

Meeting of the s40A Panel to consider the case of Dr Asef ZAFAR

Held on 19 June 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
Jennifer Richardson, Senior Legal Adviser
Mark Swindells, Assistant Director, Corporate Directorate (Panel Secretary)

Purpose of this note

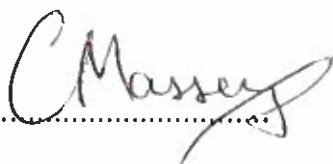
- 1 This meeting note records a summary of the Members' consideration of the relevant decision of the Medical Practitioners Tribunal ('MPT') which considered the Doctor's case ("the decision"), and the Panel's decision on behalf of the General Medical Council as to whether or not to exercise the power 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 concluded that, in its determination, the MPT failed to reflect the true seriousness of Dr Zafar's conduct and attached too much significance to mitigation.
- 5 The Panel also considered that the MPT had failed properly to engage with the provisions of the Sanctions Guidance concerning erasure and had failed properly to address its mind to the factors mentioned in it, and in particular para 109 of the Guidance.
- 6 The Panel also considered that the MPT 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 October 2019, whereas the doctor's suspended custodial sentence will not expire until September 2020.
- 7 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.
- 8 The panel therefore decided to appeal the MPT's decision pursuant to section 40A Medical Act 1983.



Charlie Massey (Chair)



Dated

Background

- 9 This case concerns the determination of an MPT, which concluded on 24 May 2019, considering the matter under Part 4 of the 2004 Rules.

- 10** The background to the allegation of misconduct is as follows:
- 11** Dr Zafar provided medical reports in the course of litigation relating to a road traffic accident (in December 2011) involving Mr Iqbal (a taxi driver) and the insurance company of the other driver, Liverpool Victoria Insurance Company Limited ("LVI").
- 12** Dr Zafar examined Mr Iqbal for around 15 minutes on 17 February 2012 and diagnosed mild pain and stiffness and predicted that the symptoms should resolve themselves in a week. A second report which bore the same date as the first one was later produced under Dr Zafar's name, but did not identify that it was an amended or second report. Both reports were relied on by Mr Iqbal's solicitors in the proceedings. LVI conducted an investigation into the differences between the reports and Dr Zafar gave two witness statements dated 20 August and 22 October 2013. In his first witness statement, Dr Zafar claimed that the agency instructed by Mr Iqbal's solicitors had drafted the second report without his consent. In his second witness statement, Dr Zafar stated that the first report was an error and that the second report was correct. Dr Zafar also completed affidavits dated January and May 2016 about the reports.
- 13** He was subsequently convicted of 10 counts of contempt of court and was sentenced to six months' imprisonment suspended for 2 years.
- 14** At the hearing before the MPT, Dr Zafar therefore faced the following allegation of impairment by reason of his conviction, which he admitted at the outset:
- "That being registered under the Medical Act 1983:*
- 1. On 5 October 2018, at the Queen's Bench Division in the High Court of Justice, 10 counts of contempt of court were proven against you. **Admitted and found proved***
- 2. On the same date you were sentenced to 6 months' imprisonment, suspended for 2 years. **Admitted and found proved***
- And that your fitness to practise is impaired because of your misconduct."*
- 15** Dr Zafar did not contest misconduct or impairment on the basis of the public interest. The MPT found misconduct and impairment. The Tribunal determined that confidence in the medical profession was likely to be undermined if a finding of impaired fitness to practise was not made given the seriousness of this case.
- 16** The GMC's sanction submission was for erasure.
- 17** The MPT determined to suspend Dr Zafar'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 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).