[2020] JMCC. COMM. 37

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. SU2020CD00519

BETWEEN	**COLANDO HUTCHINSON**	**CLAIMANT**
AND	**REZWORTH BURCHENSON**	**1ST DEFENDANT**
AND	**COURTNEY CAMPBELL**	**2ND DEFENDANT**
AND	**VICTORIA MUTUAL WEALTH MANAGEMENT LIMITED**	**3RD DEFENDANT**
AND	**VICTORIA MUTUAL BUILDING SOCIETY**	**4TH DEFENDANT**

IN CHAMBERS

Mr Conrad George and Mr Andre Sheckleford instructed by Hart Muirhead Fatta, Attorneys-at-Law for the Claimant

Ms Symone Mayhew QC instructed by Mayhew Law, Attorneys-at-Law for the 1st – 4th Defendants

Heard: 22nd and 23rd December 2020.

Injunction – Principles to be applied – Whether special considerations apply when the practical effect of the injunction is to restrain disciplinary proceedings against an employee

LAING, J

The Claim

[1] The Claimant, is the Deputy Chief Executive Officer of the 3rd Defendant ("VMWM"), a position he has occupied since 1st January 2019. He was first employed on 19th July 2010. VMWM is a subsidiary of the 4th Defendant ("VMBS") Both companies are a part of a group of companies which will be referred to herein as ("the VM Group"). The 1st Defendant is the Chief Executive Officer of WMWM, and the 2nd Defendant is the President and Chief Executive Officer of VMBS.

[2] The Claimant, has filed a Claim Form and Particulars of Claim on 16th December 2020 and the Particulars of Claim was amended on 21st December 2020 ("the Claim"). The Amended Particulars of Claim, seeks an injunction:

> *".. restraining the 3rd Defendant whether by itself, through its agents or otherwise howsoever from taking or causing or permitting to be taken to be taken (sic) on its behalf any adverse steps against the Claimant in connection with employment by the 3rd Defendant, including terminating its contract of employment with the Claimant, for any reason connected with the purported charge letters from the 3rd and/or 4th Defendant dated 25th and 27th November 2020 ("the Purported Charge Letters")"*

[3] The Claimant has also claimed damages against the Defendants together, or against various combinations of them, sometimes in the alternative, for breach of the express terms of his contract of employment, breach of the implied term of trust and confidence, conspiracy and invasion of privacy.

The background to the application

[4] The Claimant received two letters, one dated 25th November 2020 and the other dated 27th November 2020, (together the "Charge Letters"). The letter dated 25th November 2020 was signed by Laraine Harrison, Group Chief Human Resources Officer, and it raised allegations that the Claimant was in breach of the VM Group's Code of Business Ethics and Conduct Policy, clause 6.04 Conflict of Interest, the 2nd and 3rd paragraphs of which are in the following terms:

> *"Covered persons should where possible avoid personal activities or interest that conflict with their direct responsibilities to the VM Group.*

Covered persons must not seek gain for themselves or others through misuse of their positions. Circumstances that could give rise to a potential conflict of interest must be disclosed in writing to a manager".

"Conflicts of interest may not always be clear cut, so if there is doubt, there should be consultation with the Senior Vice President, Vice President, Manager or if circumstances warrant, the Chief Financial Officer or Senior Vice President, Group Compliance, Legal Services and Corporate Secretary of the VM group. Any Covered Persons who become aware of a conflict or potential conflict should bring it to the attention of one of the afore-mentioned Officers".

[5] The 25th November 2020 letter alleged that the conflict existed since February 2018 and was not declared in writing to any of the aforementioned officers as required. It was asserted that this breach constitutes a basis for disciplinary action. The Claimant was advised that he will be required to attend a disciplinary hearing on Wednesday 2nd December 2020 at 10:00 a.m. or Thursday, 3rd December 2020 at 10 a.m., based on his preferred date, in the large training room at VMBS, 73-75 Half Way Tree Road, Kingston 10, to answer allegations which were:

a. failure to bring a potential conflict of interest to the attention of officers of VMBS;

b. failing to report a matter which the claimant has a duty to make in any book or document;

c. falsifying company documents/records or giving false information for the company's personnel files or reports.

("the Conflict of Interest Allegations").

[6] The Claimant also received a letter dated 27th November 2020 signed by Dayton Robinson, Assistant Vice President-Group Human Resources, referring to a harassment allegation against the Claimant, made to the President and CEO Mr Courtney Campbell ("the Harassment Allegations"). The 27th November letter referenced a report prepared by an investigator. It was asserted that the alleged acts were in breach of the VM Group's Disciplinary Code and the VM Groups Code of Business Ethics and Conduct Policy. It quoted extracts from both documents and for purposes of this decision I will reproduce only clause 6.10 of VM Groups Code of Business Ethics and Conduct Policy as follows:

6.10 Prevention of Harassment on the Job

The VM Group is committed to providing a work environment totally free of harassment of any kind. The VM Group will not tolerate any harassment of its Covered Persons and will take steps to investigate and take the appropriate action in keeping with the Disciplinary Code.

Harassment can result from a broad range of actions, which might include, but are not limited to the following:

- *Offensive remarks.*
- *Display of or sending to another, obscene or offensive materials.*
- *Unwanted conduct of a sexual nature, or order conduct.*
- *Affecting the dignity of women and men at the workplace.*

Covered Persons are responsible for assisting in the prevention of harassment through the following:

- *Refraining from participation in or encouragement of actions that constitute harassment.*
- *Reporting acts of harassment to their manager or encouraging Covered Person who confides in you to make a report to his manager.*

Harassment may be subtle, manipulative and may not always fit into a legal definition. Harassment is often noted in power and may mask itself as flirtation, friendliness or even teasing.

Regardless of the actual relationship, the harasser, through his/her behaviour, often assumes a superior stance over the victim. The VM Group views the matter of harassment very seriously. All such matters will be immediately investigated and resolved in a thorough but private manner. Any Covered Person found to have engaged in harassing behaviour would be subject to action up to and including termination, in accordance with the Disciplinary Code.

The application

[7] By Notice of Application filed on 16th December 2020 ("the Application"), the Claimant has sought an order for:

> *"an injunction until trial or sooner order restraining the Third Defendant whether by itself, through its agents or otherwise howsoever from taking or causing or permitting to be taken to be taken (sic) on its behalf any adverse*

steps against the Claimant in connection with employment by the Third Defendant, including terminating its contract of employment with the Claimant, for any reason connected with the purported charge letters from the Third and or/or Fourth Defendant dated 25th and 27th November 2020 ("the Purported Charge Letters")".

