



Neutral Citation Number: [2021] EWHC 1263 (QB)

Case No: QB-2020-004016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 May 2021

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

MARK RAYNER

**Claimant/
Applicant**

- and -

**BARNET, ENFIELD AND HARINGEY MENTAL
HEALTH NHS TRUST**

**Defendant/
Respondent**

Mr Philip Coppel QC (instructed by **Cavendish Legal Group**) for the **Claimant**
Mr Mark Sutton QC and **Ms Betsan Criddle** (instructed by **Capsticks Solicitors LLP**) for the
Defendant

Hearing date: 30 November 2020

Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MURRAY

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 14 May 2021.

Mr Justice Murray :

1. This is the return date in respect of an interim injunction granted by Fraser J on 17 November 2020 (“the Fraser J Order”) following an application made by Mr Mark Rayner on 16 November 2020. The Fraser J Order restrained Barnet, Enfield & Haringey Mental Health NHS Trust (“the Trust”) from proceeding with a disciplinary hearing against Mr Rayner arising out of his contract of employment with the Trust. The disciplinary hearing was due to commence on 18 November 2020. The holding of the disciplinary hearing is restrained by the interim injunction pending this return date.
2. Mr Rayner seeks to continue the Fraser J Order to restrain his employer, the Trust, from proceeding with the disciplinary hearing against him in order to await the outcome of the determination by his professional body, the United Kingdom Council for Psychotherapy (“UKCP”), as to whether the conduct that is the subject of the disciplinary hearing breached the UKCP’s Code of Ethics and Professional Practice (“the UKCP Code”), to which Mr Rayner is bound to adhere as a registered member of the UKCP.
3. The UKCP is a professional body that is responsible for the education, training, accreditation and regulation of psychotherapists and psychotherapeutic counsellors in the United Kingdom. It maintains a national register of accredited psychotherapists and psychotherapeutic counsellors, which register is accredited by the Professional Standards Authority for Health and Social Care under its Accredited Registers programme. The UKCP Code sets out the standards of ethics, practice and conduct that the UKCP expects of all psychotherapists and psychotherapeutic counsellors admitted to its register.

The parties

4. Mr Mark Rayner is a psychotherapist registered with the UKCP. He has been employed part-time by the Trust since 1 October 2004. He also has a private practice under the name “Existential Consultancy”, and he is the founder and principal shareholder of EASE Wellbeing, a community interest company.
5. Mr Rayner has been suspended from all duties with the Trust since allegations were made against him in August 2019 by an adult female patient or “service user” (“MK”), who is a former patient of Mr Rayner. Prior to his suspension, he worked part-time for the Trust in adult secondary care psychology services, with the job title Senior Psychotherapist, based at the Barnet Psychology Hub in Wellhouse Lane. Under his contract of employment, Mr Rayner is subject to the Trust’s Disciplinary Policy and Procedures (“DPP”) in respect of any matter that might involve disciplinary action.
6. The Trust is a large provider of integrated mental health services in Barnet, Enfield and Haringey and also provides community health services in Enfield.

The evidence reviewed

7. The principal evidence supporting the application to continue the Fraser J Order is the witness statement of Mr Rayner dated 16 November 2020, together with various

exhibits. Mr Rayner has also provided a witness statement dated 27 November 2020 from Mr Antonios Christodoulides, a solicitor and consultant with Cavendish Legal Group, Mr Rayner's solicitors, dealing with matters arising since the Fraser J Order was made and also responding to a point raised by the Trust in its evidence submitted in opposition to the application.

8. In response to the application, the Trust has filed the witness statement dated 25 November 2020 of Ms Sharon Thompson, together with various exhibits. Ms Thompson is employed by the Trust as a Clinical Programme Manager. Ms Thompson is the Commissioning Manager for the disciplinary investigation by the Trust commenced in August 2019 into the allegations made by MK.
9. The principal documents that I have reviewed include:
 - i) Mr Rayner's contract of employment with the Trust, which he signed on 13 January 2005 ("the Employment Contract"). The date of commencement of his employment specified in the employment contract was 1 October 2004. The clauses of that contract are not numbered. On the fourth page of the contract is a provision reading:

"DISCIPLINARY PROCEDURE

Matters which may involve Disciplinary action are set out in the Trust's Disciplinary Policy/Procedure."

In the hearing bundle there are amendments to the Employment Contract dated 23 June 2005, 3 August 2006, 18 July 2006 and 21 September 2006, none of which modify the foregoing provision.

- ii) The DPP (version dated 25 July 2016). The Trust's disciplinary proceedings against Mr Rayner are governed by the DPP. According to Ms Thompson, the DPP was collectively drafted by the Trust with input from its recognised trade unions, then signed off by the Trust's joint staff committee, and then approved by the Trust's Policy Review Group, which is chaired by the Trust's Deputy Director of Governance. The DPP sets out the Trust's policy on various aspects of employee discipline, including a framework for the conduct of a disciplinary investigation by the appointed Investigating Officer on behalf of the Trust and any resulting disciplinary hearing. It also addresses the possible outcomes of that process in terms of action that may be taken based on the conclusions reached at the disciplinary hearing, and it provides for various procedural protections and safeguards, including an appeals process.
 - iii) The Investigation Report dated 13 March 2020 ("the Investigation Report") prepared by Mr Gerry McCarron, Joint Psychology Lead, Haringey Central Locality Team, who was commissioned by Ms Thompson to be the Investigating Officer under the DPP. Mr Rayner says that, although the Investigation Report is dated 13 March 2020, he did not receive it until October 2020. In an email message dated 13 November 2020 from Ms Kiera McKeown of the Trust to Mr Rayner, copied to Mr Christodoulides, Ms McKeown states that the version of the Investigation Report that would be referred to at the disciplinary hearing that was then scheduled to take place on

18 November 2020 was “the one dated 08/10/20”. I was not presented with a copy of the Investigation Report with that date on it. (If that version is in the hearing bundle, my attention was not drawn to it, and I did not find it myself. I was taken to at least two copies in the hearing bundle, one exhibited to the Particulars of Claim, and one exhibited to Mr Rayner’s witness statement, each bearing the date 13 March 2020.) I assume that if Ms McKeown was not mistaken and there is a version of the Investigation Report with that date on it, any differences between that version and the version I reviewed are immaterial for present purposes.¹

