

**Complementary & Natural Healthcare Council**

**Conduct and Competence Panel**

**Notice of Decision**

**Date of Hearing:** 03 May 2017

**Name of Registrant:** Mr Neville Mundy

**Registration No.:** 000027-K14

**Profession:** Hypnotherapist

**Panel:** Jon Levett (Chair), Alan Peacock (Lay), Patricia Murch (Lay)

**Legal Advisor:** Paul Moulder

**Council Representative:** Ms K Wingfield

**Registrant Representative:** None

The Registrant did not attend

The Particulars of Allegation are annexed to this Determination, as Appendix A.

**Determination**

Before the commencement of the proceedings, the Registrant had requested the possibility of his attendance at the hearing by Skype call. The request had been put to the Panel, who had taken Legal Advice. Having duly considered the request, the Panel agreed that the Registrant could attend by Skype call. This decision, together with the Legal Advice, had been communicated to the Registrant. The Registrant had then stated that he was unable to attend in that way, due to short notice and other professional commitments to patients.

At the outset of the proceedings, Ms Wingfield provided a bundle of documents dealing with service of the Notice of the Hearing. This included a letter dated 13 March 2017 giving the necessary information in accordance with paragraph 3 of Appendix 2 of the Councils *Detailed Procedures for dealing with Complaints* (“*the Appendix*”), a copy of a signed Post Office receipt for delivery and an email from the Registrant dated 02 May 2017 giving his consent to the hearing proceeding in his absence. The Panel considered that the requirements as to Service of Notice of the Hearing had been satisfied.

Ms Wingfield made an application to proceed in the absence of the Registrant, in accordance with paragraph 13 of the Appendix. The Panel acknowledged that the discretion to proceed in absence of the Registrant had to be exercised with care and caution. The Panel noted the Registrant’s consent given in the email. No adjournment had been requested by the Registrant and the Panel had previously given agreement to the Registrant attending by Skype, which had been later declined by the Registrant. The Panel was mindful of the public

interest in dealing with regulatory proceedings. As to any dispute of facts, the issues were fairly limited and the Panel had before it the Registrant's response on the issues by letter. The Panel determined in all the circumstances it should proceed to hear the case in the absence of the Registrant.

Ms Wingfield opened the case to the Panel, including setting out the Council's case that the facts alleged by the Council amounted to misconduct, by reason of which the Registrant's fitness to practise was impaired. She outlined how the underlying facts in the evidence demonstrated the Registrant's failure by considerable degree to meet the necessary standards.

### **Decision on Facts**

The Panel considered the Particulars of Allegation as set out in the Notice of Hearing attached as Appendix A to this Notice of Decision.

The Panel heard oral evidence from Mrs A, the mother of the 8 year-old child who was the patient of the Registrant. It found Mrs A to be a credible and impressive witness. She did not seek to embellish her account, made appropriate concessions and was firm in her recollection of certain events. Her account was consistent with the written record of complaint made on 14 September 2016.

The Registrant did not attend, but the Panel had before it his responses to the original complaint and the witness statement of the complainant. It gave the accounts appropriate weight in weighing the evidence.

### **Particular 1**

Found proved.

The Panel noted that the wording of this particular alleged that the Registrant had 'failed' to establish effective communication, in breach of section B1 of the Complementary and Natural Healthcare Council ('CNHC') June 2014 Code of Conduct, Ethics and Performance for Registrants ('the Code').

The Panel first considered the evidence provided as to the various events concerning communications between the complainant and the Registrant. It determined to resolve the issues of fact on the evidence, on the balance of probabilities. The Panel accepted and preferred the account of Mrs A, where there were disputes of fact. It had found her to be a credible witness and there was no obvious reason for her to not have given a true account.

The Panel therefore determined that it had been clear to the Registrant that there had been an agreement that the Registrant would speak privately to Mrs A a few days after the initial consultation on 25 August 2016. It found that Mrs A had called the Registrant and left a voicemail message on 30 August 2016. It noted that the text message left by Mrs A on 31 August was not disputed by the Registrant, and in that message, Mrs A referred to the call the previous day. The Registrant did not dispute that he had not answered Mrs A's telephone call on 01 September 2016, although he said he had a good reason. He agreed that he had received a further call from Mrs A that evening, in which she voiced a concern that the session had had a negative impact on her daughter but he had forgotten to return the call the next day. There was an issue whether Mrs A had completed an email enquiry on the Registrant's website in the week commencing 5 September 2016. On the basis that it found Mrs A a credible witness, the Panel accepted that this was the case, on the balance of probabilities.

