

## SARKER V WORCESTERSHIRE ACUTE HOSPITALS TRUST

[2015] EWHC 165 (QB)

The High Court (Nicol J) last week handed down judgment in this case, refusing an application by the Claimant for an interim injunction restraining the Defendant from proceeding with a disciplinary hearing against him. Robert Moretto represented the successful Defendant ('the Trust').

### Facts

The Claimant, a consultant colorectal and general surgeon, employed by the Trust since 2011, was suspended in October 2012, following a review of his clinical work by the Royal College of Surgeons. The Trust commissioned an investigation, which was completed in July 2014 and provided to the Claimant at the end of October 2014. The annexes to the report followed several days later. The Defendant informed the Claimant that it considered that there was a prima facie case of gross misconduct to answer and supplied draft charges. Following correspondence between the parties' solicitors about possible dates in December 2014, the hearing was postponed to 27 January 2015.

The Trust's disciplinary policy provides that the employee and representative must be provided with the 'management case', which sets out the precise nature of the allegation(s); copies of all written documentation to be relied on at the hearing; the date, time and venue of the hearing; and the names of the panel members, Trust representative, investigating manager and any other witnesses to be called. This must be supplied 10 working days prior to the hearing (according to one part of the policy) or at least 10 working days prior to the hearing (according to another). The Trust provided the management case on 12 January 2015: 12 working days before the hearing. The charges were identical to the draft charges served at the end of October 2014.

In December 2014, the Claimant's solicitors became concerned that the Claimant might be dyslexic. They received confirmation of this by way of a specialist report

on Friday 16 January and wrote to the Defendant asking that the hearing be adjourned on Monday 19 January. This was premised on the difficulties of responding to the management case in only 12 working days (when the Trust had spent over 27 months on its investigation) and also the Claimant's newly-diagnosed dyslexia, which was likely to be relevant directly to some of the charges and also to the conduct of the disciplinary proceedings.

The Trust's solicitors replied on behalf of the Trust the following day, giving detailed reasons for opposing the request and suggesting that the points made in the Claimant's letter could be raised at the hearing. At the beginning of the hearing, the panel was presented with skeleton arguments by the parties. The panel did not accept that the Claimant had had insufficient time to prepare, but did propose a range of reasonable adjustments to assist the Claimant. The Claimant asked for an adjournment so that he could seek relief from the High Court. The panel refused this request and so the Claimant and his legal team withdrew from the proceedings. The Claimant's application was not formally on notice, but the Defendant was represented by counsel.

### Held

Nicol J reminded himself that where the granting of an interim injunction would dispose finally of proceedings, prospects of success had to be over and above 'a serious issue to be tried' (paras 11-13). He approved the line of authorities that warning the Court against micro-managing disciplinary proceedings and encouraging parties to follow the procedures provided for contractually (paras 20 and 22), which included the panel having primary responsibility for determining procedural fairness. He accepted the Trust's submission that where an appeals policy allows consideration of whether disciplinary action was appropriate and reasonable in the circumstances, complaints of procedural unfairness could be addressed at the appeal stage. This met the Claimant's concern that damages would not be a satisfactory alternative remedy, as a successful appeal would have the effect of reviving the contract of employment (para 19).