

ENGLAND AND WALES / JUDGMENT

Johnson McKenzie v First Greater Western Limited

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Approved Judgment Johnson McKenzie v First Greater Western Limited Case No: KB-2026- Neutral Citation Number: [2026] EWHC 868 (KB) THE HIGH IN OF KING'S BENCH DIVISION COURT JUSTICE Royal Courts of Justice Strand, London, WC2A 2LL Date: 17/04/2026 Before: David O'Mahony, Judge of the High Court sitting as a Deputy

- ----- Between: JOHNSON MCKENZIE Claimant
- and - FIRST GREATER WESTERN LIMITED (trading as GREAT WESTERN RAILWAY) Defendant
- -----
- ----- Ms. Rosana Bailey (instructed on a direct access basis) for the Claimant Mr. David Cunnington (instructed by Kilgannon and Partners LLP) for the Defendant Hearing date: 24th March 2026
- ----- APPROVED JUDGMENT This judgment was handed down remotely at 10.30am on Friday 17 April 2026 by circulation to the parties or their representatives by e-mail
- ----- Approved Judgment Johnson McKenzie v First Greater Western Limited DHCJ David O'Mahony

Introduction

1. This is an application for an interim injunction to restrain the defendant from conducting a disciplinary hearing. The claimant has filed substantive proceedings seeking a final injunction to similar effect and an associated declaration. The Parties
2. The defendant is a well-known train operating company. The claimant has been employed by the defendant since 1997. He has worked at Paddington Station since 2001. A few years after moving to Paddington, he was appointed a customer service representative. His principal responsibilities were on the concourse help desk. The Issues
3. The claimant argues that the defendant is in breach of a number of contractual and/or procedural obligations relating to the disciplinary hearing. He seeks to restrain the defendant from conducting the hearing until they are rectified. His complaints are as

follows: (a) (b) (c) (d) the defendant has failed to provide him with relevant disclosure; the defendant has not conducted a fair and proper investigation of the allegations; the proposed chair is not independent or impartial (this was particularised at the hearing as an allegation of apparent bias); he is currently medically unfit to attend the disciplinary hearing (he says that the disciplinary hearing should be postponed until there is medical evidence to the effect that he is fit to participate in it).

4. The defendant resists the application on three bases:
 - (a) it would be contrary to principle, for the court to interfere in the disciplinary process at this stage;
 - (b) damages would be an adequate remedy for the claimant's complaints were they to be well founded;
 - (c) the balance of convenience, not least the interests of the complainants, falls clearly in favour of refusing the relief sought. The Facts
5. The principally relevant facts are as follows.
6. The claimant has been diagnosed with osteoarthritis in both knees. The defendant accepts that as a result of that diagnosis, the claimant is disabled. In early 2017, the claimant had knee surgery which involved trimming the cartilage and inserting screws. As a result of the claimant's knee condition, he requires appropriate heating in his workplace.
7. Until around January 2024, the claimant used an electric fan heater. At that time, Mr Morgan, a manager at Paddington, stopped the claimant using that heater. The reason Mr Morgan gave for the decision was that its use gave rise to Health and Safety issues. The Approved Judgment Johnson McKenzie v First Greater Western Limited claimant was allowed to use an oil heater. When that proved inadequate, the claimant was moved to working in the ticket office while the weather was cold. Once the warmer weather came, the claimant moved back to the desk in the concourse. He alleges that shortly afterwards the oil heater exploded. 8. On 23rd September 2024, the claimant wrote a grievance letter to management making a series of complaints.
9. The first complaint was that the defendant had failed to make reasonable adjustments to take account of his knee condition. The claimant proposed two possible adjustments: permitting him to use his fan heater; or enclosing the help desk as had been done at other stations. The second complaint was that he had been the subject of bullying by another employee when working in the ticket office. The third complaint was an allegation of "bullying, harassment, victimisation and racist conduct" against a supervisor at the station. The claimant set out details of four incidents to support that allegation. The fourth complaint was an allegation of a pattern of discriminatory behaviour towards him because of his race (which included allegations about the supervisor the subject of the third complaint in her behaviour towards specific other employees and the lack of response to a 2021 complaint he had made against another manager). The fifth complaint was a health and

safety complaint relating to the number of people employed at the help desk.

