



Neutral Citation Number: [2026] EWHC 723 (KB)

Case No.: KB 2026 000569

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE ROYAL COURTS OF JUSTICE

Date: Wednesday 25th March 2026

Before:

MR JUSTICE RITCHIE

BETWEEN

DR NEERAJ NIRMAL

Claimant / Applicant

AND

BIRMINGHAM WOMEN'S AND CHILDREN'S HOSPITAL
NHS FOUNDATION TRUST

Defendant / Respondent

Martin Forde KC and Giles Powell (instructed by Lexadeen Solicitors) for the Claimant
Betsan Criddle KC and Oliver Isaacs (instructed by Capsticks) for the Defendant

Hearing date: 16.3.2026

APPROVED JUDGMENT

Judgment approved by the Court for handing down. This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be at 14:00 am on Wednesday 25th March 2026.

Mr Justice Ritchie:

The Parties

1. The Claimant is an ST5 trainee doctor who works at the Defendant's hospital.

Bundles

2. For the hearing I was provided with a hearing bundle, a supplementary bundle, two authorities bundles, a spare case and three skeleton arguments.

Summary

3. This hearing was the return date for consideration of an ex parte injunction which I granted on 3.3.2026, when sitting as the urgent applications Judge, preventing the Defendant from continuing with a potential gross misconduct disciplinary hearing set for the next day: 4.3.2026. At the time of granting, after hours, by video hearing, the Claimant's complaints were that: (1) he had not been given permission to have lawyers represent him at the hearing; (2) the Defendant's panel had indicated that the complainant witnesses would not be called and so his lawyer could not cross examine them on disputed factual evidence; (3) the whole process was incorrect, the complaints should have been handled through the educational supervision route under the West Midlands Deanery, not by the Defendant Trust's internal disciplinary procedure.
4. At the hearing today I discharged the injunction. My reasoning is set out below.

The Issues

5. The parties did not provide a list of issues, but having heard submissions from counsel, for which I am most grateful, I discern that the following are the issues:

Procedure:

- 5.1 was it inappropriate to apply ex parte for an injunction?
- 5.2 did the Claimant fail to provide full and frank disclosure at the ex parte hearing?

Substance:

- 5.3 is there a serious issue to be tried?
- 5.4 would damages be an adequate remedy?
- 5.5 what is the balance of convenience and justice – should the injunction be continued until trial or discharged?

Evidence

6. I have read the evidence in the two witness statements from the Claimant and one from Doctor Ratna Kumar for the Defendant. I have also read the documents in the bundles. The factual matters I set out below are interlocutory assertions and are not findings per se. They are matters based purely on the written evidence in the bundle and arising as relevant to the submissions made during the 3 hour hearing.

Pleadings and factual chronology

7. In September 2022 the Claimant was first employed by the Defendant as a clinical fellow at the Defendant's hospital for 6 months. On 24.10.2022 the Defendant sent a "Principle Statement of the main Terms of Employment" to the Claimant. He was to be subject to the Terms and Conditions of Service of Hospital Medical Staff as amended from time to time, at a salary of £51,017 pa. Clause 13 stated that the disciplinary procedure was in S.42 of the General Whitley Council Conditions of Service as incorporated by paragraph 189 of the Terms and Conditions of Service. I do not know if those other documents were provided to him. S.42, clause 5 of the Whitley Council's Conditions provides that: "In support of this, the Council suggests that an employee should have the right to be represented, other than at the purely investigative stage." The Protocol therein states at F that: "Employees should be given reasonable advance notice in writing of the date and time of a disciplinary hearing". Paragraph 189 states as follows:

"DISCIPLINARY PROCEDURES

189. Wherever possible, any issues relating to conduct and capability should be identified and resolved without recourse to formal procedures. However, should an employing authority consider that a practitioner's conduct and capability may be in breach of the authority's code of conduct, or that the practitioner's professional competence has been called into question, the matter will be resolved through the authority's disciplinary or capability procedures (which will be consistent with the 'Maintaining High Professional Standards in Modern NHS' framework), subject to the appeal arrangements set out in those procedures. *Any allegations of misconduct against, or capability concerns about, a doctor or dentist in a recognised training grade should be considered initially as a training issue and dealt with via the educational supervisor with close involvement of the postgraduate dean from the outset.*"

8. The Claimant relies on the words above which I have put in italics to emphasise them. In June 2023 Health Education England (HEE) told the Defendant that the Claimant would be joining them as an ST4 specialist trainee in cardiology under a training agreement with HEE (which I have not seen) and a contract of employment with the Defendant. That ran from September 2023 to September 2024. The offer letter of 14.6.23 is in the bundle. There is no contract of employment in the bundle. There is an unsigned Statement of Terms and Conditions of Employment at the Defendant trust in the bundle which included, at clause 19.1, the following words: "Your attention is drawn to the disciplinary and grievance procedures applicable to your employment, copies of which are available from Human Resources Department".
9. Doctor Kumar asserts that the HR department of the Defendant told her that the HEE agreement with the Claimant which ran alongside the Defendant's employment contract would have been governed by the Gold Guide. The extracts from the Gold Guide are in my bundle and clauses 5.7-5.9 were raised. Those state that conduct issues are subject to the Defendant's policies and procedures and the national agreed standards such as

Maintaining High Professional Standard in the Modern NHS (MHPS). At clause 5.8 of the Gold Guide, this was written:

“In the first instance where there are concerns around conduct, performance and professional competence, employers and host organisations should advise the Postgraduate Dean of any postgraduate doctor in training who is experiencing difficulties as well as the action being taken, including steps to support and remedy any deficiencies. Where appropriate, the Postgraduate Dean, employers and host organisations will work closely together to identify the most effective means of helping/supporting the individual while ensuring that patient safety is maintained at all times. There may be a need for early involvement of services such as the Professional Support Unit provision in NHSE WTE, NES, HEIW and NIMDTA or NHS Resolution (formerly the National Clinical Assessment Service) to provide advice about how best to support the process.” (I have added the italics)

At clause 5.13 this was written:

“5.13 On occasion, the concerns about a doctor may be enough to warrant referral to the GMC’s fitness to practise process. Postgraduate doctors in training, in common with all doctors, may be subject to fitness to practise investigation by the GMC and adjudication by the Medical Practitioners Tribunal Service.”

