

Meeting of the s40A Panel to consider the cases of Dr Edward POOLEY (6146580) and Dr Dharson DHARMASENA (6106364)

Held on 9 August 2019.

Panel members present

Paul Buckley, Director of Strategy and Policy (deputising for Charlie Massey) (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
Mark Swindells, Assistant Director, Corporate Directorate (Panel Secretary)

Purpose of this note

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

The relevant decisions

- 2** The Principal Legal Adviser confirmed that the decisions were both relevant decisions for the purposes of s.40A.

Consideration

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

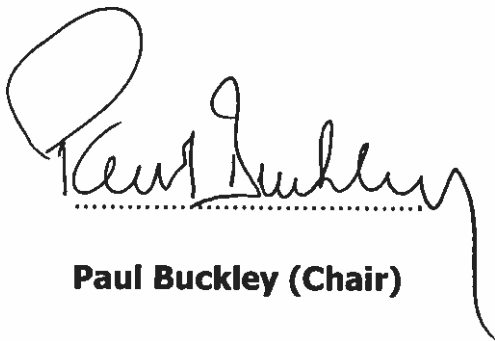
Dr Pooley

- 4 The Panel was most concerned by the findings in this case. The Panel agreed that Dr Pooley's actions, in prescribing opiate medication online, without obtaining an adequate medical history from patients or adequately assessing the patient, and without referral to the patients' own GPs was a serious departure from good medical practice.
- 5 The Panel felt that this was especially grave given Dr Pooley's position as an experienced partner at the GP practice he was working at during the period in question.
- 6 Given the serious nature of Dr Pooley's actions, which the MPT described as "reckless", the Panel felt that the length of the suspension could be considered lenient. However, it did not fall outside the bounds of what it was open to the MPT to properly and reasonably decide. It noted that, if an appeal against the length of suspension was issued, the High Court would be highly likely to defer to the judgment of "the specialist tribunal" as to what period of time would satisfy the public interest concerns and maintain public confidence in the profession.
- 7 The Panel could not identify any errors of principle in the MPT's approach. It appeared to the Panel that the MPT had properly considered and taken into account Dr Pooley's insight and remediation. Given that the MPT concluded that it was highly unlikely that Dr Pooley would breach GMC requirements and principles in the future, the Panel felt that the MPT's determination is sufficient to protect the public.
- 8 The Panel therefore decided to not appeal the MPT's decision pursuant to section 40A Medical Act 1983.

Dr Dharmasena

- 9 The Panel was similarly concerned by the findings against Dr Dharmasena. Again, the Panel agreed that Dr Dharmasena's actions, in prescribing opiate medication online, without obtaining an adequate medical history from patients or adequately assessing the patient, and without referral to the patients' own GPs was a serious departure from good medical practice.
- 10 The Panel noted that the MPT had concerns about the level of insight that Dr Dharmasena demonstrated.

- 11** Given the serious nature of Dr Dharmasena's actions, which the MPT again described as "reckless", the Panel felt that the length of the suspension could be considered lenient. However, it did not fall outside the bounds of what it was open to the MPT to properly and reasonably decide. It noted that, if an appeal against the length of suspension was issued, the High Court would be highly likely to defer to the judgment of "the specialist tribunal" as to what period of time would satisfy the public interest concerns and maintain public confidence in the profession.
- 12** The Panel could not identify any errors of principle in the MPT's approach. In Dr Dharmasena's case, unlike Dr Pooley's, the MPT has directed for a review hearing to take place shortly before the end of the period of suspension. The Panel noted that this will be an opportunity for Dr Dharmasena's insight to be tested further. Because of this, the Panel was satisfied that the MPT's determination is sufficient to protect the public.
- 13** The Panel therefore decided to not appeal the MPT's decision pursuant to section 40A Medical Act 1983.



Paul Buckley (Chair)

9 AUGUST 2019

Dated

Background

- 14** This case concerns the determination of an MPT, which concluded on 18 July 2019, considering the matter under Part 4 of the 2004 Rules.
- 15** The background to the allegation of misconduct is as follows:
- 16** The allegations against both doctors arose out of their issuing, as GPs working for an online service (White Pharmacy), online prescriptions for opioid medications, in circumstances where (it was alleged and found) they failed to obtain an adequate medical history from patients, failed adequately to assess the patients and did not have an adequate knowledge of the patients' health. It was alleged (and found) that the prescriptions were issued without adequate and appropriate safeguarding, in that the doctors failed to decline to prescribe medication that had a risk of causing dependency and redirect the patient to their own GP.