10. On 28th September 2024, the claimant was notified of an investigation by the defendant based on allegations of inappropriate behaviour towards colleagues and customers. On 19th November 2024, the defendant notified the claimant that no further action would be taken in relation to those allegations. It appears from the notification letter that one of the complainants was the supervisor who was the subject to his third complaint of 23rd September 2024.
11. On 29th January 2025, the claimant wrote another letter to the defendant. He noted that he had been provided with a new fan heater on 28th November 2024. He then made a further complaint of “bullying, harassing, victimising, intimidating, discriminatory and racist” conduct against the same supervisor as his third complaint of 23rd September 2024. He set out three further incidents that he said supported this allegation.
12. The defendant’s letter notifying the claimant that it was not upholding the complaints he had made in September 2024 is dated 17th January 2025. It is signed by Victoria Isaacs. The letter acknowledged that oil heaters are not adequate for the claimant’s needs and that adequate heating had by then been provided. There was to be a Microsoft Teams meeting to provide the claimant with the outcome of the investigation on 27th February
2025. In the event, although others were on Microsoft Teams, the claimant was on a telephone call with Ms Isaacs and is alleged to have engaged in the conduct which forms part of the disciplinary proceedings. The claimant says that he was handed the letter in a sealed envelope at the station on 2nd March 2025. The claimant then appealed this decision to Stage 2.
13. On 21st March 2025, Mr Bennett of the defendant wrote to the claimant explaining that a series of formal complaints had been lodged regarding his behaviour. The claimant was invited to an investigation meeting on 7th April 2025. The meeting was moved to 14th April 2025 at the claimant’s request, when he attended. The claimant has been away from work with a stress related sickness since 22nd April 2025.
14. On 28th May 2025, Mr Bennett wrote to the claimant notifying him of the outcome of his investigation. He explained that he had concluded that a disciplinary hearing should be held in relation to three charges. They were: Approved Judgment Johnson McKenzie v First Greater Western Limited
 - (a) On 14th March 2024 he had made a malicious allegation of racial discrimination against Mr Morgan in a letter he had sent to Ms Isaacs as part of the grievance investigation (a gross misconduct charge);
 - (b) Repeated failure to follow reasonable management instructions to accept a company mobile phone and use it during work hours (another gross misconduct charge);

- (c) On 27th February 2025, he was verbally aggressive during the telephone conversation with Ms Isaacs (a misconduct charge).
- 15. Mr Bennett attached his fourteen page investigation report and appendices containing the evidence he had gathered during the investigation.
- 16. Mr Bennett's investigation report is a thorough and carefully reasoned document. He deals with each set of allegations that he was asked to investigate under a separate heading. For each set of allegations, he sets out a summary of the evidence, the claimant's response and his conclusions on that set. The following aspects of Mr Bennett's report are relevant to the present application:
 - (a) Ms Isaacs made a number of complaints about the claimant's conduct throughout the grievance process. Mr Bennett found that a number of these allegations were not established on the evidence. His conclusion that there should be a disciplinary hearing on the allegation relating to the telephone call on 27th February 2025 was based on the fact that it was supported by evidence he obtained and described from others listening to the call;
 - (b) Mr Bennett was asked to investigate complaints by the supervisor about whom the claimant had made his grievance complaint at the end of 2024 and early 2025 and the manager about whom he had complained in 2021. Mr Bennett refused to investigate these allegations further because they were the subject of the ongoing grievance process;
 - (c) The claimant's response to the allegation that he had made a malicious allegation of racial discrimination against Mr Morgan was summarized by Mr Bennett as that he "repeatedly denied he had said DM's actions were racist" and "denied he had any issues with DM";
 - (d) Mr Bennett was asked to investigate a complaint by another colleague against the claimant. Mr Bennett examined the evidence and concluded that the claimant's account of what had happened was supported by two other witnesses. Mr Bennett therefore found that the allegation did not require any further disciplinary action;
 - (e) In relation to the mobile telephone allegation, Mr Bennett refers to a number of pieces of evidence. Attached to his report is a transcript of an interview with a supervisor (a different supervisor to the person the subject of the grievance complaint) who says that he presented the claimant with a mobile telephone but the claimant would not take it. Also attached to the report is an email dated 15th July 2024 from the interviewed supervisor to a manager explaining that he had had the conversation with the claimant, the claimant would not accept a company mobile phone and that "it is in the cash office safe for the time being".
- 17. The defendant dismissed the claimant's appeal from Ms Isaac's grievance decision. Its letter (which deals with both the September 2024 and January 2025 allegations) is dated 9th May 2025. The claimant says that it was sent to him on 30th May 2025. The appeal Approved Judgment Johnson McKenzie v First Greater Western Limited letter acknowledged that the resolution of the hearing issue had taken too long. The claimant has appealed this decision to Stage 3. Following an invitation to attend an appeal meeting and the claimant citing

health issues, the grievance appeal was put on hold at the request of the claimant in July 2025.

