Meeting of the s40A Panel to consider the case of Dr Hafeez-Ur Rehman Awan

Held on 9 December 2019.

Panel members present

Charlie Masséy, 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

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 In reviewing this case, the Panel noted that the MPT found Dr Awan's actions to be sexually motivated. The Panel was disturbed at the finding that Dr Awan had abused his position as a doctor in such a way. Given this finding of the MPT, the Panel found that the MPT did not appear to have considered all of the relevant elements of the sanctions guidance. Specifically, they did not engage with paragraph 150, which provides that sexual misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies; and that more serious action, such as erasure, is likely to be appropriate in such cases.

5 The Panel also found that the MPT's reasoning regarding the public interest in not depriving the public of the services of an otherwise competent doctor, was flawed. The GMC's role is to protect patient safety and hold a register of doctors licenced to practice in the United Kingdom. The Panel found that the MPT's reasoning was irrelevant as Dr Awan left the UK to practise in Canada in October 2017 and he does not refer to any intention to return to practise in the UK in his witness statement.

6 Given these errors in the approach taken by the MPT, and the serious nature of the findings in this case, the Panel therefore decided to appeal the MPT's decision pursuant to section 40A Medical Act 1983.

Charlie Massey (Chair)

Dated

6/1/20

Background

7 This case concerns the determination of an MPT, which concluded on 15 November 2019, considering the matter under Part 4 of the 2004 Rules.

8 The background to the allegation of misconduct is as follows:

9 In 2016, Dr Awan was working as a GP in Leeds and Wakefield. The GMC received a Dr Awan a referral from South Yorkshire Police on 15 January 2016. They had undertaken a covert operation on a "chat site" called Lycos. Dr Awan had engaged in dialogue with someone who he believed to be a 13 year old girl. Dr Awan had used
the username “Medic333”. Dr Awan engaged in further exchanges with Person A by
text message and WhatsApp on 21 January 2016.

10 Dr Awan made inappropriate and sexually motivated remarks to her. Further, Dr
Awan persisted in trying to speak with Person A over the phone and sought to do so
at a time when an adult would not be present. Dr Awan told Person A that he was a
doctor during the initial conversation on Lycos.

11 In October 2017, Dr Awan moved to Canada where he works as a GP.

12 At the hearing before the MPT, Dr Awan therefore faced the following allegation of
impairment by reason of his misconduct:

“That being registered under the Medical Act 1983:

1. On 5 January 2016 and 21 January 2016, you engaged in
conversations via an online chatroom, text message and WhatsApp
(the ‘Conversations’) with an individual (‘Person A’) who you:
   a. believed was a 13 year old girl;
   b. purported to accept was a 13 year old girl.

2. During the course of the Conversations you:
   a. told Person A that you were a doctor;
   b. used the username set out in Schedule 1 which
      identified you as a member of the medical profession;
   c. made numerous inappropriate remarks to Patient
      Person A as set out in Schedule 2 (as amended).

3. Your conduct at paragraphs 1 and 2c was sexually motivated.

4. You failed to report Person A as a potentially vulnerable child to the:
   a. relevant child protection agency;
   b. police.

And that your fitness to practise is impaired because of your misconduct.”

13 The Conversations are set out in the Annex to the allegation. Dr Awan admitted
paragraphs 1(b) and 2(a) & (b). The MPT heard evidence from Dr Awan and found
all of the other paragraphs of the allegation (save for 4(b)) proved.
14 Dr Awan did not contest misconduct or impairment, given the findings of fact. The MPT found misconduct and impairment.

15 The Tribunal took the view that sexually motivated conduct is not easily remediable. It noted that whilst the conversations with Person A did not take place in a clinical setting, Dr Awan had breached his position of trust. The MPT took the view that Dr Awan’s conduct was unbefitting that of a registered medical practitioner.

16 The Tribunal considered that Dr Awan has made some efforts to reflect on his behaviour and has started to put measures in place to ensure that this conduct is not repeated. For example, he told the Tribunal that he no longer uses chat rooms and has found other methods to ‘de-stress’. It noted positive testimonial evidence. The MPT determined that the risk of repetition was low. However, it noted that Dr Awan had not expressed any remorse and that insight was incomplete.

17 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 finding of sexual motivation in this case.

18 The GMC’s sanction submission was for erasure. the MPT set out the mitigating and aggravating factors:

The Tribunal considered the following to be mitigating factors in this case:

- No evidence that Dr Awan has committed a sexual offence;
- Dr Awan has made positive steps towards remediation and put measures in place, such as discontinuing his use of social media platforms to ensure this misconduct is not repeated;
- There were opportunities for Dr Awan to engage in a more sexually explicit dialogue with Person A however he did not do so;
- The sexual misconduct was at the lower end of the spectrum;
- No one came to any harm;
- Doctor of good standing with an unblemished record;
- The impact of the assault on Dr Awan in 2014.

The Tribunal considered the following to be aggravating factors in this case:

- Dr Awan has demonstrated limited insight into the effect his conduct, including revealing his identity as a doctor, had on the public trust and confidence in the medical profession;
- There has been no expression of remorse;
- The findings of inappropriate behaviour and sexual misconduct towards Person A who Dr Awan believed to be a 13 year old girl;
- The Tribunal considered Dr Awan’s actions to be a serious departure from the principles set out in GMP.
19 In considering sanction the MPT took into account paragraph 149 of Sanctions Guidance, and considered that the sexual misconduct in this case was at the lower end of the spectrum.

20 The Tribunal did have regard to the sanction of erasure of Dr Awan’s name from the Medical Register, and found that whilst the misconduct was serious, it fell short of being fundamentally incompatible with continued registration. The Tribunal took the view that erasing Dr Awan’s name from the medical register would be disproportionate, given the circumstances of this case and that a period of suspension would suffice in order to send a signal to the doctor, the profession and the public about what is regarded as behaviour unbefitting of a registered doctor. It also considered the public interest would be best served by not depriving the public of an otherwise competent doctor.

21 The MPT determined to suspend Dr Awan’s registration for a period of nine months with a review.

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

22 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.

23 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”).

24 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”).

25 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:

25.1 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?
25.2 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.

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

25.4 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).