[8] Some of the grounds on which the Claimant is seeking this order are as follows:

(i) There are serious issues to be tried in that:

(a) there is a breach of express contractual terms which form a part of the contract between the Third Defendant and the Claimant, in that the Third Defendant is embarking on disciplinary procedures in contravention of the Third Defendants disciplinary handbook ("the Disciplinary Policy") which forms a part of his contract of employment;

(b) the Third and Fourth Defendants are acting contrary to the implied contractual duty of mutual trust and confidence, and therefore in breach of the Claimant's contractual rights in that:

i. untenable, vague and imprecise charges have been laid against the Claimant by the Third and Fourth Defendants;

ii. the have been ignored with respect to the Claimant and the relevant disciplinary procedures contained in the Disciplinary Policy purported charges contained in the Purported Charge Letters;

iii. the Third and Fourth Defendants, through its officers have urged the Claimant to resign from his post in light of the purported charges against him.

(c) The First, Second and Fourth Defendants have been and are conspiring to prejudice the Claimant in his contract of employment and have procured breaches of contract by the Third Defendant;

(d) they Defendants have been and are conspiring to cause injury to the Claimant and have caused injury to the Claimant;

[9] In his affidavit sworn on 16th December 2020, the Claimant avers that the Conflict of Interest Allegations arise from the existence of a personal relationship since February 2018 between Ms L, an employee in the sales unit of VMWM and himself.

[10] The Claimant averred that on 22nd October 2020 he had a brief discussion with the 1st Defendant in relation to the pregnancy of Ms. L. He further averred that on 30th October 2020 the 2nd Defendant asked him to meet at his office and at that meeting the 2nd Defendant indicated, *inter alia,* that he had received a complaint in respect of the Claimant's conduct and an investigation had been commissioned which was incomplete. The Claimant stated that he was advised that matters concerning Ms. L were in the report. However, the Claimant stated that he was not told of the nature or the specifics of the complaints against him which formed a part of the report, save that there was a sexual harassment complaint and it concerned references to Ms. L.

[11] The Claimant admitted that he spoke to an investigator and the questions were about the nature of his relationship with Ms. L. The Claimant said that he did not answer any of these questions substantively.

[12] The Claimant further stated that on 6th November 2020 he met with the 2nd Defendant in his office and the 2nd Defendant indicated that he had received the final report. The Claimant was advised that certain matters were included in the report including complaints of sexual harassment, however the Claimant asserted that no particulars of any of the allegations were raised. The 2nd Defendant indicated that he would arrange with the human resources section in respect of the next steps to be taken.

[13] The Claimant also averred that on 14th November 2020, Dr Dayton Robinson urged him to resign and to accept a settlement thereby avoiding a hearing of the allegations against him.

The relevant law

[14] In determining the circumstances in which an interlocutory or interim injunction ought to be granted, our Courts have consistently been guided by the principles laid down in **American Cyanamid v Ethicon** [1975] 1 All ER 504 which can conveniently be reduced to three main considerations, which in summary are:

a. Is there a serious issue to be tried?

b. Would damages be an adequate remedy?

c. Does the balance of convenience favour the granting of an injunction?

A. Is there a serious issue to be tried?

[15] As Lord Diplock stated in **American Cyanamid** at page 510 C, "*the court must no doubt be satisfied that the claim is not frivolous or vexatious; in other words that there is a serious question to be tried.*" At page 510 D he stated as follows:

> *"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."*

[16] The Claimant has asserted that the conduct of the 3rd Defendant amounts to a breach of contract and other causes of action. It is not contested that the VM Group has an employee disciplinary policy ("the Disciplinary Policy") which governs disciplinary proceedings within the group of companies. The Disciplinary Policy is incorporated into the contract of employment of every employee of VMWM. Clause 5 of the Disciplinary Policy provides as follows:

> *"5.01 Where an apparent violation has occurred or been reported a meeting shall be held with the employee to discuss the issue(s) and to determine what, if any action is to be taken. The employee will be advised of the meeting in writing and the alleged violation stated. The meeting shall include the Supervisor/Manager and the employee. The employee has the*

> *option to be accompanied by a Union Delegate or a representative of his/her choice.*
>
> *5.02 The disciplinary action shall be in accordance with the Disciplinary Policy, Procedure and Scheduled, guided by the Labour Relations Code.*
>
> *5.03 Supervisors/Managers are authorized to apply sanctions for offenses which warrant oral or written warnings. Written warnings shall be done with the Group Human Resources Manager."*

[17] One of the complaints of the Claimant on which he hinges his attack on the integrity of the disciplinary process, is that no meeting took place between himself and the 1st Defendant his immediate supervisor as required under the Disciplinary Policy. Instead, senior managers from VMBS wrote and summoned the Claimant to disciplinary hearings under clause 6 of the Disciplinary Policy.

[18] Ms Mayhew has suggested that as Mr Robinson explained in his affidavit, the meetings with the 2nd Defendant to which the Claimant referred, were not intended to be the "disciplinary inquiry" as contemplated by the policy but were preliminary meetings in the process prior to the referral of the matter for the formal disciplinary inquiry to be convened. Counsel submitted that the Defendants were attempting to determine whether there were any options available which could mitigate the effects of an adverse finding against the Claimant if a disciplinary hearing was held, in an effort to save his career. For example, by altering the reporting structure in which Ms L was currently placed, in order to remove the conflict. Counsel argued that the meetings scheduled for 15th December 2020 and 22nd December 2020 were intended to be the actual disciplinary inquiry as required by clause 5.01 of the Disciplinary Policy.

Was a preliminary meeting required by the Disciplinary Policy?

