal therapy and embarking on a friendship – the acts in which we found were not (save for buying jewellery) sexually motivated.
- The Registrant considered that a gap of around eight years between the end of formal therapy and a sexual relationship was a sufficiently long period.
- Neither the friendship nor the sexual relationship the Registrant embarked upon were with a current client. She was a former client.
- The panel did not find harm to 'A'.
- While there was an initial allegation of rape, this allegation was withdrawn and has been expressly disavowed by 'A'. The police did not press charges.
- We have assumed previous good character; certainly the UKCP have had no other complaints about the Registrant.

66. Having reviewed the competing factors set out above, the Panel went on to consider the appropriate sanction(s) in order of seriousness. It kept the issues of public protection and proportionality at the forefront of its consideration.

- a. *Apology, warning, written report or oral statement:* We considered these sanctions to be inappropriate given the seriousness of the conduct, and the undermining of the public confidence.
- b. *Further training and further supervision or therapy:* As the Registrant said that they are no longer seeking to work as a psychotherapist, you did not ask that consideration be given to these steps. Given this expressed intention to retire, the panel did not consider that these steps would be sufficient to either safeguard the public or ensure the maintenance of public confidence.
- c. *Conditions of Practise order:* The Panel then considered whether the impairment could be addressed by placing conditions on the Registrant's practise, potentially in combination with a *Suspension Order*: Had the Registrant demonstrated insight and a willingness to either have conditions on their practice for a short period, or undertake further training about the importance of clear boundaries, this may have satisfied the public interest in having confidence in the profession. However, the fact that the Registrant met 'A' when she was the Registrant's patient, and knew very well her vulnerability throughout, but did not show that at any point, the Registrant

paused and reflected before embarking on a close friendship and then sexual relationship with her, was such that the panel did not consider a suspension order would be sufficient by way of outcome.

- d. *Removal from UKCP Register:* in all the circumstances this was considered to be the appropriate outcome. It ensures there is no ongoing risk to the public, and that public confidence in the profession is maintained.

67. The Panel determined that the appropriate sanction is removal from the UKCP register.

Application for an interim suspension order

68. Dr Joshi submitted that an Interim Suspension Order (ISO) was necessary to cover the appeal period in this case. The Registrant did not object to this as the Registrant said he was not on the register and did not intend to reapply in any event.

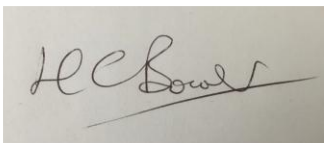
69. The Panel considered that an ISO was necessary to protect the public and was otherwise in the public interest.

Right of Appeal

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

71. 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,

A rectangular box containing a handwritten signature in black ink. The signature appears to read 'HCBower'.

Harry Bower, Lay Chair

Date 22 January 2021