- iv) The UKCP Code (version dated 1 October 2019).
- v) The UKCP Complaints and Conduct Process (version dated November 2020). (“UKCP Complaints Process”). The UKCP Complaints Process sets out how a complaint against a member entered on the UKCP’s register of psychotherapists and psychotherapeutic counsellors (referred to in the UKCP Complaints Process as a “Registrant”) will be dealt with in any case where the complaint raises an issue about his or her suitability to be on the UKCP register. In relation to each such complaint, a UKCP officer (referred to in the UKCP Complaints Process as a “Case Manager”) will be assigned to manage and process the complaint in accordance with the UKCP Complaints Process. The matters addressed by the UKCP Complaints Process include misconduct, professional incompetence, criminal conviction or caution, physical or mental health problems and relevant decisions of other bodies, regulators or employers. If the relevant complaint indicates that the psychotherapist’s suitability to practise may be impaired, there is sufficient evidence to support the complaint, and there is a realistic prospect of being able to prove the allegations in the complaint, then the Case Manager will refer the complaint to an Adjudication Panel, being a panel of three, chaired by a lay member and comprised of both lay and professional members, each of whom has been appointed based on his or her relevant experience. The Adjudication Panel will hold a hearing, hear evidence and submissions, and then decide:
 - a) whether the allegations have been proven or admitted;
 - b) if proven or admitted, whether they amount to a breach of the UKCP Code;
 - c) if so, whether the breaches are such that the psychotherapist should remain on the UKCP register without any restrictions or conditions; and
 - d) what sanctions, if any, are to be applied.
- vi) The UKCP Complaints and Conduct Process: Guidance for Psychotherapists (version dated 29 May 2019). This is guidance published by the UKCP for its members on the UKCP Complaints Process.

¹ When the draft judgment was circulated to the parties’ legal representatives prior to handing down in accordance with the provisions of CPR PD 40E, it was pointed out to me that the version of the Investigation Report dated 8 October 2020 was included in the third part of the exhibits to Mr Rayner’s witness statement. As noted, I was not taken to it during the hearing.

- vii) Written summary of the Interim Suspension Order Hearing held on 30 August 2019 under the 2017 version of the UKCP Complaints Process before an Interim Order Panel, setting out the Interim Order Panel's reasons for refusing the UKCP's application that Mr Rayner be made subject to an interim order of suspension as a result of the referral by the Trust to the UKCP on 16 August 2019 informing the UKCP that it was launching disciplinary proceedings against Mr Rayner for:
- a) failing to notify the Trust of a decision of another UKCP Adjudication Panel in May 2019 (which was a matter concerning one of Mr Rayner's private patients, unrelated to MK or Mr Rayner's work at the Trust), where the Adjudication Panel found that Mr Rayner was guilty of misconduct but his fitness to practise was not impaired; and
 - b) failing to maintain appropriate boundaries in his clinical work with a patient (namely, MK).

The Interim Order Panel concluded that it had insufficient evidence before it to support the imposition of an Interim Suspension Order.

10. I have also had regard to the Particulars of Claim, correspondence referred to in the skeleton arguments, and correspondence to which I was taken during the course of the hearing.

Additional background

11. Between 2014 and September 2017 Mr Rayner treated MK during the course of his employment with the Trust.
12. On 22 September 2017 Mr Rayner was suspended from work by the Trust in relation to allegations of disciplinary concerns unrelated to MK. The specifics of those allegations are not material for present purposes. It was due to this suspension that Mr Rayner's treatment of MK ended. On 26 September 2017 Mr Rayner notified the UKCP of the institution of these disciplinary proceedings by the Trust.
13. The Trust held a disciplinary hearing at which the allegations were partially upheld, as a result of which, in October 2018, Mr Rayner was given an informal warning that would remain on his record for six months. Mr Rayner returned to work in November 2018.
14. Mr Rayner appealed the outcome of the Trust's disciplinary proceedings under the appeal process in the DPP. Following an appeal hearing on 7 December 2018, Mr Rayner was informed by a letter dated 14 December 2018 from Ms Jackie Liveras, the Trust's Deputy Chief Operating Officer, that the original disciplinary decision to issue a sanction of informal warning for six months was upheld.
15. As I have already noted, in May 2019 the UKCP found that Mr Rayner was guilty of misconduct in relation to a matter concerning one of his private patients but determined that his fitness to practise was not impaired.

16. In August 2019 MK made a complaint to the Trust that Mr Rayner had breached his professional obligations by having communicated with her after his suspension in September 2017. MK made her complaint during the course of telephone conversations with Dr Richard Rushe, Consultant Clinical Psychologist, Lead for Barnet Psychology Hub, on 1 and 2 August 2019.
17. On the basis of that complaint, on 6 August 2019 the Trust suspended Mr Rayner. On 14 August 2019 the Trust commissioned an investigation under the DPP. The Trust confirmed the suspension and initiation of the disciplinary procedure by letter dated 15 August 2019 to Mr Rayner, outlining the terms of reference for the investigation and confirming that the investigation would be completed by October 2019. The investigation was, in fact, concluded in March 2020.
18. The Trust referred this disciplinary matter to the UKCP on 16 August 2019, together with a complaint about Mr Rayner's failure to inform the Trust about the hearing of the UKCP Adjudication Panel in May 2019 where he had been found guilty of professional misconduct, but no restriction had been imposed.
19. Following the Trust's referral on 16 August 2019, the UKCP sought an interim suspension order against Mr Rayner. That application was rejected by a UKCP Interim Order Panel on 30 August 2019 on the basis that there was insufficient evidence before it in support of the application.
20. On 3 September 2019 Ms Amy Newton, the Case Manager at the UKCP in relation to both the Trust's referral and Mr Rayner's self-referral of the allegations made by MK, sent an email to Mr Christodoulides and one of his colleagues stating that the matter relating to MK that had been referred to the UKCP by the Trust on 16 August 2019 would be placed on hold pending the outcome of the Trust's disciplinary proceedings.
21. On 5 September 2019 the UKCP notified the Trust that they did not intend to take matters further at that stage in relation to the Trust's referral on 16 August 2019 as they did not have enough information, but that they would review the position upon receipt of further information or the conclusion of the Trust's investigation. According to Ms Thompson, the UKCP continued to seek updates from the Trust during the course of the disciplinary process.
22. Mr Rayner was not happy with some aspects of the disciplinary process, including the length of time the investigation was taking. He also continued to be unhappy about the investigation and disciplinary outcome in relation to the 2017 allegations. He submitted a grievance under the Trust's employee grievance procedure on 4 December 2019 in relation to (i) the investigation of the 2017 allegations, (ii) the decision to commission the investigation in relation to MK's complaint, and (iii) the fact that the Trust had informed the UKCP of the investigation in relation to MK's complaint. In February 2020 Mr Rayner submitted a second grievance.
23. The original terms of reference for the Trust's investigation set out thirteen allegations against Mr Rayner relating to MK. During the course of the investigation, the terms of reference were revised to add two additional allegations. The allegations concern matters such as Mr Rayner sharing and communicating with MK via his personal mobile number with MK and his personal email address, disclosing personal details

about his life to her, meeting socially with her and so on. There is no suggestion that he had a sexual relationship with her.