So, at least under the HEE provisions, where the Claimant had conduct issues those were to be governed by the Defendant’s policies but the Defendant had to work closely with the Dean to support and remedy them. However, the GMC might become involved if they were more serious.

10. The Defendant’s conduct policy was unhelpful in relation to the presence of a legal representative at the hearing for the doctor. At clause 8.6 it said: “Employees have the right to be supported/accompanied at the hearing by a trade union representative or a work colleague.” The Defendant’s letter to the Claimant dated 14.4.2025 restated that clause. At the hearing before me the Defendant admitted that this did not accord with *Kulkarni v Milton Keynes Hospital NHS Foundation Trust* [2009] EWCA Civ 789, and so accepted they had to allow the Claimant to have a lawyer present at the hearing. It is a shame that the Defendant never told the Claimant that during the process. The policy was silent on any right of a doctor to require complainants to give live evidence and be cross examined in relation to crucial factual disputes.

Sexual harassment allegations by LD

11. On 20th August 2024, LD, a staff member at the hospital, reported what she described as behaviour by the Claimant which made her feel unsafe, as follows. He had tried to connect with her on Facebook the week before. Then, when she was leaving work, in

the dark, the Claimant approached her and offered to drive her to her home. She refused and said she was walking. He walked along beside her asking about work. He walked with her outside the hospital and continued whilst she took her route home. She said at a crossing "see you later" but he still followed her. She felt uncomfortable and texted her flatmate to collect her. She asked why he was leaving the hospital when he was on shift. She then walked to a pub for safety in numbers, and awaited her flat mate. The Claimant did not leave and asked her why she needed a lift. He asked if she had a boyfriend. He asked to buy her a coffee outside work. She refused. She said she had to go as her flatmate was arriving. She asserted that, overall, the experience made her feel uncomfortable. This report was acted upon and Doctor Bhole spoke to the Claimant, who gave a different account of the facts. He was given informal advice that he needed to learn from the incident to avoid making colleagues feel the same way again. He was warned that similar reports should not arise again and "this shouldn't be a recurring theme". People may feel intimidated by him because of his size and he should be aware of that.

Sexual harassment allegations by CW

12. The Claimant became an ST5 in September 2024. By January 2025 another complaint had been raised, this time by a doctor with whom the Claimant had worked over the weekend of 8-10.11.2024. CW was the SHO on call and the Claimant was the registrar. CW reported that on the Friday shift the Claimant had asked her out to dinner multiple times and she declined, multiple times. She told a female colleague to be careful with the Claimant. He then (hearsay evidence) asked that female colleague to dinner and only stopped asking when she told him she was married. On the Sunday shift he started on CW again. The regular dinner invitations continued and multiple inappropriate questions were asked of her by the Claimant including: what she did for thrills, about her sex life, whether she had "one night stands" and asking whether she wished to ride his motorbike to get some excitement. He also kept asking her to take coffee with him. At the end of the shift, after handover, he again asked her to dinner. This whole set of behaviours made her feel quite uneasy.

Investigation

13. Initial fact finding was undertaken by Doctor Whyte, a clinical tutor, to determine next steps and she became aware of LD's report during that. She also spoke to the Claimant on 14.1.2025 and interviewed him on 13.2.2025. He asserted that he was surprised by CW's accusations and denied acting inappropriately in any way. He did accept that he had: (1) asked her to have dinner with him on the Friday and the Saturday in November 2024 at a local place, as an act of kindness, with no other intentions; and (2) asked her to have coffee with him and she did. He asserted his questions were not sexualised. As for the accusations by LD, I am unable to find his responses but his recollection is the Defendant agreed that they had been dealt with informally.
14. The Defendant's Practitioner Advisory Group (PAG) considered the information. They consulted with the HEE and asked if the HEE had a process which they wished to use.

The HEE, via Professor Phillip Bright, the Head of the School of Medicine, advised the Defendant that this was a conduct issue and the HEE looked to the Defendant to investigate and keep the Dean in the picture and characterised the conduct allegations as “harassment accusations.” The PAG decided that a formal process should be instigated. Doctor Kumar was appointed as the case manager and informed the Claimant on 14.4.2025. That letter summarised the accusations as: “inappropriate and unprofessional behaviour leading to colleagues feeling vulnerable and uncomfortable in the work environment”. The terms of reference were enclosed and related to the CW complaint only. The Defendant’s MHPS policy was attached. Doctor Kumar informed the Claimant that: “Under the terms of the Trust’s Maintaining High Professional Standards Policy, you have the right to be accompanied at any meeting by someone who may be another employee of the NHS, Trade Union representative or member of a medical defence organisation. *The companion may be legally qualified but he or she will not be acting in a legal capacity.*” I have added the italics. Despite those clear words that he was not entitled to have a lawyer represent him in a legal capacity at any meeting, as I have stated above, the Defendant admitted in submissions that this was wrong in law and fact. The Defendant was bound by a Court of Appeal decision: *Kulkarni v Milton Keynes Hospital NHS Foundation Trust* [2009] EWCA Civ 789, in which, at [51, 57, 59 and 60] in which the Court ruled that those words meant that a doctor can have a paid lawyer representing him/her at such meetings. So, in my judgment, the Defendant should have said the opposite of what the Trust Policy actually says. No changes to the Trust policy had been made since the 2010 decision, so in over 14 years.

