Meeting of the s40A Panel to consider the case of Dr Sivashanmugarajan RAMAKRISHNAN

Held on 20 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

Jennifer Richardson, Senior Legal Adviser
Jim Percival, Principal Legal Adviser and Deputy General Counsel
Tim Swain, Head of OCCE, 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 s35D Medical Act 1983, within the meaning of s40A(1)(d) Medical Act 1983.

Consideration

3 The Panel considered the record of the MPT’s determination and the legal advice in detail.
4 The Panel discussed the dishonesty of the doctor in this case and noted that this dishonesty had occurred in a training practice. Whilst they were therefore concerned by this fact, they nonetheless acknowledged that the dishonesty itself could be said to be at the lower end of the spectrum of potential dishonesty. The Panel also recognised there was significant (though incomplete) evidence of insight and there was a low risk of repetition.

5 The Panel raised some concern that the Tribunal found no impairment in a case where dishonesty had been found proven. However, it was not considered that an appeal would be appropriate given the limited prospects of success and, that it wasn’t the type of case where the most significant sanctions would arise if it did.

6 The Panel therefore decided not to appeal the MPT’s decision pursuant to section 40A Medical Act 1983.

27 April 2020

Charlie Massey (Chair) Dated

Background

7 This case concerns the determination of an MPT, which concluded on 26 February 2020, considering the matter under Part 4 of the 2004 Rules.

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

9 Dr Ramakrishnan is a GP who faced proceedings together with another partner in his practice, Dr A. In Dr A’s case, the allegations of dishonesty were not proved and a finding of ‘no misconduct’ followed. Dr A’s case has not been referred to the Executive Panel for consideration.

10 The allegations against Dr Ramakrishnan arose out of a patient complaint; NHSE required an investigation and a response to it. Dr Ramakrishnan (the Practice Manager) was responsible for the investigation and collated relevant material, including statements from the doctors responsible for the patient’s treatment. There was no allegation that the information provided with regard to the patient was inaccurate or incomplete. But shortly before the response was due to be sent to
NHSE, the medical defence body for one of the doctors concerned advised that it would be better if the letter of response came from a doctor who had had no treatment responsibilities. As a result, Dr Ramakrishnan belatedly saw and discussed the matter with a colleague, Dr B, who had had no previous involvement in the investigation, and:

10.1 A letter dated 28 November 2017 was sent in the name of Dr B stating that Dr B had led the investigation into the patient’s complaint and held discussions with the colleagues involved. Although Dr Ramakrishnan knew that Dr B had not carried out these activities, the MPT found that this failing was not dishonest: “the Tribunal are satisfied that Dr Ramakrishnan did not intend to mislead NHSE at the time he sent the Letter. He and Dr A were rushed to get the Letter out on 28 November 2017, and their focus and attention was directed towards ensuring that an accurate description was given of the patient’s treatment by all who were involved in her care...” It was a genuine mistake.

10.2 The letter included Dr B’s electronic signature, which Dr Ramakrishnan did not have permission to use. However, again the MPT found that its use was still not dishonest, given that the letter was to go in Dr B’s name (which he knew), it was not dishonest to append the electronic signature.

10.3 On 6 December 2017, an email was sent by Dr Ramakrishnan to NHSE. The email perpetuates what was said in the earlier response, namely that Dr B was involved at the time the Letter was sent on 28 November 2017 in investigating the patient’s complaint; but he no longer wishes to be involved. Dr Ramakrishnan advised that he had been requested to write the Practise response, although both these assertions were false. This, the MPT found, was dishonest.

Impairment

11 The issue of impairment was considered on 24 and 27 January 2020. The doctor did not give oral evidence; the MPT was provided with a reflective statement. Numerous testimonials were adduced which suggested that Dr Ramakrishnan was and is held in high regard by the local GP community. Dr Ramakrishnan also advised that he had attended ethics courses. Dr Ramakrishnan analysed the email that had led to the finding of dishonesty. He described it as ‘misleading’ (rather than dishonest) but assured the MPT of his desire to be honest and trustworthy.

12 The MPT noted that the dishonesty was a “one-off” incident, had not been repeated and was not for personal gain. There had been no clinical harm. It was on the “lower end” of the spectrum of seriousness.

13 The MPT determined that Dr Ramakrishnan did not have full insight but his current level of insight was substantial. It also determined that Dr Ramakrishnan had made real efforts to remedy his actions.
14 The MPT concluded that Dr Ramakrishnan does not present a real risk to the public and that there was little risk of repetition.

15 The MPT concluded after much thought that a fully informed member of the public or profession, made aware of all the facts and Dr Ramakrishnan’s level of insight and the steps he has taken to remediate his shortcomings, would be reassured that his response has been sufficiently professional to offset the concerns raised by his dishonest conduct. It determined that Dr Ramakrishnan’s fitness to practise is not currently impaired by reason of his misconduct.

16 A warning was issued.

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

17 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.

18 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”).

19 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”).

20 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).