Social Worker:
Colin John Brown
Registration Number: SW26352
Fitness to Practise:
Final Hearing

Date(s) of hearing: Monday 20 September 2021 to Friday 24 September 2021

Hearing Venue: Remote hearing

Hearing outcome: All allegations found proved. Impairment found. Removal order imposed.

Interim Order: Interim Suspension Order imposed for 18 months.

Introduction and attendees

1. This hearing is held under part 5 of the Social Workers Regulations 2018 (the regulations).

2. Mr Brown attended and was represented by Mr Ray Short of UNISON.

3. Social Work England was represented by Ms Nutan Fatania of counsel, as instructed by Capsticks LLP.

Adjudicators	**Role**
Alexander Coleman	Chair
Sarah Redmond	Social Worker Adjudicator
Sarah McAnulty	Lay Adjudicator

Jyoti Chand	Hearings Officer
Paige Higgins	Hearing Support Officer
Gerry Coll	Legal Adviser

Allegations

4. The allegations against Mr Brown are as follows:

1. You engaged in inappropriate conduct with a service user (now ex-service user) in that:

1.1. Once the ex-service user had turned 18, your conduct was characterised by sexualised conversations and sharing of sexual fantasies.

1.2. You conducted a physical examination by observing the young person's pubic area following reported symptoms of trichotillomania.

1.3. You provided your personal mobile phone number to the ex-service user and exchanged telephone calls and text messages which were of a sexual nature.

1.4. You did not report your conduct to your employer until after the young person had stated their intention to inform your employer.

2. Your conduct at Particulars 1.1, 1.2 and 1.3, above, was sexually motivated.

Your actions at particulars 1 and/or 2 constitute misconduct.

By reason of your misconduct your fitness to practise is impaired.

5. After the charges had been read, Mr Short on behalf of Mr Brown formally made admissions as follows:

   heads of charge

   1.1, 1.2, 1.3, and 1.4 admitted;

   2, in respect of 1.1 and 1.3 above, admitted;

   2, in respect of 1.2 above not admitted.

   Mr Brown admitted misconduct.

Preliminary matters

6. Mr Short, on behalf of Mr Brown, made an application under rule 38(b) of the Social Work England (Fitness to Practise Rules) 2019 (the rules) that part of the hearing would be conducted in private. This was in regard to matters relating to Mr Brown's health, that of his close family and his family circumstances being discussed. Ms Fatania for Social Work England did not object. The panel accepted the legal adviser's advice. Although, it had full regard for rule 37, which provides that hearings should be in public ordinarily, the panel determined that it could accommodate Mr Brown's right to respect for his private and family life by hearing only those matters in private when necessary. Accordingly, the panel agreed to Mr Short's application.

7. On its own motion after legal advice under rule 32, and with both parties consenting, the panel determined that the service user referred to in the allegations will be recorded as service user A.

8. The only issue in dispute was that Mr Brown denied that the physical examination of service user A was sexually motivated in nature. Accordingly, the panel determined that the admissions made by Mr Brown will be noted and Mr Brown given full credit when relevant.

Summary of Evidence

9. The panel were provided with the following documents:

   - Statement of case – 13 pages
   - Witness statement bundle – 20 pages
   - Exhibit bundle – 131 bundles
   - Social Workers statement bundle – 78 pages

- Service and supplementary bundle – 33 pages

10. Between 2014 and 2019, Mr Brown was employed by the Child and Adolescent Mental Health Service (CAMHS) which is part of Central North-West London Primary (the Trust). Mr Brown's social worker qualification enabled him to be employed as Senior Primary Mental Health Therapist.

11. On 15 May 2019, the Health and Care Professions Council (the HCPC), Mr Brown's then-regulator received a self-referral from Mr Brown. A referral was also made by the Trust on 29 May 2019.

12. Mr Brown advised the HCPC that he had been suspended from his employment, due to his having engaged in an inappropriate personal relationship with a former service user A. Mr Brown had worked with service user A from when service user A was aged 14 until he transitioned from CAMHS to the Trust's adult services. Mr Brown also disclosed that in 2014 he had conducted a physical examination of service user A to rule out symptoms of trichotillomania, a disorder in which the patient self-harms by compulsively plucking out their hair.

13. Mr Brown was the treating therapist for service user A between 7 April 2014 and June 2017. At that point, service user A transferred to the Trust's Adult Mental Health Services as he had become an adult on reaching 18 years old.

14. During a meeting with his manager on 13 May 2019, Mr Brown handed his letter of resignation and intention to retire. Mr Brown disclosed during this meeting that he had conducted an inappropriate relationship with service user A, after the point at which service user A had been transferred to the adult mental health services. Service user A had contacted Mr Brown and a relationship developed, which was characterised by sexual conversations and sharing sexual fantasies. Calls and text messages had been exchanged which were of a sexual nature. Mr Brown disclosed that this had been possible because he had given service user A his personal mobile telephone number. Mr Brown also disclosed that in 2014 while he was the treating therapist for service user A, he conducted a physical examination of service user A's pubic area without a chaperone being present. The Trust then referred the matter to the LADO and to the police.

15. The police advised that service user A was "*not ready to share what happened between him and Colin*". Accordingly, they closed the case.

i) Ms Fatania for Social Work England called three witnesses:

(a) Mr Natalino Putzu – Team Manager and Early Intervention Team Lead for Westminster CAMHS;

(b) Dr Azer Mohammed – Consultant Child and Adolescent Psychiatrist at Westminster CAMHS;

(c) Ms Sisa Moyo – Deputy Director for the Central and North-West London CAMHS and Eating Disorders and internal investigator.

ii) Mr Short for Mr Brown called Mr Brown as a witness for his own case.

Mr Natalino Putzu

16. Mr Natalino Putzu adopted his statement and gave evidence that he had received and recorded the initial disclosure from Mr Brown on 13 May 2019. Mr Brown reported that service user A had telephoned Victoria Medical Centre and been put through to Mr Brown on one occasion. During the call, service user A said that he was masturbating. Mr Brown told Mr Putzu '*I thought is he acting out rather than showing me. I should have put it down, but I listened. On the end, he finished and said should he call me back'.* Mr Brown disclosed that another call had taken place some weeks later in which service user A expressed a wish to stay in contact with Mr Brown. '*I told him as to why he's phoning me. He said he was not getting anywhere with adult services. I said, 'ok if you really need to speak to someone the call me' and I gave him my personal number*.'

