

Meeting of the s40A Panel to consider the case of Dr Roisin Hamilton

Held on 8 July 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
Jen Richardson, Senior Legal Adviser
Kate Takes, Senior Legal Adviser
Tim Swain, Head of Office, Corporate Directorate (Panel Secretary)

Purpose of this note

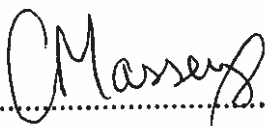
- 1 This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ("the decision"), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power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

The relevant decision

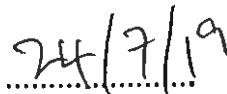
- 2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A.

Consideration

- 3 The Panel considered the record of the MPT's determinations and the legal advice in detail.
- 4 The Panel noted that this case involved a new and review hearing with the review matter relating to the doctor's XXX previous convictions and the new matter relating to misconduct owing to the order made against her in the Magistrates' Court. The Panel noted that the doctor's fitness to practise was found to be no longer impaired by reason of her XXX convictions, although impairment was found with regard to the new matter of misconduct. It also noted what the Tribunal considered to be the exceptional circumstances of the case in deciding that no sanction should follow that finding of impairment.
- 5 XXX, the Panel also observed that the doctor had shown a high degree of insight and remediation and XXX. The Panel determined that, in the circumstances of this case, while some level of conditions or additional supervision may have been beneficial – a point that the defence team had also made – the concern was not so great as to justify an appeal against the finding of the Tribunal.
- 6 On that basis the Panel concluded not to exercise the right of appeal.

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Charlie Massey (Chair)

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Dated

Background

- 7 This case concerns the determination of an MPT, which concluded on 14 June 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').
- 8 The MPT hearing was a new and review matter. The new allegation considered by the MPT was one of misconduct. The review hearing concerned allegations of XXX conviction. The circumstances of which were as follows:

Review

8.1 Dr H was first referred to the GMC in relation to concerns about her XXX convictions.

8.2 Dr H pleaded guilty to a number of offences and received three convictions between 2015 and 2017. These convictions XXX and included failing to provide a breath specimen, assaulting a Police Custody and Security Officer; behaving in a threatening or abusive behaviour and driving whilst under the influence of alcohol.

8.3 XXX

8.4 XXX

8.5 Dr H's fitness to practise was found to be impaired by reason of her convictions XXX at a MPT hearing in September 2018. On 6 September 2018 the previous MPT imposed a nine month suspension on Dr H's registration and the tribunal directed a review hearing before the expiry of the suspension. At this stage, the MPT noted its view that Dr H's insight was still developing and that it would be too early for her to return to conditional practice.

New

8.6 In March 2018 Dr H was arrested and charged with offences of being XXX disorderly in public and assaulting police officers. In agreement with the Public Prosecution Service (of Northern Ireland) she was made subject to an order that she be bound by 'recognizance to keep the peace and be of good behaviour' for the period of 1 year in respect of:

- a. 1 count of Disorderly Behaviour;
- b. 3 counts of assault on Police;
- c. 1 count of likely to Breach Peace/Good Behaviour.

8.7 The doctor's misconduct was discussed at the 2018 hearing but was not something charged as misconduct at that time: the MPT queried this position during the 2019 hearing and it was explained that, although it had been discussed, the GMC had not been in a position to put additional misconduct charges to the doctor at the time of the hearing.

8.8 XXX

MPT hearing

9 The MPT hearing commenced on 10 June 2019. The doctor admitted the allegation of misconduct.

- 10** During the impairment stage of the proceedings, oral evidence was heard from XXX Dr H.
- 11** XXX.
- 12** XXX
- 13** XXX
- 14** XXX
- 15** XXX
- 16** XXX
- 17** XXX (the GMC were neutral in relation to impairment by reason of the convictions).
XXX
- 18** The MPT found Dr H was no longer impaired by reason of her XXX convictions.
- 19** XXX
- 20** In relation to the timeframe that the doctor had not worked for (over four years), the MPT determination highlighted Dr H's evidence that *'she fully accepts that she cannot return at the same level; she stated that her aim was to complete general training and to return at a lower grade'* and referred to the CPD courses the doctor had taken.
- 21** In determining whether Dr H's bindover amounted to misconduct, the MPT noted that the doctor's actions would be regarded as deplorable by fellow practitioners and that they had been described by the doctor herself as *"absolutely abhorrent"*. The MPT found that XXX, the seriousness of the misconduct meant that a finding of impairment was necessary in the public interest and in particular the reputation of the profession.
- 22** The GMC's submission was for a sanction of conditions, *'as this was a doctor who has insight and who would benefit from a period of retraining and supervision.'* Counsel for Dr H noted that whilst the sanction should either be no action or conditions and it was also highlighted that Dr Hamilton *'has not worked as a doctor for four years and although she has undertaken CPD, she has not been tested in a clinical setting and therefore would like the safety net of supervision.'*
- 23** The MPT noted several mitigating factors, including insight, remediation, expressions of regret and apology and positive testimonial evidence. The MPT determined that there were no aggravating factors in this case and also that the risk of repetition/recurrence was low.

- 24** In relation to the period of time that Dr H had been out of practice for, the MPT noted the role of the regulator was *'to safeguard the public interest and not as such to support individual doctors by providing a 'safety net ... in the form of formal supervision.'* The MPT continued by noting it did not consider there could be any patient safety in Dr H being de-skilled because:
- 24.1** 'there has never been any suggestion of any patients being put at risk by her actions',
 - 24.2** she had taken significant CPD, albeit outside a clinical setting;
 - 24.3** there was no evidence that Dr H will operate outside of her competence;
 - 24.4** Dr H had acknowledged that she would need to re-start her career at a lower level than she had previously practised at and that she would not return to clinical practice without the required support system in place.
- 25** The MPT determined to impose no action as it considered this case *'to be exceptional both in terms of the procedure XXX.* The MPT noted that duty to the overarching objective, in particular the second and third limb, could be served by a finding of impairment of fitness to practise by reason of misconduct, and that no further action was required to be taken on Dr H's registration.
- 26** In relation to Dr H's potential return to clinical practice, the doctor's evidence had explained that she would not be seeking to return to clinical practice immediately because she does not plan to return to her training post in Glasgow (which it is understood may have remained open since her long-term sick leave in 2015). However, Dr H did confirm that she does plan to return to clinical practice and would be *'exploring the possibility of non-training grade posts in Northern Ireland'*, in due course.

