

## Meeting of the s.40A Panel to consider the case of Dr Faryal Rauf Khawaja (7610669)

Held on 7 September 2021.

### Panel members present

Charlie Massey, Chief Executive (in the Chair)  
Colin Melville, Medical Director and Director, Education and Standards  
Anthony Omo, General Counsel and Director of Fitness to Practise

### In attendance

James McDermott, Senior Legal Adviser  
Jim Percival, Principal Legal Adviser and Deputy General Counsel  
Iona Twaddell, Office of the Chair and Chief Executive (Panel Secretary)

### Purpose of this note

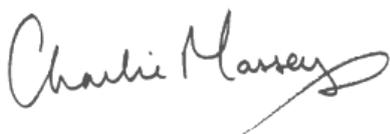
- 1 This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ('the decision'), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power to appeal the decision pursuant to section 40A Medical Act 1983 (as amended) ('the Act').

### The relevant decision

- 2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A of the Act. The Tribunal did not find any of the allegations against the Doctor to be proved, and so did not proceed to consider impairment or sanction. This is therefore a decision not to give a direction under s35D within the meaning of s40A(1)(d) Medical Act 1983, as confirmed by the Court of Appeal in its judgment in the case of *Raychaudhuri v General Medical Council* ([2019] 1 WLR 324).

## Consideration

- 3 The Panel considered the record of the MPT's determination and the legal advice in detail.
- 4 The Panel was concerned by what it considered to be some errors in the MPT's determination, where certain factual findings appeared to have been made contrary to unchallenged evidence before them and appeared to demonstrate an inconsistency in its treatment of the record of Dr Khawaja's statements during the disciplinary investigation for evidential purposes in a manner which was overly generous to Dr Khawaja.
- 5 They also considered that the Tribunal's apparent focus upon the question of whether there had been a failure by Dr Khawaja to assess Patient C 'in a timely manner,' may have led to them failing separately to address the question of whether there were consequential failures to arrange a blood test / chest x-ray, or to prescribe intravenous furosemide when required.
- 6 However, the Panel noted that Dr Khawaja is not currently practising and therefore there is no immediate risk to patient safety. The Panel also noted that there was debate about several of the facts and that the grounds of appeal would likely be focused on a single clinical incident.
- 7 Based on their assessment of all the relevant information, the Panel did not note any errors of fact or principle in the MPT's decision which would sufficiently give rise to grounds of appeal and as such they were satisfied that the outcome was sufficient to protect the public.
- 8 The Panel therefore decided not to appeal the MPT's decision pursuant to section 40A Medical Act 1983.
- 9 The Panel however was also concerned to understand more about the level of support which Dr Khawaja as a doctor new to UK practice had received from the trust and the deanery. The Panel suggested that there should be conversations with the Dean and with the responsible officer about this case, to understand why this case had resulted in GMC referral instead of local support. The Panel also noted that the doctor was not currently working, but expressed some concern as to the possibility of her return to practice in an environment which did not provide her with appropriate support.



20 September 2021

**Charlie Massey (Chair)**

**Dated**

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## Background

- 10 This case concerns the determination of a MPT, which concluded on 10 August 2021, considering the matter under Part 4 of the 2004 Rules. The MPT found none of the allegations proved and consequently did not go on to consider the question of impairment.
- 11 Dr Khawaja qualified as a doctor in 2016 from the University of Health Sciences, Lahore. She commenced employment as a Foundation Year 2 level doctor in February 2019 at the North Cumbria Integrated Care NHS Foundation Trust ('the Trust') before her contract was terminated with immediate effect on 7 August 2019.
- 12 The allegations were that Dr Khawaja:
  - 12.1 failed, without authorisation, to attend shifts at the hospital on 30 May 2019, 31 May 2019 and 9 June 2019;
  - 12.2 inappropriately prescribed a fentanyl patch to Patient A in July 2019;
  - 12.3 provided inadequate care to Patient B in that she failed to prescribe the required medication for hyperkalaemia;
  - 12.4 failed to adequately communicate with her colleagues in relation to the care of Patient B;
  - 12.5 provided inadequate care to Patient C in that she did not conduct as assessment in a timely manner, did not arrange appropriate investigations and did not prescribe furosemide when required;
  - 12.6 was dishonest when advising a Registrar that she had seen Patient C and that Patient C's chest was clear, which was untrue.

