Meeting of the s40A Panel to consider the case of Mr Mohamed El-Ghannam
Held on 6 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 as it was a decision not to give a direction under s35D of the Medical Act 1983 within the meaning of s40A(1)(d) Medical Act 1983, as confirmed by the Court of Appeal in its judgment in the case of Raychaudhuri v General Medical Council [2018] EWCA Civ 2027.
Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.

4 The Panel was disturbed by the facts of this case and felt that Mr El-Ghannam’s behaviour was unacceptable, particularly because it was directed at more junior colleagues, even if it was not found to be sexually motivated. The Panel considered that this did in fact amount to an abuse of position.

5 The Panel noted the MPT’s conclusion that risk of repetition was low, and that Mr El-Ghannam had reflected and apologised about his behaviour.

6 The Panel felt that whilst Mr El-Ghannam’s behaviour was serious and unacceptable, there was no evidence that it was part of a long-term pattern. Moreover, the Panel noted that the MPT’s warning confirmed that his behaviour amounted to a significant departure from the standards of conduct to be expected of a registered medical practitioner and that that warning would remain on Mr El-Ghannam’s record.

7 So, whilst the Panel was troubled by the findings in this case, it decided not to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

27 March 2020

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Charlie Massey (Chair) Dated

Background

8 This case concerns the determination of an MPT, which concluded on 11 February 2020, considering the matter under Part 4 of the 2004 Rules.

9 The background to the allegation of misconduct is as follows:
Mr El-Ghannam qualified in 1975 in Egypt. At the time of the events at issue, he was practising as a consultant obstetrician at a hospital in King’s Lynn.

It was alleged that:

11.1 on 6 November 2017, Mr El-Ghannam grabbed the hair of Ms A (a midwife member of the clinical team, and thus more junior than he was), pulled her backwards by her hair, slapped her on the back and told her that she should have acted more quickly.

11.2 on 11 January 2018, Mr El-Ghannam demanded that Ms A kiss his cheek before he responded to a question she had asked him regarding a clinical matter. This second incident was alleged to be sexually motivated.

Evidence before the MPT included Mr El-Ghannam’s trust interview. In relation to incident one, he said ‘the midwife had done well and he wanted to thank her. To get her attention he gently pulled the hair and slapped her on the back. There was [no] intent to cause harm. He denies pulling hard on her hair.’ In relation to the second incident, he said that he never planted kisses on lips. He said ‘If he asked for a kiss it was very rare always done in front of everyone as a joke and stress reliever. Staff would laugh’.

Mr El-Ghannam said he was very sorry about his behaviour. He could see that his joking which was intended to relieve stress has caused problems. He will not repeat this and would like to go on a stress management course. Nothing was ever meant as intimidation.

The MPT accepted that the doctor had grabbed Ms A’s hair. It did not accept that she had been pulled backwards by her hair. It did however find that she had been slapped on her back, and with sufficient force as to leave a red mark on her skin when inspected by a colleague within 10 minutes of the incident. Mr El-Ghannam also admitted, and the MPT accepted, that he had told the midwife that she should have acted quicker, or used words to that effect.

In relation to the second incident, the doctor and Ms A’s evidence concurred; she had asked a question, and he had indicated before answering that he wanted a kiss by pointing to his left cheek with his finger. The MPT accepted that this was inappropriate but, having looked at all the background evidence, it decided that, on the balance of probabilities, it could not infer that this conduct was sexually motivated.

Misconduct

The MPT found that there was no context, clinical or otherwise, in which Mr El-Ghannam’s conduct towards Ms A could be deemed as justified, proper or appropriate conduct for a doctor. It concluded that there had been a clear breach of paragraph
36 Good Medical Practice, which requires doctors to treat colleagues fairly and with respect. It accepted that there was a power imbalance between the two individuals concerned. However, it rejected the submission that the incident amounted to an abuse of position in the sense that the doctor was willing to mistreat and manipulate junior colleagues, because they were unlikely to complain. It decided that it could not infer such an attitude, given that the doctor’s actions related to one individual albeit on two separate occasions. Equally, it held that it could not find there was evidence of a ‘wider attitudinal problem towards subordinates and women’, on the basis of these two incidents alone.

**Impairment**

17 The MPT determined that Mr El-Ghannam’s evidence of remorse ‘demonstrated insight’. It noted that that the doctor had recognised that his actions were wrong and had caused upset and had apologised. It regarded the two incidents as isolated errors of judgment. In the light of these factors, it decided that it was highly unlikely that the doctor would repeat such conduct. The MPT also took into account and gave some weight to the testimonial evidence before it which was from a variety of Mr El-Ghannam’s professional colleagues. These showed that he was well liked and respected by those working alongside him. His sense of humour and familiar approach was mentioned but not highlighted as an area of concern.

18 The MPT considered whether a finding of impairment was required for the protection of the public, patients or colleagues. It concluded in light of the above that the risk of repetition of the behaviour found proved was low and a finding on this basis is not justified. It went on to consider whether a finding of impairment was required in the wider public interest. It concluded that in all the circumstances of this case a finding of impairment on public interest grounds was not required.

19 Taking all of the above into account, the MPT determined that Mr El-Ghannam’s fitness to practise is not currently impaired. The MPT did then go on to issue a warning in this case.

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

20 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.

21 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:

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?

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.

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

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).