24. The Investigation Report concluded that Mr Rayner had no case to answer in relation to two of the allegations (namely, that Mr Rayner purchased gifts for MK's two sons and that he gave tennis lessons to one of her sons). There was a case to answer on the remaining thirteen. The overall conclusion of the Investigating Officer, Mr McCarron, set out in the Investigation Report, is as follows:

“The overall conclusion of my investigation is that most of the allegations made by the service user, MK, alleging unprofessional conduct on the part of Mr Rayner are upheld and supported by evidence. I believe, therefore, that there is sufficient evidence of a case of misconduct for the employee to answer, which needs to be considered in line with the Trust's Disciplinary Policy.

Specifically, there is evidence of *a failure on Mr Rayner's behalf to maintain proper and safe professional boundaries with the service user*. The blurring of these boundaries by his actions was to prove harmful to the psychological well-being of the service user and amounts to unsafe practice and unprofessional conduct.” (emphasis added)

25. Mr Rayner says that the facts established by the Investigation Report are largely undisputed. Mr Mark Sutton QC, leading counsel for the Trust, disagreed with that position, saying that there were “a plethora of challenges” to Mr Rayner's account.
26. I consider that it would not be proportionate on this application for me to review and assess the evidence with a view to determining whether the factual background is substantially agreed or not. At least one of the three or so examples given by Mr Sutton during the hearing of matters on which there were factual disputes concerned an allegation regarding which Mr McCarron had found there was no case to answer (namely, whether Mr Rayner had given gifts to MK's two sons). The other examples seemed to concern matters of detail that were not fundamental. Ms Thompson's evidence does not support the submission that there is a plethora of disputed matters of fact. In light of the fact that Mr Rayner bears the burden of establishing that the test for continuation of the Fraser J Order is met, I consider that it is fair to assume in his favour that the factual background is, in its essentials, uncontested. I proceed on the basis that the key issue for the Trust's disciplinary hearing will be whether that factual background justifies the conclusion that Mr Rayner was guilty of unprofessional conduct in his dealings with MK by failing to maintain proper and safe professional boundaries with her.
27. Mr Rayner maintains that:
- i) the question of whether he failed to maintain proper and safe professional boundaries with MK can only be answered by reference to the standards of professional conduct set out in the UKCP Code; and

- ii) for the Trust to proceed to a disciplinary hearing before that question has been determined by an Adjudication Panel of the UKCP would be a breach of the implied term in the Employment Contract that the Trust would not, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
28. On 7 August 2020 the Trust provided the Investigation Report to Mr Rayner together with a disciplinary pack of documents and advised him that the Trust would be conducting a disciplinary hearing under the DPP to consider the outstanding allegations on 20 August 2020.
 29. Following a request by Mr Rayner on 11 August 2020, the Trust agreed on 19 August 2020 to postpone the disciplinary hearing to a date to be fixed in order to give him more time to consider the papers.
 30. On 20 August 2020 the Trust notified Mr Rayner that the disciplinary hearing had been rearranged to take place on 6 October 2020 and that the grievance interview would take place on 9 September 2020.
 31. On 26 August 2020 the Trust notified the UKCP that its disciplinary investigation into MK's allegations against Mr Rayner had concluded and that a disciplinary hearing would take place on 6 October 2020. The UKCP responded the following day to request that it be updated following the conclusion of the disciplinary hearing.
 32. By letter dated 28 August 2020 the Trust formally invited Mr Rayner to a grievance investigatory meeting on 9 September 2020 and notified him that Mr McCarron had been appointed to conduct the interview, given that he had been conducting the disciplinary investigation.
 33. On 12 October 2020 the Trust notified Mr Rayner that the disciplinary hearing would take place on 20 October 2020. Mr Rayner objected to that date on the basis that the Trust had given him less than the minimum 7 working days' notice required under paragraph 17.1 of the DPP. On 15 October 2020 the Trust agreed to postpone the disciplinary hearing.
 34. On 6 November 2020 the Trust notified Mr Rayner that the disciplinary hearing would take place on 18 November 2020.
 35. On 12 November 2020 Mr Rayner notified the Trust that, given the overall conclusion reached in the Investigation Report and his disagreement that the factual matters alleged did breach professional boundaries or amount to unprofessional conduct, he intended to refer himself to the UKCP. He invited the Trust to suspend the disciplinary hearing pending determination by an Adjudication Panel of the UKCP of whether his conduct in relation to MK breached professional boundaries or amounted to unprofessional conduct.
 36. On 13 November 2020 the Trust wrote to Mr Rayner refusing to postpone the disciplinary hearing. On the same day, Mr Rayner's solicitors asked the Trust to reconsider its decision, warning that if the Trust did not agree to postpone the hearing,

Mr Rayner would seek an injunction to restrain it pending a decision by the UKCP on the questions raised by Mr Rayner's self-referral.

37. On 16 November 2020 Mr Rayner referred himself to the UKCP for it to evaluate whether the conduct described in the Investigation Report breached professional boundaries or amounted to unprofessional conduct. On the same day, Mr Rayner made an urgent application for an interim injunction, giving informal notice to the Trust.

Procedural history

38. Mr Rayner's application came before Fraser J on 17 November 2020, resulting in the making of the Fraser J Order. Although the Trust was represented by counsel at the hearing, the application was heard effectively on a without notice basis, giving rise, among other things, to the duty of the applicant to make full and frank disclosure.
39. The Fraser J Order was made on 17 November 2020.
40. Mr Rayner issued his claim form on 19 November 2020 and filed and served his Particulars of Claim on 26 November 2020, pursuant to his undertaking given to Fraser J.

