

Meeting of the s40A Panel to consider the case of Dr Ibrahim JALLOH

Held on 4 April 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
Mark Swindells, Assistant Director, Corporate Directorate (Panel Secretary)
Kate Takes, Senior Legal Adviser (observing)

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.

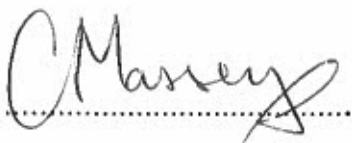
The relevant decision

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

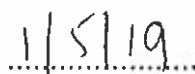
Consideration

- 3 The Panel considered the record of the MPT's determination and the legal advice in detail.

- 4 The Panel was concerned at the gravity of the dishonesty in this case, and Dr Jalloh's apparent lack of full insight and candour, according to the determination.
- 5 In addition, the Panel noted that the MPT failed to have regard to paragraph 119 of the Sanctions Guidance and the principles set out in *Council for the Regulation of Health Care Professionals v General Dental Council, Flesichmann [2005] EWHC 87*, which indicate that where a doctor remains subject to a criminal sentence, they should not return to unrestricted practice. The period of suspension will expire in October 2019, whereas the doctor's suspended custodial sentence will not expire until September 2020.
- 6 The Panel also discussed the inconsistency between the MPT's findings at the impairment stage with regards to the doctor's insight and what they recorded the next day, that the doctor had been developing insight throughout the hearing and that the risk of repetition was not significant. Additionally, given there were outstanding concerns in relation to the lack of insight, the Panel was concerned that a review hearing had not been directed at the end of the period of sanction.
- 7 The Panel noted that one mechanism to gain assurance on Dr Jalloh's level of insight and to assess the risk of repetition would be for the GMC to direct the MPTS to hold a review hearing, using powers under section 35D(48) of the Medical Act. At the date of the Panel's meeting, an Assistant Registrar decision had not yet been made.
- 8 The Panel therefore adjourned to allow for the usual process, in the absence of an MPT directed review, for obtaining an Assistant Registrar's decision as to whether to direct the MPTS to hold a review hearing prior to the expiry of Dr Jalloh's period of suspension to be followed, on an expedited basis.
- 9 Subsequent to the Panel's meeting on 4 April, the Assistant Registrar directed that a review hearing will occur prior to the expiry of Dr Jalloh's period of suspension.
- 10 The Panel was therefore assured that there will be an opportunity for Dr Jalloh's insight and the likelihood of a repetition to be assessed, and decided that on balance the outcome of six months' suspension, with a review hearing was not insufficient to protect the public thereby agreeing not to appeal the MPT's decision.



Charlie Massey (Chair)



Dated

Background

11 This case concerns the determination of an MPT, which concluded on Wednesday 13 March 2019, considering the matter under Part 4 of the 2004 Rules.

12 The background to the allegation of misconduct is as follows:

12.1 The GMC was notified of an allegation of impairment by reason of conviction for fraud by false representation, following an incident in April 2018.

12.2 Mr Jalloh presented two prescriptions at Boots Pharmacy, Victoria Station, Terminus Place. The pharmacist was alerted by the unusual quantities of medication prescribed. The first prescription, dated 5 April 2018, was in the name of Mohamed Bay and was for: Amlodipine 5mg tablet (28 x 3); Atenolol 50mg tablet (28 x 3); Augmentin 375mg tablet (84 x 2). The second prescription, dated 6 April 2018, was in the name of A B Bah and was for: Doxycycline 100mg capsule (28 x 2); Amlodipine 5mg tablet (28 x 3); Simvastatin 40mg (23 x 3).

12.3 Mr Jalloh used a prescription pad from the Kingfisher Surgery, where he had not worked for approximately nine years. Mr Jalloh had initially told the police that he wrote the prescriptions for himself, later altering his account to state they were for a friend. Whilst Mr Jalloh initially failed to attend the Westminster Magistrates Court when he was due appear, the police took no further action in relation to the failure to appear, and at the resumed hearing on 14 September 2018 he attended and entered a guilty plea and was subsequently sentenced to 24 weeks' imprisonment, suspended for 24 months.

13 At the hearing before the MPT, Mr Jalloh therefore faced the following allegation of impairment by reason of his conviction, which he admitted at the outset:

"That being registered under the Medical Act 1983:

1. On 14 September 2018 at Westminster Magistrates Court you were:

*a. convicted of fraud by false representation contrary to sections 1 and 2 of the Fraud Act 2006; **Admitted and found proved***

*b. sentenced to 24 weeks imprisonment, suspended for 24 months. **Admitted and found proved***

And that your fitness to practise is impaired by reason of your conviction."

14 Mr Jalloh gave evidence to the MPT at the impairment stage. In relation to the first prescription, Mr Jalloh accepted that the medication was for himself, albeit issued in a made-up name, and he was being lazy in not attending his own GP surgery to obtain a prescription. Mr Jalloh was entitled to free prescriptions in any event, so he was not seeking to dishonestly obtain medication for free, which he wouldn't otherwise

have been entitled to. Mr Jalloh told the MPT that the second prescription was written in the name of, and was intended for, his cousin who was visiting the UK from Sierra Leone.

- 15** Whilst Mr Jalloh did not face any separate allegations about his prescribing practice, the MPT considered that there were concerns around his prescribing and that this was an aggravating feature, particularly in relation to the prescription for Mr Jalloh's cousin. Mr Jalloh, in reflecting on his conduct, said that in hindsight he should have written the prescriptions on a private prescription pad, rather than use the pad from the Kingfisher Surgery, which demonstrated a lack of insight in relation to the breaches of *Good medical practice*.
- 16** The MPT considered that the offence for which Mr Jalloh was convicted was serious noting that it met the threshold for a custodial sentence. The MPT was not satisfied that Mr Jalloh recognised the seriousness of his offending or that he had demonstrated insight. Further the MPT considered his evidence lacked candour, in respect of his varying explanations. The MPT considered that a risk of repetition remained. Accordingly the MPT found Mr Jalloh's fitness to practise impaired, noting that such a finding was necessary to protect the public and to uphold public confidence in the medical profession.
- 17** Following the finding of impairment the GMC raised some additional concerns about Mr Jalloh's prescribing which had arisen from his evidence at stage two, and further brought to the attention of the MPT that the matters for which Mr Jalloh had been convicted occurred when he was subject to undertakings and when he had relinquished his licence to practise. Whilst the MPT determined not to add these matters as additional allegations, they noted that they could be considered as aggravating factors at the sanction stage.
- 18** The GMC's sanction submission was for a period of suspension, noting that the conduct was not persistent or covered up, and was not therefore extensive or serious enough to warrant a sanction of erasure.
- 19** The MPT determined to suspend Mr Jalloh's registration for a period of six months with an immediate order, but it did not direct a review. The MPT indicated a view that Mr Jalloh's insight had developed over the course of the hearing, and that it was satisfied that the risk of repetition was not significant. The MPT found that Mr Jalloh's conduct was not fundamentally incompatible with continued registration and that six months' suspension would be a sufficient period for Mr Jalloh to complete the process of remediation and developing insight. The MPT determined not to direct a review on the basis that the suspension imposed was in order to mark the seriousness of the conviction and that Mr Jalloh's registration is still subject to undertakings, albeit they are not currently being monitored because Mr Jalloh does not hold a current licence to practise.

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

- 20** 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.
- 21** 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").
- 22** 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").
- 23** 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:
- 23.1** 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?
- 23.2** 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.
- 23.3** If the answer is yes, then the GMC may exercise its power of appeal
- 23.4** 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).

