

Meeting of the s40A Panel to consider the case of Dr Przemyslaw SLEDZIK

Held on 26 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
Kate Takes, 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 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 that the MPT has misunderstood the effect of the High Court judgment and accordingly has applied the wrong procedure when re-considering the sanction, after the case was remitted back to it by the High Court. The sanction was quashed by the High Court and, therefore, the MPT should have considered stage three in its entirety following the procedure under Rule 17(2)(l) of the GMC (Fitness to Practise) Rules 2004 (as amended). This meant that new evidence and submissions could have been presented by both parties.
- 5 The Panel considered that the MPT was wrong to take such a narrow approach in this case, and as such that the MPT did not consider all the relevant evidence in coming to a new decision. The Panel requested that this feedback is given to the MPTS.
- 6 The Panel also considered that the MPT were wrong and made an error in law by backdating the conditions to the previous MPT hearing in May 2018. The Panel has, again, requested that this feedback is given to the MPTS.
- 7 In addition, the Panel was concerned, from a patient safety perspective, that that Dr Sledzik appeared to only have limited insight into his actions.
- 8 However, the Panel noted that the MPT had restricted Dr Sledzik's practice by imposing conditions for a period of 18 months with a review hearing at the end of that period. The review hearing will be due to take place in or before December 2019. Hence there will be an opportunity for Dr Sledzik's insight and remediation to be considered, as well as an assessment of any future risks to patient safety at this hearing.
- 9 Notwithstanding the concerns about the procedure adopted by the MPT at this remitted hearing, the Panel do not believe that the MPT outcome is insufficient to protect the public or public confidence, and therefore decided to not appeal the MPT's decision pursuant to section 40A Medical Act 1983. The Panel wished to record that their decision not to appeal should not be seen as an endorsement of the MPT's handling of this case nor their decision, however, for the reasons outlined in the paragraph above.



4 August 2019

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Charlie Massey (Chair)

Dated

Background

- 10** This case concerns the determination of an MPT, which concluded on 4 July 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').
- 11** The MPT hearing was solely to consider sanction, which had been remitted back to the MPT by the High Court on 7 February 2019.
- 12** The first MPT hearing took place between 19 February and 31 May 2018 ('the 1st MPT hearing'). Dr Sledzik faced a series of allegations relating to his work as a locum ophthalmic practitioner or ophthalmologist at Boots and Specsavers in 2015, regarding a substantial number of patients (deficient professional performance), and his failure to refer patients to the hospital eye service in accordance with guidance (misconduct).
- 13** The MPT found Dr Sledzik to be impaired by both reason of his deficient professional performance and his misconduct. The determination noted that:
- 13.1** *The Tribunal was concerned by Dr Sledzik's lack of insight into his deficient professional performance and determined that there was a significant risk of its repetition. The Tribunal had regard to the test for impairment set out in the fifth Shipman report (detailed above). It determined that Dr Sledzik had in the past acted and is liable in the future to act so as to put a patient or patients at unwarranted risk of harm. Furthermore, the Tribunal has received no evidence from Dr Sledzik with respect to remediation, with regard to his clinical skills and record keeping, nor testimonial evidence from colleagues and/or patients attesting that he is considered a safe and competent doctor.*
- 13.2** *The Tribunal took into account Dr Sledzik's assertion that he believed that he was working in his patients' best interests and that, had he known he was working to the contrary, he would have referred patients to the hospital eye service when required. The Tribunal had no reason to doubt the sincerity of Dr Sledzik's assertion. Nevertheless, it was deeply concerned by his belief that his knowledge and experience outweighed that of those who produced the relevant national guidance.*
- 14** The MPT concluded that conditions (for 18 months and with a review) would be a sufficient sanction in Dr S' case. In determining sanction, the MPT noted the mitigating factors as follows 'Dr Sledzik's insight was limited, but developing. He made a significant number of admissions at the outset of the hearing and recognised that there were deficiencies in his record keeping. There have been no previous findings of deficient professional performance or misconduct, and prior to these

proceedings, there is evidence that he was regarded positively by employers. Further, he had received additional offers of employment.' The MPT further noted that the sole aggravating factor related to Dr Sledzik's continued lack of insight with regard to Patient B.

- 15** The GMC appealed the decision to impose conditions. The grounds of the appeal included:
 - 15.1** the MPT's findings on impairment were inconsistent with its sanction determination that conditions were sufficient to protect the public;
 - 15.2** the MPT had wrongly confined its summary of the aggravating factors relevant to sanction to one issue (lack of insight into the care of Patient B);
 - 15.3** the conditions (in particular, the clinical supervision required being at the lowest level envisaged by the Glossary) were not sufficient to protect the public; the appropriate sanction was erasure.
- 16** The appeal was heard before Mrs Justice Lang DBE in December 2018. The judgment was handed down on 7 February 2019: General Medical Council v Sledzik [2019] EWHC 189 (Admin). Lang J allowed the appeal on a limited basis and quashed the sanction and remitted the case back to the MPT to consider sanction due to the apparent *'contradiction between the Tribunal's strong findings of a lack of insight at impairment stage, and lack of evidence of remediation, and its subsequent findings at sanction stage.'*
- 17** Lang J also noted that whilst, on the evidence, she did not consider this was a case where *'the failure to remediate or the risk to patients is so striking that it would be wrong for a tribunal not treat it as an aggravating factor'*, she could not ascertain the reason why the MPT had included only the lack of insight concerning Patient B as an aggravating feature (and not the doctor's lack of insight into his failings in respect of all his patients).
- 18** However, whilst Lang J referred to identifying flaws in the sanction determination, she noted that it was not clear whether those flaws *'may be a consequence of a defective approach to the case by the Tribunal, or they may merely be a result of poor drafting and inadequate reasons.'*
- 19** Lang J also noted that *'this is not a case where I am able to conclude that the Tribunal was wrong to impose a period of conditional registration and to reject the sanctions of suspension or erasure.'*
- 20** Following Lang J's judgment and the sanction being quashed, Dr Sledzik's practice was not restricted and, therefore, he was referred to the interim orders tribunal ('IOT'): at a hearing on 14 March 2019 an interim order of conditions was imposed.

