Meeting of the s40A Panel to consider the case of Dr Andrew Sadler

Held on 18 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
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, having regard to the decision of the Court of Appeal in Raychaudhuri v General Medical Council [2018] EWCA Civ 2027, the decision to find the doctor’s fitness to practise not to be impaired was a relevant decision for the purposes of s.40A, being a decision not to give a direction under s35D, 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 The Panel acknowledged that the MPT, in reaching its decision not to find the doctor impaired, had expressly and repeatedly acknowledged the seriousness of the conviction for dangerous driving and criminal damage and its impact on the public’s trust and confidence and the need to have regard for the same.

5 The Panel did have some reservations that the MPT decision not to find impairment appeared to have focussed on the doctor’s mitigation and the lack of risks to patients, without giving adequate consideration to whether a finding of impairment was necessary to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct. It was also noted that while there was no risk of patients coming to harm, it is certainly the case that the actions of the doctor had put public safety at risk.

6 However, at the heart of the determination is the MPT’s assessment of remediation and likelihood of repetition and that the MPT’s findings in this regard are likely to be upheld by a court on appeal.

7 The Panel moved on to consider whether or not, in the circumstances, a warning would have been an appropriate outcome. Whilst expressing some reservations about the failure by the MPT to give a warning in this case, the Panel acknowledged, having regard to the legal advice it had received, that it was unlikely that the decision to decline to give a warning would be considered by the court to be a relevant (and therefore appealable) decision for the purposes of s40A. Notwithstanding its concerns, the Panel also concluded that the decision was not insufficient to protect the public.

8 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

9 This case concerns the determination of an MPT, which concluded on Wednesday 20 February 2020, considering the matter under Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The outcome was that Dr S’s fitness to practise was not found impaired and a warning was not issued.

10 The allegation considered by the MPT was one of conviction. Dr S was convicted of Dangerous Driving and Criminal Damage on 1 May 2019 for which he was sentenced to eight weeks’ imprisonment, suspended for six months and he was disqualified from driving for 20 months, the circumstances of which were as follows:

10.1 At the time of the allegation, Dr S was working as an FY1 at North Tees Hospital and the matter came to the attention of the GMC as a result of a self-referral from Dr S. The summary of the police case stated that on 5 October 2018 at 01:00 a.m. a witness had observed a vehicle driving the wrong way around a roundabout without any lights on apart from hazard lights. The witness contacted the police and followed the vehicle where the witness noticed the vehicle driving at speed, the driver losing control of the vehicle which caused it to spin in the road, making off again at speeds of 70 mph and over taking on the wrong side of the road.

10.2 Upon the arrival of the police, the vehicle was stationary in the road and Dr S ran towards the police vehicle (which was also stationary at that time), jumped onto the bonnet and lay ‘star fished’ across the windscreen; damage caused to the police vehicle as a result was a shattered windscreen, broken windscreen wiper and a dent to the bonnet. The police believed that Dr S appeared to be under the influence of drink or drugs, but a blood sample were taken and Dr S was not subsequently charged with any related offences to alcohol or drugs; the police did not provide any information to the GMC concerning any toxicology results.

10.3

10.4 In Dr S’s interview with the police he made full admissions to the offences. He described that he was a junior doctor in geriatrics which he stated was very stressful and reported being unable to sleep, he denied being under the influence of alcohol or drugs.

MPT hearing

Facts/Impairment

11 Dr S admitted the allegations. When considering impairment, the MPT noted that the incident was very serious, leading to a criminal conviction, that Dr S’s actions had
brought the profession into disrepute and breached a fundamental tenet of the profession impacting adversely on public trust.

12 However, the MPT noted Dr S’s early admissions and that he had given a detailed explanation of the events to the MPT. The MPT accepted that Dr S’s actions could be categorised as an isolated, one-off, incident. It also found that there were no concerns about clinical practice or patient safety, that the doctor had shown remorse and insight, had undertaken commendable actions to remediate and build the trust of the public and had ‘put in place a strong support network around him to assist him…’ ‘He has also changed his personal circumstances and made life-style changes as a result of these events in order to minimise the risk of repetition.’

13 The MPT noted the positive accounts of Dr S’s professionalism and integrity and that he had continued to work in a challenging environment with no reported concerns from Occupational Health. The MPT having regard to Dr S’s insight and remediation found the risk of repetition to be low.

14 The MPT noted its view that this was not a borderline case with impairment being finely balanced and that it had ‘little hesitation in concluding that the need to uphold proper professional standards and public confidence in the profession would not be undermined if it found no impairment in these particular circumstances.’

Warning

15 A warning was considered but not issued as the MPT did not consider a deterrent was required for Dr Sadler nor in the public interest in part because ‘Dr Sadler’s criminal conduct has already been marked by his conviction and sentence … This outcome is in the public domain and Dr Sadler will continue to be obliged to notify potential employers of his conviction in accordance with the procedure set out in Rehabilitation of Offenders legislation.’

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

16 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.

17 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").

18 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”).

19 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:

19.1 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?

19.2 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.

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

19.4 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).