Meeting of the s40A Panel to consider the case of Dr Louise Armstrong

Held on 11 February 2020

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

Jacqui Eden, Senior Legal Adviser
Jim Percival, Principal Legal Adviser and Deputy General Counsel
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, having regard to s40A(1)(d) of the Medical Act 1983 and the decision of the Court of Appeal in Raychaudhuri v General Medical Council [2018] EWCA Civ 2027, 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 at the undisputed facts of this case which demonstrate Dr Armstrong's repeated and sustained dishonesty in relation to her status on the Medical Performers list whilst working as a locum GP and whilst subject to investigation by the General Medical Council.

5 The Panel noted that Dr Armstrong had admitted all of the allegations, had provided evidence of mitigating circumstances which were submitted as being relevant to her admitted conduct, shown remorse and remediation, and had fully cooperated with the regulatory process.

6 Notwithstanding these mitigating factors, which can be acknowledged in any sanction deliberations, the Panel struggled to see how the MPT concluded that the doctor's fitness to practise was not impaired. Specifically, the Panel felt it illogical that the MPT could conclude that there was no impairment, given the persistent and multifaceted dishonesty.

7 The Panel concluded that the MPT's decision was insufficient to protect the public because the MPT had erred in its finding on misconduct, had failed to attach significance to the seriousness of Dr Armstrong misconduct and had attached too much weight to matters of mitigation.

8 The Panel therefore decided to appeal the MPT's decision pursuant to section 40A Medical Act 1983.

Charlie Massey (Chair) Dated 27/2/20

Background

9 This case concerns the determination of an MPT, which concluded on Wednesday 22 January 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 ('the Rules'). The outcome was that Dr Armstrong's fitness to practise was not found impaired and a warning was issued.

10 The allegation considered by the MPT was one of misconduct and concerned allegations related to Dr Armstrong's probity, the circumstances of which were as follows:
10.1 Dr Armstrong is a GP who worked from 2004 to 2012 in the North of England, following which she emigrated to Australia where she worked as a GP until 2015, when she then returned to the UK and begun working as a locum in the North East.

10.2 Whilst working as a locum GP at eight different practices, Dr Armstrong was not registered on the Medical Performers List (‘MPL’) as is required and which she knew was required; whilst working at one of the practices as a locum she informed an administrator that she was on the MPL, when she knew that she was not. NHS England commenced an investigation and Dr Armstrong failed to co-operate with that investigation.

10.3 Following referral to the GMC, Dr Armstrong was made the subject of an interim order of suspension on her registration, following which Dr Armstrong made applications to Nuffield Health and Push Doctor and failed to declare the GMC investigation and her suspension.

10.4 In June 2018, Dr Armstrong returned to Australia and applied for a GP position and again failed to disclose that she was subject to an interim order. Upon the Australian practice making enquires with her she provided false information about the interim suspension and GMC investigation; Dr Armstrong subsequently withdrew her application for the GP post.

MPT hearing

Facts/Impairment

11 Dr Armstrong admitted all of the allegations including that she had acted dishonestly.

12 The MPT found that the allegations of dishonesty amounted to serious misconduct. However, they did not find that Dr Armstrong’s failure to co-operate with NHS England’s investigation amounted to serious misconduct noting that she had in fact sent one email and therefore there was ‘some engagement, albeit limited’.

13 The MPT noted:

13.1 Dr Armstrong’s full engagement with the regulatory process, including her having flown from Australia to give evidence to the MPT;

13.2 That Dr Armstrong’s apology was genuine and that she was remorseful;

13.3 That she was aware of the gravity and the impact of her actions;

13.4 Dr Armstrong had reflected in detail;

13.5 Significant mitigating factors which affected her decision making;
The risk of repetition was ‘exceptionally low’.

The MPT considered the overarching objective, being satisfied by the level of insight, remediation and risk of repetition that Dr Armstrong did not pose a risk to patients. The MPT’s consideration of the second and third limb of the overarching objective noted having regard to the fact that the wider public interest needed to be considered stating they had given ‘these issues careful consideration’ and that public confidence would not be undermined in circumstances where a fully informed member of the public were aware of the circumstances and that professional standards were upheld by a ‘rigorous regulatory process which had resulted in a finding of serious professional misconduct’.

The MPT found there had been exceptional circumstances as a result of the combination of ‘multiple, significant adverse life stressors’ which Dr Armstrong had been subject to at the time; stating that the circumstances of the case were also exceptional to justify a finding of no impairment.

Warning

In imposing a warning, the MPT ‘determined that it was necessary for it to highlight to Dr Armstrong, the profession as a whole and the wider public, that her conduct was serious, unacceptable and had the potential to bring the profession into disrepute. The Tribunal determined that a warning was necessary to reinforce the importance of maintaining proper professional conduct and behaviour and was proportionate in the circumstances’.

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

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.

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”).

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”).
19 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:

19.1 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?

19.2 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.

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

19.4 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).