18. On 29th August 2025, the claimant filed a wide ranging claim against the defendant in the Employment Tribunal. The Particulars of Claim runs to 57 pages and 174 paragraphs. It makes allegations about events starting in 2008. It includes matters that are the subject of the claimant's grievances and some facts that will be considered at any disciplinary hearing. The defendant is defending the claim on bases that include the contention that a substantial proportion of the allegations are out of time. The claimant has threatened further Employment Tribunal proceedings in correspondence. The Disciplinary Procedure
19. Although there is a suggestion in the correspondence that this is disputed, the defendant is content that I resolve this application on the assumption that the defendant's disciplinary procedure ('the Disciplinary Procedure') forms part of the claimant's contract of employment.
20. The relevant parts of the Disciplinary Procedure are the following: "When a colleague of Great Western Railway is faced with an allegation of misconduct, neglect of duty, or other breach of discipline:
 1. The colleague will be informed in writing, as early as possible, of the nature of the offence and will be invited to attend a disciplinary hearing within 7 working days of receipt of the letter confirming the allegation (s). This will be heard by an appropriate manager of Great Western Railway.
 2. The colleague will be supplied with copies of written reports or statements made as part of the investigation and other relevant evidence at least 5 working days before the hearing.
 3. At such hearings a colleague employee facing disciplinary allegations is entitled to be: i) ii) Accompanied by a fellow colleague of Great Western Railway Accompanied by a full time official employed by a trade union; or a lay trade union official so long as they have been reasonably certified in writing by their union as having experience of, or as having received training in, acting as a worker's representative or companion at disciplinary or grievance hearings iii) Permitted to call witnesses
 4. Upon completion of the disciplinary hearing, the outcome will be confirmed in writing to the colleague.
 5. The colleague shall have the right of appeal to an appropriate senior manager of Great Western Railway against the decision, and/or interpretation of the facts, and/or facts not previously considered or application of the agreed procedure.
 6. Hearing the appeal must not be the manager who heard the case in the first instance.

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7. Any such appeal must be made in writing within 7 working days of the date of written notification of the decision. The appeal should be heard and decided as early as possible... If the colleague appealing so desires: i) They will be heard in person before an appropriate manager of Great Western Railway. ii) The same provisions under clause three above will apply.
8. ...
9. The procedure set out in paragraphs 1 to 8 above may involve cases of gross misconduct which may warrant summary dismissal. ..." The law
21. The test to be applied to an application for an interim injunction is the well-known three stage test enunciated in *American Cyanamid v. Ethicon* [1975] AC 396.
22. The nature of an employer's disciplinary power was explained by Elias LJ in *Christou and Anor v. London Borough of Haringey* [2013] 3 WLR 796 at paragraph 48 as follows: "In the employment context the disciplinary power is conferred on the employer by reason of the hierarchical nature of the relationship. The purpose of the procedures is not to allow a body independent of the parties to determine a dispute between them. Typically it is to enable the employer to inform himself whether the employee has acted in breach of contract or in some other inappropriate way and, if so, to determine how that should affect future relations between them. It is true that sometimes (but by no means always) the procedures will have been contractually agreed, but that does not in my judgment alter their basic function or purpose. The employer has a duty to act fairly and procedures are designed to achieve that objective. The degree of formality of these procedures will vary enormously from employer to employer. But even where they provide a panoply of safeguards of a kind typically found in adjudicative bodies, as is sometimes the case in the public sector in particular, that does not alter their basic function. It is far removed from the process of litigation or adjudication..."
23. The court has the power to grant interim relief to a party to ongoing disciplinary processes, a power which it will exercise in an appropriate case: *Chhabra v. West London Mental Health NHS Trust* [2014] ICR 194. However, the courts have generally declined to grant the kind of pre-emptive relief sought in this case. The principles to be applied to such an application were summarised by Green J (as he then was) in *Al-Mishlab v. Milton Keynes Hospital NHS Foundation Trust* [2015] EWHC 3096 (QB) at paragraphs 16 to 21, in the following way: "16. First, in an employment context there is a power vested in the employer to manage employees, which includes establishing relevant facts and deciding how these facts affect future relations. Even where internal procedures are detailed the purpose of those procedures is to facilitate the employer's managerial power. Where detailed procedures are silent on the matter then the fallback is that it is a managerial discretion for the employer to decide upon in relation to that gap. In this regard see *MacMillan* [2014] EWCA 1031, paragraph 51 and the judgments cited therein. Approved Judgment *Johnson McKenzie v First Greater Western Limited*