The UKCP's position following the Fraser J Order

41. On 19 November 2020 Mr Rayner's solicitors sent a copy of the Fraser J Order, together with the applicant's skeleton argument and supporting evidence bundle, to the UKCP.
42. On 24 November 2020 Ms Amy Newton of the UKCP wrote to Mr Christodoulides acknowledging receipt. In her email message, she set out the background of (i) having been notified by the Trust on 16 August 2019 of its investigation into MK's allegations and (ii) the UKCP's unsuccessful application for an interim suspension order against Mr Rayner, and then continued, in relevant part, as follows:

“Following our unsuccessful application for an ISO, I notified you and your colleague Ian Chai on 3 September 2019, that the 16 August 2019 matter would be placed on hold pending the outcome of BEHMHT's investigation and procedure. Even if an ISO was granted, we would have expected BEHMHT to continue with their investigation and disciplinary proceedings and notify UKCP of their outcome.

Disciplinary proceedings by BEHMHT and UKCP's Complaints and Conduct Process

Although we have been receiving intermittent updates from BEHMHT as to the progress of the investigation and disciplinary proceedings against your client, there had been no updates from your client in relation to this matter until his email to our complaints inbox on 16 November 2020 in which he self-referred to a matter we were already aware of (the

August 2019 notification from BEHMHT). For the avoidance of doubt, his self-referral on 16 November 2020, was about an existing matter that we were notified of by BEHMHT in August 2019 and that we had placed on hold until the BEHMHT conclude their process.

In accordance with clause 4.2 of our CCP [the UKCP Complaints Process], where a Registrant is subject to complaints/disciplinary proceedings related to their practice by another organisation/regulator/employer, we may suspend our complaints process until the proceedings have been completed by the relevant organisation/employer etc (as above, you were informed on 3 September 2019 the matter would be placed on hold). Your client is subject to BEHMHT's complaints/disciplinary proceedings in the first instance.

In accordance with clause 4.4 of the [CCP], when deciding whether to suspend consideration of the complaint, the Case Manager must weigh up the interests of any Complainant, the Registrant and the wider public before deciding whether it is appropriate to do so. The BEHMHT are investigating the concerns raised by a client/service user of the BEHMHT. It is therefore appropriate for BEHMHT to investigate this matter in the first instance as, your client was employed by BEHMHT and therefore subject to their policies and procedures at the time of the alleged misconduct.

Furthermore, BEHMHT would have access to all the information pertaining to the complaint as well as access to the service user who was subjected to the alleged complained of behaviours by your client. They would also have access to the service user/patient's medical notes and the arrangements of the patient's care.

It is normal practice for NHS investigations to be completed first and UKCP has concluded numerous cases following decisions being made by the NHS/another regulator/employer etc in accordance with the relevant clauses of our CCP.

Once BEHMHT has made a decision and concluded its procedures, UKCP will consider what implication the decision has (if any) on your client's UKCP membership. Section 2.1.5 of our complaints procedure, allows us to consider "a decision by: a body in the UK responsible for the regulation of health, social care or other relevant profession; or an employer, to the effect that a Registrant's suitability to be on the UKCP register is called into question."

For the avoidance of doubt, UKCP fully supports BEHMHT investigating the matter and notifying UKCP of their decision upon completion of their disciplinary proceedings.

In the interests of fairness and transparency, I have copied BEHMHT into this email so that they are aware of our position.”

Legal principles

43. The High Court may grant an injunction in all cases where it appears to the court “just and convenient” to do so: Senior Courts Act 1981, section 31. This provision simply confirms the court’s inherent jurisdiction: *Fourie v La Roux* [2007] UKHL 1, [2007] 1 WLR 320 at [25]. The well-known principles set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL) establish the test for determining whether it is appropriate to grant or, for present purposes, continue the interim injunctive relief sought.

Submissions

44. Mr Philip Coppel QC, leading counsel for the claimant, submitted that the Trust, in exercising its powers under the DPP, is required to do so in accordance with the mutual duty of trust and confidence that governs its relationship with its employee, Mr Rayner. In support of that proposition, he relied on *Smo v Hywel Dda University Health Board* [2020] EWHC 727 QB at [205] and the cases cited there.
45. In *Smo*, Linden J granted a consultant surgeon, who was subject to disciplinary proceedings instituted by his employer, the defendant, concerning aspects of his conduct and approach to clinical practice, a permanent injunction to prevent the defendant from continuing a separate investigation into the surgeon’s relationships with his colleagues. Whereas the disciplinary proceedings were conducted pursuant to a procedure to which the surgeon had agreed by virtue of his contract of employment, the separate investigation was not. Linden J found that the separate investigation was simply a particular course of action on which the employer had decided and that it had done so in breach of its implied duty of trust and confidence to the surgeon.
46. Mr Coppel submitted that *Smo* at [209] supported the proposition that for an employer of a professional to embark on a disciplinary hearing revolving around the professionalism of the employee in advance of a determination by a professional body of the same issue can constitute a breach of the implied duty of mutual trust and confidence. Whether it does, in fact, constitute such a breach, he submitted, turns on whether the allegations in the disciplinary proceedings depend on an evaluation of whether undisputed facts constitute a breach of professional standards.
47. Mr Coppel submitted that the Trust had no documents of its own setting out its conception of “professional boundaries” or “unprofessional conduct” for those practising psychotherapy. There was therefore a real risk that the Trust would draw those boundaries or characterise that conduct without reference to the UKCP, the professional regulator for those practising psychotherapy. To do so would be a breach of the duty of trust and confidence.
48. Mr Coppel submitted that, in the light of the foregoing analysis, there was clearly a serious issue to be tried, satisfying the first stage of the *American Cyanamid* test.