[19] Clause 6 of the Disciplinary Policy provides as follows:

> ***6.00 Disciplinary Action***
>
> *6.01 Disciplinary procedure must be initiated within twenty-eight (28) days of an offence being reported.*

> *6.02 Disciplinary action should generally be in accordance with the sanctions detailed in the Disciplinary Schedule Code, which is attached.*
>
> *6.03 The Supervisor or the Manager shall consult with a Manager-Group Human Resources to determine the sanction to be applied and the procedure to be followed.*
>
> *6.04 The written history of the employee's conduct may be considered in arriving at a decision.*
>
> *6.06 Except in cases of summary dismissal, the employee shall be advised orally of the reason for the disciplinary action and the sanction to be imposed before the letter is issued.*
>
> *6.06 Disciplinary action should not be taking against a Union Delegate until the matter is disclosed to/discussed with a full-time Officer of the union concerned.*

[20] It was submitted by Mr George that the Disciplinary Policy contemplates two separate hearings. The first being a disciplinary inquiry in the form of a meeting, pursuant to clause 5.01 of the Disciplinary Policy. The second is a disciplinary hearing, which although not specifically referred to in the Disciplinary Policy, is pursuant to the Labour Relations Code, which has been incorporated into the Claimant's contract of employment by virtue of clause 5.02 of the Disciplinary Policy. Mr George argued that "a meeting" is distinct from "a disciplinary hearing" and thus clause 5 of the Disciplinary Policy cannot be interpreted to be a reference to a "hearing".

[21] On the contrary, it has been submitted by Ms Mayhew on behalf of the Defendants that only one hearing is contemplated and that is under clause 5 of the policy. Ms Mayhew referred to regulation 22 of The Labour Relations Code which is in the following terms:

> *22. Disciplinary Procedure*
>
> *(i) Disciplinary procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should-*

> *(a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
>
> *(b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
>
> *(c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
>
> *(d) provide for a right of appeal, wherever practicable to a level of management not previously involved;*
>
> *(e) be simple and rapid in operation…..*

Counsel submitted that the important consideration was whether the disciplinary hearing complied with the requirements for a disciplinary procedure pursuant to the provisions of the Labour Relations Code and not whether it was classified as a "meeting", as in this case under clause 5.0. Ms Mayhew conceded that the use of the word "meeting" in clause 5.0 was not the most appropriate term.

Conclusion on whether there is a two-stage process

[22] It is noteworthy that clause 5.00 is entitled "Disciplinary Inquiry". Clause 5.02 provides that the disciplinary action shall be in accordance with the Disciplinary Policy, Procedure and Schedule, guided by the Labour Relations Code. Clause 5.03 authorises Supervisors/Managers to apply sanctions for offenses which warrant oral or written warnings, with the additional requirement that written warnings shall be done in consultation with the Group Human Resources Manager.

[23] The language of clause 5.01 and the use of the term "meeting" is arguably not as precise as it should be if what is contemplated is a disciplinary hearing. Clauses 5.02 and 5.03 clearly indicate that it is contemplated that the "meeting" with the employee may result in disciplinary action and sanctions including oral or written warnings. Clause 6 does not make express provision for a separate disciplinary hearing. However, the Defendants appear to have construed "*a meeting*" to mean "*a disciplinary hearing*" because the Charge Letters and other correspondence

refer only to a "*disciplinary hearing*" which is a term that is not defined in the Disciplinary Policy.

[24] It is therefore not patently clear on reading the Disciplinary Policy whether it contemplates a two-stage process with a meeting followed by a formal disciplinary hearing as Mr George has submitted. I am of the opinion that this is a difficult legal issue which deserves more mature argument and analysis. Consequently, it is not suitable for a final determination within the context of this Application. In the circumstances, I am prepared to find that on a proper construction of the Disciplinary Policy, it may require a meeting to be held as a precursor to a formal disciplinary hearing, which will involve the cross examination of witnesses and the other processes that are usual in such hearings. Accordingly, I find that there is a serious issue to be tried as to whether there is a procedural breach which can amount to a breach of the express or implied terms of the Claimant's contract of employment. I am not prepared to find that this means that there is also a serious issue to be tried in respect of conspiracy or invasion of privacy.

Possible breach of natural justice principles - proceeding with the hearing in the absence of the Claimant and his Counsel

Events since the filing of the Claim

[25] The Court has been presented with evidence of a number of emails including one dated 30th November 2020 from Mr George to Larraine Harrison indicating that he had received an email from his client requiring him to attend a hearing on Monday 7th December 2020. Mr. George indicated that he had only been able to take preliminary instructions so far as he was in court that week and would not therefore be able to attend a hearing on that Monday. There is a response dated 2nd December 2020 from Larraine Harrison to the Claimant and Mr. George asking them to choose two dates for the hearing from six possible dates in December 2020.

[26] On Wednesday, 9th December 2020 Dr. Dayton Robinson wrote to the Claimant and copied Mr. George and others. The email was in the following terms:

> *"Dear Colando,*
>
> *Good evening.*
>
> *To my email sent to both you and Mr. George re your availability for the proposed dates for the hearings. You were to respond by Monday, December 7, 2020, you have not done so. Accordingly, we have now set the dates for these hearings which you are required to attend. The hearings for the breach of conduct will commence on December 15, 2020 and that for harassment will commence on December 21, 2020.*
>
> *Regards"*

[27] Mr George replied on 14th December 2022 to Dr. Dayton Robinson and indicated that he was unable to attend on the dates specified. Mr. George further stated;

> *In any event, we are currently in the process of issuing proceedings in the Supreme Court, seeking an injunction restraining you from taking any further steps in the disciplinary process, which we are seeking to have heard by a judge as a matter of urgency.*

[28] Mr. Sheckleford has filed an affidavit dated 16th December 2020 in which he gives evidence as to the events of Tuesday, 15th December 2020 and the email response at 5:26 am by Dr Dayton Robinson to the email from Mr George dated 14th December 2020. Dr Robinson stated the following:

> *Dear Mr George*
>
> *I refer to your email of December 14, 2020, and our telephone conversation. We have been more than reasonable in attempting to provide dates for the Hearings to commence.*
>
> *In spite of our written communications and our telephone conversations, Mr. Hutchinson and you have steadfastly declined to confirm any dates. Now in a matter-of-fact way you indicate: "In any event, we are currently in the process of issuing proceedings in the Supreme Court, seeking an injunction restraining you from taking any further steps in the disciplinary process, which we are seeking to have heard by a judge as a matter of urgency". Even though neither Mr. Hutchinson nor you have provided any complaint or reason as to why the Hearings should not be heard.*
>
> *Going to court would undoubtedly catapult this matter in the public domain and we don't understand why this would be in Mr. Hutchinson's interest,*

therefore, we can only regard this threat as an attempt to prevent the legitimate and proper processing of the complaints against Mr. Hutchinson.

We will not be deterred. The Hearings will commence today at 2 pm as per my previous email. Once again, Mr. Gregory Reed is copied on this email.