15. Soon after this notification the Claimant went off work with stress for 6 months, which delayed the disciplinary process. During this time additional allegations were made by LD (not the original ones) and these were added to the terms of reference in June 2025. Those were summarised as follows: between September 2024 and February 2025, there have been multiple repeated unprofessional and inappropriate behaviours towards a Physician Associate in Cardiology, LD specifically: in the first week of LD’s commencement at the Trust, you invited her outside of the hospital for a coffee, during which you asked her questions of a personal nature about her boyfriend and questions of a sexual nature. You sent multiple WhatsApp messages making her feel she was being ‘watched’. These made her feel nervous and isolated. You often called Ms LD on her long journey driving home and while the conversation seemed to be patient related at the start, often turned to a personal nature.
16. On 20.10.2025, after he returned to work, the Claimant was again interviewed more formally. He took another doctor along with him. The note suggests that the Claimant denied asking any inappropriate questions to CW. He accepted that he had offered her coffee and they had gone for a coffee in outpatients. He offered that they order chicken together at the end of the shift and she had declined. They did discuss gyms, rock climbing, motorbike racing and CW had mentioned her boyfriend. The Claimant did not have a motor bike. They did not talk about sex. As for LD, he accepted he knew her

as a physician's associate. He accepted he had asked her for a coffee once and took her out, away from the hospital to a coffee shop. She had mentioned her boyfriend was a pilot. He accepted he had asked her where she had parked her car in the car park and had driven her to her car. He had called her twice outside work. There was no conversation of a sexual nature. During the interview the Claimant is recorded as accepting that the allegations, if proven, could amount to gross misconduct.

17. Doctor Kumar delivered her report in December, set out the allegations, the Claimant's denial of them and recommended a misconduct hearing concluding that there were "discrepancies between the accounts" of the complainants and the Claimant. Other witnesses had also been interviewed and gave evidence of post event disclosures by CW and LD. The Claimant was notified on 12.1.2026 that the procedure would go to a misconduct hearing. Support was offered. The conduct policy was attached. The investigation report was not attached.
18. No evidence was put in Doctor Kumar's statement of any close involvement of the Dean in the process after the initial decision that the Defendant should use its own processes. Doctor Kumar evidenced no involvement at all with HEE after the initial contact.
19. On 16.2.2026 the Claimant joined a defence organisation for doctors. They wrote to the Defendant on 17.2.2026 raising the issue of the Defendant failing to categorise the allegations as a training issue. They had not seen the investigation report. They did not contact the Dean.

Notification of hearing and procedure

20. On 19.2.2026 the Defendant informed the Claimant of the date of the misconduct hearing: 4.3.2026, so just under 2 weeks ahead. The letter stated he could be represented by a Trade Union member or work colleague. It stated that: "During the misconduct hearing, you will have the full opportunity to respond to the allegations and present any information, evidence, or mitigating circumstances you wish the panel to consider." It did not say he could have a lawyer to represent him and cross question witnesses or make submissions on the law and on any findings or on the nature of gross misconduct or on mitigation and punishment. It did not state which witnesses the Defendant intended to call or rely upon. It required the Claimant to provide the names of the witnesses he intended to rely on. The letter included the disciplinary pack with the investigation report of Doctor Kumar. The letter makes the hearing look like a final hearing where a decision will be taken on the facts and potential gross misconduct. If it was a final hearing, the Defendant had given the Claimant 13 days to prepare for it, gather witnesses and answer the evidence in the investigation report and to arrange counsel to represent him. That was, to say the least, a tall order and I doubt that it complied with clause F of the Whitley Councils' Protocol.

21. On 23.2.2026 the chair of the panel wrote to the Claimant's representative about how the decision to choose the Defendant's disciplinary route had been taken. The Claimant's post graduate tutor had been contacted and matters discussed. A discussion had occurred with the head of the West Midlands medical school. The decision was taken to use the Defendant's procedures not the training ones. There was no suggestion of any further or any close involvement of the Dean in the process.
22. On Wednesday 25.2.2026 a letter before action was sent by the Claimant via his solicitors to the Defendant. The Claimant asserted numerous breaches of the Defendant's employment contract in the disciplinary process and required the trust to discontinue the disciplinary process and a written assurance that the hearing would not proceed on 4.3.26. The Claimant relied on the Gold Guide para 5.7, which incorporated the national MHPS. The Claimant asserted that the Defendant should have considered the issues initially as training issues as required by the national MHPS. The Claimant submitted that the Trust's own MHPS was worded differently about training and had to be interpreted in accordance with the national MHPS. The Claimant asserted the investigation was biased against him and the complainants had altered their evidence. The Claimant threatened to seek an injunction based on the Defendant's breaches of contract as follows: (1) failure of respect for due process in breach of the implied term of trust and confidence and (2) mis-categorisation of the allegations as employee conduct instead of the correct categorisation as a training issue. The Claimant did not contact the Dean.
23. On Friday 27.2.2026 Capsticks responded for the Defendant. They asserted that the national MHPS was guidance; the Gold Guide was irrelevant; even if the national MHPS was binding that Defendant had complied with it; the Defendant did initially consider the allegations as training issues with HEE but decided that they were better suited to the Defendant's own misconduct procedure; gross misconduct would not be a training issue anyway. Certain cases were summarised and reliance was placed on the proposition that employers should be allowed to run their disciplinary processes without micro-management by the Courts unless there was a sufficiently serious breach of contract which could not be remedied in the employer's procedure by itself. In this case the Defendant had investigated and there was a prima facie case to take to a disciplinary panel. In any event the Defendant asserted that the Claimant had delayed his potential claim. He had been given 13 days to prepare for a final hearing and had been told he could not bring lawyers, acting as lawyers, to that hearing so I do not find that submission persuasive.

