Meeting of the s40A Panel to consider the case of Dr Islam Elsayed Abdelhadi Mohamed

Held on 14 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

Jen Richardson, 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 to direct 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.
The Panel was troubled by the facts of this case, which Dr Mohamed admitted. The Panel felt that the material Dr Mohamed posted online was deeply offensive, sexist, racist and far beyond a matter of taste. The posts demonstrate multiple elements of prejudice.

The Panel found that this was deplorable and were troubled by the decision of the MPT to suspend for only 4 weeks. In light of the seriousness of the misconduct, and the impact on the public and public confidence in the profession, the Panel felt that the length of the suspension directed by the MPT's could be viewed to be lenient. The Panel noted that the starting point for the MPT should be considerations of public confidence in the profession, rather than the impact of a suspension on the doctor.

However, the Panel noted that the impairment and sanction are a matter of public record, and this is not insubstantial. In addition, the Panel considered Dr Mohamed's remorse and commitment to understanding issues relating to discrimination.

This was not a case in which the GMC sought a sanction of erasure and the Panel considered that it was reasonably open to the MPT to have directed a period of suspension for less than the maximum available 12 months, albeit they were concerned that the decision to suspend for only 4 months was somewhat lenient.

The Panel therefore considered whether in all the circumstances the public interest would be best served by challenging the MPT's determination in this case in order to secure a potential extension of several months to the current period of suspension, where by the time any appeal was heard the Doctor would have served his current period of suspension and have returned to practice for a significant period of time. The Panel did not consider that it would be.

The Panel therefore, on balance, decided not to appeal the MPT's decision pursuant to section 40A Medical Act 1983.

Charlie Massey (Chair)

Dated
Background

10 This case concerns the determination of an MPT, which concluded on 23 January 2020, considering the matter under Part 4 of the 2004 Rules.

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

12 Dr Mohamed admitted an allegation that:

Between 18 July 2015 and 22 July 2018 you posted offensive and/or racist content via your Facebook account including the comments and images set out at Schedule 1.

13 Schedule 1 contained a list running to four and half pages with 37 examples of posts containing, among other things, racist and sexist and sexually explicit material. Dr Mohamed qualified in Egypt in 2015 and moved to the United Kingdom and obtained GMC registration on 18 June 2018. He then worked at West Suffolk NHS Foundation Trust ("the Trust"). Dr Mohamed came to the GMC's attention as a result of a complaint received on 13 October 2018.

Impairment

14 Dr Mohamed admitted his actions amounted to serious misconduct. The Tribunal found that a finding of impairment was necessary because of the gravity of Dr Mohamed's misconduct.

15 The MPT determined that a finding of impairment was necessary on the grounds of public confidence.

Sanction

16 In determining sanction, the MPT noted various mitigating and aggravating features including the extremely offensive nature of the material posted, relating to a number of different groups within society; that the posts were uploaded over a 3 year period, that they were freely available on the internet and that it involved discrimination.

17 The Tribunal was satisfied that Dr Mohamed's expressions of remorse were genuine and that he has fully accepted his misconduct. He has undertaken work to better understand issues relating to discrimination. The Tribunal considered that Dr Mohamed displayed reasonably good insight, which extended into why what he did was wrong.

18 The GMC sanction submission was suspension. The Tribunal determined that a period of suspension was necessary to mark the seriousness of the misconduct, to maintain public confidence in the profession and maintain professional standards.
19 The Tribunal noted that it had evidence before it that a suspension of longer than 4 weeks would affect Dr Mohamed’s visa status, and would prevent him being able to reapply for a visa for 12 months. It concluded that a period of suspension of longer than 4 weeks would have a disproportionate effect on the doctor.

20 On analysis, the evidence to support this was unclear. The evidence took the form of an email from the Trust dated 20 January 2020; this contained two different assertions. Firstly, it stated that the maximum period of suspension without affecting Dr Mohamed’s visa status was four weeks; secondly, it indicated that Dr Mohamed could be suspended for longer, provided his earnings did not fall below £30,000. This would perhaps permit a four month suspension. Defence submissions indicated that, after having made unspecified enquiries, the longest period would be 60 days. GMC Counsel did not have an opportunity to verify the information, due to time constraints.

21 The MPT determined to suspend Dr Mohamed’s registration for a period of one month. No review hearing was directed.

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).