Regards

Dayton

[29] Mr George's reply by email at 9:25 am was as follows:

Dear Dayton,

Many thanks for your email.

There is no wish to intervene with the proper processes at VMWM, and the decision to issue proveedings (sic) has only been taken after careful evaluation.

We will be asking the Registrat (sic) to treat this as a security file, as we share your desire to keep the matter confidential.

We will be sending you the particulars of claim in draft before issuing proceedings, so that you will be aware of the issues as soon as they are formulated properly. We anticipate that this will be later this morning, or early afternoon.

Mr. Hutchinson cannot be represented at a hearing today, as I have explained to you, as I am not available. We are listed in the Court of Appeal for 1 pm today. For you to proceed in that knowledge, and in circumstances in which you will by then have a draft of his legal complaints about the entire process, would seem at best unreasonable and contrary to the implied contractual duty, which you owe, of mutual trust and confidence.

I shall send the draft by email to keep it confidential, and perhaps you will let me know how it should be served (should it be necessary to do so) to maintain confidentiality at WMWM.

I shall be in touch again later in the morning.

Best regards

Conrad

[30] The evidence of Mr. Sheckleford, is that he was advised by Mr. George that after the Court of Appeal proceedings he ascertained that the disciplinary hearing had

commenced but was advised that he would not be allowed to participate. Mr. George then made several unsuccessful attempts to participate in the hearing.

[31] Mr George has submitted that the failure to allow the Claimant to attend the hearing with counsel of his choice is a breach of the principles of natural justice which are incorporated into the rights of employees as a matter of contract. He indicated that the Claimant and himself made every effort to attend the hearing once they were advised that the company would be proceeding with the hearing. Despite his efforts and the multiple attempts he made for over one hour he was not permitted to participate physically or virtually.

[32] Ms Mayhew countered by arguing that the employer acted very reasonably in trying to fix dates for the hearings which were convenient to the Claimant and his Counsel. There was an offer of nine different dates, to which the Claimant or his Counsel did not respond in a timely fashion. Furthermore, Ms Mayhew argued, it was the duty of the Claimant to attend the hearings and no reason has been given as to why he did not. Counsel submitted that the case of **National Commercial Bank v The Industrial Disputes Tribunal and Peter Jennings** [2016] JMCA Civ 24 demonstrates that there is no absolute right to attend a disciplinary hearing with the Counsel of one's choice and if the issue had to do with the unavailability of his Counsel, the Claimant still had the opportunity to attend the hearing and to state his objection.

[33] In **Jennings** (supra), the Court of appeal concluded that the statement attributed to the IDT that "*the principle of **Audi Alteram Partem** requires the person to be allowed to be accompanied by an attorney-at-law to his disciplinary hearing*" cannot be regarded as completely wrong. I agree with the submissions of Ms Mayhew that the right is not absolute and that the employer/3rd Defendant acted reasonably in trying to fix a date which was convenient to the Claimant and his Counsel. In the absence of reasonable cooperation, commencing the hearing in such circumstances would not have amounted to breach of the principles of natural justice.

[34] I have not been given sufficient credible evidence as to exactly what transpired on 15th December 2020, (much of the evidence being second hand hearsay) and I do not think it would be prudent for me to make a definitive ruling as to whether the events of that particular day amounted to a breach of the principles of natural justice, but I accept that if the assertions of Mr George are proved that he made attempts to participate and he was unreasonably denied participation this could be an irregularity in the proceeding which could amount to a breach of contract.

Whether the allegations can amount to a breach of the Code of Business Ethics and Conduct Policy

(1)The allegation of conflict of interest

Can the relationship with Miss L amount to a conflict of interest?

[35] The Claimant has admitted that he started a relationship with Ms L in February 2018 and at that time she had no reporting obligation to him. He stated that between June and October 2019 she reported directly to the 1st Defendant and that since October 2019 she reports to Ms Tamara Waul-Douglas who officially is to report directly to the Claimant, but the Claimant avers that as a matter of practice, she reports to the 1st Defendant. The Claimant has asserted that the relationship has never been a secret since he and Ms L attended several functions together, work-related and non-work-related and were seen by senior members of management of the 3rd and 4th Defendants. The Claimant also averred that the 2nd Defendant initiated a conversation with him concerning the relationship at the end of a mentorship session in or about March 2019, in which the 2nd Defendant said he had been told of the relationship and urged the Claimant to "*manage it well*". Dr Robinson in his affidavit states that he has been advised by the 2nd Defendant that the Claimant's account of this conversation contains material omissions but that the 2nd Defendant admitted that he told the Claimant that he should remember that he is a married man and he should be careful.

[36] It has been asserted on behalf of the Claimant that the relationship is incapable of amounting to a conflict of interest because the term conflict of interest is defined at clause 6.04 of the Code of Business Ethics & Conduct as:

> *A conflict of interest arises whenever Covered Person or connected party of a Covered Person has an interest in any supplier, customer or competitor of the VM Group. An interest in any entity that has or may have a business relationship with the VM Group can cause a potential conflict of interest and where possible such situations should be avoided.*

[37] Mr George argued that this referred to a commercial conflict and this could not arise on the allegations arising from the relationship with Ms L. In those circumstances it would be unlawful for an employer to proceed or continue a disciplinary hearing and consequently, the circumstances are appropriate for the grant of an injunction. The Claimant has relied on the UK Supreme Court case of **West London Mental Health NHS v Chhabra** [2014]1 All ER 943. In that case a High Court Judge had granted a declaration and injunction to Dr Chhabra, preventing a disciplinary conduct panel investigating certain complaints against her as matters of gross misconduct under the trust's disciplinary policy. The Court of Appeal allowed the appeal from the decision of the Judge and the Supreme Court allowed the appeal against the Court of Appeal's decision. The case concerned the disciplinary procedures for doctors in the UK's National Health Service. The background to the case is lengthy and it is unnecessary for me to rehearse it for our purposes. Crucial to the decision was the finding of the Supreme Court that there had been a number of irregularities, in the proceedings against Dr. Chhabra, four of which were particularised, which cumulatively rendered the convening of the disciplinary conduct panel unlawful as a material breach of her contract of employment. Lord Hodge SCJ, with whom the other law Lords agreed, concluded at paragraph 39 as follows:

> *[39] I am persuaded that the cumulative effect of those irregularities is that it would be unlawful for the Trust to proceed with the disciplinary procedure and that the court should grant relief. 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*** *[2009] EWCA Civ 789 at [22], [2009] IRLR 829 at [22], [2010] ICR 101. 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, Botham v Ministry of Defence*** *[2011] UKSC 58, [2012] 2 All ER 278, [2012] 2 AC 22 and* ***Socieìteì Geìneìrale, London Branch v Geys*** *[2012] UKSC 63 at [73], [2013] 1 All ER 1061 at [73], [2013] 1 AC 523, Lord Wilson.*

[38] It is worth noting that whereas there were concerns about the procedure which the trust followed, at paragraph 40 Lord Hodge acknowledged that he did not think that the second irregularity or the fourth irregularity, if either were the only complaint, would in the circumstances have justified injunctive relief.