49. The second stage of the *American Cyanamid* test is whether damages would be an adequate remedy for Mr Rayner if the Fraser J Order was not continued. Mr Coppel submitted that damages would clearly be inadequate. He noted that if the disciplinary hearing proceeds ahead of a determination by a UKCP Adjudication Panel of the questions self-referred to the UKCP by Mr Rayner, he stands to be dismissed by the Trust.
50. Mr Coppel submitted that, although Mr Rayner, if dismissed, would have the right to bring a claim in the employment tribunal for unfair dismissal under section 94 of the Employment Rights Act 1996, the tribunal would only be seeking to determine whether the Trust's decision to dismiss him fell within the range of responses that a reasonable employer could adopt. The tribunal would not consider whether the Trust's decision regarding Mr Rayner's conduct was substantively correct. Moreover, the remedies that the tribunal could award in the event of a favourable outcome for Mr Rayner would be limited.
51. Mr Coppel submitted that, similarly, a successful action by Mr Rayner against the Trust for breach of contract by reason of wrongful dismissal would not negate the stigma and loss of professional standing, and almost certain loss of his private client base, that would follow Mr Rayner's dismissal for failing to observe "professional boundaries" and for "unprofessional conduct". For those reasons, damages would not be an adequate remedy.
52. Finally, in relation to the third stage of the *American Cyanamid* test, the balance of convenience, Mr Coppel submitted that there is an "overwhelming case" for the Trust to await the outcome of the UKCP's adjudication on Mr Rayner's self-referral, for the following reasons:
 - i) the primary facts not being in dispute, the fundamental issue concerns matters that are quintessentially within the expertise of the UKCP, namely, the standards of professional conduct to which a registered psychotherapist such as Mr Rayner is bound to adhere;
 - ii) the matter having been referred to the UKCP, the decision of the UKCP's Adjudication Panel would be highly relevant, if not determinative, of the key questions raised by the Investigation Report;
 - iii) the Trust could participate in the hearing before the UKCP's Adjudication Panel;
 - iv) in light of Mr Rayner's suspension by the Trust, there is no risk to the Trust's patients in the interim;
 - v) the Trust has not suggested that there would be any prejudice to its disciplinary process from awaiting the outcome of the UKCP's consideration of these questions, particularly in light of the fact that the Trust has not itself adhered to the timetable set out in the DPP but instead has pursued the disciplinary process at a leisurely pace;
 - vi) for the same reasons that damages would be an inadequate remedy for Mr Rayner, he would suffer irremediable prejudice if he were dismissed even

if, subsequently, there was a determination on the key issues in his favour by his professional body; and

- vii) it is inherently undesirable for there to be a divergence between evaluative conclusions on professional standards reached by an employer and a professional body.
53. Mr Coppel submitted that it is irrelevant that the UKCP appears to have taken the view that the Trust's disciplinary proceedings should take place before a UKCP Adjudication Panel is convened to consider Mr Rayner's conduct in relation to MK. The Trust and the UKCP cannot determine between themselves how to allocate their duties to Mr Rayner. The UKCP cannot abdicate its regulatory functions any more than the Trust can arrogate those functions. It does not matter if it is "normal practice" for the UKCP to await the outcome of an employer's disciplinary proceedings before convening an Adjudication Panel to consider the relevant registered member's case. Mr Coppel also noted that Mr Rayner has formally warned the UKCP that it will challenge its refusal to carry out its regulatory role, that sort of decision being amenable to judicial review: see, for example, *R (Mandic-Bozic) v British Association for Counselling and Psychotherapy* [2016] EWHC 3134 (Admin).
54. Mr Coppel sought to distinguish the case of *Chakrabarty v Ipswich Hospital NHS Trust* [2014] EWHC 2735 (QB), [2014] Med LR 379 (QB) relied upon by the Trust. *Chakrabarty* concerned disciplinary proceedings brought by the defendant trust against the claimant, who was employed by the trust as a consultant in cardiology and general medicine. The claimant sought a permanent injunction to prevent the trust from proceeding with a capability hearing under the defendant's internal competence and capability procedures. He relied on contractual arguments and also argued that it was unlawful for the defendant to proceed before the Medical Practitioners Tribunal Service (MPTS), the adjudicatory wing of the General Medical Council (GMC), had concluded its inquiry into the claimant's fitness to practise. In *Chakrabarty*, Simler J held at [160]-[162] that there was no contractual or legal bar to prevent the defendant from conducting a capability hearing before the outcome of the MPTS proceedings.
55. Mr Coppel submitted that the crucial distinction between that case and this is that *Chakrabarty* was concerned with capability, which it was not within the exclusive competence of the GMC/MPTS to assess. This case, by contrast, concerns the assessment of professional boundaries and conduct against an undisputed factual background, a matter that he submitted was quintessentially within the province of the UKCP as the relevant professional regulator. That was particularly so, given the absence of any documented articulation of professional boundaries or standards of professional conduct by the Trust.
56. Mr Coppel also sought to distinguish the case of *Gregg v NW Anglia NHS Foundation Trust* [2019] EWCA Civ 387, another decision relied upon by the Trust. In *Gregg* the defendant trust brought disciplinary proceedings against the claimant, who was employed by the trust as a consultant anaesthetist, following the deaths of two patients. A police investigation was also commenced.
57. One of the principal questions considered by the Court of Appeal in *Gregg* was whether the defendant was in breach of its duty of trust and confidence in pursuing its disciplinary proceedings against the claimant while the police investigation was

ongoing. In *Gregg*, Coulson LJ commenced his consideration of this question at [100] as follows:

“100. There is no issue that it is quite legitimate for a doctor to face parallel proceedings instigated by his employer, on the one hand, and the GMC on the other. That was found to be unobjectionable in *Chakrabarty v Ipswich Hospital NHS Trust* [2014] Med LR 379. Does it make a difference if the parallel investigations/proceedings are criminal?”

58. Mr Coppel submitted that *Gregg* provided no support to the Trust’s position, being concerned with the continuation of disciplinary proceedings while there were ongoing criminal proceedings. What matters most, he submitted, is whether one process preceding the other would give rise to a real danger of a miscarriage of justice (in the case of criminal proceedings) or an unfair process (in the case of civil proceedings): *Gregg* at [121]. That will depend, Mr Coppel submitted, on the coincidence of issue in the two legal processes: see *Gregg* at [130]-[131].
59. Mr Coppel rejected the Trust’s criticism that Mr Rayner was inviting the court to “micro-manage” its disciplinary process. He submitted that Mr Rayner was asking the court to restrain the disciplinary hearing from taking place. That is a macro decision. Cases where the court has deprecated micro-management of an employer’s disciplinary process, such as *Makhdum v Norfolk & Suffolk NHS Foundation Trust* [2012] EWHC 4015 (QB) at [58] and *Al-Mishlab v Milton Keynes Hospitals NHS Foundation Trust* [2015] EWHC 3096 (QB), were therefore of no assistance to the Trust.
60. For the Trust, Mr Sutton submitted that in light of the UKCP’s position as outlined in the email message dated 24 November 2020 from Ms Newton to Mr Christodoulides, the relevant passages from which I have set out at [42] above, this application is unsustainable. The continuation of the relief granted by the Fraser J Order would result in a stalemate. The Trust would not be able to continue with its disciplinary proceedings while the UKCP has clearly indicated that it does not intend to take further action until the Trust’s disciplinary proceedings are concluded.
61. Mr Sutton submitted that Mr Rayner has been aware of the UKCP’s position in this regard since receiving the UKCP’s email message dated 3 September 2019 (see [20] above) and yet failed to draw that email message to the attention of Fraser J in compliance with his duty of full and frank disclosure.
62. Mr Sutton notes that Ms Newton sent a further email message to Mr Christodoulides on 26 November 2020 in which she said, among other things:

“UKCP has every confidence in [the Trust] and its procedures. We fully support them in completing their process and we urge you to allow them to complete it.”
63. Mr Sutton submitted that the DPP is a collectively drafted document, with input from the Trust’s recognised trade unions, and represents an agreed process for dealing with disciplinary matters relating to the Trust’s employees. It is clear under the DPP that

the Trust is not precluded from carrying out its own investigation and taking action in the event that a disciplinary matter is referred to a regulator such as the UKCP.

64. Mr Sutton noted that Part 4 of the UKCP Complaints Process contemplates the interrelationship between proceedings under the UKCP Complaints Process and proceedings before other bodies. Paragraphs 4.2 to 4.4 are of particular relevance:

“4.2 Where a Registrant is subject to complaints/disciplinary proceedings related to their practice by another organisation/regulator/employer or subject to legal action, consideration of a complaint under this Complaints and Conduct Process may be suspended by the Case Manager until those other proceedings have been completed by the relevant organisation, regulator, employer, or the courts.

4.3 In the instance that the same complaint is lodged with UKCP and another organisation/regulator/employer, the Case Manager will liaise with the relevant organisation/regulator/employer when considering suspending the Complaints and Conduct Process until those other proceedings have been completed by the relevant organisation, regulator or employer.

4.4 When deciding whether to suspend consideration of the complaint, the Case Manager must weigh the interests of any Complainant, the Registrant and the wider public before deciding whether it is appropriate to do so. The Case Manager can review this decision at any time and give reasonable notice to the Registrant that consideration of the complainant is resuming.”

65. In other words, Mr Sutton noted, the UKCP Case Manager can suspend consideration of a complaint pending the outcome of an employer’s disciplinary proceedings relating to the same matter. That is what happened in this case, as confirmed by the email message of the Case Manager, Ms Newton, to Mr Christodoulides on 3 September 2019. That is in accordance with the UKCP’s normal practice, as confirmed by Ms Newton in her message of 24 November 2020 to Mr Christodoulides.
66. Mr Sutton referred me to *Bristol City Council v Deadman* [2007] EWCA Civ 822, [2007] IRLR 888 (CA) at [17] where Moore-Bick LJ observed that where an employer has published and implemented with the concurrence of the employees’ representatives formal procedures providing for the manner in which complaints are to be investigated, it will usually become a term of the contract of employment that those procedures will be followed unless and until withdrawn by agreement. That is relevant to this case, the DPP applying to disciplinary action in relation to MK’s complaint against Mr Rayner pursuant to the Employment Contract.
67. Mr Sutton noted that the interrelationship between an employer’s disciplinary proceedings and a professional body’s regulatory proceedings has been specifically

considered by the courts in cases where the relevant professional body was the General Medical Council (GMC), the regulator for medical practitioners. He referred to the cases of *Chakrabarty* and *Gregg*, which I have already mentioned in my summary of Mr Coppel's submissions. The principles set out in those cases were clearly not limited to cases involving the GMC. Mr Sutton also referred to the deprecation of a court's micro-management of an employer's disciplinary proceedings in various cases, including *Makhdam* at [52], [53] and [58] and in *Al-Mishlab* at [18]-[19].

68. Mr Sutton submitted that the Trust is not merely entitled but is, in fact, required to conduct disciplinary proceedings in relation to MK's complaint in accordance with the DPP. The DPP affords Mr Rayner a full and proper opportunity to respond to the allegations. Furthermore, it is expressly agreed in the DPP that a referral to a regulator does not preclude a disciplinary hearing under the DPP. Paragraph 14.1 of the DPP makes it clear that:

“... [i]f a referral to a regulator is appropriate, it is usual that it will be made only following conclusion of the disciplinary process. However, where allegations of [a] serious nature and/or misconduct are made[,] consideration of earlier referral to a professional may be considered.”

69. Mr Sutton referred to Ms Thompson's witness statement at paragraph 8, where, after referring to section 14 of the DPP, she said:

“The normal process is that [referral to an employee's 'professional body, i.e. their regulator'] will follow on after the conclusion of the disciplinary process because the regulator will be better able to assess at that point whether or not there is an issue with the individual's fitness to practise in their chosen profession. However, where concerns of a particularly serious nature have been raised, consideration may be given to an earlier referral.”

70. Mr Sutton noted that the Trust's view and the UKCP's view as regards normal practice and the relative order in which an employer's disciplinary proceedings and the UKCP's proceedings under the UKCP Complaints Process typically occur, and should occur in this case, are consistent.

71. Mr Sutton noted that Mr Rayner appeared to have abandoned his argument, set out in paragraph 17 of the Particulars of Claim, that it was an implied term of the Employment Contract that the Trust:

“... would, in deciding whether the Claimant had adhered to professional boundaries and the standards of professional conduct expected by the UKCP, be guided by any relevant evaluation by the UKCP.”

This argument was not mentioned in Mr Rayner's skeleton argument nor was it raised during submissions at the hearing.