The application

24. On Monday 2.3.2026 the Claimant applied for an ex parte injunction to stop the hearing going ahead. He relied on his own signed witness statement, which was undated. In the skeleton the Claimant's counsel relied upon: (1) the mis-categorisation point; (2) the assertion that the Defendant appeared to be unwilling to permit the Claimant to have legal representation at the hearing, in breach of the implied duty of trust and confidence

and fairness; and (3) the Defendant's refusal to call the complainants for cross examination by the Claimant's counsel (Mr Forde KC), which was alleged to be unjust and procedurally unfair.

25. On 3.3.2026, as the urgent applications Judge, I granted an injunction preventing the hearing going ahead and providing a short return date. A transcript of my reasons has not been obtained yet. Counsel's note of those is in the bundle. I ordered the Claimant to issue a claim form in a short timescale, not knowing they had already done so.

The claim

26. The Claim Form was actually issued on 2.3.2026 and in that the Claimant sought declarations of breaches of contract during the disciplinary process by: (1) incorrectly misclassifying the allegations as internal conduct matters rather than training matters for the HEE; (2) adopting an internal policy which conflicted with the national MHPS on treating the allegations as training matters not misconduct matters for the Defendant. The Claimant sought damages and costs. No other points were pleaded. No particulars of Claim have yet been served to expand or explain the alleged breaches of contract.
27. Between the application and the return date the Claimant provided an amended Claim Form, as yet unissued, adding the allegation that the Defendant had failed to investigate whether the Claimant's conduct arose as a result of his health/disability issues. That delphic pleading was explained in submissions as relating to an online self-assessment which the Claimant had chosen to undertake for autism related symptoms on 6.2.2026 and notes in the investigation report of some discussions with Doctor Harris of the Defendant Trust who mentioned in mid-2025 that the Claimant may have some "neurodivergent characteristics". The Claimant does not rely on any medical report on diagnosing any such condition. No such defence had been raised in the investigation relating to such a condition. It is not explained how any such condition, even if it was diagnosed, would excuse the alleged sex pest harassment behaviours. It may go to mitigation. The Defendant has not been given any sufficient time to consider this issue. Thus, counsel for the Defendant was not in any position to inform the Court how it would be dealt with at the Defendant Trust. The Claimant now asserts he has only just started to consider this. I am doubtful that a 34 year old ST5 doctor who is married with children would be so unaware of himself that he could go through school, a medical degree, 5 years of medical training and marriage and never have considered this before. I have looked at his disclosed performance reviews from 2024 and 2025. His interactions with other staff and patients was considered there. His lack of empathy with patients was highlighted and some arrogance, but no neurodivergent concerns were noted. It seems to me that the Claimant is seeking to change horses midstream. I do not consider that the decision on renewal of the injunction should or can, in fairness, be based on this new, unevicenced health related allegation. The Defendant has not had time to react to the point yet and the assertion that the Defendant was in breach of contract for failing in the disciplinary process to investigate whether the Claimant had such a medical condition is unarguable on the evidence before me.

Applying the law to the issues

Procedure:

28. Was it inappropriate to apply *ex parte* for an injunction two days before the final hearing? CPR r.23.4 provides that the general rule is that a copy of the application for an injunction should be served on the respondent. CPR r.23.7 provides that it should be served as soon as possible and in any event 3 days before the hearing. At least informal notice should be provided unless the circumstances of the application require secrecy: see CPR PD23A para. 4.2. The Court may grant an injunction *ex parte* if there are good reasons for not giving notice. The evidence in support must state the reasons, see CPR r.25.3.

29. In this case the Claimant did not assert that the Defendant would in some way seek to undermine the injunction had it been informed. Instead, the urgent application at the hearing was based on the fact that the final hearing was taking place the very next day. The Claimant had only been given 13 days notice of the hearing and the notice made it clear that he was not allowed lawyers to represent him and did not state which witnesses, if any, were to be called and whether the Claimant could cross examine them. The short notice of the disciplinary hearing had led to a short PAP period and the parties appeared to be rushing towards what the Claimant perceived would be an unfair hearing. The Defendant had been asked to stop both the process and the hearing and had refused to do so on Friday on 27.2.2026. On Monday 2.3.2026 the Claimant issued his application. But, that timescale was no excuse for failing to serve the Defendant. On the further evidence now available to me I do not consider that there was a good reason for failing to serve the application and the evidence in support on the Defendant on the day of issue: 2.3.2026. Whether the Defendant would have been able to attend by lawyers I do not know however that is not the point. They were entitled to be told.

30. Did the Claimant fail to provide full and frank disclosure at the *ex parte* hearing? I note that there is no evidence that the Claimant asked the panel chair if the Claimant could have a legal representative at the hearing, either in the PAP letter or in any other correspondence. Nor did the Claimant ask the panel through his lawyers, which witnesses were to be called and whether they could be cross examined by his lawyer and why such witnesses were not required to give live evidence. There was a communication in which the Claimant stated he *would* bring his lawyers to the disciplinary hearing but that does not mean the panel agreed to them entering the hearing. Overall, despite the list of assertions made in the Defendant's skeleton at para. 35, I do not consider that the Claimant failed to give full and frank disclosure in the circumstances. The Claimant was in a flap and facing a final hearing on 13 days notice. His career was on the line. He faced a hearing which looked like it would be determined without the complainant witnesses giving live evidence and without the ability to cross question them on the serious factual disputes identified by the case manager. Furthermore, he faced this without his lawyers, without a signed contract of employment and without a clear understanding of his rights in the process.