MPT hearing

- 21** The MPT hearing commenced on 4 July 2019.
- 22** The GMC and doctor had planned to present new evidence relating to sanction at this hearing.
- 23** At the start of the hearing, there were discussions about the scope of the hearing. The Legally Qualified Chair stated that *'What I do not think is legally correct is for there to be information presented between what has happened subsequently because that would be matters for a review hearing, that is not matters for a re-determination because, of course, were you to do that you would open up all sorts of a can of worms. You could be hearing information that made matters worse, you could be hearing information that made matters better but of course you could be hearing information that made you think, for instance as an example, fitness to practise no longer impaired, but that is not a matter for this determination and that is not what the High Court has asked us to do.'*
- 24** Counsel on behalf of the GMC submitted that the GMC read Lang J's judgment to mean that the entirety of stage three was to be revisited, that the FTP Rules allowed for further evidence to be adduced at the sanction stage and that the evidence may or may not affect the MPT's findings, *'particularly so far as insight is concerned.'* GMC Counsel also suggested that ignoring the intervening period of time between the conclusion of Dr Sledzik's 2018 hearing, including Lang J's judgment such as her comments about the erasure, would be 'artificial'.
- 25** In response to questioning about his position, Dr Sledzik stated *'I understand but there is new evidence from both sides: the GMC brought new evidence and I have new evidence. I would not like to go through this again, this whole process, I would like to stay as we are now'* and (in response to a question 'based on the evidence at the time?') *'the evidence we have now previously, yes.'*
- 26** The MPT determined that the scope of the 2019 hearing was not to reopen stage three in its entirety but was solely to consider the position of sanction and insight as of May 2018 and they would not hear further submissions or receive any further evidence which was more appropriate for 'a full review hearing.' The MPT's determination highlighted that *'it interpreted Mrs Justice Lang's judgment as directing that it re-determine sanction as of May 2018, asking itself whether the sanction imposed at that time was appropriate on the evidence before it then ... the Tribunal noted that the learned judge did not direct the Tribunal to consider any other new evidence.'*
- 27** Although a bundle of the 'new evidence' had been sent to the Medical Practitioners Tribunal Service ('MPTS') in advance of the hearing, at the hearing the MPT noted that *'it was sure to put any additional material out of its minds when re-determining sanction today.'*

- 28** The GMC had also proposed to submit that a sanction of suspension was appropriate in the circumstances of the case (and following on from Lang J's judgment). However, for the reasons set out above, the MPT considered the case based on the GMC's previous submission of erasure at the 1st MPT hearing.
- 29** The MPT's determination referred to the mitigating and aggravating factors; these included the mitigating factors and the sole aggravating feature found at the 1st MPT hearing but also included the additional mitigation of Dr Sledzik's engagement with the GMC and hearing process, his *'willingness to take on-board new working practices, which suggests he is capable of remediation'* and that he *'understands that not referring patients to the HES had an adverse impact, and he now appreciates that he should have followed guidance. This shows insight.'*
- 30** Overall, the MPT noted that whilst it had found that insight (regarding patient B) was lacking, it did not consider that this *'outweigh[ed] the overall insight Dr Sledzik has begun to develop in relation to the totality of his deficient professional performance and misconduct.'*
- 31** The MPT also stated that whilst it *'was mindful of its decision at the impairment stage that Dr Sledzik did not have full insight, meaning there remained a risk of repetition, it was satisfied that conditions would provide sufficient public protection in this regard. Further, whilst Dr Sledzik has yet to demonstrate remediation, he has demonstrated a willingness to remediate and to retrain.'*
- 32** The MPT determined to impose conditions for a 18 month period. These conditions were the same as those imposed at the 1st MPT hearing and were 'backdated' to May 2018; *'the period of 18 months runs from the time of the 2018 Tribunal's original decision (May 2018)'*. It is understood that the backdated conditions do not follow the new conditions bank which came into effect in April 2019.
- 33** With regard to the duty to the overarching objective, the MPT stated that it considered this could *'be fulfilled by the formulation and imposition of conditions.'*

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

- 34** 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.
- 35** 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").

- 36** 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").
- 37** 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:
- 37.1** 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?
- 37.2** 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.
- 37.3** If the answer is yes, then the GMC may exercise its power of appeal
- 37.4** 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).