17. Secondly, it is accepted that there are implied terms in the Applicant's contract that neither party will without reasonable and proper cause act in a manner that is calculated or likely to destroy or seriously damage the relationship of trust and confidence and that the defendant will in any event act fairly in the conduct of an internal disciplinary or similar process. It is therefore accepted that implied terms constrain the exercise of the employer's discretion. But it is also submitted that the discretion remains broad: See in this regard Braganza [2015] UK SC 17 at 30 and Yapp [2014] EWCA Civ 1512 at paragraphs 59-61. In those judgments there is reference to the discretion being akin to a Wednesbury rationality test in that an employer may properly be able to exercise a discretion over a range of possible reasonable options.
18. Thirdly, it is submitted that the court should not engage in micro-management of employment procedures. Illustrations of matters which the courts have treated as micro-management may be found in the judgment of the Court of Appeal in Kulkarni [2009] EWCA Civ 789 . In that case the High Court and Court of Appeal refused to interfere in a panel where the issue concerned the alleged wrongful admission of prejudicial evidence; see also Chhabra v West London Mental Health Trust [2013] UKSC 80 , at paragraphs 36-40.
19. Fourth, there is a public interest in allowing internal processes to run their course and courts should be slow to interfere if disputed issues can be sorted out and resolved within the framework of the internal procedure itself. See for example, Makhdum [2012] EWHC 4015 per Beatson J. at paragraph 51 where the judge indicated that it would in effect require serious irregularities before the court would consider interfering. He also intimated (see paragraph 52) that where the parties have agreed upon a process the court should prima facie respect the contractual intention of the parties and allow the process to occur. Similar observations were made by Mann J. in Hendy v MOJ [2014] EWHC 2539 at paragraph 49 and see also Sarker [2015] EWHC 165 to similar effect.
20. Fifthly, there is a public interest that matters which needs to be taken of a substantive nature, (which would in my view include a decision upon the capability of a practitioner to work within the NHS) should be taken by the mandated expert panel: See by way of illustration Dr A v HTX [2012] EWHC 857 (QB) at paragraph 203.
21. Finally, I should refer to the decision of Simler J. in Chakrabarti [2014] EWHC 2735 at paragraphs 116 and 160-163 for the proposition that procedures should be applied with flexibility.” (see also Colbert v. Royal United Hospitals Bath NHS Foundation Trust [2023] EWHC 1672 (KB) at paragraphs 34-38)
24. At paragraph 161 of Chakrabarty, Simler J (as she then was) said: “...More importantly however, as a general rule it is not appropriate for the courts to intervene to remedy irregularities in the course of internal disciplinary proceedings between an employer and an employee. Such intervention causes unnecessary delay and expense, leading to the sort of micro-management that courts have repeatedly deprecated: see for example Kulkarni v Milton Keynes Hospital NHS Trust [2009] EWCA Civ 789 at [22].”

25. In *Sarker v. Worcestershire Acute Hospitals NHS Trust* [2015] EWHC 165 (QB) at paragraph 24, Nicol J said that in deciding whether it was appropriate for the court to Approve Judgment Johnson McKenzie v First Greater Western Limited intervene, it is relevant that the contract provides for an appeal hearing. This was also said to be relevant by Mann J in *Hendy* (supra at paragraph 87) as, he said, was the availability of a claim for unfair dismissal in the Employment Tribunal.
26. Finally, as regards the reasonableness of an employer continuing with a disciplinary hearing when the employee is unwell, in *Royal Borough of Greenwich v. Syed* [UKEAT/0245/14/LA] at paragraph 44 Wilkie J said: “Criticism is also made of the tribunal's conclusion that it was unreasonable for the respondent to fail to conclude that, for as long as Mr Syed continued to be certified unfit, there should never be a disciplinary hearing which, by definition, would take place in his absence. In our judgement, as the basis for a conclusion that the decision of Mr Foulds to proceed on 4 January with a disciplinary hearing, in the absence of Mr Syed, meant that the investigation was unreasonable puts it far too high. Without in any way prejudging the task of the Tribunal which will consider this matter, it is plain and obvious that there can be many circumstances in which a reasonable employer, conducting a reasonable investigation, can proceed in the absence of a person, even though they may be certified by their GP unfit for work through sickness. To require an employer, as an incident of a reasonable investigation, always to give an unlimited period during which an employee could continue to furnish certificates of unfitness, safe in the knowledge that disciplinary proceedings could not take place in their absence, is wrong.” Discussion and conclusions
27. It seems to me that when the above principles are applied to the complaints made in this application, it is clear that the application for an interim injunction must fail. The proper place for the claimant's complaints to be considered is within the disciplinary process. If the claimant is unsuccessful at the initial disciplinary hearing, paragraph 5 of the Disciplinary Procedure permits the claimant to appeal on broad grounds. These include the ability to raise procedural complaints and extend to relying on facts not previously considered. If the claimant were to be unsuccessful on any appeal, and were he to be dismissed, there is a potential remedy in the Employment Tribunal. (i) The claimant's complaints about disclosure
28. The claimant makes the following complaints about disclosure:
 - (a) the defendant has failed to disclose a recording of the Microsoft Teams meeting on 27th February 2025;
 - (b) the defendant has refused to disclose the witness accounts or other documents on which the Stage 1 and Stage 2 grievance decisions were based. The claimant says that the refusal breaches paragraphs 9, 12 and 13 of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 (‘the ACAS Code’), the principles of procedural fairness and those parts of the Disciplinary Procedure that require him to be provided with the material gathered in the course of the disciplinary investigation and other relevant evidence. The

claimant makes the following particular complaint about material from the grievance process: “In particular, the Respondent has failed to disclose the statements of two colleagues, Gary Drew and Pauline Chambers, both of whom are Black and both of whom were interviewed by the Respondent. Their statements do not appear in the investigation report and have not been provided to me. Their absence from the disclosed materials raises serious concerns about selective evidence-handling” Approved Judgment Johnson McKenzie v First Greater Western Limited

