

Meeting of the s40A Panel to consider the case of Dr Omar Aziz

Held on 25 March 2019.

Panel members present

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

In attendance

Jim Percival, Principal Legal Adviser and Deputy General Counsel
Dawn Crook, Senior Legal Adviser
Tim Swain, Head of Office of the Chair and Chief Executive (Panel Secretary)

Purpose of this note

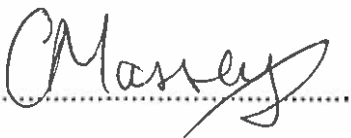
- 1 This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ("the decision"), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power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

The relevant decision

- 2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A. He referred the Panel in this regard specifically to s40A(1)(d) Medical Act 1983 and the decision of the Court of Appeal in Raychaudhuri v General Medical Council [2018] EWCA Civ 2027.

Consideration

- 3 The Panel considered the record of the MPT's determination and the legal advice in the form of the Submission provided by the Principal Legal Adviser in detail.
- 4 The Panel considered this was an unusual case in that there was both a finding of dishonesty and a lack of insight on the part of the doctor, but also a conclusion of no impairment.
- 5 The Panel observed that the lack of insight on the part of the doctor was troubling and noted that following a finding of dishonesty, a finding of impairment would usually be a natural step. However, they noted that the circumstances of this case were such that the dishonesty found by the MPT was at the lower end of the spectrum – being "neither sustained nor repeated", "an impulsive, isolated and short-lived incident" and one which had only arisen due to "Dr Aziz's initial honesty in declaring the needle missing in the first place".
- 6 They noted and accepted the MPT's conclusion that "dishonest behaviour was an isolated event within a single procedure and has not been repeated, [and] that Dr Aziz has not had a propensity to be dishonest or have a deep-seated attitudinal problem in a career spanning 38 years".
- 7 However, the Panel also noted that a warning is not insignificant for a doctor's practice given that it will be published on their record for the next two years.
- 8 In all the circumstances, the Panel accepted that the MPT decision to find no impairment but to issue a warning was a reasonable outcome, demonstrated no error of principle on the part of the MPT and was not insufficient to protect the public.
- 9 The Panel therefore concluded that the GMC should not exercise its power to appeal the determination in this case.



Charlie Massey (Chair)



Dated

Background

- 10** This case concerns the determination of a Medical Practitioners Tribunal, which concluded on 4 March 2019, considering the matter under Part 4 of the 2004 Rules.
- 11** Dr A is a Consultant Dermatologist. The circumstances of the allegations which were considered by the MPT concerned two separate patients.

Patient A

- 12** On 28 October 2016, Dr A removed a lesion from Patient A's right breast. At the conclusion of the procedure, Dr A noticed that he had dropped the needle used for the suture. Patient A was asked to remain whilst the needle was located. Dr A and a Healthcare Assistant ('HCA') spent 10 minutes looking for the needle during which Dr A bent down to pick an item up from the floor and took it to the sharps bin, stating 'I've got it' and Patient A was told to leave the room. The needle was then found shortly thereafter on the floor by the HCA. It was alleged that Dr A's actions were dishonest and there was a separate allegation that he failed to record that the needle was missing.

Patient C

- 13** On 3 October 2016, Dr A performed a shave excision on a mole. Dr A was said to have been satisfied that the specimen was benign and did not send it for histological examination. It was alleged that Dr A had failed in his duty to send the specimen for analysis.

The MPT hearing

- 14** The MPT convened on 25 February 2019. Dr A did not admit any of the allegations and the MPT heard evidence from witnesses including Dr A.
- 15** The MPT found that Dr A had been dishonest in purporting to find the needle and put it in the sharps bin and that in doing so had put both Patient A and the HCA at risk of harm. The MPT did not find proven Dr A's failure to send the specimen from Patient C for analysis proven having preferred the evidence of Dr A's expert that given Dr A's experience and expertise he was entitled to conclude that a referral for a histology report was not required.
- 16** In considering whether Dr A's actions amounted to serious misconduct, the MPT recognised that Dr A's dishonesty was short-lived and that it was an impulsive, isolated incident and not indicative of a general attitudinal issue. However, they concluded that it was a serious failure.
- 17** In considering impairment the MPT repeated its findings in respect of the nature of the dishonesty; it was observed that there was no personal benefit to Dr A other than

enabling Patient A to leave without delay and to continue with the surgeries for the day. The MPT also had regard to the evidence of the expert witnesses that the risk of harm to Patient A and the HCA was minimal or negligible.

- 18** In respect of Dr A's insight the MPT stated that they had not been presented with any evidence to demonstrate insight into his actions or the impact they may have had on the medical profession; but noted that Dr A accepted the factual findings. However, they later determined that Dr A did not have a propensity to be dishonesty or a deep-seated attitudinal problem in a career of 38 years.
- 19** The MPT took the view that it was difficult for Dr A to remediate given the circumstances in which it took place, but having taken into account the evidence of testimonial witnesses was satisfied that the conduct was out of character.
- 20** In finding that Dr A's fitness to practise was not impaired the MPT noted the following:

'...The Tribunal accepted that in a case where a doctor fails to demonstrate insight into his actions that a finding of impaired fitness to practise would ordinarily follow. However, the circumstances of this case are unusual in that it relates to a serious failing in relation to circumstances which might not have arisen had it not been for Dr Aziz's initial honesty in declaring the needle missing in the first place. It has balanced its concerns about Dr Aziz's limited demonstration of insight and remorse against the short-lived nature of the dishonesty and the fact that his actions posed a minimal risk of harm. Further, but for this event, Dr Aziz is considered to be otherwise honest and trustworthy.'

- 21** The MPT imposed a warning on the basis that it was necessary *'to reinforce the importance of maintaining proper professional conduct and behaviour'*.

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

- 22** 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.
- 23** 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").
- 24** 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").

25 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:

25.1 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?

25.2 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.

25.3 If the answer is yes, then the GMC may exercise its power of appeal.

25.4 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).

