Meeting of the s40A Panel to consider the case of Dr Baljinder Singh Ubhi
Held on 6 April 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

Dawn Crook, 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 as it was a decision not to make a direction under s.35D Medical Act 1983, within the meaning of s.40A(1)(d) Medical Act 1983.

Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.
4 This Panel noted the facts of this tragic case involving the death of a young child, Patient A. Dr Ubhi failed to review Patient A’s medical records or obtain a history from Patient A’s mother. In addition, he failed to assess Patient A’s behaviour, heart rate, breathing rate, capillary refill time, skin colour or extremities’ skin temperature. Further, he failed to arrange for various assessments to be undertaken and failed to arrange for a period of observation pending the outcome of those investigations. Dr Ubhi did not make a record of his consultation with Patient A.

5 The Panel noted that Dr Ubhi self-referred to the GMC. At the MPTS hearing, he admitted the allegations and that his conduct amounted to serious misconduct.

6 The Panel agreed that the misconduct which was found proven in this case was serious, particularly when considering the seniority of Dr Ubhi and his wealth of experience, however it was an isolated incident, in that it related to Dr Ubhi’s care of one patient, which occurred almost four and half years ago. The Panel noted that there have been no concerns about Dr Ubhi’s clinical capabilities since. The Panel therefore felt that there is no obvious ongoing risk to patient safety.

7 The Panel noted that the MPT concluded that Dr Ubhi had learned lessons which had been embedded in his practice. In addition, Dr Ubhi has received a warning which will remain on file.

8 The Panel could find no obvious failings in the MPT’s approach. The Panel therefore concluded not to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

9 This case concerns the determination of an MPT, which concluded on Thursday 12 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 Ubhi’s fitness to practise was found not to be impaired; a warning was however imposed.

http://www.gmc-uk.org
At the time of the allegations, in October 2015, Dr Ubhi had recently commenced a post as a locum Consultant in General Paediatrics at Chesterfield Royal Hospital. Dr Ubhi commenced a substantive NHS Consultant post in Paediatrics at Darlington Memorial Hospital in May 2016. Dr Ubhi self-referred to the GMC in September 2018 following an Inquest into the death of a patient (‘Patient A’), where his conduct was criticised. The circumstances of the allegations are as follows:

10.1 Patient A, a four-year-old girl, was listed for a tonsillectomy on 21 October 2015. Patient A became unwell following her initial assessment and a decision was made to cancel the planned surgery. Prior to her discharge a Nurse requested that Dr Ubhi assess Patient A to see if she required a prescription of antibiotics to take home with her.

10.2 It is accepted that Dr Ubhi failed to review Patient A’s medical records or obtain a history from Patient A’s mother. Dr Ubhi failed to assess Patient A’s behaviour, heart rate, breathing rate, capillary refill time, skin colour or extremities’ skin temperature. Further, he failed to arrange for various assessments to be undertaken and failed to arrange for a period of observation pending the outcome of those investigations. Dr Ubhi did not make a record of his consultation with Patient A.

10.3 After examination solely of the tonsils, Dr Ubhi diagnosed viral tonsillitis and advised antibiotics were not required. Patient A was discharged but later her condition deteriorated, and she subsequently died at Sheffield Children’s Hospital due to meningococcal septicaemia.

Facts

11 At the outset of the proceedings, Dr Ubhi made full admissions in relation to his clinical failings. The MPT therefore found all of the factual allegations proven.

Impairment

12 Dr Ubhi, through his counsel, admitted that the conduct amounted to serious misconduct. In finding that the conduct amounted to misconduct the MPT noted that his failure to make a note of the consultation inhibited proper inquiry and investigation by the Trust. The MPT found that Dr Ubhi’s actions fell far below the standards of conduct expected of a doctor and that they were sufficiently serious to amount to serious misconduct.

13 In finding no impairment, the MPT took the view that Dr Ubhi had good insight and had reflected upon the consequences of his failure regarding his record keeping and that he had embedded those lessons learned in his current practice.

14 The MPT took account of systemic issues in terms of there being no protocol in place for review of patients whose elective surgery was cancelled, but noted that it was not
excusable for a clinician to delegate responsibility for a patient’s diagnosis when he has specifically be called upon to give a medical opinion. The MPT however considered that his failings were remediable. Noting that the failures occurred almost five years ago, the MPT recognised that there had been no further complaints with regards to Dr Ubhi’s clinical practice in the intervening period. Having considered the evidence of remediation before it, the MPT was of the view that Dr Ubhi is currently working effectively and competently and that lessons learned had again been embedded in his practice.

The MPT concluded that Dr Ubhi had done all that could be expected of him to remedy his clinical failings. The MPT also acknowledged that there had been a public apology at the Inquest and the MPT hearing. The MPT went on to conclude that Dr Ubhi does not pose a current risk to members of the public and that a finding of impairment was not necessary either on patient safety or public interest grounds.

Warning

The MPT did however go on to impose a warning on the basis that Dr Ubhi’s reflection and insight was incremental, and that the slow process led to a continued lack of openness and candour with Patient A’s mother, the Trust and the Inquest, which damaged the reputation of the medical profession and public trust in it. In light of this, and the seriousness of the admitted failings, the MPT determined it was necessary to impose a warning in order to uphold public confidence in the profession.

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 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").
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:

20.1 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?

20.2 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.

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

20.4 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).