- (c) the defendant has failed to disclose the findings relating to the claimant’s 2021 complaint.
- 29. The defendant’s factual answer to these complaints is as follows.
- 30. As regards the recording of the Microsoft Teams meeting. The defendant does not hold any recording of the Teams call. It has investigated whether any participant in the 27th February 2025 Teams call recorded it. It has been told that no such recording was made. The claimant’s position appears to be based on the assertion that because there was a Teams meeting it will have been recorded. That is not a correct understanding of how Microsoft Teams operates. Meetings on Microsoft Teams are not automatically recorded.
- 31. As regards the underlying material relating to the grievance processes and the outcome of the 2021 complaint, the defendant says that they are irrelevant to the issues in the disciplinary hearing (which appear ultimately to turn on discrete disputes of fact). It says that it can only disclose witness accounts given in the course of dealing with a grievance complaint with the consent of the witness. It says that it has disclosed all the material it gathered in the course of the disciplinary investigation and refers to the appendices to Mr Bennett’s report. The defendant points out that its Disciplinary Procedure permits the claimant to call any witness he wishes to call at the hearing (see paragraph 3 (iii)) and that therefore, if he thinks their evidence is relevant, the claimant can seek to call Mr Drew and Ms Chambers. Ms Bailey said during the hearing that the claimant is in contact with Mr Drew and Ms Chambers and that they have given the claimant the gist of what they said during the grievance process.
- 32. I have no reason to go behind the statements by the defendant that there is no recording of the Microsoft Teams meeting and that it has disclosed all the underlying material from Mr Bennett’s investigation. The dispute between the parties under this heading is therefore one as to whether the additional material from the grievance processes is relevant to the issues that are to be decided in the disciplinary hearing. That is a matter for the person conducting the disciplinary hearing, not one for interim relief in the High Court. The claimant can raise these issues at the disciplinary hearing and he has a right to appeal any adverse outcome on the broad grounds set out in paragraph 5 of the Disciplinary Procedure. This complaint falls within the prohibition on micro-managing the process (Kulkarni at paragraph 22) and the general rule described by Simler J in Chakrabarty at paragraph 161.

33. I add for completeness that Mr Cunnington sought to rely on the decisions of Thornton J and the Court of Appeal in *Burns v. Alder Hey Children's NHS Foundation Trust* [2021] EWHC 1674 (QB) and [2021] EWCA Civ 1791 for the proper approach to disclosure in this case. I merely note that Burns was concerned with an investigation rather than a disciplinary hearing and that at paragraph 41, Underhill LJ said: "In this appeal we are concerned only with the first stage of the MHPS disciplinary process. It is not appropriate for us to consider what disclosure obligations may arise if the case proceeds to a hearing." (ii) The investigation was defective
34. The claimant makes a number of complaints about the investigation. I will not set out everything that the claimant says in his witness statements. The complaints include: failing to investigate what he says is the central factual issue underpinning his allegation of racial discrimination (inconsistent heating arrangements); selective reliance on managerial perceptions rather than objective evidence; a failure to consider whether the Approved Judgment *Johnson McKenzie v First Greater Western Limited* feelings expressed were influenced by the ongoing grievance complaint (and whether the disciplinary investigation was retaliatory); failure to consider or investigate the medical context and whether the removal of the heater constituted a failure to make reasonable adjustments; failure to include the statements of Mr Drew and Ms Chambers in the investigation; failure to consider an earlier misconduct complaint about a mobile phone which involved a phone being taken from him and in relation to which no further action was taken (the claimant's case is that his phone was broken, it was taken from him and never returned or replaced); failure to consider why the claimant was being pursued on the mobile phone charge when others also did not use their work mobile phones; and a failure to examine key evidence including photographs showing fan heaters in use in Reading and contemporaneous materials.
35. The claimant argues that the failure properly to investigate is a breach of the implied term of trust and confidence in the employment contract and paragraphs 5-6, 9 and 12 of the ACAS Code.
36. The defendant argues that these complaints are ill-founded. It repeats what it says about the relevance of the subject matter of the grievance complaints to the disciplinary process. In its submissions under this heading, the defendant argued that what the court is being asked to do is to interrupt the process and anticipate the decision of the person conducting the disciplinary hearing, contrary to the guidance in *Hendy and Makhdam*.
37. I agree with the defendant's submissions about the role of the High Court at this stage. It is a matter for the person conducting the disciplinary hearing to decide whether the issues that the claimant complains that Mr Bennett did not consider are relevant to the resolution of the issues before him or her in the disciplinary hearing. If the person conducting the disciplinary hearing decides that they are relevant, then it is for that person to decide what the effect of any failure by Mr Bennett to consider them has on his or her findings. In addition, I repeat, the Disciplinary Procedure provides that the claimant is permitted to lead evidence of his own and permitted to call witnesses. It also provides for broad grounds of

appeal. It is open to the claimant to seek to raise all these matters in the disciplinary process. (iii) The choice of chair