17. Three further calls were recorded as having taken place between Mr Brown and service user A in which service user A discussed his mental health concerns, his use of adult pornography internet sites and his sexual fantasies. Although, Mr Brown asserted that he had told service user A that his much greater age and state of health precluded a personal relationship of any form, Mr Brown continued to listen and participate in the calls. Mr Brown accepted that he had become aroused. In addition, Mr Brown said that he had told service user A of his own intimate imaginations.

18. Mr Putzu said that Mr Brown had retrospectively and should have disclosed these issues at the time of their occurrence, in line with the Trust's expectations of senior therapists. Mr Putzu had not been Mr Brown's manager at that time. This delay was also a serious matter. Mr Brown had a professional obligation to raise the concerns with his manager in a timely way. Mr Putzu also said that Mr Brown should not have given his phone number to service user A and engaged in the sexualised contacts.

19. Mr Putzu, when cross-examined by Mr Short did not accept that Mr Brown had said service user A was aged 19 when these events occurred. Mr Putzu's recollection was being told that service user A was 17. Mr Putzu recalled that Mr Brown reported having observed service user A being aroused when he was examined physically by Mr Brown. Mr Putzu did not accept that he was wrong in this recollection despite contrary entries in other exhibits.

Doctor Mohammed

20. Doctor Mohammed adopted his statement and gave evidence that his duties involve seeing patients who required medical intervention. He was not Mr Brown's supervisor but was a medical colleague. As a result, Dr Mohammed was able to assist service user A in ways that Mr Brown could not. Service user A manifested signs of anxiety and fear and/or panic with constant worry. Service user A had, in his opinion, adopted a maladaptive coping strategy in response to his anxieties.

21. Dr Mohammed said that around 2014, when asked to discuss Mr Brown's examination of service user A, in which Mr Brown acknowledged using a pen or other instrument to lower the waistband of service user A's pants, Dr Mohammed thought that to have been an ill-advised thing for Mr Brown to have done. In Dr Mohammed's view, it is not always necessary to examine wounds where self-harm is suspected. Mr Brown's role was to provide cognitive behaviour therapy but in certain circumstances may have appropriately extended his role to conduct an examination if appropriate. Dr Mohammed would not have expected Mr Brown to conduct an intimate examination. In his view, it was ill-advised for Mr Brown not to have considered whether he should pause before conducting the examination and consider whether one of his medical colleagues could have provided guidance before continuing.

22. In cross-examination by Mr Short, Dr Mohammed thought that Mr Brown and other colleagues had a discretion whether to examine the wound if there was a report of a patient self-harming. When it was put to him that another witness (Ms Moyo) took a contrary view in her statement, suggesting that neither the social worker nor the mental health worker was allowed to carry out a physical examination, Dr Mohammed did not completely agree. Dr Mohammed said however that his view and that of Ms Moyo were not necessarily at odds, and much depends on the nuance of the situation.

23. Dr Mohammed said that while it was difficult to come to a concluded view whether Mr Brown's actions were appropriate if the therapist believed that a patient was self-harming that it could be appropriate to look and observe an injury. Even as a doctor, Dr Mohammed said that he would not have lowered anyone's underwear or pants.

24. Dr Mohammed did not recall a discussion with Mr Brown in which Mr Brown discounted self-harm by service user A. The majority of patients, in Dr Mohammed's opinion, do not require examination unless something is out of the ordinary. The process may be collaborative apart from medical staff may observe injuries in patients. However for an intimate examination the profession would require to consult the definition in the chaperone policy. There was a difference between observing injuries and commonplace obvious parts of the body and those in a private area of the body. Ordinarily, one would not want to invite a patient to reveal or expose anything in such an area. "*Below the belt area, you have got to be thinking very carefully about how you want to proceed*."

Ms Sisa Moyo

25. Ms Sisa Moyo gave evidence that carrying out a physical examination was not any part of Mr Brown's role. Any such physical examination would be out with the skill set of a social worker or mental health therapist. In her view, Mr Brown was expected to refer a patient for examination a medical professional. Ms Moyo said that the Trust's chaperone policy did not necessarily apply to Mr Brown, as he was not permitted to carry out a physical examination. Ms Moyo said that it was not appropriate for Mr Brown to have used an instrument (such as a pen) in order to conduct a physical examination Mrs Moyo observed that Mr Brown had examined service user A on 9 December 2014 when the young person was in his care.

26. In cross-examination by Mr Short, Ms Moyo said that because there was no expectation that Mr Brown would carry out a physical examination, there was no expectation that the chaperone policy and discipline policy would apply. She thought that Mr Brown's working practice where he was in Mr Short's words "completely clinically isolated the surgery" was not unusual for the therapist. That would not have justified Mr Brown conducting a physical examination. Ms Moyo concluded that to an extent she and Dr Mohammed did not completely agree and that Dr Mohammed allowed the possibility of pulling down a collar and lifting a sleeve, she observed that "we have a difference of opinion".

27. In answer to panel questions, it was an unspoken policy that therapists would not conduct a physical examination where a service user would be asked to remove clothes and be physically examined. That was different in her view from observation of wounds that were accessible and immediately visible. In Ms Moyo's evidence, a physical examination falls outside of the therapist role. If it ever were necessary, chaperone should have been obtained. In circumstances where the young person insisted on removing clothing, Mr Brown should have stopped him. He should have discouraged the young person from proceeding further and explained that he was not equipped for such an examination and must refer the young person to a specialist. This should always be done within professional boundaries and in the spirit of safeguarding the young person. An examination is, in Ms Moyo's view, a hands-on procedure and not an observation. In regard to a therapist, any such examination must be limited to visible parts of the body, what anyone could see. Mr Brown was not permitted even to take the height and weight of the young person.