[39] It is also noteworthy, that Lord Hodge agreed with the Court of Appeal (at paragraph 33), that there was evidence in the report concerning the conduct of Dr.Chhabra which could amount to serious misconduct and that the appropriate disciplinary conduct panel could properly have been convened on that basis. The case therefore did not turn on the absence of evidence, but rather on the irregularities in the process.

[40] In respect of the Conflict Allegations, Ms Mayhew submitted that one cannot simply look at the narrow definition of 'Conflict of Interest' at clause 6.04 of the Code of Business Ethics & Conduct. Counsel referred the Court to the definition section of the Code which at clause 1.01 provides the following definition:

> *"1.01 CONFLICT OF INTEREST refers to a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the persons self interest and the Institution's interest or the public's interest"*

[41] Ms Mayhew posited that the relationship of the Claimant and Ms. L had to be considered in the context of this definition and the evidence of Dr Robinson. In his affidavit filed 21st December 2020, Dr Robinson explains the basis on which a potential conflict of interest exists and I think it is worth reproducing as follows:

> *15. Their relationship poses a potential conflict of interest as it affects the performance management of the Company. In particular, as Deputy CEO the Claimant is the indirect supervisor of all subordinates. Further, specifically as it relates to Miss. [L], she reports to a manager who reports to the Claimant. As such, the Claimant is likely to be involved in processes and decisions relating to the appraisal and promotion of Ms. [L] and even negotiation of benefits. There is also the possibility of preferential treatment accorded to Ms [L] given the proximity of the reporting relationship, even though indirect. In this regard, it is pertinent for the management to know about any existing personal relationship between the Claimant and his subordinates so that the business can take appropriate measures to remove the reporting relationship, as for example transfer or reassignment of one of the parties to a suitable alternative position in the group to mitigate and or prevent any adverse consequences such as preferential treatment or biases that may arise due to the existence of the personal relationship. It is for these reasons that the Disciplinary Policy requires team members to report matters and that failure to do so may result in disciplinary action.*

[42] Ms Mayhew also posited that the Claimant has acknowledged that the circumstances can amount to a perceived conflict as is reflected in his letter dated 6th November 2020 Exhibit “CH 7” of his affidavit where he stated:

> *6) While I was not consciously aware that this presented a perceived conflict until no, I do believe I have a moral obligation to the organization to set the record straight and hereby declare that I am currently in a personal relationship with Ms.[L].*
>
> *7) I take great pride in separating my personal and work life and my track record demonstrates this despite the perceived conflict.*

Conclusion on whether the Conflict Allegations are sufficient to justify a disciplinary hearing

[43] I accept the submissions of Ms Mayhew that the conflict of interest referred to in the Code of Business Ethics & Conduct is not to be restricted to the narrow definition of clause 6.4 but should include the expanded definition which is present in the definition section at clause 1.01. Applying this broad definition, I find that the Claimant’s relationship with Ms L is potentially more than a perceived conflict and is capable of amounting to an actual conflict of interest for, *inter alia*, the reasons advanced by Dr Robinson and would therefore be a matter which the Claimant ought properly to have disclosed in writing. In such circumstances, the failure to make such a disclosure may amount to a breach of the Code of Business Ethics

& Conduct of which the Claimant has been accused. I have arrived at this finding with full appreciation of the fact that that there is no express policy of the 3rd Defendant which restricts intimate relationships between employees.

[44] The assertion by the Claimant that members of Senior Management might have known of his relationship and have therefore waived their right to make any complaint in respect of it is not an argument which is sufficient to convince me that such knowledge (the extent of which has been disputed), if it existed, would obviate the need for a formal disclosure. I am therefore unable to find that prior knowledge of his relationship and inaction in respect thereto would mean that the alleged breach cannot be established in a disciplinary hearing.

[45] I also find that the Claimant has been provided with sufficient particulars of the allegations against him in respect of the Conflict of Interest Allegations which would permit him to properly meet and respond to those allegations.

(2) Conclusion on whether the Harrassment Allegations are sufficient to justify a disciplinary hearing

[46] The Harassment Allegations against the Claimant are serious and I have no hesitation in finding that they provide a proper basis for there to be a disciplinary hearing. The Claimant has been provided with not only the Charge Letter, but the report was annexed which details the allegations of the complaining employees. Accordingly, the Claimant has been provided with sufficiently detailed and clear information in respect of the allegations against him which will enable him to respond appropriately. I am not of the opinion that details such as the date or dates of the alleged incidents are necessary particulars for the Claimant to have prior to the hearing. The absence of a specific date or dates for example does not hinder the Claimant in the preparation of his defence. He will still have the opportunity to cross-examine his accusers and the absence of such details, if the accusers are not able to present them at the hearing, is a matter which goes to credibility and/ or weight of their evidence. These are matters which lie within the purview of the

tribunal at the hearing. I am impelled to find that there are no procedural irregularities in respect of the Harassment Allegations.

Conclusion as to whether there is a serious issue to be tried

[47] It is necessary at this stage to distinguish between the Conflict of Interest Allegations and the Harassment Allegations. The Court finds that there is a serious issue to be tried in respect of a claim for a breach of contract arising from the issue as to whether there should have been a meeting before the disciplinary hearing into the Conflict of Interest Allegations. Although the hearing into the Harassment Allegations has not yet been held, it does appear that the 3rd Defendant is adopting a similar course and this provides the basis for a similar finding that there is serious issue to be tried in respect of the Harassment Allegations as well.

