Meeting of the s40A Panel to consider the case of Dr Jeny Selvarajah

Held on 5 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

Jennifer 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 concerned about the multiple instances of dishonesty in this case which were motivated by financial gain. The Panel was also troubled that the MPT found that Dr Selvarajah’s insight was limited.

The Panel noted, however, that there were some mitigating circumstances, and that Dr Selvarajah fully accepted that her dishonest conduct amounted to serious misconduct and that she has brought the profession into disrepute.

The Panel was of the view that the length of the suspension directed by the MPT, 12 months, was within a range of sanctions that the MPT could reasonably impose. However, given that there were outstanding concerns in relation to lack of insight, the Panel were concerned that a review hearing had not been directed at the end of the period of sanction. The Panel also noted that the suspension was for a substantial length, 12 months, and that without a review hearing, there was no opportunity to check that Dr Selvarajah has kept her knowledge and skills up to date during her suspension.

The Panel noted that one mechanism to gain assurance on Dr Selvarajah’s level of insight and to check how she had maintained her knowledge and skills would be for the GMC to direct the MPTS to hold a review hearing, using powers under Section 35D(4B) of the Medical Act. At the date of the Panel’s meeting, an Assistant Registrar decision had not yet been made.

The Panel felt that this case would most proportionately be remedied by the GMC directing the MPTS to hold a review hearing at the end of Dr Selvarajah’s suspension. The Panel therefore adjourned to allow a GMC Assistant Registrar to consider whether to direct the MPTS to hold a review hearing prior to the expiry of Dr Selvarajah’s period of suspension pursuant to section 35D(4B) of the Medical Act 1983 (as amended).

A GMC Assistant Registrar subsequently did decide to direct a review for Dr Selvarajah to demonstrate how she has further developed his insight and kept her knowledge and skills up-to-date.

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

Charlie Massey (Chair)  
Dated 9/3/20
Background

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

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

13 Dr Selvarajah qualified as a doctor in 2015. In February 2018, she started a full time GP based rotation. In January 2018, to supplement her income, she registered as a locum doctor with RM medics. She undertook shifts at (relevantly) the West Middlesex University Hospital.

14 Dr Selvarajah’s case involved allegations of dishonesty in relation to claims for work done at this hospital on three occasions between March and April 2018. It was alleged, and admitted by Dr Selvarajah, that she submitted three timesheets for work she had not undertaken, forged approval signatures on these timesheets and received payments of £680 she was not entitled to (for the first two shifts – the third was queried and led to the investigation). On the last occasion at least, she had failed to turn up to work.

15 It was also alleged and again admitted that, on four further occasions in April and early May 2018, Dr Selvarajah made a number of dishonest statements when questioned about her work, after questions were asked.

16 Dr Selvarajah admitted all the allegations, including dishonesty.

Impairment

17 Dr Selvarajah admitted her actions amounted to serious misconduct, that she had brought the profession into disrepute and that, as a consequence, her fitness to practise was impaired.

18 Dr Selvarajah’s evidence noted that during the time period she had been worried about her own health and the health of a close family member, personal and financial pressures and that these matters, along with not having been paid by the locum agency for an earlier shift in February 2018, had contributed to her actions. It was noted that she had repaid the amount owed (although one of the payments was not repaid for 20 months after receiving it).

19 Whilst the MPT accepted Dr Selvarajah had been suffering from significant personal stress and financial pressure at the relevant time, it also noted her actions were ‘conscious and deliberate’ and determined her ‘primary motivation was financial gain and she chose to put her own interests above the interests of others and above her professional duties as a medical practitioner.’ The MPT also noted the initial attempts
to mislead investigators and further dishonesty in order to avoid the consequences of her actions.

20 In assessing the issue of impairment, the MPT recognised the doctor’s admissions, level of insight and remediation but noted that her reflections were ‘restricted to her personal circumstances and the impact on those close to her. Therefore, the Tribunal concluded that Dr Selvarajah’s insight was insufficient, given her limited consideration of the implications of her actions on others.’ It found that her behaviour was potentially capable of remediation and that she had taken steps towards this, but they were still limited to her personal circumstances and there was no evidence of what she had learnt from online modules completed. She had underplayed her financial motivation, preferring to stress her personal and family difficulties.

21 When considering risk, the MPT determined at paragraph 58 that although it was not satisfied that Dr Selvarajah has developed sufficient insight, it was unlikely that she would act dishonestly in the same way again in the future and as such, the risk of repetition is low.

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

Sanction

23 In determining sanction, the MPT noted various mitigating (admissions, apology, partial insight, previous good character and repayment of the money) and aggravating features including that her conduct was serious, in a professional setting, repeated, persistent and covered up. When considering insight, the MPT determined that, whilst this was incomplete, this did not have any impact on the risk of repetition.

24 After considering relevant paragraphs from Sanctions Guidance, the Tribunal decided that ‘a period of suspension would send a clear signal to Dr Selvarajah, the public and wider profession reaffirming the standards of conduct and behaviour expected of all registered doctors.’

25 The Tribunal did have regard to the sanction of erasure, and viewed this as a borderline case. It concluded that it would be disproportionate to remove Dr Selvarajah permanently from the Register. The MPT determined to suspend Dr Selvarajah’s registration for a period of twelve months. No review hearing was directed.

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

26 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.

27 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”).

28 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”).

29 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:

29.1 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?

29.2 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.

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

29.4 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).