Substance:

31. **Is there a serious issue to be tried?** To make out the serious issue in this case, in my judgment, it has to be in relation to the pleaded case. Remarkably, the pleading does not mention legal representation or cross examination of witnesses. The claim form relates only to the asserted mis-characterisation of the allegations as conduct to be dealt with within the Trust disciplinary process rather than as a training issue. In my judgment the pleaded case rests on flimsy ground.
32. Firstly, neither party could find a signed contract. The Defendant admitted (para. 40 of the skeleton) that there is no written contract of employment. That may be a breach of the legal requirements to provide terms in writing.
33. Secondly the Claimant asserted he was working under the terms sent originally in October 2022 set out above, and the Defendant asserted he was employed under the offer letter dated June 2023.
34. The Defendant asserted that the Defendant was bound to follow its own MHPS policy, not the national MHPS policy. Its own policy, at clause 3.2, stated that for doctors in training posts, concerns around conduct and capability “*may*” initially be considered as a training issue. The Defendant asserted that it had not breached that term. In the alternative the Defendant asserted that if the national MHPS applied, which had the words “*should be considered initially as a training issue*”, that requirement had not been breached because the Defendant had discussed the issues with HEE and been advised by the Professor stated above to follow their internal disciplinary process. The documentary evidence backs that assertion up, as is shown in the chronology of facts above. It does not back up any further involvement of the Dean.
35. I was addressed on the case law laying down the rule that the local policies must be interpreted in accordance with the national MHPS policy: *Chhabra v West London MH NHST* [2013] UKSC 80, at [34-39], but I do not see how that improves the Claimant’s case. I work on the basis for this hearing that the national MHPS policy applied or that the local MHPS policy is to be interpreted in accordance with the national policy.
36. In *Skidmore v Dartford* [2003] UKHL 27, Lord Steyn considered who decided the correct route for the disciplinary proceedings at a hospital trust and ruled thus:

“14 Concentrating at this stage on the issue of whose decision determines the categorisation of a case, I now turn to the directly relevant case law as matters stood at the time of the Court of Appeal judgment.”

...

“At first instance in *Saeed v Royal Wolverhampton Hospitals NHS Trust* [2000] *Lloyd's Rep Med* 331, Gage J preferred the approach of Lightman J. On the facts Gage J found that the allegation of indecent assault during a medical

examination against a senior house officer was one of personal conduct. The Court of Appeal [2001] ICR 903 agreed with Gage J on the latter point and dismissed the appeal. Hale LJ (with whom Dame Elizabeth Butler-Sloss P and Potter LJ agreed) defined the first issue as follows, at p 907D: "Who decided into which category the case fell, and on what basis could the court interfere with that decision?" Hale LJ commenced her judgment by saying, at p 907:

"12. One might have thought that the answer to the first issue was obvious. The employer who is contemplating disciplinary action against an employee has to decide which procedure should be followed. If the employee thinks that the employer has made the wrong choice, he can try to have it changed in advance or seek damages after the event. The court will have to perform its usual task of construing the contract and applying it to the facts of the case."

...

"15. ... Prima facie therefore the position is as follows. The trust is entitled to decide what disciplinary route should be followed. That decision must, however, comply with the terms of the contract. If a non-conforming decision is taken and acted upon, there is a breach of contract resulting in the usual remedies."

37. In relation to the characterisation of the alleged conduct (which the Claimant denies), the labels: "inappropriate behaviour", "sexual harassment" were used in the reports written by Lisa Whyte. Whether these allegations, if proven, are or are not gross misconduct is a matter of law applied to the detailed factual findings. I am troubled by the way in which the Defendant sought to submit that this was no longer in dispute because at an interview in October 2025 the Claimant himself had admitted that the allegations, if proven, were gross misconduct. I do not see that as at all determinative of the question whether the allegations amount gross misconduct in law if proven. The Claimant did not even have legal advice at that stage and is no expert on employment law or the correct definition of gross misconduct.
38. I take into account that the mischaracterisation which the Claimant himself relies upon in the pleaded claim is not in relation to whether the allegations can be gross misconduct, it is in relation to the disciplinary route choice. He says the Defendant should have sent him to his educational trainers at HEE for the use of their processes (none of which I have been shown) and should not have used their own disciplinary processes.
39. I agree with the Defendant's submission that some types of misconduct allegations cannot and should not reasonably be dealt with by using the training route. For instance, allegations of rape, fraud, theft and physical sexual assault do not seem to me to fit that route (indeed examples of gross misconduct are given in the Defendant's conduct policy at Appendix 1). I accept that serious and repeated verbal sexual harassment

could arguably amount to gross misconduct, but a panel would need to hear full argument on the law and the detail of the facts before coming to any such conclusion. Supervision and training are vital for dealing with such matters. I bear in mind in this case that no physical touching is asserted. No doubt the panel will do so if they reach that point after a fair final hearing. So, I agree with the Defendant that some types of gross misconduct allegations are likely to be inappropriate for the training route. They are more likely to be considered in the disciplinary route. This is so for many reasons. One reason appears to me to be that medical training and supervision is likely to be more focussed on how to train the Claimant to be a good doctor, knowledgeable, capable and skilful, interacting well with patients and colleagues, and less about how to behave properly more widely (for instance not providing training about not committing crimes or how to drive carefully). Another reason would be the practicality of interviewing witnesses. The Defendant employs them all, not HEE. So, for HEE to carry out the investigation they would need to gain access to the complainants and the first report witnesses, which may have been difficult, cumbersome or impossible. I would need to have heard from the case manager, the PAG and the professor from the HEE who made those decisions, to understand the reasons why the training route was not chosen, but none of that evidence is before me. Finally, the national MHPS, which the Claimant relies upon, does not say "must", it says "should initially". That phrase is slim pickings for the Claimant to hang his whole claim upon.

