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Dastagir v GMC [2015] EWHC 847 (Admin)

Background

Dr Mohamed Dastagir, a General Practitioner, who has been charged with an offence of blackmail appeared before an Interim Orders Panel ('IOP') on 1 October 2014 which determined to impose an order of interim suspension for a period of 18 months on his registration under Section 41 of the Medical Act 1983.

Dr Dastagir applied to terminate the interim order of suspension under Section 41A(10).

Application

The application for termination of the interim order was considered by Mrs Justice Lang on 24 March 2015 with judgment being given on 31 March 2015.

Mrs Justice Lang sets out the allegations against Dr Dastagir (paragraphs 2-14). In summary Dr Dastagir has been charged with an offence of blackmail. He appeared before Magistrates on 8 October 2014 and the case was sent for trial at the Crown Court. Dr Dastagir has indicated he is pleading not guilty and the trial has been fixed to take place on 22 June 2015.

The Judge sets out the Panel's determination (paragraph 15). She notes that the IOP gave a detailed determination setting out the competing submissions made by Counsel for the GMC and Counsel for the doctor.

She then sets out the statutory test and relevant case law (paragraphs 16-29) as well as setting out in some detail the submissions relied upon by Counsel for Dr Dastagir reflecting other cases where a suspension order was terminated even though the registrants were facing serious criminal charges or had been convicted (paragraphs 23-28).

Mrs Justice Lang also sets out the guidance which the IOP are required to take into consideration (paragraphs 30-31).

In the remaining paragraphs of the judgment (paragraphs 32-45) Mrs Justice Lang sets out her considerations and conclusions.

She first considers whether or not there is a likelihood of serious damage to public confidence in the profession if Dr Dastagir were allowed to continue to work with patients pending trial (paragraph 32). She also notes (paragraph 33):

'Although a defendant facing criminal charges is presumed to be innocent unless or until the charge is proved, it is inherent in the statutory provisions that the Panel or the Court must make a judgment on an interim basis, on the evidence made available to it at that time, even though it may later turn out that the allegations are not proved. Parliament intended that preventative measures should be taken, in appropriate cases, to maintain confidence in the profession'.

Although Mrs Justice Lang agreed with Counsel for the doctor's submission that simply because a doctor is charged with any of the offences on the list (set out in paragraph 14 of GMC Guidance) does not mean that an order of suspension should be made - each case must be assessed on its individual facts (paragraph 34).

Mrs Justice Lang confirmed that blackmail is regarded as extremely serious, it is indictable (ie triable in a Crown Court) only, with a maximum sentence of 14 years imprisonment and is very likely to attract a custodial sentence upon conviction (paragraph 35).

She also notes that Counsel for the doctor's submissions (paragraphs 36-38) in which it is submitted that the question is: what would have a properly informed member of the public think if the doctor were allowed to continue to practise? Counsel emphasised that the allegations were entirely unconnected with his clinical practice and that NHS England had not suspended him from their Performer's List even though the statutory test is the same as applied by the IOP.

Mrs Justice Lang confirms that she had the benefit of seeing the prosecution evidence, which the IOP did not have and sets out details of this in paragraph 39.

She notes that the doctor intends to plead not guilty although she did not know on what basis but she had considered his interview with the police and his subsequent letter to them and further details which are set out in paragraph 40.

She also confirms that although the prosecution considers that there is a realistic prospect of conviction it is possible that Dr Dastagir will be acquitted. She says it is also possible that his behaviour, even if unpleasant, may not constitute a criminal act. She confirms he

is undoubtedly innocent unless or until found guilty. On the other hand, if the doctor is convicted she considers that he will be at a real risk of a custodial sentence and erasure from the medical register (paragraph 41).

In the circumstances and contrary to Counsel for the doctor's submissions she confirms as follows (paragraph 42):

'...I consider that a properly informed and reasonable member of the public would be surprised and dismayed to learn that his or her treating doctor was awaiting a Crown Court trial on this serious charge, which would potentially lead to imprisonment and erasure, and yet the regulator had permitted him to practise, without informing his patients. A reasonable member of the public would make due allowance for the fact that these events occurred in the context of a relationship breakdown, when the Claimant was upset. However, a reasonable member of the public would be likely to conclude that his conduct fell far outside the spectrum of acceptable or normal behaviour in such situations. The allegations reveal the Claimant as threatening, intimidating and vindictive, and seriously call into question his judgment and his integrity.'

Mrs Justice Lang acknowledges that the most difficult aspect of the case has been the impact of suspension on the doctor and his practice and that she has to consider whether suspension is the necessary and proportionate response. She considers that the IOP would rightly reject the lesser alternative of conditions as there were no meaningful conditions which could be imposed (paragraph 43).

In the circumstances she concludes (paragraph 44):

'In my view, this is one of those rare cases in which the serious nature of the allegations means that there is a real likelihood of serious damage to the public confidence in the profession if the Claimant is allowed to continue to practise pending trial, even though he may yet be acquitted. In those circumstances, I conclude that it was in the public interest for an interim order of suspension to be made, and the Panel was right to do so. If and in so far as his suspension was a breach of Article 8 ECHR, I consider it was justified and proportionate under Article 8(2)...'

The application to terminate the suspension was dismissed.

Salient Points

- Reminder that in considering the risk to the public interest it is necessary to consider the degree of risk and the likelihood of serious damage to the public

confidence in the profession if a doctor were allowed to continue to work with patients pending the resolution of unproved allegations against him

- Reminder that in deciding whether to make an order, the principle of proportionality must be applied. The potential harm to the public interest in not suspending a doctor has to be carefully weighed against the damage caused by preventing him from practising.

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