

Meeting of the s40A Panel to consider the case of Dr John MAWSON

Held on 21 May 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
Jennifer Richardson, Senior Legal Adviser
Mark Swindells, Assistant Director, Corporate Directorate (Panel Secretary)
Sue Carr, Deputy Medical Director (observing)

Purpose of this note

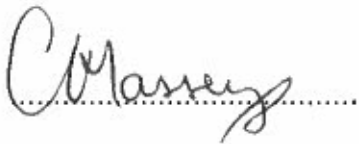
- 1 This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ("the decision"), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power 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. Colin Melville declared that he was formerly a colleague of Dr Mawson's but long in advance of the events in question.
- 4** The Panel is of the view that dishonesty in a doctor is of the utmost seriousness; furthermore, dishonesty is difficult to remediate. Here, the dishonesty found proved related to the maintenance of accurate clinical records, which is a matter closely concerned with a doctor's professional role.
- 5** Given the seriousness of the impairment, the suspension could be viewed as insufficient in length. This may particularly be so given that the original instruction was found by the MPT to have itself been such a serious failing in case and professional standards as to itself have amounted to misconduct – albeit that the MPT considered that this clinical misconduct (which had occurred in March 2017) was capable of remediation and had been remediated by Dr Mawson, such that his fitness to practise was not found to be impaired by reason of that clinical misconduct also, but only by reason of his dishonest alteration of the patient's medical records to seek to cover up that failing.
- 6** However, Dr Mawson's clinical abilities were not in issue, and moreover the panel did not identify any clear error in approach of the MPT. Any appeal would be a direct challenge to the MPT's assessment as to the appropriate length of the suspension. It was noted that the High Court would give due deference to the judgment of the expert Tribunal, and apply the Wednesbury unreasonableness test.
- 7** It was noted that by the time any appeal would be heard, the Doctor would have completed his suspension some considerable time previously. It is even more unlikely therefore that, in practice, a court would be minded to interfere in retrospect with the original decision in the absence of fairly compelling reasons to do so.
- 8** Dr Mawson had, albeit belatedly, demonstrated insight into any ongoing risk and no submissions were made regarding ongoing risk.
- 9** It was further noted that both parties agreed that suspension was appropriate; this was not a case where erasure was an appropriate or proportionate outcome. It was also relevant that there had been systemic issues in the Trust, and the MPT had fairly taken those factors into account.
- 10** The panel therefore agreed not to appeal the MPT's decision. As the case raised concerns about systemic issues in the trust, which will be discussed with the Trust's Responsible Officer.



Charlie Massey (Chair)

27/6/19

Dated

Background

11 This case concerns the determination of an MPT, which concluded on 24 April 2019, considering the matter under Part 4 of the 2004 Rules.

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

12.1 It was alleged by the GMC that Dr Mawson was involved in the premature labour of Patient A, who give birth to Patient B at 23 weeks only. Dr Mawson faced charges relating to the handling of that labour. There were a series of charges relating to the clinical decisions he took, the key point being that he failed to involve a Paediatrician or Neonatologist to advise Patient A on the options with regards to the care of Patient B. Instead, he took the view that Patient B was 'not for intervention at birth due to gestation'. This was inappropriate as it failed to take into account not only the absence of specialist advice, but the prospects of the child surviving its premature birth. After Patient B died, and after Dr Mawson had been confronted by a midwife about the sequence of events, Dr Mawson altered his clinical record. The original record read 'not for intervention at birth due to gestation'; this was changed to 'not for resuscitation at birth if unwell due to gestation.' In addition, the amendment included a note to say that Mr Abraham (the consultant obstetrician) was 'aware of events' and agreed.

12.2 A number of clinical errors were found proven, including counselling Patient A that Patient B was not for intervention due to gestation, failing to contact a paediatrician/neonatologist, inappropriate recording that Patient B was not for intervention due to gestation and altering the record. The Tribunal accepted that these were serious and amounted to misconduct. The Tribunal determined that they had been remediated by the date of the hearing and Dr Mawson's fitness to practise was not found to be impaired on their account.

12.3 Dr Mawson admitted that he altered the clinical record. The Tribunal determined that Dr Mawson made the alteration after having been informed that Patient B was born with signs of life and had showed signs of life following birth, which did not accurately reflect the instructions as contained in the original record. It found that this was dishonest.

- 13** The MPT determined that the doctor's dishonest conduct amounted to serious professional misconduct and that his fitness to practise was impaired, noting as follows at paragraphs 46-47 of the Impairment Determination:

46. In relation to Dr Mawson's dishonesty, the Tribunal was mindful that dishonesty may be difficult to remediate. However, there is no evidence before the Tribunal that Dr Mawson has undertaken any remediation or reflection in relation to his dishonesty given that he has maintained that he altered his original record for the purpose of clarification and was not dishonest.

47. In the absence of any tangible evidence of insight, remediation or reflection on the specific finding of dishonesty, the Tribunal determined that Dr Mawson's fitness to practise is currently impaired.'

- 14** The GMC submitted that suspension was appropriate. The MPT did suspend Dr Mawson's fitness to practise but only for a period of 2 months. There was no immediate order. No review hearing was directed.

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

- 15** 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.
- 16** 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").
- 17** 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").
- 18** 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:
- 18.1** 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?

- 18.2** 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.
- 18.3** If the answer is yes, then the GMC may exercise its power of appeal
- 18.4** 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).