40. The decision in this case on which route to take may arguably have been wrong and in breach of contract, but in my judgment, at this early stage, the claim cannot be said to be either strong or likely to be successful. At most, in my judgment, it is arguable.
41. I take into account, on the facts, that the Claimant was given a serious chat about his (disputed) behaviour with LD in the late summer of 2024 after the August allegations of following her around and pestering her outside the hospital. Yet, if the allegations are proven, 2-3 months later this advice appears to have made no difference. I wonder why medical training would be the correct course for a doctor to understand the boundaries between: (1) asking a person out for a date once (and being declined) and (2) persistently pestering a person for sex or a date or harassing them with sexualised questions or following them around and pestering them, whilst at work or just outside work. That behaviour might be classified as entirely unrelated to anything medical.
42. Taking all of these matters into account, I do not consider that the allegedly wrongful failure to choose the training route, despite consideration thereof by the PAG with HEE and the joint choice of a disciplinary route, is a serious issue to be tried.
43. **Would damages be an adequate remedy?** I do not consider that damages would be an adequate remedy where a young doctor's career is on the line in a potential gross misconduct hearing.

44. **What is the balance of convenience and justice** –should the injunction be continued until trial? If I am wrong, and the choice of route issue is a serious issue to be tried, I shall first consider the case law giving guidance on how the balance of convenience test in the *American Cyanamid* case is applied in the employment law environment and specifically in relation to injuncting a disciplinary process.

Wrong misconduct process

45. In *West London Mental Health NHS Trust v Chhabra* [2014] 1 All ER 943 (Supreme Court), a disciplinary procedure was criticised by the doctor. She asserted that the case manager had to decide whether there was enough information to place the case before a disciplinary panel and had got that wrong. The doctor asserted that there were flaws in the investigation and applied for an injunction to restrain the continuation of the disciplinary panel's activities. The Supreme Court held that an injunction was needed. Lord Hodge SCJ held that, on the facts, the terms of the disciplinary procedure had contractual effect, [37] and there had been a number of irregularities in the proceedings which cumulatively rendered the convening of the conduct panel unlawful because it was a material breach of her contract of employment. The trigger was the accumulation of serious defaults, [39]. He went on to rule as follows:

“39 ... As a general rule it is not appropriate for the courts to intervene to remedy minor irregularities in the course of disciplinary proceedings between employer and employee – its role is not the "micro-management" of such proceedings: *Kulkarni v Milton Keynes Hospital NHS Foundation Trust* [2010] ICR 101, para 22. Such intervention would produce unnecessary delay and expense. But in this case the irregularities, particularly the first and third, are of a more serious nature. I also bear in mind that any common law damages which Dr Chhabra might obtain if she were to succeed in a claim based on those irregularities after her employment were terminated might be very limited: *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2012] 2 AC 22 and *Geys v Société Générale* [2013] 1 AC 523, para 73, Lord Wilson.

Lord Hodge ruled that the most serious shortcoming was the categorisation of the conduct as “gross misconduct” [40] which was a question of law in each case and wrongly done on the facts of that case.

46. I note that in the case before me that point was not taken by the Claimant.
47. Just after that decision was published, in *Hendry v MoJ* [2014] EWHC 2535, Green J provided this useful list of principles at [49]:

“(a) The court will be prepared to intervene in a disciplinary process if it is demonstrated that the proceedings are being conducted on a basis which makes their conduct a breach of contract such that the pursuit would also be a breach.

...

(b) ... in my view they have to be breaches or errors which make the continued pursuit unfair in a manner which cannot be remedied within the proceedings themselves.

(c) Nonetheless, the court will not “micro-manage” an employment disciplinary procedure.”

Furthermore at [87] Green J ruled thus:

“The authorities make it clear that the court can intervene in an employment dispute resolution procedure where there is sufficient unfairness. However, an employee cannot assume that it will always intervene whenever there is unfairness. If the procedure is capable of ironing out the unfairness then the court may well leave it to do so. As appears from the above authorities, the court will not micro-manage employment disputes. Because of the delays which are capable of arising if interim relief is to be given, this point becomes a factor in considering the desirability of giving interim relief. The overall balance of convenience may well favour letting the procedure run its course if the unfairness lacks enough severity. In the present case, for example, there is to be a disciplinary hearing and then there is a possible appeal. Those are stages which are capable of considering unfairness, even if there is a technical breach of contract. Then at the end of the road there is the availability of an unfair dismissal claim in the Employment Tribunal. While this may not investigate fully the merits of the reasons for dismissal, it would certainly be able to consider the merits of the operation of the procedure (see, for example, A v B, above).”

Health

48. For the Claimant in this case, his health issues can be dealt with in future by the Defendant Trust as part of the disciplinary process. He may himself wish to obtain expert evidence, but that is a matter for him.

Legal representation

49. The Claimant's legal representation issue has been conceded by the Defendant in this injunction process. He can instruct and rely on his solicitors and counsel at the hearings.

Cross examination of witnesses - complainants

50. The Claimant's issue over the lack of provision by the panel to call the complainants and allow cross-examination of them at the final hearing was the next point raised in the application for an injunction. Firstly, I now know that this has not been pleaded in the Claim Form. Secondly, it seems to have arisen out of a failure by the panel to:
- (1) give him enough notice of the hearing so that he could properly defend himself; and
 - (2) state which witnesses the panel would be calling; and
 - (3) inform him whether the panel would call the complainants and he would be allowed to cross examine the complainants. The Claimant did inform the panel which witnesses

he wished them to call but not why. I do not know how the panel intended to proceed at the hearing but, without first having notified the complainants that they were required to attend, it seems unlikely that they were to be called. Perhaps, albeit unlikely, the hearing was a pre-trial review where those matters were to be decided and the final hearing then would have been listed later. If that was the case, no one told the Claimant so.

