

## Meeting of the s40A Panel to consider the case of Dr David ROSCOE

Held on 2 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  
Jacqui Eden, 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.

- 4 The Panel was concerned by this case and felt that any instance where a doctor was implicated in violence was a serious matter.
- 5 The Panel considered this an exceptional case insofar as the MPT determined Dr Roscoe's fitness to practise to be impaired and yet did not take any action in terms of his registration.
- 6 The Panel carefully noted the MPT's findings in respect of the mitigating factors, namely:
  - 6.1 significant insight and extensive reflection;
  - 6.2 targeted remediation;
  - 6.3 early admissions;
  - 6.4 sincere remorse and regret;
  - 6.5 an isolated incident in the context of an unblemished career and was entirely out of character;
  - 6.6 the unusual and difficult personal circumstances.
- 7 Having considered all aspects of this case carefully, and with particular attention to Dr Roscoe's remorse and candour, the Panel agreed not to appeal the MPT's decision.

  
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**Charlie Massey (Chair)**

29/7/19  
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**Dated**

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## Background

- 8 This case concerns the determination of an MPT, which concluded on Thursday 6 June 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').
- 9 The allegation considered by the MPT was one of misconduct, the circumstances of which were as follows:

**9.1** Dr Roscoe is an ST6 specialist registrar in rehabilitation medicine in the British Army. On 27 January 2018, the police were called to the home address of Dr Roscoe following a report by Mrs A that during the course of an argument she had been pushed by Dr Roscoe. During the argument Dr Roscoe had been swearing at Mrs A and put both his hands on the top half of Mrs A's arms and pushed her backwards towards the door of the house. Dr A was arrested and interviewed by the police during which he admitted that he had pushed Mrs A.

**9.2** On 29 January 2018, Dr Roscoe appeared before Lincoln Magistrates Court where he pleaded guilty to assaulting Mrs A for which he received a conditional discharge for 18 months and ordered to pay costs. Dr Roscoe made a self-referral to the GMC on 1 February 2018.

**9.3** Dr Roscoe's fitness to practise was alleged to have been impaired by reason of misconduct as the imposition of a conditional discharge is not deemed a conviction for the purposes of section 35C(2)(c) of the Medical Act 1983.

### **MPT hearing**

**10** The MPT hearing commenced on 3 June 2019 and Dr Roscoe admitted the facts. At stage two of the hearing, the MPT heard oral evidence from Dr Roscoe and his Educational Supervisor, having also received various documentary evidence. Dr Roscoe admitted that the allegations amounted to misconduct and the MPT found that his actions did amount to a breach of *Good Medical Practice* and that his actions were not a trivial departure or a minor criminal offence; as such they concluded that his actions amounted to misconduct.

**11** Upon considering whether Dr Roscoe's fitness to practise was impaired, the MPT found that Dr Roscoe had *significant insight* into his misconduct and that he had reflected on his behaviour and developed coping mechanisms to address identified stressors in his life. The MPT were impressed by Dr Roscoe's *'targeted and considered'* remediation and found that the risk of repetition was low.

**12** The MPT took the view that at the time of the incident Dr Roscoe was subject to a number of unusual stressors at the time of the incident such that they amounted to exceptional circumstances, namely:

**12.1** loss of a training post that he and his family had moved home for;

**12.2** unexpected separation from his family without military accommodation;

**12.3** poor health and care of family members;

**13** The MPT found that Dr Roscoe had genuine remorse for his actions and did not seek to blame others or attempt to minimise them.

- 14** In finding that Dr Roscoe's fitness to practise was impaired the MPT noted that a member of the public would be shocked if they knew a doctor had received a conditional discharge for assault. They found that the exceptional circumstances that Dr Roscoe found himself in explained his behaviours and went to the risk of repetition but *'do not excuse his actions'*. The MPT found that whilst the conduct was highly unlikely to be repeated that Dr Roscoe's misconduct had damaged the public confidence in the medical profession and that a finding of impairment was necessary to fulfil the MPT's duty under the second and third limbs of the over-arching objective to maintain the public confidence in the profession and to maintain proper professional standards.
- 15** In determining what sanction to impose the MPT identified a number of mitigating factors including:
- 15.1** significant insight and extensive reflection;
  - 15.2** targeted remediation;
  - 15.3** early admissions;
  - 15.4** sincere remorse and regret;
  - 15.5** an isolated incident in the context of an unblemished career and was entirely out of character;
  - 15.6** the unusual and difficult personal circumstances.
- 16** The MPT noted the only aggravating feature was that Dr Roscoe had received a conditional discharge for an offence of violence but noted that Mrs A did not suffer any visible injuries as a result.
- 17** The MPT determined to take no action on Dr Roscoe's registration having considered Dr Roscoe's personal circumstances at the time of the incident and medical evidence, such that they were satisfied that they amounted to exceptional circumstances to justify taking no action on Dr Roscoe's registration. The MPT were satisfied that the finding of impairment of Dr Roscoe's fitness to practise alone was sufficient to satisfy its duty to act in accordance with the over-arching objective.

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

- 18** 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.

- 19** 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").
- 20** 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").
- 21** 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:
- 21.1** 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?
- 21.2** 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.
- 21.3** If the answer is yes, then the GMC may exercise its power of appeal
- 21.4** 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).