72. Mr Sutton submitted that there was no basis for the suggestion that the Trust should, in essence, outsource or delegate part of its disciplinary process to the UKCP. The Trust would not be a party to proceedings under the UKCP Complaints Process. More fundamentally, the Trust's disciplinary proceedings under the DPP and the UKCP's proceedings under the UKCP Complaints Process have different purposes. The Trust's disciplinary proceedings under the DPP are concerned with the application of the Trust's own agreed disciplinary standards and deciding whether the relevant employee has breached those standards by his or her conduct such as to forfeit trust and confidence in the employment relationship. The UKCP's proceedings under the UKCP Complaints Process are concerned with determining whether a registered member has breached the UKCP Code and, if so, whether that calls into question his or her fitness to practise.
73. Turning, then, to the elements of the *American Cyanamid* test, Mr Sutton submitted that Mr Rayner has not shown that there is a serious issue to be tried. Requiring Mr Rayner to attend a disciplinary hearing at which he will be given a full and proper opportunity to respond to the allegations against him is incapable of amounting to a breach of the implied term of trust and confidence. It cannot properly be argued that such a requirement, in accordance with the collectively agreed set of disciplinary procedures set out in the DPP, amounts to conduct on the part of the Trust that, without proper and reasonable cause, is calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties, which is the test for determining whether a breach of the implied term has occurred, as set out, for example, in *Mahmud v Bank of Credit and Commerce International SA* [1998] AC 20 (HL) at 53 (per Lord Steyn).
74. Finally, as to the balance of convenience, Mr Sutton submitted that the balance of convenience firmly favours permitting the Trust to hold its disciplinary hearing. Mr Rayner has known of the allegations to be considered at the disciplinary hearing since 7 August 2020 but delayed until 16 November 2020 in making his application for interim injunctive relief. Further, and crucially, the UKCP has put its own regulatory process on hold pending the outcome of the Trust's disciplinary proceedings and told Mr Rayner as much as long ago as 3 September 2019. There is, accordingly, no purpose to be served, Mr Sutton submitted, in granting the continuation of the interim injunctive relief that Mr Rayner obtained from Fraser J on 17 November 2019.

Discussion and analysis

75. I start by noting that there is no contractual bar to the Trust's holding a disciplinary hearing prior to a determination by an Adjudication Panel under the UKCP Complaints Process in respect of MK's allegations. Section 14 of the DPP makes it clear that disciplinary proceedings may precede even a referral to a regulator, much less the conclusion of a regulator's consideration of that referral. There is evidence from Ms Thompson that this is, in fact, the normal practice of the Trust. That position is consistent with the UKCP's position, as set out in Ms Newton's correspondence with Mr Rayner's solicitors, where Ms Newton indicated that it is normal practice for the UKCP to await the outcome of a registered member's employer's disciplinary process against the member before conducting proceedings against that member under the UKCP Complaints Process.

76. I note that paragraph 17 of the Particulars of Claim reads in full as follows:
- “17. Further, it is an implied term of the [Employment] Contract that:
- (a) the Claimant must in his employment by the Defendant adhere to professional boundaries and the standards of professional conduct expected by the professional body governing psychotherapy, namely the UKCP; and
- (b) ... the Defendant would, in deciding whether the Claimant had adhered to professional boundaries and the standards of professional conduct expected by the UKCP, be guided by any relevant evaluation by the UKCP.”
77. As the argument was not explicitly raised at the hearing, it appears that Mr Rayner has abandoned it, at least in relation to (b), which, of course, is the essential part of paragraph 17 of the Particulars of Claim for the purposes of the interim injunctive relief that he seeks to continue. In case he has not abandoned it, however, I address the point.
78. It is arguable that it is an implied term of the employment contract of a medical professional that he or she will adhere to the standards of professional conduct of his or her professional body, to the extent that they are relevant to his or her employment. It does not, however, in my view follow from this that the employer will, in deciding whether the employee has adhered to professional boundaries and/or observed standards of professional conduct, defer to or otherwise be bound by the professional body’s determination as to whether the employee has so adhered and/or observed. For one thing, the professional body may not make such a determination, and it cannot be forced to make the determination simply because the employer has instigated its own disciplinary process. As to whether the employer is bound to be “guided by” any relevant evaluation of the professional body, this amounts, in my view, to no more than saying that it would be irrational for the employer not to have regard to the professional body’s determination if it is available when the employer is making its own determination during the course of its own disciplinary process.
79. Mr Rayner has put forward no authority to support the proposition that the implied term alleged in paragraph 17(b) of the Particulars of Claim is some form of default rule, comparable to the implied mutual duty of trust and confidence, brought into operation due to the nature of the Employment Contract. Nor can it be said, in my view, that it is an implied term in the sense that it sets out what the Employment Contract must mean on that point when the Employment Contract is read in the light of its purpose and the admissible background.
80. In this case, therefore, there is no contractual basis for asserting that the Trust is obliged to await the outcome of the UKCP’s determination as to whether Mr Rayner has breached the UKCP Code in relation to his conduct towards MK before the Trust determines whether Mr Rayner has failed to observe safe professional boundaries in his dealings with MK as required by the terms of his employment.

81. I note that Simler J reached a similar conclusion on the contractual position in *Chakrabarty*, but obviously that will have turned on the specific contractual arrangements in that case and so, as to the contractual position, is of limited assistance for this application.
82. More relevantly, Simler J found in *Chakrabarty* that there was no legal bar to the defendant hospital's carrying on with its disciplinary proceedings notwithstanding that there were parallel proceedings brought by the claimant's professional regulator, the GMC, before the MPTS. That position was summarised and approved by Coulson LJ in *Gregg* at [100], as noted at [57] above. Coulson LJ's statement in the first sentence of [100] is unqualified. *Chakrabarty* is given as an example.
83. Mr Coppel asserts that *Chakrabarty* can be distinguished on the basis that the disciplinary matter concerned the claimant's capability rather than adherence to professional boundaries, which is quintessentially a question for the professional regulator. There is no such qualification to the principle by Coulson LJ in *Gregg* at [100], but I accept that the Court of Appeal in *Gregg* was considering a question of incompetence or negligence of the claimant, not a question as to adherence to professional boundaries with a patient. In *Gregg* the context was also different as the relevant parallel proceedings were criminal proceedings, giving rise to different considerations. So, consideration of *Gregg* takes the matter only so far.
84. In my view, Mr Rayner has failed to establish any properly arguable legal basis for his assertion that the Trust is *bound* to defer to the judgment of the UKCP on the question of whether his conduct towards MK breached safe professional boundaries and therefore is *bound* to await the outcome of the UKCP's own proceedings on the complaint initially referred to it by the Trust on 16 August 2019 and self-referred by Mr Rayner on 16 November 2020.
85. It seems to me that, at the highest, it can be argued that if, by the time of the Trust's disciplinary hearing, the UKCP had made a determination as to whether Mr Rayner had breached the UKCP Code in his conduct towards MK as alleged, then the Trust would be bound to consider that determination as relevant to its own consideration of the matter. That falls a long way of short of requiring that the Trust await the outcome of the determination of the matter by a UKCP Adjudication Panel before it can conduct its own disciplinary hearing in relation to the 13 allegations set out in the Investigation Report in respect of which Mr McCarron found that Mr Rayner has a case to answer.
86. I turn, therefore, to the key question, namely, whether there is a serious issue to be tried as to whether the Trust's failure to await the outcome of a UKCP Adjudication Panel's determination on the referral of MK's allegation was a breach of its duty of trust and confidence to Mr Rayner. In *Mahmud*, Lord Steyn said at 53:
- “Earlier, I drew attention to the fact that the implied mutual obligation of trust and confidence applies only where there is ‘no reasonable and proper cause’ for the employer’s conduct, and then only if the conduct is calculated to destroy or *seriously* damage the relationship of trust and confidence. That circumscribes the potential reach and scope of the implied obligation.” (emphasis in original)