51. Going forwards, once the Claimant has made plain to the panel which witnesses he wishes to have called and to cross examine, the next step will be for the panel to decide whether they will call those witnesses. Whether some form of examination is necessary or not remains a question of reasonableness and the application of the normal requirement of fairness and reasonableness in misconduct procedures. As was made plain in *Ulsterbus v Henderson* [1989] IRLR 251, by the Northern Ireland Court of Appeal, such decisions are management decisions not judicial ones and there is no general rule that the accused has a right to require the panel to call the complainant. It all depends on the facts of the case. Indeed, in that case the Industrial Tribunal had upheld a claim for unfair dismissal when the bus company dismissed a conductor for taking a fare and not issuing tickets (to a Mrs Devlin and a Mrs Kane) who were passengers, without calling the complainants or allowing him to challenge their evidence. O'Donnell LJ ruled thus [19]:

“In my judgment the Tribunal in dealing with the question of the sufficiency of evidence fell into the trap which it has so carefully advised itself against, namely it proceeded to substitute its own view for that of the reasonable employer and overlooked the true test, as set out by *Arnold in British Home Store v Burchell* (supra), where he said:

'First of all, there must be established by the employer the fact of that belief [that is, belief in the employee's guilt]: that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further.'”

The Court of Appeal overturn the Tribunal's decision on this basis [21]:

“It is quite clear in this case that a careful investigation was carried out by Mr Campbell, an appeal was heard by Mr Wilson, and a most meticulous review of all the evidence was carried out as is evidenced by Mr Heubeck's letter of 31.12.85. As I have indicated, in that letter Mr Heubeck meticulously reviewed all the evidence, and considered whether there was any reasonable possibility,

indeed any possibility, that a mistake had been made. What the Tribunal appears to be suggesting is that in certain circumstances it is incumbent on a reasonable employer to carry out a quasi-judicial investigation with a confrontation of witnesses, and cross-examination of witness. While some employers might consider this to be necessary or desirable, to suggest as the Tribunal did, that an employer who failed to do it in a case such as this was acting unreasonably, or in the words of Lord Denning, acting outside: '... a band of reasonableness, within which one employer might reasonably take one view, another quite reasonably take a different view,' is in my view insupportable.”

The editors of *Harvey on Employment Law*, at chapter 98 on (iv) Misconduct, General, summarise thus:

“Although strict compliance with every aspect of natural justice (ie (i) nature of accusation known to accused; (ii) opportunity to state case; (iii) decision-making body acting in good faith) is not necessary, a fundamental breach of the rules of natural justice may well render a dismissal unfair; *Haddow v Inner London Education Authority* [1979] ICR 202, EAT; *Taylor v Alidair Ltd* [1978] IRLR 82, [1978] ICR 445, CA; *Campion v Hamworthy Engineering Ltd* [1987] ICR 966, CA. In *Slater v Leicestershire Health Authority* [1989] IRLR 16, CA, Parker LJ observed (at p 19) that '[t]he rules of natural justice in this field do not ... form an independent ground upon which a decision may be attacked, although a breach will clearly be an important matter when the [tribunal] consider the question raised in s 57(3) of the Act”

52. It was the Claimant's case at the *exparte* hearing that, once the panel had read the investigation report, seeing that the case manager had identified serious factual issues over what the Claimant said or did to the complainants, these were obviously the key disputed issues on the facts. These, it was submitted, would have to be determined and there should be no need for him to point that out to a panel. However, the Claimant went on to submit that it is not sufficient to decide those issues on paper in this process. Nor would it be sufficient for the panel to ask the Claimant to provide written questions in advance to the complainants, as was suggested by Defence counsel and the chair in an email dated 3.3.2026 at 3.48pm. To look at that the other way around, if only the complainants were called and the panel did not allow the Claimant to give evidence and required the complainants to provide written questions to the Claimant in advance, would that be a fair hearing for the complainants? I have considerable sympathy with the submissions made by the Claimant on a natural justice basis about the panel not calling live witnesses on key factual issues, but the context of disciplinary hearings is they are management processes run in accordance with the contract of employment, the employer's policies and the relevant applicable national standards. They are not judicial proceedings. The rules of natural justice are relevant, as are the implied terms of trust and confidence and fair process. Were the panel to decide, in this potential gross misconduct case, that the main complainants did not need to give live evidence to

support their versions of the events and the doctor, who decided to give evidence in denial, was to be cross questioned to test and undermine his version of events, in any later unfair dismissal proceedings, the panel would need to explain why that was a reasonable and fair way to reach a decision on the disputed facts. All such decisions depend on the detailed factual matrix and the seriousness of the issues in each case. For the bus company in *Ulsterbus* the Court of Appeal did not consider it unreasonable to fail to call the customers to give evidence in the light of the careful investigation and multiple visits to the customers by the investigator. For a professional doctor (as opposed to a ticket inspector), with only two complainants both of whom are employed by the Defendant, and allegations of sexual harassment, the factual matrix is not the same. All cases depend on their facts.

53. The Defendant submits that the national MHPS do not provide doctors with the automatic or any right to cross examine complainants. The panel has the power to decide. I agree, that will be matter for the panel to decide. The Defendant relied on a decision of Dan Squires KC sitting as a deputy in *Colbert v RUH Bath* [2023] EWHC 1672. In that case C was accused by witnesses of bullying and intimidation. There were two issues in dispute. The first was whether C had a right to require the attendance of individuals at a disciplinary hearing, who were interviewed as part of the investigation of the allegations against him, but who D was not proposing to call to give evidence. The relevant documents were the national MHPS and D's Managing Conduct Policy. After an investigation a hearing was listed at which the panel was to determine his guilt or innocence and then move on the resolution. The panel did not intend to call the complainants or any eye-witnesses, only the author of the investigation report. C could call his own witnesses. After a last-minute change of legal representative, C required the panel to call all the management witnesses and stated that he intended to call 30 witnesses himself. The panel refused to call the management witnesses. C applied for an injunction. D invited C to explain why each witness was required for cross examination. C did not explain why. The application was made and served late and there were other difficulties. Guidance was provided at paras. 34-36 on the general law relating to disciplinary proceedings thus:

“34. First, the power to investigate allegations of misconduct and to discipline employee is conferred “by reason of the hierarchical nature of the relationship” between employer and employee (*Christou and Ward v London Borough of Haringey* [2013] EWCA Civ 178 paragraph 48). It exists as part of the “power vested in the employer to manage employees” (*Al-Mishlab v Milton Keynes Hospital NHS Foundation Trust* [2015] EWHC 3096 paragraph 16). That has two consequences. It means that contractual provisions dealing with disciplinary processes should be interpreted on the basis that their underpinning “purpose ... is to facilitate the employer's managerial power” (*Al-Mishlab* paragraph 16). It also means that where contractual procedures are silent on a point, the fallback position is that they are determined as a matter of the

employer's managerial discretion (*Al-Mishlab* paragraph 16 and *McMillan v Airedale NHS Foundation Trust* [2014] EWCA Civ 1031 paragraph 54).

35. Second, the fact that the underlying purpose of disciplinary processes is to facilitate the employer's managerial power, does not mean there is no obligation on the employer to act fairly. In contracts such as the present, that contain detailed disciplinary procedures, the purpose of many of the provisions is likely to be to secure a fair process. That is not inconsistent with the purpose of the disciplinary process as a whole being to facilitate the exercise of managerial power. A key role of procedural provisions that ensure a fair process (for example provisions that individuals are given adequate notice of allegations against them and a proper opportunity to respond) is to help secure accurate factual findings, and to ensure that those subject to a complaint accept outcomes as fair and appropriate. That is important to good management of employment relationships as well as for securing fairness for individual employees.

36. Third, obligations to act fairly in the disciplinary process may be imposed on employers not only through express contractual provision, but through an implied duty that neither party to an employment contract will act, without reasonable and proper cause, in a manner calculated or likely to destroy or seriously damage the relationship of trust confidence between employer and employee (*Gregg v North West Anglia Foundation Trust* [2019] ICR 1279 paragraph 97 and *Al-Mishlab* paragraph 17)."

The decision on the facts of the wording of D's individual conduct policy was that the decision on which witnesses to call was for the panel, they had asked C why he wanted the management witnesses called and he had not explained why he did. Thus, the injunction was not granted.

54. Different facts arise in the present case. On 26.2.2026 the Claimant's representative asked the panel for CW and the complainants to be called. A response was received from the panel on the day before the listed hearing, 3.3.2026 at 3.48 pm, the chair wrote: "Dr Catherine Taylor will be available to attend as a witness. Due to the short notice of your request, and in recognition of the potential emotional impact on the other individuals involved, we have not asked the witnesses to attend the hearing in person at this stage. However, please be assured that if, during the course of the hearing, I, as Chair considers that additional information or clarification from any witness is required, the hearing will be adjourned to allow this to take place. As an alternative, you are welcome to submit any specific questions or points you would like the witnesses to address in writing. We can then share these with the relevant individuals and arrange for written responses to be provided. Please let me know if you would like to proceed with written questions or if there is anything further you need ahead of tomorrow's hearing."

The chair has misspelt the name of the case investigator, Catherine Tyler. This effectively was a statement that the decision had been taken not to call the complainants. On 5.3.2026, after I granted the *ex parte* injunction and the hearing was cancelled, the

chair of the panel emailed the Claimant and agreed for the Claimant to have a lawyer at the hearing representing him. He also wrote that that:

“In terms of the witnesses to be called, further to my email below, usual practice would be that the transcripts collated during the investigation would be referred to unless there was a specific reason to call individuals in person. I would be grateful if you would confirm the reason why you wish to call the individuals and why it would be proportionate when the investigation transcripts are available. The Panel is then happy to consider the position.”

Unless the hearing was a pre-hearing review I do not see how that could work. Surely the complainants would need some notice if they were to be called. If, in future, the Claimant fails to explain why he wants CW and LD called he will be shooting himself in the foot. If he explains what the issues are and shows that they are important issues (sexualised questions for instance) then the onus will be on the panel to consider and explain any decision they take on the way forwards with evidence on the key factual issues.

Conclusion

55. Applying the law in the context of these facts, I do not consider that this Court should continue the *ex parte* injunction because this Court should not micromanage the process going forwards and I consider that the panel can iron out the problems themselves. I consider that the parties must work together to communicate better and to make clear what the process is going to be and how the evidence will be heard and dealt with and, most importantly, what the issues are. This can be achieved by better engagement between the panel and the Claimant's lawyers and perhaps a pre-hearing review. So far, this interim relief application has not caused any harm because the lack of clarity over what was going to happen on 4.3.2026 has been avoided by the hearing being adjourned.
56. Whilst it is a matter for the panel, the Defendant will no doubt carefully consider how to proceed. The panel might consider: (1) giving adequate notice of the next hearing; (2) giving clear guidance on what is going to take place at the next hearing; (3) stating whether it is a pre-hearing review to determine what evidence is to be called live to resolve factual disputes and what is to be only on paper and perhaps to settle the contents of the bundle for the panel; (4) if it is a final hearing, making clear what evidence will be live and what evidence will be read, after consulting with the Claimant on the issues and explaining its decisions.
57. After I circulated the draft judgment the Claimant sought to “address the Court”, I infer that means at a further hearing, on their desire for a stay of proceedings. In an email the Defendant suggested written submissions if that was to be entertained. I refuse that approach. No notice of application for a stay of the action has been issued and no evidence has been filed in support. This judgment deals with the return date for an *ex parte* injunction granted urgently.

Conclusions

58. I discharged the ex parte injunction on 16.3.2026. Having read the written communications on costs, no costs will be awarded.

END