38. The currently proposed chair of the disciplinary hearing is Claire Morgan. Her email footer gives her position as Regional On Train Manager and her contact details as Vastern House, Reading Station. In response to Ms Morgan's invitation to the claimant to attend a disciplinary hearing on 14th January 2026, Ms Bailey requested that she recuse herself. The reason Ms Bailey gave was: "It has come to my attention that you are likely to know, whether in passing or otherwise, Ms Victoria Isaacs [she also listed a range of other people she said were connected to the dispute]...This proximity creates a significant risk to the fairness and impartiality of the proceedings, as it appears that you may have regular interaction and/or a working relationship with Ms Isaacs...The working environment of at a railway station necessarily involves close and regular interaction between colleagues...."
39. Ms Bailey followed this up with a letter dealing with a number of matters. In it she said: "47 ...The chair is linked to Reading Station, the location at which one of the key individuals involved in the matter is employed, namely Victoria Isaacs..."
48. Reading Station operates an open plan office environment. Accordingly, the Approved Judgment Johnson McKenzie v First Greater Western Limited likelihood that Claire Morgan does not know Victoria Isaacs is remote.
49. This connection creates an appearance of bias..."
40. On 23rd January 2026, Ms Beech an employee relations manager whose email footer also gives her contact details as Vastern House, Reading Station wrote to Ms Bailey: "I am responding to your e-mail requesting for a new hearing manager to be appointed for your clients disciplinary. Ms Morgan is an experienced, professional manager who will be able to hear the case objectively and without bias. You mention that she has worked with a number of the witnesses previously, I can confirm that Ms Morgan has never managed any of the colleagues as she worked in a different region to the Paddington/ Reading colleagues. Ms Morgan's current role is Regional OB Manager, which is a completely separate function to stations"
41. In her witness statement for the present proceedings, Ms Beech adds: "31...Whilst she [Ms Isaacs] now works in the same region, she works in a different function to the stations. There was no evidence that she had any knowledge of the matters concerned or any personal involvement with any of the persons involved so as to give rise to any risk of bias or the appearance of bias. ... 42... It is extremely common for Managers to decide grievances of individuals known to them or directly reporting to them. That does not mean that they are biased. The allegation by Ms Bailey on 13 January 2026, was that Ms Morgan was likely to know, whether in passing or otherwise, Ms Victoria Isaacs. Knowing someone does not demonstrate bias. There is no suggestion that she does know Ms Isaacs in any meaningful way other than by reference to the fact that she is an employee of the company. ...

44. Respectfully, it appears to me that the Applicant and Ms Bailey are trying to decide who hears the matter. It is not for them to do so. Ms Morgan is experienced, has no historical knowledge of the matter and does not manage anyone involved in the process. She also does not work directly with anyone or at that base. In my view she is clearly independent the correct choice of Manager to hear this disciplinary.”
42. The claimant’s complaints both in correspondence and in his witness statement for these proceedings are either that Ms Morgan and Ms Isaacs do work in the same open plan office or, alternatively, that the defendant has not addressed his complaint sufficiently specifically. As to the latter, he says that the defendant has not said in terms whether Ms Morgan knows Ms Isaacs, has worked alongside her or has any professional familiarity with her. The claimant says that the defendant is a large organisation and that there will be many available managers who have no connection with Ms Isaacs. Ms Bailey submits that this along with her other complaints cumulatively give the appearance of bias. She says that this breaches the ACAS Code and the Disciplinary Procedures’ requirement that there be an “appropriate” chair.
43. In his submissions, Mr Cunningham said that while he accepted that there may be circumstances in which the High Court might intervene at this stage to require that a different chair be appointed, neither party had cited a case in which such an order had been made. He pointed to the function of the disciplinary process described by Elias LJ in *Approved Judgment Johnson McKenzie v First Greater Western Limited Christou* and said that there was no basis to intervene in this case. He said that there was in fact no independent evidence that Ms Morgan and Ms Isaacs worked in the same open plan office. He said that merely working at the same station would not be enough. In any event, Mr Cunningham said that challenges such as this as to the appropriateness of the chair should, on the principles set out above, also be dealt with within the disciplinary process.
44. I accept Ms Bailey’s submission that the claimant is entitled to be told in terms what connection, if any, Ms Morgan has with Ms Isaacs or anyone else whose witness evidence will be considered during the disciplinary hearing. However, as with the complaints that I have already dealt with, the proper place to explore the appropriateness of Ms Morgan’s appointment is by all the facts being considered as part of the disciplinary hearing and, if necessary, on appeal under paragraph 5 of the Disciplinary Procedure. Such an appeal would also be the proper place to raise any complaint about the adequacy of any response to the question as to any connection between Ms Isaacs and Ms Morgan. The claimant has not raised a concern about the appearance of Ms Morgan’s impartiality that is sufficient to warrant the intervention of the High Court at this stage. (iv) Postponement until medically fit
45. The claimant was first invited to attend a disciplinary hearing by letter dated 10th June