Mr Brown's evidence.

28. Mr Brown adopted his earlier statements as his evidence in chief. He began by acknowledging the almost complete admissions made by him. In Mr Brown's evidence, he explained that Dr Mohammed (in Mr Brown's recollection) was unpersuaded that service user A's history of plucking out pubic hair was truly self-

harm. Dr Mohammed wished to see more evidence before accepting this as a diagnosis. In that context, Mr Brown pursued the matter with service user A during therapy sessions on several occasions. Service user A, however, was very guarded on the issue. Finally, as recorded by Mr Brown in session notes dated 9 December 2019, service user A offered to show Mr Brown his pubic area.

29. Mr Brown said that he seized this opportunity to carry out what he intended to be a quick observation in order to settle the matter. He took service user A to the corridor in order to seek a colleague, but none was available. He, therefore quickly permitted service user A to loosen his clothing and then used a pen to lower the band of service user A's underwear by about 20 mm. Service user A then said "that's as far as you go" and examination ended there. Mr Brown denied that he had ever observed arousal in service user A during the examination, and he was similarly unaroused.

30. However, Mr Brown considered that this incident could, from his own personal experience and from his professional training, be regarded as a triggering event that prompted service user A to later initiate sexualised contact with him by phone. Mr Brown regretted the episode recognised that he should at least have found a chaperone. Mr Brown accepted that he had found the later sexualised telephone contact to gratify his own need at that time.

31. Mr Brown accepted that he had not reported the sexualised telephone contact immediately, and that he should have done. Mr Brown accepted that his report was only made because service user A said that he was going to report the matter. Mr Brown associated this event with his having told service user A that he was not in a position to become involved in a relationship with him. Mr Brown said that he told service user A that he was 65 years old and ill, and that service user A should meet young people.

32. **[PRIVATE]** Mr Brown explained to the panel that he had been diagnosed with prostate cancer in the time leading up to his physical examination of service user A. He was being treated with hormone therapy which made him depressed and impacted on his judgement. As a result, he required additional treatment to counter the ill effects of the hormone therapy.

33. **[PRIVATE]** Mr Brown said that his father had been diagnosed with bladder cancer at this time and had died. In addition, his mother had been diagnosed with vascular dementia. These events and stressors came close together and explained Mr Brown's departures from the standards expected of him.

34. Mr Brown did not accept that he had been sexually curious about service user A. Service user A had contacted him and had pursued the possibility of a relationship in a sexually teasing way. Mr Brown accepted that it was quite wrong of him to become

involved in this way with service user A. In Mr Brown's evidence, service user A had got close to him at a time of his high need. The sexualised telephone contact had become almost a friendship and the reliving of his own adolescence. However Mr Brown said that at the time of the physical examination, no such sexualised connection existed "Those were early days".

35. In cross-examination by Ms Fatania for Social Work England, Mr Brown denied that he had a sexual curiosity about service user A when he conducted the physical examination. He did not accept that that one aspect of the allegations against him was true. All of the others however were true. Mr Brown accepted that he was guilty of a lapse in judgement in not raising the serious matters formally when they were occurring. In relation to the physical examination Mr Brown said that he would not have done it if service user A had agreed to see a doctor for that purpose. The event was unplanned and he did not expect to go through the chaperone procedure. Mr Brown did not accept that he had not discussed Dr Mohammed regarding service user A's diagnosis. He accepted that Dr Mohammed did not recall the discussion but explained that psychiatrists will routinely have such discussions and could not be expected to remember the event now. "It did not sit in his memory" as it did with Mr Brown's.

36. Mr Brown said that he had allowed events to occur where the young person was taking charge and commanding things. Mr Brown said that he had reflected privately and intensely. He did not go to supervisor which was also a lapse in judgement. There was however no planning by him in relation to the physical examination. It was a spontaneous event which occurred entirely for a medical purpose and with no sexual element. The examination notes were brief and non-specific. It occurred in the 10 minutes at the end of the 50 minute session Mr Brown had written a quick note only.

Panel questions.

37. Mr Brown maintained that distinction could be drawn between his physical examination of service user A and the later events in answer to panel questions. The examination arose spontaneously and without a sexual context. However, accepting that it may have been, for service user A, an event that prompted service user A to explore the possibility of sexual contact with Mr Brown, it was very different in character from the subsequent sexualised contacts. When asked to clarify his evidence that a physical examination was necessary to identify potential safeguarding issues, Mr Brown was vague and did not answer the clarification.

Finding and reasons on facts

38. The panel accepted the legal adviser's advice on the approach to the evidence. On the civil standards of the balance of probabilities, the burden of proof was always on Social Work England. The panel should begin its consideration with the objective facts

as shown by original and contemporaneous documents and all the known or probable facts. It should be cautious in placing reliance on witness evidence solely based on the confident recollection of the witness. The panel should assess the evidence in the round and decide if Social Work England has discharged the burden of proof. An admission, where unequivocal, was of considerable importance in finding a head of charge proved.

39. The legal adviser referred the panel to the case of *Basson v GMC* [2018] EWHC 505 and the guidance that acting with sexual motivation is conduct done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

40. The panel considered that Mr Putzu relied on the records available to him. He had made a full and frank presentation and it was clear to the panel, that he was not speaking on behalf of the previous manager. His oral evidence was consistent with the exhibits. There was nothing to suggest that he had an adverse motive to elaborate the case against Mr Brown or promote the interests of his organisation or service. He had taken a reasonable and thoughtful approach which was low-key in presentation and reflected what he had written as being told to him at the particular time.

41. Dr Mohammed had given his oral evidence in a clear manner. He principally relied on the records of Mr Brown and his own records. He provided medical explanations for the condition that might have supported physical examination of service user A and the wider understanding of Ms Moyo as to what happens in practice. He was thorough and showed a layered and nuanced understanding of therapy in practice. To the extent that there is any difference between Dr Mohammed and Ms Moyo regarding inspection of service users' bodies, the panel was inclined to accept Dr Mohammed. The panel considered however that Dr Mohammed's and Ms Moyo's evidence were not materially at variance.