### *MPT hearing*

- 13 Dr Khawaja was neither present at the hearing nor represented. The MPT determined to proceed in her absence, noting that she had been properly served in accordance with the Rules, had confirmed in written correspondence with the GMC that she was aware of the proceedings and had intentionally waived her right to attend or be represented.
- 14 The only GMC witnesses to provide oral evidence at the hearing were Dr JS, Clinical Director and Consultant in Acute Medicine at the Trust, who had interviewed Dr Khawaja as part of the disciplinary process and Dr F, GMC expert. Dr Khawaja did not attend the hearing and had not provided any submissions for the tribunal to consider.

- 15** The tribunal considered witness statements from the following witnesses, none of whom provided oral evidence:
- 15.1** Dr SS, Specialty Registrar in Respiratory Medicine, whose evidence concerned Dr Khawaja's failure to attend a shift on 9 June 2019 and the clinical allegations relating to Patient B on 19 July 2019.
  - 15.2** Nurse JC, whose evidence concerned events on 18 July 2019, primarily relating to the clinical allegations concerning Patient A, together with limited reference to the allegations of the same date concerning Patient B.
  - 15.3** Nurse LN, whose evidence concerned the clinical allegations relating to Patient B on 18 July 2019.
  - 15.4** Senior Staff Nurse SC, whose evidence concerned the allegations relating to Patient C occurring on 27 July 2019. Nurse SC explained that she had asked Dr Khawaja to review Patient C twice and on both occasions Dr Khawaja, who was noted to be reading her personal emails, simply refused. As a result, Nurse SC contacted the Registrar, taking her away from A&E, to review Patient C. Nurse SC explained that the Registrar later informed her that Dr Khawaja had advised the Registrar that she had checked Patient C's chest, which was clear. Nurse SC told the Registrar that Dr Khawaja had not in fact reviewed Patient C. As a result, the Registrar checked Patient C's chest and found it to be overloaded with fluid.
- 16** The tribunal also considered various documentary exhibits, including the expert report of Dr F, medical records of patients B and C and other exhibits produced by the above-mentioned witnesses. In his expert report, Dr F opined that aspects of the standard of care provided by Dr Khawaja to all three patients was seriously below the required standard, subject to the MPT making certain findings of fact.
- 17** The MPT found none of the allegations proved. As the MPT found none of the facts proved they did not go on to consider impairment / sanction.

### **The General Medical Council's power to appeal pursuant to s.40A**

- 18** With effect from 31 December 2015, the General Medical Council acquired the power to appeal to the High Court (or equivalent courts in Scotland and Northern Ireland where relevant) against relevant decisions of a Medical Practitioners Tribunal ("MPT") if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.
- 19** The basis upon which the GMC will consider whether or not to exercise this power to appeal is described in "Appeals by the GMC pursuant to s.40A of the Medical Act 1983 ("s.40A appeals") – Guidance for Decision-makers" ("the Guidance").

- 20** Decisions concerning the exercise of the s40A power to appeal were originally delegated by the Council to the Registrar. However, following recommendations from Sir Norman Williams' Review Council agreed that decision-making in prospective appeals involving decisions of Medical Practitioners Tribunals be delegated to a three person Executive Panel comprising: the Chief Executive and Registrar as Chair; the Medical Director and Director of Education and Standards; and the Director of Fitness to Practise (or their nominated Deputies if not available) ("the Panel").
- 21** As the Guidance makes clear, when considering whether to bring a s.40A appeal in a particular case, it will be necessary to consider the following questions:
- 21.1** Based on their assessment of all of the information held, and in the particular circumstances of the case, and having regard to the factors set out in the Guidance, does the Panel consider that the MPT's decision is not sufficient to protect the public?
- 21.2** If the Panel is of the view, on its assessment of all the information held, in the particular circumstances of the case, that there are grounds to consider that the MPT's decision is not sufficient, it will consider whether exercising the power of appeal would further, rather than undermine, the achievement of the over-arching objective.
- 21.3** If the answer is yes, then the GMC may exercise its power of appeal
- 21.4** In considering that question the Panel will be required to consider and weigh a number of competing factors (including its assessment of the prospects of success of the appeal, and the nature and importance of the issues which would be aired).