2025. The hearing appointment he was given was to be 25th June 2025. On 17th June 2025, the claimant asked that the hearing be re-scheduled to take place in October 2025 by reason of “the substantial volume of documents, the absence of representation and my continued indisposition”. He also made disclosure requests. The defendant responded to the request to change the date on 25th June 2025. The date was changed to 10th July 2025. On 7th July 2025, the defendant cancelled the hearing for the second time as the claimant had not confirmed he was able to attend.
46. On 8th July 2025 the claimant wrote a letter to the defendant raising a number of matters, including disclosure. As to the date of the hearing, he repeated his request that the hearing be moved to October 2025. One of the reasons he gave was that he was currently indisposed and referred to two medical certificates and two reports from the company’s occupational health department which he had sent to the defendant.
47. On 24th July 2025, the occupational health department reported a telephone consultation with the claimant. It said that the claimant was “experiencing significant symptoms of psychological ill-health” and stated that he was unfit to attend a disciplinary meeting either in person or virtually. On 28th August 2025, the occupational health department reported a further telephone consultation with the claimant. It said that the claimant had said that there had been no significant change, but that “There is potential for his mental health to improve with ongoing counselling and increased medication.”. It again stated that the claimant was unfit to attend a disciplinary meeting either virtually or in person.
48. On 18th September 2025, the claimant wrote to the occupational health doctor. His letter included the following: “During our recent occupational health appointments, you have indicated a specific timeframe within which you expect me to recover, citing the need for me to attend a disciplinary hearing. I must respectfully point out that such comments appear to exceed the remit of occupational health and do not align with the impartial and supportive role expected in this context. It is important to note that my ill health arose as a direct consequence of the bullying, victimisation, discrimination and harassment that I endured during my employment Approved Judgment Johnson McKenzie v First Greater Western Limited with the company... .. The attached letter from my counsellor [the attached is a letter from an NHS counsellor] outlines the severity of my current condition. I kindly request that you refrain from inquiring about my readiness to attend the disciplinary hearing as I remain unable to do so at this time...”
49. Ms Beech’s evidence is that the occupational health doctor confirmed the claimant’s unfitness to attend a disciplinary hearing after the consultation.
50. On 22nd October 2025, Ms Beech wrote to the claimant. She acknowledged that this may be a difficult time for him and said that it was now necessary to arrange a welfare meeting. On the subject of the disciplinary hearing, she said: “Disciplinary Process We understand that your health is a significant concern right now, and we want to be respectful of that. At the same time, the disciplinary matter remains unresolved and cannot be delayed indefinitely.

While we recognise this may be difficult, progressing the process could also help in providing some resolution and certainty moving forward. A hearing manager will be appointed shortly and will contact you directly with further details. We are mindful of the Occupational Health advice and will ask for their input again regarding any adjustments that may support your participation. If you have any specific suggestions or needs, please do share them with us so we can take them into account. To clarify, Occupational Health has advised that you are currently not fit to attend disciplinary meetings...”

51. The claimant responded on 30th October 2025. As regards the disciplinary process he said that it had to be deferred until he was medically fit to engage and cited the ACAS Code.
52. On 17th November 2025, the occupational health department reported a further telephone consultation with the claimant. It noted that his mental health had got worse and that he was “...unfit to attend a disciplinary meeting with no clear timescale as to when he will be fit to attend.”.
53. As set out above, on 12th January 2025, the claimant was invited to a disciplinary hearing on 14th January 2026. On the same day, Ms Morgan agreed to postpone the disciplinary hearing as it clashed with a doctor’s appointment the claimant had.
54. On 19th January 2026, the occupational health department reported another telephone meeting with the claimant. It concluded that: “Following discussion and review today I would advise that Mr McKenzie remains unfit for work, I would also consider him unfit to attend a welfare or disciplinary meeting either in person or remotely. Due to his current symptoms, I am unable to indicate when the situation is likely to change.”.
55. On 10th February 2026 Ms Morgan wrote to the claimant informing him of a new date for the disciplinary hearing of 23rd February 2026. Her letter concludes: “I am aware that it has been recognised by Occupational Health that you are unfit to attend a disciplinary hearing with no clear timescale for when you will be. In consideration of the impact this process is having on your health, I consider it Approved Judgment Johnson McKenzie v First Greater Western Limited necessary to progress the disciplinary process so that your case can be brought to a close. I can therefore offer you the adjustment of confirming your responses and mitigation to the allegations in writing. If you wish to proceed with written submissions, please send these to me at my e-mail address detailed below by the commencement of the hearing. Alternatively, should you wish for a representative to attend the hearing on your behalf please do advise me of who this will be. If you do not confirm either your attendance at the meeting, a representative on your behalf or send me written submissions of your case I reserve the right to proceed with the disciplinary hearing, and a decision may be made in your absence.”
56. No response has been received to that letter. In the event, that hearing date was also vacated to permit the present application to proceed and be determined.