42. Ms Moyo had a clear professional understanding of the policies and practices in force in the CAMHS service between 2014 and 2019. The panel found her knowledge and clarity very helpful. She was clear on how policies should be interpreted. She resisted Mr Short's suggestion that practice can depart from policy on occasion when she explained why any form of physical examination would never occur.

43. In the panel's view, Dr Mohammed persuasively articulated practical situations and crossing over of roles which can lead to a therapist observing a service user's body but not on examination. Dr Mohammed had come to the view that this incident amounted to an intimate examination on this occasion. And so the differences between Ms Moyo's procedure-driven understanding and Dr Mohammed's more open view that observation was plausible in some circumstances, the panel concluded that the witnesses were not truly at odds. Both witnesses came from

different disciplines to explain what they meant, but both came to the conclusion that an intimate examination was not in these circumstances appropriate. Both strove to be helpful to the panel from their different professional standpoints.

44. Mr Brown acknowledged that he was recalling events from some time ago. However, he was responsive and articulate. There was a depth and consideration given by him the questions asked and he paused before answering in order to give as full an answer as he could. But all of these events occurred during a traumatic time in his life.

45. The panel considered that Mr Brown found it difficult to acknowledge that his actions in physically examining service user A were sexualised. Such an event was, if true, in conflict with the professional standards expected of him and the fundamental tenets of the social work profession. The care and safeguarding of vulnerable young persons are at the heart of the Practice area in which Mr Brown has specialised over a number of years. He had become a senior therapist.

46. All of the evidence taken together, including evidence given on its own behalf by Mr Brown, supported the contention that Mr Brown's sexually motivated actions began with his physical examination of service user A in 2014. Mr Brown himself explained the teasing and "tantalising" way in which service user A had, in Mr Brown's evidence, invited Mr Brown to explore his intimate area. Taking all of the evidence together, the panel was satisfied that the examination had not been simply a spontaneous and ill-advised event. Mr Brown's own evidence supported that he had responded to a sexually suggestive invitation by service user A and had participated in a brief but boundary-crossing transgression.

47. The examination incident had occurred at a traumatic time in Mr Brown's life. The panel found that on balance of probabilities, Mr Brown had surrendered to the opportunity of an improper examination of service user A. Moreover, he did this at a time of significant stress in his private and family life. Against this background, the panel would be unsurprised to learn that such an event was wholly uncharacteristic of Mr Brown. Indeed the panel accepted that Mr Brown, in particular acknowledging his responsibility for other matters, had reflected deeply and uncompromisingly on his conduct. However, the panel considered that Mr Brown could not bring himself to face the reality of his inappropriate conduct during a therapy appointment, however brief and however spontaneous.

Head of charge 1.1.

48. Mr Putzu recorded his conversation of 13 May 2019 with Mr Brown which was thorough and professional. It included records of three telephone conversations by Mr Brown with service user A and details Mr Brown's full reflections in the associated

exhibit NP/1. The written account contains one significant detail which Mr Brown did not accept and the panel considered that that fitted closely with its observations set out above. Taken together with Mr Brown's admission, the panel found this head of charge proved.

Head of charge 1.2.

49. The panel had regard to the case notes, the disclosure by Mr Putzu, the written submissions and admissions in this process and investigations by Ms Moyo. The panel observed that Mr Brown had written that he had looked at service user A's pubic area, referring to the stomach area. In verbal evidence he said that he wanted to view the criteria. His intellectual curiosity was piqued by the unusual presentation of a service user pulling out pubic hair as opposed to eyelashes which was an interesting extension of the condition that Mr Brown believed he was dealing with. Mr Brown's own account of the examination, using a pen to lower the band of service user A's underwear until stopped by service user A together with the words used by Mr Brown and the service user all supported, on balance of probabilities, a sexualised rather than a strictly professional examination. Taking all of the contemporary notes and investigations into account, and carefully weighing Mr Brown's own account in evidence, the panel came to the view that this head of charge was found proved.

Head of charge 1.3.

50. The panel had careful regard to the investigation report, which included Mr Brown's information handed over his mobile phone number to service user A. The report also contained Mr Brown's reflections of giving service user A his phone number. Taken together with Mr Brown's admission, the panel found this head of charge proved.

Head of charge 1.4.

51. The panel observed that all of the written documentation supported the conclusion that events had come to light several years after the physical examination in 2014. There was no record of a physical examination of the pubic area in the 2014 case notes. The records, on balance, support the conclusion that Mr Brown's disclosure occurred only just prior to service user A's intention to report, and was prompted by the acknowledged exchange in which service user A had said that Mr Brown "shouldn't be a therapist" and that service user A intended to report matters to his employers. Taken together with Mr Brown's admission, the panel found this head of charge proved.

Head of charge two.

52. The panel considered closely the guidance given by the High Court in the case of Basson referred to above. In relation to the telephone calls, the panel considered that

these were clearly some form of sexual gratification at the time of the calls and taken together supported the view that they were intended to promote a future sexual relationship. Mr Brown gave evidence that he had experienced some sexual excitement during the calls and that this had met a need for him at that time. Mr Brown explained to the panel that he had become something of a friend to service user A and was also reliving his own adolescence. In Mr Brown's oral evidence he recognised the friendship and that he had valued that. The panel placed significant weight on Mr Brown's motivation and the fact that there was a power imbalance between him and service user A at that time. Mr Brown was an older man and had been service user A's therapist, a role which had subsisted for many years and over a difficult period of service user A's adolescence. Mr Brown presented himself as an older man drawn into a sexual relationship that he was susceptible to in the personal circumstances he found himself in. The panel found that made him open to both limbs discussed in Basson, of present gratification and of promoting a sexualised relationship extending into the future.

53. The panel understood that the difficult personal and health circumstances Mr Brown found himself were a significant contributory factor. Mr Brown however as an experienced and senior therapist and social worker should have recognised this. He should have taken action, including the simple step of reporting the matter to his manager immediately.

54. The panel placed considerable weight on the admissions made by Mr Brown, and his oral evidence that he found the calls sexually gratifying. Similarly the text exchanges were sexually charged and fulfilled “a need” for Mr Brown at that time.