The Panel noted as a particular feature of the evidence that, aside from any of the disputed facts in the case, the Registrant did not say that he had attempted to contact Mrs A at any time before her complaint was made, on 14 September 2016.

The Panel then went on to consider whether, on those facts, the Registrant had breached section B1 of the Code. It found that he had. The Code states:

*“B1 Establishing effective communication with clients*

*You must show respect for clients by listening to them, and acknowledging and taking account of their views.”*

In the view of the Panel, the conduct of the Registrant fell far below the standards of communication to be expected of a registrant. Despite a clear agreement to converse with the complainant, who was a worried mother of a child, the complainant had not responded to a voicemail message, nor returned her call, nor made any other attempt to follow up the consultation.

## **Particular 2**

This particular was found proved.

The Panel had made findings on the facts as set out above, which it took into account in deciding this particular also. The Code states:

*‘B3 Accurate, relevant and clear information: an essential part of consent*

*You must share with clients the information they want or need to make decisions about their health and wellbeing, their health needs and related care options”.*

The Code was accompanied by Guidance Notes. The notes, in particular at paragraph 3, set out that a registrant should provide effective communication of information, which involves: exploring care options with clients; listening to their concerns; asking for and respecting their views; encouraging them to ask questions; answering any questions as fully and honestly as possible.

The Panel found that the Registrant’s conduct in not responding to Mrs A’s attempts to follow up the treatment session on 25 August had run completely contrary to the obligations expressed in this section of the Code, as explained in the Guidance. The Registrant had had an obligation to revert to Mrs A, and to talk to her about his assessment of the necessary care, but had not done so, either in response to her calls and messages to him, or otherwise.

## **Misconduct**

Having made its findings of fact, the Panel went on to consider whether the facts as found amounted to ‘misconduct’.

The Panel had heard and accepted the advice of the Legal Adviser.

The Registrant had breached the Code, but the Panel reminded itself that not every breach of the Code would amount to misconduct. The Panel had regard to the definition of misconduct as behaviour which is ‘serious’ and which would be regarded as ‘deplorable’ by fellow members of the profession.

The Panel noted that this may include conduct which is negligent, though must be more than 'mere' negligence. A single incidence of negligence is less likely to be regarded as 'misconduct', unless the single event is particularly serious.

The Panel considered its findings in relation to the particulars which it had found proved. It had found that the Registrant had failed on several occasions to take up the opportunity to discuss with Mrs A information relating to the health of her child. It accepted that Mrs A had been left worried and distressed as a result. Taking all the circumstances into account, including the Registrant's explanation of matters in his responses, the Panel felt that the Registrant had fallen far below the necessary standards. In the view of the Panel, this was conduct that fellow professionals would regard as 'deplorable' and was misconduct.

### **Impairment**

Regardless of its finding on the question of misconduct, in any event and pursuant to the Detailed Procedures on Complaints of the Council, the Panel was obliged to go on to consider whether the Registrant's fitness to practise is impaired.

The Panel approached this question on the basis that the matter was a question for its judgment, and one in respect of which there is no burden of proof.

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

The Panel considered the matter of the Registrant's insight into matters, as expressed in his response letters, dated 18 October 2016 and 13 April 2017. It noted that the Registrant regarded his failing as a mistake to return Mrs A's telephone call after 1 September 2016, which was a mistake for which he apologised. Whilst the Panel acknowledged that the Registrant had apologised for this error, it felt that the misconduct was broader than this failing.

In the judgement of the Panel, the Registrant had failed to demonstrate any real insight as regards the broader aspect of the failings. In the Panel's view, there had been clear concerns raised as to the risk to the health and well-being of Mrs A's daughter, and the Registrant had breached fundamental tenets of the profession, by his failures to adhere to the Code, as set out above.

In view of the Registrant's lack of insight as to the broader aspects of his failings and the lack of any evidence before the Panel that the Registrant had taken any steps to address these failings, the Panel's judgement was that, as at today, there was a risk of repetition of these behaviours and hence the Registrant's fitness to practise was impaired.