87. In *Gogay v Hertfordshire County Council* [2000] IRLR 703 (CA) at [55] Hale LJ emphasised the severity of the test set out by Lord Steyn in *Mahmud*. In *Gregg* at [99], Coulson LJ approved the approach of Andrews J in *Stevens v University of Birmingham* [2017] ICR 96 of dividing the issues in two. Doing so by reference to the test as set out in *Mahmud*, the relevant issues are:
- i) whether the employer's conduct is calculated to destroy or seriously damage the relationship of trust and confidence; and
 - ii) if so, whether there was a reasonable and proper cause for their conduct.
88. Applying the test in this way to this case, it is clear that there is no serious issue to be tried as to whether the Trust's decision to hold the disciplinary hearing without awaiting the UKCP Adjudication Panel's decision on the referral of the MK allegations is *calculated* to destroy or seriously damage the relationship of trust and confidence. The Trust is simply seeking to operate its collectively approved DPP, which forms part of the Employment Contract with Mr Rayner. *A fortiori* it is not acting in a manner *calculated* to destroy or seriously damage the relationship of trust and confidence, especially in circumstances where the UKCP has positively indicated that it expects the Trust to hold its disciplinary hearing and complete its disciplinary process before the UKCP operates its own UKCP Complaints Process in respect of the same allegations.
89. There is also no serious issue to be tried that the Trust has no reasonable and proper cause for its conduct. It is seeking simply to operate its own collectively approved and contractually agreed disciplinary proceedings in relation to its own employee, Mr Rayner. Its conduct is clearly reasonable and proper.
90. That conclusion is reinforced, in my view, by the fact that the purpose of the Trust's disciplinary proceedings under the DPP is different from the purpose of the UKCP's proceedings under the UKCP Complaints Process. The Trust is concerned with the application of its own disciplinary standards and, by a fair, collectively approved process, which provides important safeguards to the employee including a right of appeal, seeks to uphold those standards. The UKCP is concerned with ensuring that registered members adhere to the UKCP Code and are fit to practise.
91. The case of *Smo*, relied on by Mr Rayner, can be distinguished, as the case was not concerned with parallel proceedings between a regulated and professional and his or her employer, on the one hand, and the regulated professional and his or her professional body, on the other hand. In *Smo*, the defendant employer, in addition to conducting formal disciplinary proceedings under an agreed disciplinary procedure against the claimant, was seeking to instigate a separate *ad hoc* process against the claimant on what was, in effect, a disciplinary matter.
92. Contrary to Mr Coppel's submission, I do think that if the court were to say that, *Chakrabarty* notwithstanding, on this specific issue of adherence to safe professional boundaries, the Trust is required to outsource the determination of that question to the UKCP, then the court would be guilty of the sort of micro-management of an employer's disciplinary process that is deprecated in *Makhdum*, *Al-Mishlab* and other cases. The Trust has a legitimate interest in having full control over and in carrying out its own disciplinary process to a proper conclusion.

93. Mr Coppel's argument that it is necessary for the Trust to defer to the UKCP because the Trust has no documents of its own setting out its conception of professional boundaries or professional conduct for those practising psychotherapy is, in my view, a weak one. The Trust is clearly able to call on extensive internal expertise and experience in the professional provision of psychotherapy to patients. It will clearly be able to form a rational judgment on the conduct of Mr Rayner in relation to MK. It is, of course, possible that the Trust may reach a different conclusion from the UKCP on whether Mr Rayner has observed proper and safe professional boundaries with MK, but, as I have already noted, it is doing so in the context of its relationship with Mr Rayner as an employee, and whether he has adhered to the Trust's professional standards, and not with a view to determining whether Mr Rayner has breached the UKCP Code or is generally fit to practise as a psychotherapist. For the reasons I have already given, the Trust is not *bound* to come to the same conclusion as the UKCP in any event.
94. Also, I note that the UKCP Code does not, in fact, provide much in the way of articulation of what amounts to maintaining proper and safe professional boundaries. In any event, the UKCP Code is available for the Trust to consider and for Mr Rayner to make submissions on, if he wishes to. I have not been pointed to any UKCP document that articulates in detail what amounts to maintaining proper and safe professional boundaries.
95. It seems that it is not the lack of detailed documented standards of professional conduct that Mr Rayner is really concerned with, but rather who will be making the assessment. I can understand that he may perceive that there will be a more sympathetic, more realistic and/or more nuanced assessment of his conduct by an Adjudication Panel convened by the UKCP than by the Trust at a disciplinary hearing under the DPP. That alone is, self-evidently, not a sufficient basis for the court's ordering a stay of the Trust's disciplinary hearing until the UKCP has completed its assessment of the allegations relating to MK.
96. Given that there is no serious issue to be tried, it would not be just and convenient for the court to continue the interim injunctive relief in the Fraser J Order. In light of that conclusion, there is no need to consider adequacy of damages for Mr Rayner or the balance of convenience.
97. Although it is not, strictly speaking, necessary to address Mr Rayner's motivation for seeking the Fraser J Order when he did, I note that neither in his evidence nor in Mr Coppel's submissions was there an adequate explanation of why Mr Rayner chose to seek interim injunctive relief at a late stage in November 2020, when the disciplinary hearing had already been set and postponed twice, and he had known since 3 September 2019 that the UKCP was intending to await the outcome of the Trust's disciplinary process before acting on the Trust's referral on 16 August 2019 of the MK allegations.
98. Whether there was a breach of Mr Rayner's duty of full and frank disclosure in failing to draw Fraser J's attention to Ms Newton's email of 3 September 2019 to Mr Christodoulides is now an academic point.

Conclusion

99. Mr Rayner's application to continue the interim injunctive relief granted in the Fraser J Order is refused. That order will be discharged.