55. Regarding the physical examination in 2014, the panel was careful to avoid drawing an unwarranted conclusion from the later events. Taken on its own and in the context of the difficult personal and family circumstances explained above the panel book closely at the contemporary records spoken to by the witnesses. The panel considered that it was telling that Mr Brown did not set out in the notes that he had examined service user A's groin area. The panel also accepted Dr Mohammed's evidence that Mr Brown had never said that he had conducted such an examination to him.

56. The panel also considered evidence which supported the view that the examination had been a sexualised event. The panel was satisfied that the evidence demonstrated no immediate reason for Mr Brown to examine service user A's groin area. Mr Brown had not stopped to find a chaperone for such an unusual event. In a similar way, though some time later, Mr Brown had not call-barred service user A's number or even changed his own number which would immediately have stopped the sexualised calls and texts. In the panel's view, it was legitimate to link that unwillingness to discontinue contact with service user A to his unwillingness to take the obvious steps

necessary to prevent any kind of intimate examination of service user A in 2014.

57. Further, Mr Brown had described that service user A had behaved in a "tantalising" manner. The power imbalance that existed at that time included the knowledge of the deeply personal confidences disclosed to Mr Brown by service user A as a therapist including the sexual matters disclosed by this vulnerable adolescent.

58. Mr Brown himself had drawn a connection in his oral evidence between the examination event as a prompt for service user A to make phone contact later. Mr Brown recalled that events in his own adolescence had provoked fear and excitement, which he associated with sexual feelings and which "remain with you". The panel found that to be an important strand of evidence since Mr Brown's insight in 2014 must have informed his decision-making even if distorted by his family and private life. His contemporary record, which makes no mention of the groin area examination, is suggestive of a secretive event and by inference a sexual one.

59. Mr Brown said in oral evidence that he was looking for safeguarding concerns but was unable to say what the safeguarding concerns were. Mr Brown must have been aware that what he was doing was a very high risk thing to do. Mr Brown supplemented his oral evidence by saying that "I knew this young person enjoyed an exclusivity" and that service user A was "tantalising".

60. Mr Brown knew that what he was doing fell outside of policy. The fact that he did not record adequately in his contemporary notes, and that Dr Mohammed did not remember being told about the event persuaded the panel that rather than being an ill-advised negligent act this was a sexually motivated act. The panel did not accept that Mr Brown's medical condition negated a sexual motivation.

61. The panel found head of charge 2 proved for all heads 1.1, 1.2, and 1.3.

62. The panel found the stem of the heads of charge proved for the reasons set out above.

Finding and reasons on grounds

63. Having announced its decision on the facts the panel went on to determine whether the heads of charge found proved amounted to misconduct in accordance with rule 32. Ms Fatania submitted that the grounds of impairment in Mr Brown's case were his acts which amounted to misconduct. Ms Fatania said that the heads of charge revealed conduct carried out in the course of his professional responsibilities that, each taken individually and then considered together, were sufficiently serious to constitute misconduct. Ms Fatania referred the panel to the standards for social workers that applied at the time of the events:

    - the Health and Care Professions Council Standards of conduct, performance,

and ethics (the 2016 standards) which was in force from 2012 onwards and updated from January 2016; and

– the standards of proficiency for social workers (2017) (the 2017 standards) which came into effect on 9 January 2017.

64. Mr Short, on behalf of Mr Brown, reminded the panel that Mr Brown had admitted misconduct at the outset of the hearing. Although it is a matter for the panel's judgement, Mr Brown did not suggest that his actions could not amount to misconduct.

65. The panel accepted the legal adviser's advice. It understood that a finding of misconduct was a matter for the panel's independent professional judgement. There is no statutory definition of misconduct, but the panel had regard to the guidance of Lord Clyde *in Roylance v GMC* (No2) [2001] 1 AC 311: "*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 to be followed by a practitioner in the particular circumstances*". The conduct must be serious in that it falls well below the required standards. The panel recognised that breaches of standards in and of themselves might not necessarily amount to misconduct.

66. The panel identified a number of breaches of the 2016 standards. The panel considered that standard 9 was sufficiently broad to cover behaviour that engaged wider public interest considerations, including public confidence in Mr. Brown as a social worker, although employed as a senior therapist in this case.

67. The panel found that Mr. Brown's conduct was a breach of the following 2016 standards:
1.7 You must keep your relationships with service users and carers professional.

2.7 You must use all forms of communication appropriately and responsibly, including social media and networking websites.

3.1 You must keep within your scope of practice by only practising in the areas you have appropriate knowledge, skills, and experience for.

3.2 You must refer a service user to another practitioner if the care, treatment, or other services they need are beyond your scope of practice.

6.2 You must not do anything, or allow someone else to do anything, which could put the health or safety of a service user, carer, or colleague at unacceptable risk.

7.1 You must report any concerns about the safety or wellbeing of service users promptly and appropriately.

9.1 You must make sure that your conduct justifies the public's trust and confidence in you and your profession.

9.4 You must declare issues that might create conflicts of interest and make sure that they do not influence your judgement.

68. The panel also identified a number of breaches of the 2017 standards as follows:

2.3 Understand the need to protect, safeguard, promote and prioritise the wellbeing of children, young people, and vulnerable adults.

2.5. Be able to manage and weigh up competing or conflicting values or interests to make reasoned professional judgements.

2.9 Recognise the power dynamics in relationships with service users and carers and be able to manage those dynamics appropriately.

3.1 Understand the need to maintain high standards of personal and professional conduct.

3.4 Be able to establish and maintain personal and professional boundaries.

3.5 Be able to manage the physical and emotional impact of their practice.

4.1 Be able to assess a situation, determine the nature and severity of the problem and call upon the required knowledge and experience to deal with it.