B. Would damages be an adequate remedy?

The approach to be taken by the Court

[48] When considering the adequacy of the remedy of damages available for either party the Court adopts the following approach. Firstly, the Court considers whether, if the Claimant were to succeed at trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained by the refusal to grant the injunction. If damages would be an adequate remedy and the Defendant is in a financial position to pay them, then the injunction should be refused, regardless of how strong the Claimant's claim may appear to be at that stage.

[49] Secondly, if damages would not provide an adequate remedy for the Claimant in the event of him succeeding at the trial, then the Court should consider whether, if the Defendant were to succeed at trial the loss he suffered as a result of having been restrained by the injunction would be adequately compensated by the Claimant's undertaking as to damages.

Are damages adequate where the injunction is sought to restrain adverse effects of a disciplinary hearing which could result in the termination of the employment of the Claimant

[50] The Claimant has submitted in writing, that damages are not an appropriate remedy in this case because:

1. the Claimant's case is that the 1st and 2nd Defendants are inducing the VMWN through VMBS to terminate its contract with him;
2. these are circumstances in which the VMWM has subsisting trust and confidence in him;
3. the notice period for the Claimant's contract is short.

[51] In his affidavit filed 22nd December 2020 the Claimant averred that he is trained in the financial sector and is a member of a number of professional organizations. He explained that his professional career requires several certifications from different organizations, for example he is required to meet a "fit and proper" status from the Bank of Jamaica ("the BOJ") and the Financial Services Commission ("the FSC"). He asserted that if he is terminated by reference to the charges against him such termination will have a prejudicial and inimical effect on his ability to seek employment equivalent to that which he currently holds. This is because the circumstances of such dismissal will negatively affect his "fit and proper" status for the purposes of the Banking Act and the Financial Institutions Act as well as affecting his relationship with the professional bodies of which he is a member.

[52] The Claimant further posited, that should he be terminated the limit on his damages in a claim of wrongful dismissal would be his remuneration for a time equivalent to the period of his notice which is sixty days. By contrast he would have suffered serious professional damage by reference to such termination and may

be excluded from pursuing his professional field and chosen career path altogether.

[53] The Claimant relies on the case of **Hill v CA Parsons Limited** [1972] Ch 305. In that case Mr Hill, who was 63 years old and due to retire in 2 years after having served the company for 35 years, was given one month's notice of the termination of his contract, along with 37 other employees who had refused a recently introduced requirement to join a specific trade union. The Court of Appeal found that this notice period was invalid and decided that the grant of an injunction was appropriate.

[54] Lord Denning MR at pages 315-316 concluded as follows:

> *In these circumstances, it is of the utmost importance to Mr. Hill and the other 37 that the notices given to them should not be held to terminate their employment. Damages would not be at all an adequate remedy. If ever there was a case where an injunction should be granted against the employers, this is the case. It is quite plain that the employers have done wrong I know that the employers have been under pressure from a powerful trade union. That may explain their conduct, but it does not excuse it. They have purported to terminate Mr. Hill's employment by a notice which is too short by far. They seek to take advantage of their own wrong by asserting that his services were terminated by their own "say-so" at the date selected by them - to the grave prejudice of Mr. Hill. They cannot be allowed to break the law in this way. It is, to my mind, a clear case for an injunction.*

[55] Sachs L.J. at page 316 F to 317 A made the following observation:

> *There is not the slightest suggestion but that he had at all material times the full confidence of his employers in his work: they sought to dismiss him solely because he would not join a trade union referred to as DATA which he sincerely felt he could not conscientiously join for reasons given in his affidavit. Appropriate notice for a man holding such a high grade appointment has been conceded by the defendants to be either three or six months: and on the material so far before us it seems that it could not be less than the latter period. According to uncontradicted evidence a man of his age has in essence no material chances of obtaining fresh employment once he has been dismissed by his regular employer. Damages for wrongful dismissal, however, would at common law be limited to amounts equivalent to such salary and pension rights as are lost to a plaintiff during the further period he would have served if given a valid notice.*

> *The terms of the contract under which he was serving - and those under which he had served for so many years - did not oblige him to join any trade union whatsoever. Accordingly, until the defendants sought to dismiss him for not complying with a non-existent term of his contract he had every prospect of continuing to serve them till he reached the normal retiring age and thus earning increments in salary and pension rights.* ***It follows that, as in so many cases, the damages recoverable under the common law rule are in practice by no means adequate to compensate this particular plaintiff for the loss he would really suffer*** *- a point to which I will return. (emphasis supplied)*

[56] His Lordship continued later at 320 B as follows:

> *At one stage it seemed that a challenge was being offered to the jurisdiction of the courts to grant an order of the nature sought by the plaintiff: but that suggestion was not pursued - it was bound to fail. Thus in essence the defendants' submission became one that in relation to contracts of service the practice that no such order should be made was so settled that it had by now become an inflexible rule of law which brooked no exceptions. In this behalf the previously mentioned general statements of law in a number of judgments were again relied upon - but the same answer applies as in the case of the primary contention that the contract itself could not subsist after the expiry of an unlawfully short notice. On an examination of the authorities the position in my judgment is that stated by Lord Denning M.R.: there is no such inflexibility.*
>
> *It thus becomes relevant first to consider whether an order in the instant case would contravene the main grounds upon which it would be refused in the vast majority of master and servant cases. Foremost amongst the grounds given in Fry on Specific Performance, 6th ed. (1921), p. 50 is that it is wrong to enforce a contract which needs personal confidence as between the parties when such confidence may not exist. Here such confidence does exist. Another ground is that common law damages normally provide an adequate remedy. Here they do not. It is well recognised that such cases can in practice arise as regards contracts of employment - hence the new "compensation" provisions in the Industrial Relations Act 1971, which undoubtedly envisage that account should be taken of factors such as the employee's "legitimate expectations for the future in [his] employment" (see the Report of the Royal Commission on Trades Unions and Employers' Associations 1965-1968, Cmnd. 3623, para. 553). For an instance of recognition that such damages can be inadequate, see the judgment of Jenkins L.J. in the* ***Vine*** *case [1956] 1 Q.B. 658, 676. A further ground is often the difficulty of reinstatement when the plaintiff's post has been filled. That difficulty does not exist here.*

[57] It is clear, that the finding of the Court in **Hill** that damages would not be an adequate remedy was based in part on the facts of the case including the conduct of the employer especially when viewed against the special circumstances of Mr

Hill, such as his length of employment, his age and the closeness of his retirement. I do note the comments of Sachs LJ which I have emphasised in the quote above, that in so many cases, the damages recoverable under the common law rule are in practice by no means adequate. The position of the Claimant in this case cannot reasonably be equated with that of Mr Hill, nor can the challenged conduct of the Defendants (and in particular that of VMWM), be equated with the demonstrably defective notice in **Hill**. If the Claimant in this claim establishes that he has been wrongly accused and /or dismissed, it is difficult to see how such a wrongful accusation and/ or dismissal, if pronounced by the judgement of the Court to be wrong, could be held against him by the BOJ, the FSC or any professional association. The short notice period and consequently the limit placed on the common law damages which the Claimant might be able to recover does not necessarily mean that damages would not be an adequate remedy, but it is a factor which the Court considers. The short notice period, was contractually agreed and I am of the view that the common law damages to which the Claimant would be entitled if successful, would be an adequate remedy for the Claimant in this case. The matter is before the commercial court and in the ordinary course, will be resolved in a reasonable time.

