Meeting of the s.40A Panel to consider the case of Dr Olanrewaju Oladipo (7026256)

Held on 14 December 2021.

Panel members present

Charlie Massey, Chief Executive (in the Chair)
Colin Melville, Medical Director and Director, Education and Standards
Anthony Omo, General Counsel and Director of Fitness to Practise

In attendance

Dawn Crook, Senior Legal Adviser
Jim Percival, Principal Legal Adviser and Deputy General Counsel
Iona Twaddell, Office of the Chair and Chief Executive (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 (as amended) ("the Act").

The relevant decision

2 The Principal Legal Adviser confirmed that the decision was a relevant decision for the purposes of s.40A of the Act. The decision was a decision under s.35D giving a direction for suspension, within the meaning of s.40A(1)(a)(i).

Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.
The Panel was concerned by apparent errors in the MPT’s decision, for example in determining that seeking a kiss from a patient was not serious misconduct. The Panel were also concerned that the MPT accepted that Dr Oladipo had gained full insight and remediation in a short period of time when he had previously denied misconduct throughout the case.

However, the Panel noted that a three-month suspension was not an insignificant sanction and would remain on Dr Oladipo’s record. They also felt that this was a case where the High Court, considering an appeal, would conclude that erasure was not the only reasonable outcome. An appeal would not likely have led to a substantially different outcome and could not therefore be said to be in furtherance of the overarching objective.

Based on their assessment of all the relevant information, the Panel were satisfied that little would be gained from an appeal to seek to overturn the erroneous findings of the MPT in respect of those matters it did not consider amounted to serious misconduct. On balance the Panel therefore concluded the overall outcome was sufficient enough for public protection to render any appeal in this case a disproportionate use of the GMC’s power to appeal.

The Panel therefore decided not to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

17 December 2021

Charlie Massey (Chair)   Dated

Background

This case concerns the determination of an MPT, which concluded on 19 November 2021, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The outcome was that Dr Oladipo’s fitness to practise was found impaired and their registration was suspended for a period of three months, with no review hearing being directed.

At the time of the events in question Dr Oladipo was working as a locum Specialist Registrar in Respiratory Medicine at Norfolk and Norwich University Hospitals NHS Trust. The matters giving rise to the allegation are as follows:

9.1 It was alleged that Dr Oladipo engaged in sexually motivated conduct towards Patient A (a female patient being treated for a lung infection).
9.2 It was alleged that between 26 April 2016 and 9 May 2016, while Patient A was an in-patient at Norfolk and Norwich Hospital (‘the Hospital’) Dr Oladipo spoke to Patient A in a sexualised manner and inappropriately touched her while carrying out an examination of a rash on her torso.

9.3 It was also alleged that Dr Oladipo told Patient A that he wanted to kiss her, grabbed her by the back of the neck and pushed his tongue into Patient A’s mouth.

9.4 It was further alleged that Dr Oladipo telephoned Patient A’s mobile while she was a patient in the Coltishall Ward on 9 May 20216 and continued to call her a number of times between 10 May 2016 and 7 June 2016 after she had left the Hospital.

Facts

10 The hearing commenced on 26 April 2021, going part heard, after stage 2, on 12 May 2021. No admissions were made by Dr Oladipo prior to the hearing of the factual evidence.

11 The vast majority of the allegations were found not proven. The MPT assessed the credibility and reliability of the witness testimonies, and balanced that against any corroborative or documentary evidence, concluding in the main that the GMC had not discharged its burden of proof. The MPT did find however that Dr Oladipo gave his mobile telephone number to Patient A and made a number of calls to her mobile telephone between 10 May 2016 and 7 June 2016.

12 The MPT found that Dr Oladipo did made a number of comments to Patient A, including (or words to the effect of):

   i) ‘I came by on Friday to say goodbye but you didn’t even look at me’;

   ii) when he said he could see if Patient A could be discharged from the hospital, ‘If I do will you come back to see me tomorrow?’;

   iii) on one or more occasions, ‘I want a kiss before you go’;

   iv) that Patient A should ring him;

   v) during a call to Patient A, ‘I told you to ring me’;

   vi) during a call to Patient A, ‘I’m putting the phone down now, call me back’;

   vii) during a call to Patient A, ‘Why haven’t you called me?’;

   viii) during a call to Patient A, ‘Why didn’t you come and see me?’;

13 All of the factual findings which were found proven, except for the statement made at paragraph 12(i) above, were found by the MPT to be sexually motivated.
Impairment

14 In their decision on impairment the MPT found that Dr Oladipo’s actions in giving his mobile number to Patient A in pursuit of a possible sexual relationship amounted to an abuse of trust and was conduct that amounted to serious misconduct.

15 The MPT also found the sexually motivated comments made during some of the telephone calls amounted to serious misconduct.

16 However, the MPT found that the comments at paragraph 12(ii) and 12(iii) above, which were considered to be sexually motivated, whilst below the standard expected of a doctor, did not fall significantly below the standard expected and did not constitute serious misconduct.

17 In considering the question of current impairment the MPT noted that Dr Oladipo had provided evidence of partial remediation and that his insight was at an early stage, and that there remained a small risk of repetition. The MPT determined that a finding of impairment was required on all three limbs of the overarching objective.

Sanction

18 The hearing reconvened for the sanction stage on 18 November 2021. Dr Oladipo submitted further evidence which included a number of recent testimonials, and a ‘remediation and reflections’ bundle which included details of various courses he had attended and his reflections and learnings from them. The evidence was akin to what one would expect at a review hearing.

19 The GMC maintained its sanction submission of erasure in light of the findings of sexual motivation.

20 The MPT found that the further evidence provided by Dr Oladipo demonstrated that he had sufficiently remediated and that no ongoing risks were identified. The MPT determined that a period of suspension was sufficient to send a declaratory message to the medical profession and to the wider public that Dr Oladipo’s sexual misconduct was unacceptable. The MPT considered a period of three months represented an appropriate balance between satisfying the overarching objective and providing Dr Oladipo with an opportunity to return to practice, recognising that he was an otherwise excellent doctor whose misconduct was out of character and had been significantly remediated. No review was directed.

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

21 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.

22 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”).

23 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”).

24 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:

24.1 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?

24.2 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.

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

24.4 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).