

Meeting of the s40A Panel to consider the case of Professor Robert Thompson WALTON

Held on 12 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)

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.

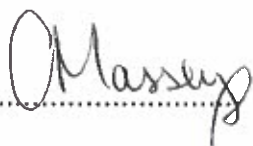
The relevant decision

- 2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A.

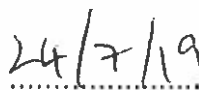
Consideration

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

- 4 The Panel was concerned about the MPT's determination for the following reasons:
 - 4.1 The MPT appeared to have misdirected themselves when determining the factual allegations regarding when Professor Walton's obligation to apply to undertake private work and declare any conflicts of interest arose;
 - 4.2 The MPT's categorisation of the dishonesty not being persistent was questionable;
 - 4.3 The MPT's determination on sanction failed to reflect the findings in the determination on impairment that Professor Walton had failed to reflect or undertake any remediation in respect of his dishonest conduct; this was also repeated in the MPT's decision not to direct a review;
 - 4.4 The panel felt that the MPT had placed far too much weight on Professor Walton's previous good character when determining the length of sanction when balanced against the very seriousness nature of the findings;
 - 4.5 The MPT had failed to consider any of the factors which were present which pointed to erasure;
- 5 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.
- 6 The panel therefore decided to appeal the MPT's decision pursuant to section 40A Medical Act 1983.

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Charlie Massey (Chair)

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Dated

Background

- 7 This case concerns the determination of an MPT, which concluded on Tuesday 18 June 2019, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules').

8 The allegation considered by the MPT was one of misconduct, the circumstances of which were as follows:

8.1 Professor Walton is a General Practitioner. At the time of the allegations Professor Walton was employed as a full time Professor of General Practice at Warwick Medical School ('Warwick'). During his employment at Warwick, Professor Walton regularly undertook private work at Summertown Health Centre ('the Health Centre') and Queen Mary University of London ('Queen Mary') without having sought authority to do so.

8.2 On a date between November 2016 and January 2017, Professor Walton had been offered the role at Warwick. During a telephone conversation prior to formally accepting the role, Professor Walton was informed by the Dean of Warwick that he would need to apply for permission to undertake his private work; he was also subsequently informed by the Dean by email that an application would need to be made. It was the evidence of the Dean that Warwick's policy was that the maximum number of days which could have been taken in these circumstances was two per month.

8.3 Professor Walton subsequently and prior to commencement of his employment at Warwick failed to make an application to undertake private work at the Health Centre and Queen Mary until October 2017 and failed to declare his private work as a conflict of interest.

8.4 Prior to Professor Walton making an application to undertake private work he had a discussion with the Head of Division of Health Scientists ('Head of Division') in which he informed her that the Dean had agreed that the payments he received from the Health Centre could be paid directly to him, when in fact there had been no such agreement.

8.5 Professor Walton subsequently made an application for permission to undertake private work when in fact he had already been undertaking private work for a significant period of time. The application he made sought approval to undertake private work for half a day per week at the Health Centre. Professor Walton informed the Head of Division that he had been working at the Health Centre for one day per week during his employment at Warwick when in fact he had been working for the Health Centre on the basis of four sessions per week which could equate to up to two days per week.

8.6 It was alleged that Professor Walton had been dishonest in undertaking private work during his employment at Warwick in the absence of having made an application as advised by the Dean and as required by the terms of his employment. In addition, it was alleged that Professor Walton had been dishonest in his conversations about his private work with the Head of Division.

MPT hearing

Facts

- 9** The MPT hearing commenced on 10 June 2019. At the outset of the hearing, Professor Walton admitted that whilst working at Warwick he had worked at the Health Centre for up to two days per week and at Queen Mary for one day per week. Professor Walton also admitted that he was advised by the Dean by email that he needed to make an application in order to undertake private work and that he had undertaken private work before making an application. In addition, he admitted having informed the Head of Division that there was an agreement with the Dean for him to be paid directly from the Health Centre and that he had been working at the Health Centre for one day per week. Professor Walton did not admit that he had acted dishonestly.
- 10** It was alleged by the GMC that Professor Walton knew that he was subject to terms of employment at Warwick which required him to make an application for permission to undertake private work and declare any conflict of interest and that by reason of this his failure to make an application (in addition to what he was told by the Dean) and declare a conflict of interest was dishonest. This was not found proven by the MPT, having accepted the evidence of Professor Walton that he had not read the terms and conditions prior to his appointment and therefore did not know that he was subject to such terms. This was on the basis that they had seen no evidence that there was an obligation on Professor Walton to make the application or declare this prior to starting work at Warwick.
- 11** The MPT found proven that the Dean had not agreed for Professor W to be paid directly for his work for the Health Centre (as approval for him to carry out such work had not been properly sought by Professor Walton or granted) and therefore what he stated to the Head of Division was dishonest. It was also found proven that Prof W had been carrying out up to two days per week work at the Health Centre during his employment at Warwick and therefore he had been dishonest in what he had informed the Head of Division as he was aware at the time of this conversation that he was being paid for four sessions per week by the Health Centre.

Impairment

- 12** The MPT found that Professor Walton's actions amounted to misconduct and that his fitness to practise was impaired. In finding impairment, the MPT noted that Professor Walton had continued to deny acting dishonestly and that they had no evidence to indicate that he had reflected or taken steps to remedy his misconduct and therefore could not be satisfied that there was no risk of repetition.

Sanction

- 13** The MPT was not persuaded that Professor Walton's dishonesty was persistent, relying on the fact that he dishonesty arose out of the common circumstances

relating to Professor Walton's private work. The MPT observed that there had been no repetition of dishonesty by Professor Walton and referred to the '*overwhelmingly positive testimonial evidence*', noting that he was, based on the evidence, '*a highly skilled academic and clinician who is eminent in his field*'. The MPT were satisfied based on the evidence before them that Professor Walton had acted out of character and that it was likely that he would revert back to his '*usual good character*' should similar circumstances arise in the future; as such they were satisfied that the risk of repetition was minimal.

- 14** The MPT stated that Professor Walton's dishonesty related to his external earnings from his private work outside of his work for Warwick and that he had benefitted financially from his dishonest actions. The MPT reiterated Professor Walton's denial of his dishonesty and that there was no evidence that he had reflected on or remediated his misconduct.
- 15** The MPT determined to suspend Professor Walton from the medical register for a period of six months, taking the view that such a sanction was sufficient to mark the seriousness of the misconduct and to protect the public interest and uphold the standards of the profession. The MPT observed that the public interest would not be served by removing a '*highly valued academic and clinical practitioner out of practice for a disproportionate amount of time*'.
- 16** The MPT did not direct a review, noting that there had been no concerns raised regarding Professor Walton's clinical practice and that the risk of repetition was minimal, but failing to address the findings related to Professor Walton's lack of insight and remediation in respect of his dishonest conduct.

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

- 17** 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.
- 18** 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").
- 19** 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").

20 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:

20.1 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?

20.2 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.

20.3 If the answer is yes, then the GMC may exercise its power of appeal

20.4 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).