[58] Ms Mayhew has submitted that the Claim is premature as no adverse decision has been taken and the Claimant has not suffered any financial loss. Counsel submitted that the Claimant's remedy if he contends that the charges are untenable is to defend them at the disciplinary hearing to be convened by the company. Furthermore, any adverse decision taken against the Claimant in the disciplinary proceedings may result in an industrial dispute which ought to be settled under the Labour Relations and Industrial Disputes Act (LRIDA).

[59] I do not accept the submissions of Counsel in relation to the timing of the Claim and this Application. The purpose of an injunction in usually to protect the rights of the applicant and shield him from a potential harm. He does not have to wait until he has actually suffered financial loss. I do accept that the Parliament of Jamaica has created a comprehensive statutory regime for the settlement of industrial

disputes. However, it has not completely ousted the jurisdiction of the courts although as recognized in **Village Resorts v The Industrial Disputes Tribunal and Other** (1998), 35 JLR 299, by virtue of the LRIDA the Industrial Disputes Tribunal (IDT) is able to grant remedies to employees which are not available at common law.

[60] The importance of **Hill** (supra) lies partly in its reaffirmation that the Courts are not powerless to prevent an obvious injustice and that there is no inflexible rule that in contracts of employment the Courts will not grant an injunction. **Hill** confirmed that an employee can use the forum of the Court to attack a flawed disciplinary process and to obtain an injunction to prevent the wrongful consequences thereof. However, the English Court of Appeal made it patently clear that although the Courts had the power to do so, it should only be exercised in "*an exceptional case*" and where there was the absence of some good counter argument. The availability of this jurisdiction of the Court is also demonstrated in **Chhabra** (supra).

[61] It is also noteworthy that in the case of **The Jamaica Broadcasting Corporation v The National Workers Union and Collington Campbell** (Court of Appeal), Jamaica, Civil Appeals Nos 14/1981, the Jamaican the Court of Appeal confirmed its acceptance of the principles laid down in **Hill** (supra).

[62] I have found that damages would provide an adequate remedy for the Claimant in this case. The 3rd Defendant is a major financial institution and I am prepared to draw the reasonable inference that it will be able to pay the damages if the Claimant succeeds at trial. Accordingly, there is really no necessity for me to proceed any further. On this basis, the injunction ought to be refused. However, assuming that I am wrong on this point, I will consider the balance of convenience to ascertain whether a different result might be reached if I had decided otherwise on the damages point.

C. The Balance of Convenience

[63] In ***National Commercial Bank v Olint Corp. Limited*** [2009] UKPC 16, the Privy Council reaffirmed the **American Cyanamid** principles and offered further useful guidance on the approach to interlocutory injunctions. At paragraphs 16,17 and 18 of the judgment delivered by Lord Hoffman it is stated as follows:

> *"16. ...It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in* ***American Cyanamid Co v Ethicon Ltd*** *[1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted."*
>
> *"17. In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in the* ***American Cyanamid*** *case [1975] AC 396, 408:*
>
> > *"It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them."*
>
> *18. Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either*

> *party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases."*

[64] It must be appreciated that there are a number of distinguishing features in this case as compared to **Hill** (supra). Firstly, in **Hill** the employer had issued a notice of termination. Mr Hill was seeking an interim injunction to restrain the company from implementing the notice purporting to terminate his employment. It was the validity of the notice of termination which was being challenged. In this case no such notice of termination has as yet been issued. Of course, I appreciate that the adverse steps which the Claimant is seeking to prevent by this notice of application, include potentially, the issuing of a notice of termination to the Claimant. However, the action of the 3rd Defendant in respect of which the injunction is being sought is a material difference because the Courts have historically treated disciplinary hearings (whether itself being considered to be an adverse step or as a critical component of any ultimate adverse result), in a particular manner.

[65] Secondly, as it relates to mutual trust and confidence, the circumstances are quite different. In **Hill** there was no disputing that up to the time of the issuing of the notice of termination letter of dismissal there was still mutual trust and confidence between the parties. In this case, the Charge Letters demonstrate pellucidly, that such a situation of mutual trust and confidence does not currently exist. In fact, the letters go further to describe the Claimant's continued employment as "*untenable*". As it relates to this statement, at this convenient juncture, I will add that I do not find this statement, *per se*, prejudicial to the disciplinary hearing provided that the tribunal is independent.

[66] Contracts of service are not the only category in which the successful performance of the contract depends on mutual co-operation or mutual confidence, but this is one reason for the historical position of the Courts in their refusal to grant an injunction in master and servant cases see Fry on Specific Performance, 6th ed.

(1921) p. 50, para. 110. I am however guided by the observations of the Court in **The Jamaica Broadcasting Commission** case (supra), at page 12 as follows:

> *"Although **Hill v Parsons** was a case where mutual confidence existed we do not hold that this is the only special circumstance which can arise. In overview the categories ought not to be closed and each case should be looked at to see whether there are matters which can be held to amount to special circumstances."*

[67] Ms. Mayhew placed heavy reliance on the case of **Wentworth Graham v The Jamaica Stock Exchange** the facts of which she submitted were very similar to the instant case. In **Graham,** the Appellant sought an injunction to prevent the commencement of disciplinary hearings against him pending the outcome of proceedings before the IDT and an order that would allow him to return to his employment at the respondent company pending the outcome of the IDT proceedings.