9.10 Be able to understand the emotional dynamics of interactions with service users and carers.

69. The panel carefully considered the nature and gravity of each of the heads of charge found proved.

70. Head of charge 1.1 involved a sexually motivated breach of professional boundaries over a sustained period of time. The maintenance of appropriate professional boundaries and the safeguarding of service users is at the heart of social work practice, including social workers who are employed as therapists. Social workers hold a position of trust and power in relation to vulnerable service users, and Mr Brown's case involved a highly damaging breach of trust. The panel considered that the consequence of the breach of professional boundaries was that Mr Brown failed to fulfil his responsibilities to ensure that service user A was safeguarded from the risk of harm and that his needs were prioritised and met. As an experienced and competent social worker, and senior therapist, Mr Brown should have understood the

vulnerability of service user A and the importance of maintaining professional boundaries.

71. Head of charge 1.2 involved what the panel regarded as a grave departure from the standards expected of a social worker acting as a senior therapist for a vulnerable service user. Mr Brown must have known that in conducting a physical examination of service user A he was acting outside of the scope of his responsibilities as a therapist and outside of the policies which bound him as a Trust employee.

72. Head of charge 1.3 involved a significant departure from several of the standards referred to above. Mr Brown should not, under any circumstances, have offered an ex-service user his personal telephone number. The panel found that he did so with this service user in order to facilitate an improper and unprofessional boundary crossing exchange of sexualised calls and texts.

73. Head of charge 1.4 involve a departure from the 2016 and 2017 standards which both require that Mr Brown should have taken action immediately in order to safeguard service user A. The panel found that Mr Brown concealed the physical examination which he undertook in 2014 by omitting the details from the session notes. Mr Brown did not, as he ought to have done, reported the matter to his manager immediately. Mr Brown did not, as he ought to have done, reported the subsequent phone and text exchanges. These were breaches of the standards related to imbalance of power and safeguarding of the service user even when no longer being provided services by Mr Brown. Consistent with all of this, Mr Brown did not, as he ought to have done, prioritise service user A's safeguarding and needs above his own. Instead the panel found that Mr Brown concealed his actions in order to further his own personal interests. By not reporting matters until he understood that service user A intended to, Mr Brown breached several of the 2016 and 2017 standards.

74. Head of charge 2 is a particularly grave transgression of the 2016 and 2017 standards. The panel has considered this matter in some detail above, and for that reason it is unnecessary to set out at length the seriousness of sexually motivated conduct with the service user and later former service user.

75. Ms Fatania submitted that Mr Brown's fitness to practise is currently impaired, taking into account the need to protect the public and the wider public interest.

76. Mr Short, on behalf of Mr Brown, did not suggest that Mr Brown's fitness to practise was not impaired. He reminded the panel that this was a matter for its judgement. Mr Short submitted that Mr Brown does not intend to return to any form of social work practice.

77. The panel accepted the legal adviser's advice. It considered Mr Brown's fitness to practise at today's date. It had regard to relevant passages in the sanctions guidance

provided by Social Work England. It considered whether the conduct is remediable, whether it has been remedied and the current risk of repetition. It also considered the wider public interest and the guidance in the case of *CHRE v NMC and Grant* [2011] EWHC 927 that "*the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the profession 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*".

78. The panel considered the level of Mr Brown's insight. There was evidence before the panel that Mr Brown had reflected at length on his past behaviour in some aspects although not at all in regard to head of charge 1.2. Mr Brown did not offer further evidence of insight at this stage in proceedings. Accordingly, the panel has no evidence of insight in relation to that matter. Mr Brown's insight in relation to all other matters was shown in his reflections and statement, and in his earlier oral evidence to the panel. Within the limits of the admissions made by Mr Brown, he satisfied the panel that he understands the impact of his past behaviour in the minds of the public. He appeared to accept that the public's trust and confidence which is vested in the social work profession has been damaged by his actions and can only be repaired with great difficulty.

79. The panel was not clear that Mr Brown had the same level of insight into the impact that his actions had on service user A. His reflections were at times disappointingly self-focused. Had Mr Brown developed full and complete insight, he would have recognised, as any social worker would have recognised, the potential for the degree of harm caused to service user A.

80. Mr Brown appeared to regard service user A's participation in these events as though the service user was an autonomous and freely consenting adult. This was self-evidently not the case. In 2014, service user A was a vulnerable child. He was entitled to expect that Mr Brown would make clear the boundaries which must not be crossed in this professional relationship. Mr Brown did not recognise, as far as the panel could see, how service user A would have been supported, protected, and safeguarded by proper boundaries being authoritatively and definitively enforced. Mr Brown did at least recognise that his physical examination of service user A may have been a triggering event for the child, prompting his later exploring of inappropriate sexual boundaries. Mr Brown drew a parallel between that event and events in his own adolescence. Mr Brown however did not go further, as the panel considered that he would have done, had he developed full insight.

81. Mr Short, on behalf of Mr Brown said that Mr Brown has decided not to return to any form of social work practice. The panel was invited, it appeared, to infer that Mr Brown's insight extended to recognising the difficulty that he would face in satisfying

the reasonable and informed member of the public that their trust and confidence in him as a social worker could be restored at some future point. The matter was not developed explicitly which was, in the context of the panel considering impairment, unsatisfactory. The panel considered therefore that this facet of Mr Brown's insight was limited. Although Mr Brown's reflections could fairly be characterised as searching in some respects, there were a number of important aspects which were not considered by him.

82. The panel considered whether Mr Brown's conduct is remediable. Sexual misconduct is extremely difficult to remedy, but the panel did not exclude the possibility of remediation. There was, however, no evidence before the panel that Mr Brown has recognised the full weight and impact of his actions in regard to service user A. Mr Brown has shown a level of remorse in respect of failing to safeguard the young person in his care and later ex-care with regard to his inappropriate sexualised calls and text exchanges. That remorse does not appear to extend to a full recognition of service user A's vulnerability disguised as faux-maturity. He did not recognise the potential for service user A to have acted out an appeal for care that invited a discussion of boundaries, respect and autonomy hidden behind his seeming advances.

83. There is nothing before the panel to indicate that Mr Brown has taken remedial action or that he is capable of doing so. His intended departure from the profession makes that more difficult. In these circumstances the risk of repetition of his past actions is real. The panel determined that Mr Brown has not remediated his past misconduct.