57. The claimant has also provided a number of GP certificates. There is a letter from his GP dated 25th February 2026. It includes: "...[the claimant] has reported that his participation in a disciplinary hearing at this stage – particularly in the context of unresolved concerns and ongoing procedural disputes – would be likely to exacerbate his symptoms, impede his recovery, and increase his overall risk profile...He feels that proceeding with a disciplinary process in his absence would be likely to cause him further psychological harm...I would be grateful if his current mental health difficulties could be taken into account when considering any further steps or requirements placed on him"
58. Throughout this period, the claimant and Ms Bailey engaged in extensive correspondence with the defendant (including successful correspondence dealing with his pay). The claimant also commenced the detailed Employment Tribunal proceedings I refer to above. In the current proceedings, the claimant has filed three of his own witness statements. The first running to 114 paragraphs, the second to 27 paragraphs and the third to 144 paragraphs. There is a detailed Particulars of Claim. The claimant did not attend the interim injunction hearing but Ms Bailey filed a skeleton argument on his behalf for the hearing and made oral submissions. Although there was no direction permitting it, she submitted further written submissions after the hearing.
59. The claimant argues that the decision to proceed with the hearing is contrary to the defendant's Respect & Dignity at Work Policy, inconsistent with that part of the Disciplinary Procedure that "consideration will be given to a case in which a colleague asks for time in which to prepare a reasonable statement of defence and/or making arrangements for an advocate at a personal hearing and for witnesses.", a breach of the requirement of procedural fairness and inconsistent with the ACAS Code.
60. Mr Cunningham submits that the Disciplinary Procedure is silent as to what to do when an employee is sick and there is no indication as to when he or she will be well again. He says that therefore the decision as to what to do falls within the manager's discretion (see paragraph 16 of Al-Mishab (supra)), a discretion that would be reviewable on Wednesbury grounds. Mr Cunningham says that in this case the decision to proceed is within the permissible range of decisions because: of the time that has passed since the investigation outcome; the medical evidence that there is no clear date for recovery; the amount of work that the claimant has in fact done over the last year in participating in the High Court and other proceedings; and the defendant's preparedness to make reasonable adjustments.
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61. The claimant's application under this heading is essentially based in the submission that there is an absolute prohibition on holding a disciplinary hearing in circumstances in which he has provided medical evidence that he is unfit to attend. However, as Mr Cunningham submits, it is clear from paragraph 44 of Wilkie J's judgment in Syed that there is no such absolute prohibition. As that passage shows, at least in the absence of a specific provision in the relevant disciplinary process, the question in any case in which an employer decides to conduct such a hearing, will be whether the decision was reasonable, as that concept is

understood in the cases. The sorts of considerations that will be relevant to deciding whether a decision to proceed in this case was reasonable include those identified by the defendant and set out in the previous paragraph.

62. However, the initial decision whether to conduct the hearing in these circumstances is one for the person conducting the disciplinary hearing. That decision is to be taken having regard to all the circumstances, including the need to make reasonable adjustments so that the claimant can participate to the greatest extent possible. If the claimant were to be unsuccessful in any such disciplinary hearing and wished to appeal the outcome on the basis that it should not have proceeded in his absence (even having regard to the specific reasonable adjustments offered or implemented), paragraph 5 of the Disciplinary Procedure would permit him to do so. (v) A general complaint about the defendant
63. The claimant asks me to draw the general conclusion that the defendant has systemic problems in its approach to disciplinary questions and that that conclusion should inform my approach to the relief sought. He invites me to do that as a result of looking at this case and reading the judgment of the EAT in *First Great Western Limited v. Moussa*
- [2024] EAT 82 in which the defendant was criticised. I am not prepared to follow that approach. This application falls to be decided on its own merits and by reference to the facts and principles I have set out above. The fact that another disciplinary process has been criticised on its facts does not lead to the conclusion that the present one is sufficiently relevantly flawed as to warrant the court's intervention at this stage. Damages an adequate remedy
64. In any event, it seems to me that damages would be an adequate alternative remedy for the claimant in this case. Ms Bailey argues that they would not be, because the claimant faces the prospect of losing his 28 year career, with all that goes with that, including reputational damage. I reject that submission. If the defendant were to make an adverse disciplinary finding, and the claimant were to be dismissed as a result, the claimant would be able to seek to challenge that outcome in the Employment Tribunal. Balance of convenience
65. Some of the cases that I have set out above have been decided on the balance of convenience. If this is to be considered as a separate limb of the test in this case, then it seems to me that the balance of convenience falls firmly in favour of refusing the relief sought. This matter has been going on for some considerable time and the complainants are entitled to have it resolved as soon as is now practicable. It seems to me that the considerable effort that has gone into challenging the process should properly be directed to dealing with the allegations in their proper forum, that is to say within the framework of the defendant's Disciplinary Procedure. Approved Judgment *Johnson McKenzie v First Greater Western Limited* Post-hearing submissions

66. As I say above, no permission was sought to file post-hearing submissions. Mr Cunnington objected to me considering them. In the event, I do not need to rule on Mr Cunnington's objection. I have read them and it does not seem to me that they alter the decision that I have reached.

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