Dr Pooley

- 17** The allegations against Dr Pooley, which were largely admitted and found proved, related to 19 patients to whom various prescriptions were issued during the period between March 2016 and December 2017.
- 18** In its determination on impairment, the Tribunal recorded that the doctor's actions were seriously below the expected standard of a reasonably competent GP. It observed having regard to Good Medical Practice as well as Good practice in prescribing medicines and devices, that it was imperative for a doctor to have adequate knowledge of a patient's health before prescribing drugs to them and found that there was a clear risk in prescribing opioid medication when Dr Pooley did not have the relevant information available to make a safe and appropriate decision. It determined that "it should have been obvious to Dr Pooley at the very start of his online prescribing that he did not have sufficient verifiable information available to him" and that his actions were "reckless". The Tribunal found that his actions amounted to misconduct.
- 19** In considering whether his fitness to practise was currently impaired, the Tribunal had regard to the extensive remediation and continuing professional development work undertaken by Dr Pooley. It noted that when giving evidence he was remorseful, expressing regret and insight into his misconduct, and concluded that he had developed adequate insight into his actions, such that the risk of repetition was minimal. However, the Tribunal considered that reasonably informed members of the public would be "appalled by the online prescribing undertaken by Dr Pooley" and concluded that the public interest "requires a finding of impairment to be made in this case".
- 20** The GMC's sanction submission was for suspension.
- 21** When considering sanction, the Tribunal identified five mitigating factors: the positive testimonials emphasising that Dr Pooley was a well-regarded practitioner; the focused and in-depth CPD undertaken by Dr Pooley, demonstrating how his learning had developed as a result of his experience; that he had sufficient insight into his actions and misconduct; the early admissions made to the majority of the allegations; and the expression of unconditional remorse and apology which had been communicated in an appropriate and timely manner. The Tribunal identified as aggravating factors: the fact that the misconduct in question took place in relation to a large number of patients over a 15 month period and the seriousness of the conduct and the need to satisfy the public interest.
- 22** The MPT determined to suspend Dr Pooley's registration for a period of 3 months with no review. It concluded that this would be the appropriate and necessary sanction to protect the public interest in this case.

Dr Dharmasena

- 23** The allegations against Dr Dharmasena (again largely admitted and found proved) related to 13 patients to whom various prescriptions were issued during the period between April and July 2017.
- 24** The Tribunal concluded that Dr Dharmasena's actions were "reckless" and that it should have been obvious to him from the very start of his online prescribing that he did not have sufficient verifiable information available to him.
- 25** In relation to impairment, the Tribunal considered that he had taken "some steps towards remediation of his misconduct but that more was required". It noted that he had initially made a small number of admissions to the allegations but later made full admissions during cross-examination. The Tribunal did not feel that there was adequate reflection on his part. Again it concluded that reasonably informed members of the public would be "appalled" by the online prescribing, and that there was "a clear public interest in a finding of impairment ... given the risk to patients and in order to safeguard the reputation of the profession".
- 26** Again, the GMC submitted that suspension was appropriate.
- 27** The Tribunal identified three mitigating factors: the positive testimonials emphasising that Dr Dharmasena was a well-regarded practitioner; the doctor's expression of regret and apology for his actions; and the full admissions made without reservation (although during cross-examination rather than at the start of the hearing). The Tribunal acknowledged that Dr Dharmasena was attempting to make changes to the system of prescribing at White Pharmacy but observed that "his actions were inadequate because he simply could not have prescribed opiates safely to patients in that system". The Tribunal identified as aggravating factors: the fact that the misconduct in question took place in relation to 13 patients; the seriousness of the conduct and the need to satisfy the public interest; and the fact that Dr Dharmasena, having been Clinical/Medical Director of White Pharmacy from May to August 2017, was aware of the CQC's concerns but continued to prescribe opiates in these unsafe circumstances. The Tribunal noted again its concerns regarding Dr Dharmasena's insight.
- 28** The Tribunal decided to suspend Dr Dharmasena's registration for a period of six months, and directed a review hearing.

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

- 29** 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.

- 30** 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").
- 31** 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").
- 32** 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:
- 32.1** 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?
- 32.2** 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.
- 32.3** If the answer is yes, then the GMC may exercise its power of appeal
- 32.4** 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).