84. The panel considered that a breach of professional boundaries may take different forms, and that there was a high risk that Mr Brown would in the future breach professional boundaries and fail to safeguard vulnerable service users.

85. The panel considered the test for fitness to practise recommended in the case of *CHRE v Grant [2011] EWHC 927* and decided that:

- Mr Brown has acted and is liable in the future to act in a way so as to put a service user or service users at risk of harm
- Mr Brown has in the past brought and is liable in the future to bring the profession into disrepute
- Mr Brown has in the past and is liable in the future to breach one of the fundamental tenets of the profession (breach of professional boundaries, failure to safeguard vulnerable service users, pursuing sexually motivated conduct).

86. The panel also considered the wider public interest considerations including the need

to maintain confidence in the profession and to uphold proper professional standards.

87. The panel agreed that informed members of the public would consider Mr Brown's actions to be entirely inappropriate and unacceptable. The potential for damage to the reputation of the profession is highlighted by the response made by the trust in its disciplinary procedures. Members of the public would be concerned about the ongoing risk of repetition which involves a risk of harm to vulnerable service users discussed above. The panel determined that public confidence in the profession would be undermined if the panel did not conclude that Mr Brown's fitness to practise is impaired.

88. The panel also decided that a finding of impairment was required to mark the seriousness of Mr Brown breach of the required standards for social workers, including the breach of fundamental tenets of the profession.

89. The panel found Mr Brown's fitness to practise is impaired having regard to both the need to protect the public and the wider public interest considerations.

Decision on sanction

90. Ms Fatania referred the panel to the panel's finding regarding Mr Brown's abuse of trust and power as a therapist for a vulnerable young person. She reminded the panel that his actions were sexually motivated, including a physical examination. Ms Fatania submitted that Mr Brown had accepted that he sought comfort in the intimacy that he had pursued, but had struggled to accept his misconduct in physically examining service user A. She said that the panel's findings were of extremely serious shortcomings and raised serious issues of safeguarding of a young person. In her submissions, the public would be shocked and concerned to know that Mr Brown had the potential to return to practice. Ms Fatania submitted that the only appropriate and proportionate sanction was a removal order.

91. Mr Short, on behalf of Mr Brown, submitted that Mr Brown's active goal in the proceedings and earlier has always been remediation. Mr Brown has demonstrated great honesty beginning with his self-reporting matters to his employer and then the HCPC. Mr Brown has never tried to shift blame from himself. His written evidence shows that he is still involved in remediation and intends to reflect further even after these proceedings in order to understand his behaviour. The public can be reassured that these events represent the only lapse in his 35-year career. The risk of repetition is nullified by Mr Brown's intention to remove himself from practice and the impact of the public record of this hearing taken with the reasons for his dismissal from work make a return to practice impossible in the real world.

92. The panel accepted the legal adviser's advice. The panel had regard to the sanctions

guidance published by Social Work England and last updated in 2019 (the guidance). The panel recognised the need to act proportionately, balancing public protection in all of its aspects including the wider public interest with Mr Brown's own interests. The panel considered the sanctions in ascending order of severity. The panel was aware that the purpose of a sanction is not to be punitive but to protect members of the public.

93. In its deliberations the panel carefully considered the context of Mr Brown's role and responsibilities. Mr Brown was an experienced senior therapist and social worker. The panel accepted that Mr Brown had a long career with no evidence of any earlier adverse reports. Mr Brown experienced a series of adverse personal and family circumstances which appear to have impacted on Mr Brown's decision-making. While it is important to recognise those matters, the panel had no evidence that Mr Brown had sought help in coping with the impact on him with a view to safeguarding a service user. Mr Brown has shown a degree of insight, if limited as discussed above.

94. The panel considered that his absence of an immediate response to the panel's reasons on impairment was important and revealing. He did not appear to assimilate the panel's reasons on impairment. Despite what was written, Mr Brown did not show any awareness of the importance of the distinction drawn by the panel between his insight in regard to the impact on the public's trust in the profession and his colleagues with a shallow understanding of the impact of his actions on service user A. He did not offer an apology to service user A. The panel considered that Mr Brown's reluctance to engage with this issue suggested that the limits on his insight stemmed from a deeply-seated attitudinal problem.

95. The panel considered that the secrecy and guile shown by Mr Brown in not disclosing the details of his physical examination of service user A and later the improper calls and texts exchanged persisted into his attitude towards service user A during this hearing. In these circumstances, while every credit is given by the panel for Mr Brown's early and almost complete admissions, his reflections and partially developed insight, it cannot disregard this concern. This is particularly so, given Mr Brown's admission of sexually motivated misconduct.

96. The panel identified the following mitigating factors:

- A degree of developing insight, though limited in focus.
- Participation in the process and engagement with the regulator in circumstances where he could easily have decided not to.
- Significant and early admissions meaning that service user A was spared being called as a witness.

97. The panel identified the following aggravating factors

- Service user A's age and vulnerability when exploited by Mr Brown.
- The prolonged nature of his concealment of events and repeated interactions with service user A as a former service user.
- Abuse of a therapeutic relationship with an admitted sexual motivation.

98. The panel considered the sanctions available beginning with the least serious. It held in mind that the options of taking no action, giving advice or a warning would not restrict Mr Brown's registration. The panel determined that the option of taking no action would be entirely insufficient because it would not protect the public nor address the wider public interest considerations. The option of giving advice or a warning would also be insufficient for the same reasons. The conduct in this case is sexual misconduct with very little mitigation and the sanction of taking no action, giving advice or a warning would not sufficiently mark the seriousness of the misconduct.

99. The panel next considered the imposition of a conditions of practice order. Conditions of practice would not be workable. Mr Brown has expressed the clear intention not to continue in practice. This makes conditions of practice unviable. In any event, in the panel's view, he has not demonstrated any remorse or insight in regard to the impact on service user A and his continued care needs. While not diminishing the extensive work done by Mr Brown in other aspects of his insight, this part is critical in addressing what may be a deeply-seated attitudinal problem. The public would not be protected adequately by conditions of practice in these circumstances.

