Meeting of the s40A Panel to consider the case of Mr Mohammed Sait
Held on 24 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

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 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.
The Panel was concerned that the MPT had gone beyond its remit in this case. The Panel noted that the MPT had engaged with a question of whether the GMC Assistant Registrar (AR) had the power to direct a review, despite having been informed beforehand that they (the MPT) did not have jurisdiction to do so.

Any such challenge to the GMC’s power to direct a review under section 35D (4B) of the Medical Act 1983 should be made by way of judicial review to the High Court. The Panel noted that when Mr Sait’s representatives’ application to the High Court for permission judicially to review the decision of the Assistant Registrar to direct a review, it was refused by Mrs Justice Lieven. In her decision, Mrs Justice Lieven was clear that the AR’s power to direct a review was not limited to cases where there had been a material change of circumstances since the decision of the MPT not to so direct.

The Panel’s view is that the MPT was wrong, therefore, to have declined to conduct a review at the end of Mr Sait’s suspension from the medical register. Rather, it is clear that they were under a legal obligation to undertake a review at the hearing.

Having concluded that the MPT had erred in law in deciding not to undertake a review in this case, the Panel then went on to consider whether the exercise of the right of appeal was warranted in this case.

The Panel considered that, having regard to all the circumstances of the case and the full rationale given by the MPT for its decision, the outcome of the case was unlikely to have been materially different in terms of any continued restriction on the doctor’s registration had the MPT actually undertaken the review.

Based on that assessment of the case, the Panel considered that, notwithstanding the error of law made by the MPT in declining to conduct the review, the ultimate outcome of this specific case was nonetheless sufficient to protect the public and the overarching objective.

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

For clarity, the fact that a section 40A appeal is not being pursued in this case should not be viewed as acceptance of the MPT’s position on the GMC’s power to direct a review pursuant to section 35D(4B) of the Medical Act 1983 (as amended).

Charlie Massey (Chair) Dated

9/3/20
Background

12 This case concerns the determination of an MPT, which concluded on Thursday 30 January 2020, considering the matter under Part 5 of the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’). The MPT convened for the purposes of a review of a sanction of suspension which had previously been imposed; the review having been directed by an Assistant Registrar of the GMC in the absence of a direction by the MPT imposing the sanction. The outcome was that the MPT determined not to undertake a review of Mr Sait’s fitness to practise and the suspension which had previously been imposed was permitted to lapse.

13 The allegations which were found proven against Mr Sait related to consultations he had with Patient A between September 2014 and May 2016, during which he told Patient A that she was ‘pretty’. In May 2016, Mr Sait met Patient A at a public house and made a number of comments to her which were found to have been sexually motivated, in that they were found to have been made in pursuit of a future relationship with Patient A.

14 On 20 April 2018, an MPT found the allegations proven, found Mr Sait’s fitness to practise impaired and imposed a sanction of three months suspension and directed a review. Mr Sait subsequently successfully appealed the finding of sexual motivation and the allegation was remitted to a new MPT for rehearing.

15 On 21 May 2019, the new MPT (‘2019 MPT’) convened and found that Mr Sait’s meeting Patient A in a public house and comments made whilst they were together were sexually motivated. They did not find that comments made during consultations, that Patient A was pretty, were sexually motivated nor asking Patient A to go with Mr Sait in his car. Again, Mr Sait’s fitness to practise was found impaired and a sanction of two months suspension was imposed, but a review was not directed.

16 Mr Sait again appealed the findings of sexual misconduct and on 4 December 2019, Mr Sait’s appeal was dismissed and the sanction imposed by the 2019 MPT took effect.

17 On 20 December 2019, a GMC Assistant Registrar (‘AR’) considered whether to direct a review of the suspension.

18 The AR observed that Mr Sait had not demonstrated insight into his sexual motivation toward Patient A and that there continued to be some risk of repetition (albeit not a significant risk). An MPT review hearing was listed for 30 January 2020, Mr Sait’s suspension being due to expire on 3 February 2020.

19 Mr Sait sought to challenge the AR decision by way of an application for urgent judicial review which came before Mrs Justice Lieven on 28 January 2020 who refused Mr Sait’s application for permission to judicially review the decision of the AR. Lieven J noting:

19.1 The Act placed no restriction on the power of the AR to direct a review (it does not limit the power to where there is only a change in circumstances);
19.2 The fact that there is a statutory right of appeal (s.40A) does not restrict the power;

19.3 The power in s.35D(4B) sits next to the equivalent power granted to an MPT, and was therefore in the contemplation of Parliament that it was not restricted to any limitation;

19.4 The AR’s powers do not undermine the MPT’s powers as they ‘simply allow referral back’;

19.5 Having regard to the GMC’s internal guidance on AR directed reviews; the AR can depart from the Guidance in appropriate cases as long as reasons are given (noting the reasons had been set out in some detail and that there was nothing arguably perverse about the decision).

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").

22 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").

23 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:

23.1 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?

23.2 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.
23.3 If the answer is yes, then the GMC may exercise its power of appeal

23.4 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).