Meeting of the s40A Panel to consider the case of Dr Abdul Basit
Held on 31 March 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 the decision was a relevant decision for the purposes of s.40A, being a decision under s35D giving a direction for suspension, within the meaning of s40A(1)(a) Medical Act 1983.

Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.
4 The Panel was disturbed at the prolonged, violent, coercive and controlling behaviour which the MPT found to be proven in this case. This type of conduct is seriously below what the Panel considered the public would expect of a member of the medical profession.

5 On review of the MPT’s findings, the Panel felt that the sanction the MPT imposed could be considered unduly lenient when set against the findings in this case. In particular, the MPT, in its determinations, had placed a substantial weighting on the mitigating factors, and on the limited and late-stage evidence of remediation and insight. The Panel found it hard to square the MPT’s conclusions regarding Dr Basit’s insight with his complete denial of the facts initially.

6 However, a sanction of suspension was not so far outside the boundaries of what was reasonably open to the MPT, nor did the Panel find that there was an immediate patient safety risk such that they could conclude that the decision was insufficient to protect the public. With some reservations, the Panel therefore could not determine that the MPT’s rulings were insufficient to protect the public.

7 The panel observed that despite the MPT’s findings in respect of the late development of insight and remediation that the MPT did not stipulate for a review to take place at the end of Dr Basit’s suspension. However, the Panel noted that a GMC Assistant Registrar (AR) would be considering whether to direct a review to take place, and that the AR would be aware of those matters when deciding whether it was appropriate to direct a review.

8 So, whilst the Panel was troubled by the facts of this case, in view of the matters referred to above it concluded that it would not be appropriate to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

20 April 2020

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Charlie Massey (Chair)  Dated
Background

9 This case concerns the determination of an MPT, which concluded on Friday 6 March 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The outcome was that Dr B’s fitness to practise was found impaired and a sanction of four months suspension was imposed and a review was not directed.

10 At the time of the allegations Dr Basit was employed as a Trust Grade Doctor in the Dermatology Department at Cumberland Infirmary, Carlisle. The conduct which the MPT considered related to allegations of violence committed in a domestic setting against (Dr A) and on one occasion against (Dr B). The circumstances of the allegations are as follows:

10.1 On or around 15 May 2016, Dr A and Dr Basit were in Brighton where they went for dinner and to watch a film with Dr B. Upon returning to Dr B’s flat, a verbal altercation occurred between Dr Basit and Dr B, during which Dr A stood in between them. Dr A was struck on her cheek and ear by Dr Basit causing bruising and swelling. The blow to Dr A was said to have ‘followed through’ and hit Dr B in the face, following which Dr B tried to restrain Dr Basit. As a result of the incident Dr B sustained an injury to his left eye, scratches to his neck and a bruise on his forehead. The police attended and Dr Basit was arrested, however, Dr A and Dr B decided not to press charges.

10.2 Dr Basit was alleged to have committed various acts of violence against Dr A between February 2016 and July 2016; Dr A described that the violence occurred against a backdrop of emotional, psychological and verbal abuse. The allegations of physical violence were that Dr Basit pushed her, grabbed her by the throat and squeezed his hand around her neck on a number of occasions and grabbed her face.

MPT hearing

Facts

11 Dr Basit denied all of the allegations before the MPT. In respect of the incident on 15 May 2016, Dr Basit’s case was that it was in fact Dr B who had hit Dr A in the process of attempting to assault Dr Basit and that Dr Basit had only acted in self-defence. Dr Basit also denied that he had assaulted Dr A in the manners as alleged, in turn alleging that Dr A hade made up the allegations to ‘decimate him’.

12 The MPT found the evidence of Dr’s A & B to be credible and reliable. The MPT found Dr A’s account of the use of coercive, controlling behaviour and psychological abuse to be ‘authentic’ and corroborated by the evidence of a witness. The MPT also found
Dr A’s description of the assault in Brighton to be ‘compelling’ and her description of an occasion where Dr B had put his hand around her neck and squeezed to be ‘extremely compelling’.

13 The MPT found all of the allegations proven.

Impairment

14 Between the findings of fact and the impairment determination the hearing went part-heard and reconvened five months later. The MPT were presented with evidence of remediation and reflection steps taken by Dr Basit.

15 In finding misconduct, the MPT determined that the conduct found proven was conduct unbecoming of a doctor which was ‘morally culpable’ and which fellow practitioners would find deplorable. They found it was particularly serious in light of the MPT’s acceptance of the evidence that Dr Basit’s behaviour could be categorised as ‘coercive, controlling and psychologically abusive’.

16 In finding impairment, the MPT took the view that the conduct could be remediated, noting that Dr Basit had accepted the MPT’s findings, but that there had been ‘no evidence whatsoever of remorse or regret’ until after the facts; but noting that his reflection had been comprehensive and represented a ‘significant attitudinal shift’ and the development of some insight. The MPT did not consider that repetition to be ‘highly likely’.

Sanction

17 The MPT in determining that suspension was the appropriate sanction considered that Dr Basit’s conduct required a deterrent sanction. They noted that the misconduct was capable of remediation and had been remedied in part. The MPT observed that Dr Basit had developed ‘some insight into his behaviour and its impact on others’. As to repetition, the MPT noted that there had been no repetition since 2016 and that there wasn’t a high risk of repetition.

18 The MPT considered erasure noting the engagement of one factor pointing to erasure, namely Dr Basit’s violent conduct. However, they concluded that the mitigation was such that the imposition of erasure was disproportionate.

19 In considering the length of the suspension and imposing four months, the MPT stated that it had regard to the mitigating and aggravating factors – giving weight to the ‘inherent seriousness of the violent conduct’, the period over which it occurred and the effect on Dr A and balancing that against the length of time that had passed without repetition, Dr Basit’s attitudinal shift and the public interest. The MPT observed that it had taken into consideration the financial impact of suspension on Dr Basit and his ‘usefulness to the community as a good doctor’.

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20 The MPT went on to determine that a review was not required noting that the suspension served to send out a clear message, there was no evidence of risk to patients and that whilst Dr Basit’s insight was incomplete that the regulatory process ‘will have a salutary and deterrent effect upon him’; also noting that the four months would provide him with further time to reflect.

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 MPTs 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).