100. The panel had regard to paragraph 84 of the guidance which states that conditions are '*less likely to be appropriate in cases of character, attitudinal or behavioural failings, or in cases raising wider public interest issues. For example, conditions would almost certainly be insufficient in cases of sexual misconduct…*'. The panel did not consider that public protection could be achieved by the imposition of conditions of practice. The wider public interest was also prominently in view in this case. Informed members of the public would be very concerned that Mr Brown as a senior therapist and a social worker exposed the vulnerable young person in his care to sexual exploitation and to the risk of significant harm. The public would also be concerned about the extent to which Mr Brown departed from the required standards of conduct and breached fundamental tenets of the profession. Conditions of practice would be insufficient and inappropriate.

101. The panel had regard to paragraph 105 of the guidance which states: '*Abuse of professional position to pursue a sexual or improper emotional or social relationship with a service user or a member of their family or a work colleague is a serious abuse*

of trust. Many people will be accessing social care for reasons that increase their vulnerability and that of their family. Pursuit of a sexual or improper emotional or social relationship with a vulnerable person is likely to require a more serious sanction against a social worker'. The panel considered that this paragraph applied and that it was appropriate and proportionate for the panel to impose a more serious sanction.

102. The panel next considered the sanction of a suspension order. The panel had regard to paragraph 92 of the guidance, which states that: '*Suspension is appropriate where no workable conditions can be formulated that can protect the public or the wider public interest, but where the case falls short of requiring removal from the register…*'.

103. In considering whether a suspension order was the appropriate and proportionate outcome the panel took into account the evidence that Mr Brown had been a senior therapist and an experienced social worker. The panel carefully balanced this information against the aggravating features in the case and the difficulty of remediating sexual misconduct. The aggravating features include some attitudinal matters including Mr Brown's actions in concealing his misconduct. Mr Brown has not done anything to reassure the panel that he has fully accepted his failings or is willing to remediate them and is capable of responding to a suspension order.

104. Having conducted a careful and proportionate balancing exercise, the panel decided that a suspension order was not sufficient to protect the public or the wider public interest. The panel had regard to the seriousness of Mr Brown's departure from the required standards and the need for a sanction to send a clear message to members of the public and the profession that it is entirely unacceptable for social workers to engage in sexually motivated relationships with vulnerable service users. It is also entirely unacceptable for a social worker to fail in their primary responsibility to safeguard vulnerable young persons in their care. The panel decided that a suspension order was insufficient to mark the seriousness of the misconduct and to maintain public confidence in the profession.

105. The panel had regard to paragraph 97 of the guidance which states: '*A removal order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England*.'

106. As detailed above, for an extended period of time, Mr Brown failed to ensure the safeguarding and wellbeing of service user A. He instead prioritised his own sexual relationship with the young person. In its decision on current impairment, the panel found that there is a high risk of repetition of a breach of professional boundaries. If there were to be a repetition, vulnerable service users would be placed at risk of serious harm. In these circumstances, the panel concluded that a removal order is

required to protect the public. In all the circumstances, a removal order is also required to maintain confidence in the profession and to maintain and declare proper professional standards for social workers.

Interim Order

107. Ms Fatania made an application under Schedule 2 paragraph 11(1)(b) of the Regulations for an interim order of suspension to cover the appeal period before the substantive order comes into effect, or if Mr Brown appeals, until such time as the appeal is withdrawn or disposed of. Ms Fatania made the application on the ground of public protection, which includes promoting public confidence in the profession and maintaining proper professional standards.

108. Mr Short, on behalf of Mr Brown, did not oppose the application for an interim order.

109. Having accepted the legal adviser's advice, the panel was satisfied that an interim order was necessary to protect the public for the same reasons as set out in the substantive decision, particularly having regard to the high risk of repetition and the consequent real risk of significant harm to service users. Given the panel's findings in relation to the nature of the misconduct and the risk of recurrence, serious damage would be caused to public confidence if no interim order were to be in place and standards would not be upheld. An interim order was therefore also required to promote and maintain public confidence in the profession and maintain standards for the same reasons as set out in the substantive decision.

110. The panel next considered what type of interim order to impose. For the same reasons as set out in the substantive decision, the panel considered that there were no workable conditions, and that conditions would not be sufficient to protect the public and address the wider public interest considerations.

111. In all the circumstances, the panel decided to make an interim suspension order for a period of 18 months. In deciding on this length of interim order (which will expire if no appeal is taken), it took account of the time that it might take for an appeal to be finally disposed of.

112. The panel took into account the principle of proportionality and acknowledged that this interim order will prevent Mr Brown from working as a social worker. However, the panel determined that the need to protect the public outweighed Mr Brown's interests.

Right of Appeal

113. Under paragraph 16 (1) (a) of schedule 2, part 5 of the Social Workers Regulations 2018, the Social worker may appeal to the High Court against the decision of adjudicators:

(i) to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),

(ii) not to revoke or vary such an order,

(iii) to make a final order.

114. Under paragraph 16 (2) schedule 2, part 5 of the Social Workers Regulations 2018 an appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of.

115. Under regulation 9(4), part 3 (Registration of social workers) of the Social Workers Regulations 2018, this order can only be recorded on the register 28 days after the Social Worker was informed of the decision or, if the social worker appeals within 28 days, when that appeal is exhausted.

116. This notice is served in accordance with rules 44 and 45 of the Social Work England Fitness to Practice Rules 2019.

Review of final orders

117. Under paragraph 15 (2) and 15 (3) of schedule 2, part 4 of the Social Workers Regulations 2018:

- 15 (2) – The regulator may review a final order where new evidence relevant to the order has become available after the making of the order, or when requested to do so by the social worker.

- 15 (3) A request by the social worker under sub-paragraph (2) must be made within such period as the regulator determines in rules made under regulation 25(5), and a final order does not have effect until after the expiry of that period.

118. Under rule 16 (aa) of Social Work England's fitness to practise rules, a registered social worker requesting a review of a final order under paragraph 15 of Schedule 2 must make the request within 28 days of the day on which they are notified of the order.