The Panel was therefore required to move to the next stage of its Procedures.

### **Sanction**

As the Panel had found that the Registrant's fitness to practise is impaired, it then considered the question whether and if so what sanction to impose on the Registrant's registration. The Panel heard from Ms Wingfield as to any previous disciplinary record of the Registrant and the Council's submissions as to the appropriate sanction. It also considered any mitigation provided by the Registrant.

Ms Wingfield confirmed that the Registrant had no disciplinary record with the Council. She referred the Panel to the Registrant's correspondence on the matter of Mitigation.

The Panel noted that the Registrant had apologised for any concerns caused by his failure to return Mrs A's telephone call, on 2 September 2016. He had put into action a method of recording all client calls. He said that he had been complimented about his accessibility and responsiveness by patients.

First the Panel considered whether it should take no action. It determined that it would be inappropriate in the circumstances of its findings to take no action. There were no exceptional circumstances of which it had been made aware. To take no action would not be in the public interest.

Next the Panel considered issuing a Caution to the Registrant. The fact that the Registrant had been cautioned would be noted on the Register. Any member of the public enquiring about the Registrant's registration would be advised of the caution.

The Panel considered that a caution would appropriately mark the seriousness of the failings in this case. It bore in mind that this was the sole disciplinary matter arising in relation to a single course of treatment of one patient in a period of practice of over 20 years. A caution would also alert the public to its findings in the case and satisfy the public interest in this respect.

Next the Panel considered a Restriction of Practice order, but considered that this was unnecessary in the circumstances that the public were adequately protected by a caution.

The Panel considered that a period of 18 months would be a suitable and proportionate period for the caution order to remain on the Registrant's entry on the Register. This was commensurate with the level of concerns raised in the case and the appropriate period in which to ensure that the Registrant amends his practice and over which the public would require notice.

Therefore, the Panel cautions the Registrant as to his conduct in relation to this complaint and its findings against him. It directs that the caution is to remain on the Registrant's entry on the Register for a period of 18 months.

The Order of the Panel takes effect on the day the decision is made, in this case 03 May 2017.

The Registrant has a right of appeal against the decision of the Panel which must be made within 28 days from the day on which the Order or sanction was made. Any Appeal must be made on an Appeals Form which shall be provided by the Registrar at the request of the any party which wishes to lodge an appeal.

That concludes the case.

## NOTICE OF HEARING

<b>Registrant</b>	Neville Mundy
<b>Profession</b>	Hypnotherapist
<b>Registration number</b>	000027-K14
<b>Hearing type</b>	Conduct and Competence Panel, to be held in private
<b>Date and time</b>	3 May 2017 10.00-17.30 and 4 May 2014 10.00-17.30
<b>Location</b>	The School of Economic Science 11-13 Mandeville Place LONDON W1U 3AJ
<b>Formal allegation</b>	That your fitness to practise is impaired.
<b>The facts</b>	On 25 August 2016 you provided hypnotherapy to J, the 8 year old daughter of the Complainant, Mrs A.
<b>Particulars of allegation</b>	<ol style="list-style-type: none"><li>1. You failed to establish effective communication with the Complainant, in breach of section B1 of the Complementary and Natural Healthcare Council ('CNHC') June 2014 Code of Conduct, Ethics and Performance for Registrants ('the Code').</li><li>2. You failed to give accurate, relevant and clear information to the Complainant, in breach of section B3 of the Code.</li></ol>
<b>Rights of the parties and power of the Panel</b>	The rights of the CNHC and the Registrant are as set out in paragraphs 3.1d, 9.1, 9.2, 9.3 and 9.7, Appendix 2 of the CNHC Detailed Procedures for Dealing with Complaints ('the Detailed Procedures'). The Panel has the power to proceed in the absence of the Registrant, or the Registrant's representative (paragraph 3.1f) and the Registrant is invited to state whether the Registrant will be attending the hearing (paragraph 3.1g). A copy of the Detailed Procedures is enclosed with this Notice.
<b>Sanctions available to the Panel</b>	Paragraph 23.1, Appendix 2 of the Detailed Procedures sets out the sanctions available to the Panel upon a finding that fitness to practise is impaired.
<b>Date of Notice</b>	
<b>2 February 2017</b>	