

## Meeting of the s40A Panel to consider the case of Dr Saeed

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.

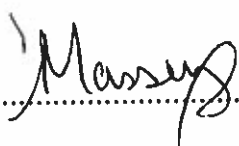
### The relevant decision

- 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 determination and the legal advice in detail, including the draft grounds for appeal.

- 4 The Panel noted that the fact of the conviction and the seriousness of the misconduct clearly demonstrate this was a very grave departure from the standards expected of a doctor.
- 5 The Panel concluded that the MPT failed to reflect the true seriousness of Dr Saeed's misconduct and failed to properly engage with Sanctions Guidance on erasure, and that the MPT attached too much significance to mitigation.
- 6 In addition, the Panel noted that the MPT had 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 mid-July 2020 whereas the doctor's suspended custodial sentence will not expire until 29 August 2020.
- 7 It was also noted that the case involved a criminal conviction for violence, rather than matters of clinical competence, and the fact that the doctor was not present at the hearing meant that assessments of insight were not based on in-person testimony. Both of these factors lent weight to the merits of an appeal in the view of the Panel.
- 8 The Panel concluded that, as a result of the errors which the MPT made in their determination of this case, the outcome was not sufficient to protect the public and it was their view that an appeal would further, rather than undermine, the overarching objective of public protection.
- 9 The Panel therefore decided to appeal the MPT's decision pursuant to section 40A Medical Act 1983.

  
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**Charlie Massey (Chair)**

24/7/19  
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**Dated**

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## **Background**

- 10 This case concerns the determination of an MPT, which concluded on 13 June 2019, considering the matter under Part 4 of the 2004 Rules.
- 11 The background to the allegation of misconduct is as follows:
- 12 At the hearing before the MPT, Dr Saeed therefore faced the following allegation of impairment by reason of his conviction:

**13** *"That being registered under the Medical Act 1983:*

*1. On 6 July 2018 at Maidstone Crown Court you were convicted of:*

- a. Controlling and Coercive Behaviour;*
- b. Assault Occasioning Actual Bodily Harm.*

*2. On 29 August 2018 you were sentenced to:*

- a. 22 months Imprisonment suspended for 2 years;*
- b. 200 hours unpaid work;*
- c. Rehabilitation Activity Requirement for 30 days;*
- d. Restraining Order until further order.*

*And that your fitness to practise is impaired because of your conviction."*

- 14** The convictions related to Dr Saeed's conduct towards his wife, Ms A. The controlling and coercive behaviour persisted between December 2016 and August 2017. The assault took place on 11 August 2017, when Dr Saeed slapped Ms A and throttled her, causing bruising around her neck. In mitigation, Dr Saeed alleged that in April 2016 (approximately 16 months before the assault) he discovered that he had been deceived by Ms A and her family prior to their marriage, having been falsely led to believe that the marriage was Ms A's first marriage, and that she was a virgin.
- 15** Dr Saeed was in fact acquitted of five of the seven of charges against him in the criminal proceedings. However, he continued to deny all aspects of the offences he was found guilty of. He made no admissions to the MPT, and in an unsigned statement put before the MPT, he maintained his argument that the allegations leading to his conviction were false.
- 16** The MPT found Dr Saeed's fitness to practise to be impaired by reason of his conviction. The MPT determined that he had breached a fundamental tenet of the medical profession in not acting within the law; that "he has begun to develop insight, but no more than this"; and that it could not be satisfied that he would not act in the same manner in the future.
- 17** The GMC's sanction submission was for erasure.
- 18** The MPT determined to suspend Dr Saeed's registration for a period of 12 months with a review. It concluded that this would be the appropriate and necessary sanction to protect the public interest in this case. The Tribunal determined that imposing the maximum period of suspension would promote and maintain public confidence in the profession and promote and maintain standards and conduct for members of the profession. Further, it was satisfied that this period will provide Dr Saeed with sufficient time and opportunity to properly reflect on, and gain insight into his offending, such that he will not repeat such behaviour.

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

- 19** 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.
- 20** 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").
- 21** 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").
- 22** 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:
  - 22.1** 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?
  - 22.2** 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.
  - 22.3** If the answer is yes, then the GMC may exercise its power of appeal
  - 22.4** 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).