[68] In **Graham,** among the cases which were considered by the Court of Appeal in relation to a stay of disciplinary hearings were **Longley v The National Union of Journalists** [1987] IRLR 109 and **Ali London Borrough of Southwark** [1988] IRLR100. The Honourable Miss Justice Jennifer Straw, JA at paragraph 225 of the judgment made the following observation:

> *[225] Both **Longley** and **Ali** show that courts are not quick to interfere with the ability of a domestic tribunal to conduct a disciplinary hearing unless the hearing is being held in circumstances where the employer still retains confidence and trust in the employee, and/or where the employer claims to have lost such trust and confidence on some irrational ground, and/or where there is cogent evidence challenging the integrity and propriety of the disciplinary hearing.*

[69] Based on my earlier findings, I feel reinforced in the view that the case before me does not fall into the category of cases identified in **Longley** and **Ali**. The 3rd Defendant/employer has lost trust and confidence in the Claimant. I have found that there is cogent evidence supporting the Conflict of Interest Allegations and that is similarly the position in respect of the Harassment Allegations. The

allegations provide a proper basis for disciplinary proceedings to be commenced and concluded.

[70] I note that in **Graham** (supra) one of the issues with which the Court of Appeal had to grapple was whether there was evidence that the disciplinary hearing would result in the appellant being deprived of his job without reference to the specially created regime established by the LRIDA. That is not one of the issues which I am required to consider on the facts before me. Ms Mayhew has submitted that the availability of remedies under the LRIDA is a special factor which the Court should consider and weigh in the balance of convenience. However, I agree with Mr. George that this ought not to be a relevant factor for purposes of this Application.

[71] In considering whether granting or withholding an injunction "*is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be*" I will seek to take whichever course seems likely to cause the least irremediable prejudice to the parties.

[72] Mr George has submitted that there is no prejudice to the 3rd Defendant because in any event the Claimant is working remotely and is not in contact with his accusers in respect of the Harassment Allegations. He submitted that there is no prejudice to the 3rd Defendant or any of the Defendants which will be occasioned by a grant of the injunction, the effect of which would only be a postponement of the disciplinary process. Counsel argued that one option, is that the 3rd Defendant could withdraw these charges and cure the defects of which the Claimant complains. The Claimant would then be quite prepared to respond to properly formulated charges and a disciplinary process which follows the Disciplinary Policy.

[73] I am influenced by the fact that the employer/3rd Defendant in this case is a large corporate entity. It has a duty to provide a safe working environment for its staff members at every level. This duty includes addressing conflicts of interest and

allegations of harassment within the workplace in order to resolve complaints made by employees. In my opinion the duty is elevated in the case of Harassment Allegations because of the particular nature of such allegations, even if the Claimant is presently working remotely. The employer/3rd Defendant also has a duty to comply with its own Disciplinary Policy and to ensure that disciplinary proceedings are initiated within 28 days which is the time specified by the policy. I find that there is no real risk of injustice or undue prejudice to the Claimant if the disciplinary process is followed and a hearing is held.

[74] As it relates to the relative strengths of the case of the respective parties, based on my earlier finding that there is cogent evidence in respect of the allegations, notwithstanding my finding of a serious issue to be tried for a possible breach of procedure in respect of the Disciplinary Policy, my opinion at this stage is that the 3rd Defendants case is stronger than that of the Claimant and by extension so is that to the other Defendants insofar as the claims against them are related to the disciplinary proceedings. I am accordingly of the opinion that there is little likelihood that the injunction will turn out to have been wrongly refused.

[75] In deciding the balance of convenience, based on my analysis and for the aforementioned reasons, I find that it lies in refusing the injunction. I have found that damages are an adequate remedy in this case, but I would arrive at the same conclusion as to the balance of convenience even if I did not so find, the adequacy of damages being only one consideration in weighing the balance of convenience.

[76] There is always a risk that a disciplinary procedure may result in dismissal or other sanction being applied to an employee which is subsequently found to have been plainly wrong. There may be reputational and professional damage but as a general principle this cannot be an overriding consideration of the Court in deciding whether it ought to permit disciplinary proceedings to continue and an adverse finding, if any, proceed to its conclusion. The effect of such an inflexible position would be that any person especially one in a senior position of management could not face disciplinary proceedings especially in respect of allegations such as

harassment, because there is always likely to be a risk that the findings of the disciplinary process may turn out to have been flawed or incorrect and his professional standing might be affected. This would be the executives' charter to commit wrongdoing and escape his employer's internal disciplinary procedure. The risk of an incorrect finding or verdict is inherent in every disciplinary proceeding, as it is in trials in the Courts. It is not the function of the Court to "micro-manage" disciplinary proceedings.

[77] Having considered all the cases to which I have referred, and in particular **Hill** and **Chhabra**, on which I have placed heavy reliance, I am fortified in my opinion that the Court should only grant an interim injunction which may prevent disciplinary proceedings in exceptional circumstances. I wish to make it patently clear that I appreciate that the terms in which the Notice of Application for the injunction is framed do not expressly request that the disciplinary proceedings be halted. However, that would be the practical effect of such an injunction if granted. This is so because the 3rd Defendant would not be able to take any steps adverse to the Claimant arising from such proceedings. A ruling could not be made in respect of the Conflict of Interest Allegations for which there has already been a hearing and it would not make good sense to proceed with the Harassment Allegations since any adverse finding against the Claimant would be otiose.

[78] Even though I have found that there is a serious issue to be tried as to whether there may be an irregularity in the absence of a meeting before the disciplinary hearing, that of itself would not provide an adequate justification for the grant of the injunction claimed in the Application. In this regard, this case is distinguishable from **Chhabra** where the Court found that the cumulative effect of the breaches entitled the applicant to an injunction. I find that there are insufficient irregularities, the cumulative effect of which would amount to exceptional circumstances that can justify the Court granting the injunction which the Claimant seeks.

[79] On 18th December 2018, it was revealed to the Court that the disciplinary hearing in respect of the Conflict of Interest Allegations went ahead in the absence of the

Claimant and/or his representative. The Court granted an interim injunction until 23rd December 2020, in order to allow an *inter partes* hearing of the application for an injunction. That hearing having been completed and the Court having ruled on the Application, that injunction will expire without further order.

[80] In the premises, the Court makes the following orders:

1. The Claimant's Notice of Application filed 16th December 2020 is refused.

2. Costs of the Application are to be costs in the Claim.

3. The Claimant's Attorneys-at-Law are to prepare file and serve a copy of this order.