



Neutral Citation Number: [2019] EWHC 94 (QB)

Case No: HQ17X01504

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings,
Fetter Lane, London, EC4A 1NL

Date: 25/01/2019

Before :

THE HON. MR JUSTICE POPPLEWELL

Between :

CATHERINE DYMOKE

Claimant

- and -

**ASSOCIATION FOR DANCE MOVEMENT
PYSCHOTHERAPY UK LTD**

Defendant

Mr Nicholas Leviser (instructed by Stepsons) for the Claimant
Mr Peter Dodge (instructed by Kitsons) for the Defendant

Hearing dates: 6-8 November 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE POPPLEWELL

Mr Justice Popplewell :

Introduction

1. The Defendant (“ADMP”) is a company limited by guarantee whose purpose is to promote dance music psychotherapy (“DMP”) in the UK and to encourage suitable standards in its practitioners. It is a relatively small organization of about 350 practising members, reflecting this particular specialisation within psychotherapy.
2. The Claimant, Ms Dymoke, has a background in theatre and dance, and has since at least as long ago as 1994 been engaged in providing therapy through touch and movement-based skills. She became a registered member of ADMP in 2002 and a member of its Council in September 2009. She became Vice Chair of the Council in about 2011 and Chair in September 2012. She ceased to be Chair in December 2014.
3. Of particular relevance to the events giving rise to the claim is Ms Dymoke’s role in relation to an aspect of movement psychotherapy known as Body Mind Centering (“BMC”). BMC is a form of therapy devised by Bonnie Bainbridge Cohen, who lives and works in the USA, and is a registered service mark of which she is the licensed holder. Ms Dymoke undertook a teacher training course with Ms Bainbridge Cohen’s School of Body Mind Centering in 2004 to 2006, and in 2007 had a leading hand in setting up an association called Embody Move Association (“EMA”) for the purpose of holding a licence in Body Mind Centering, and controlling the teaching and accreditation of BMC courses in the UK. EMA held the exclusive right to licence BMC therapy for the UK, and accordingly no course could include accreditation for BMC modules without the approval of EMA. In some documents Ms Dymoke is described as one of four founders of EMA. In her witness statement she described herself as the founder. She was the Education and Administrative Director from 2007 to 2014 and on its management committee until 2015. She is one of only four people resident in the UK who are qualified and licensed to teach BMC in the UK, and the only person in the country qualified as a programme coordinator for BMC courses.
4. By letter dated 10 March 2016 the acting Chair of the Council informed Ms Dymoke that her membership of ADMP was terminated on the grounds that there had been two conflicts of interest in relation to her dealings with an MA course in dance movement psychotherapy at Edge Hill University (“EHU”) for the academic year 2013/14. ADMP had accredited the course; EMA had licensed the BMC part of the course; and Ms Dymoke had herself been employed as a part time senior lecturer to coordinate and teach the BMC elements of the course. Her employment by EHU was not renewed for the 2013/2014 year. At an appeal meeting with the Pro Vice Chancellor, Ms Brady, on 28 October 2014 Ms Dymoke informed EHU, on behalf of EMA, that EHU’s permission to conduct BMC courses was withdrawn, and all reference to BMC in course materials and on the website would have to be removed. She was Chair of the Council of ADMP at the material times.
5. The two conflicts identified in the letter as grounds for termination were:
 - (1) a failure to notify ADMP during the process of accreditation that she was a co-director of EMA which was the sole UK licence holder for BMC; and that she was herself the sole licenced UK programme leader for BMC; and

- (2) the giving of a notice to EHU during her personal appeal hearing on 28 October 2014 which was given in her capacity as co-director of EMA.
6. On 7 April 2016 Ms Dymoke’s solicitors sent a notice of appeal against the decision. On 6 May 2016 ADMP’s solicitors sent ADMP’s “Reply” which was subsequently confirmed to be its determination and dismissal of the appeal.
7. In this action Ms Dymoke claims that her membership was unlawfully terminated. She seeks reinstatement as a member of the association, and damages. The claim is put on the basis that in the process leading to the termination of membership, and the dismissal of the appeal from that decision, there was a breach of the rules of natural justice and of ADMP’s published procedures on handling complaints. The focus of the dispute is therefore in relation to the procedure adopted, rather than the substance of whether there were conflicts of the kind alleged to have justified termination. It is not accepted by Ms Dymoke that there were any conflicts which were not disclosed to ADMP, and it is contended on her behalf that in any event there was nothing in her conduct which could properly justify termination of membership; however those are questions which do not arise in these proceedings: the thrust of the case is that the procedural unfairness involving breaches of the published codes vitiates the decision, and that she should be reinstated. It is accepted on her behalf (although this was not accepted in the notice of appeal) that if the claim succeeds it will be open to ADMP to undertake a further process of investigation and inquiry into the allegations in a way which does not replicate the allegedly flawed process previously adopted, and to reach a fresh decision.
8. The cause of action is framed in contract (1) for breach of an implied term that ADMP would comply with the rules of natural justice and (2) for breach of express terms of the procedural codes. In the alternative there is a claim based on the principle recognised in *Nagle v Fielden* [1966] 2 QB 633, which can be summarised as providing that the rules of natural justice must be observed, irrespective of contract, where a decision is made by a body with the requisite degree of power or control over a person’s ability to work in a chosen field.
9. ADMP denies that the rules of natural justice are applicable, whether by reference to the principle in *Nagle v Fielden* or as a contractual implied term; it denies that there has been any failure to comply with the substance of the requirements of the procedural codes; it contends that if there was any procedural failing, it made no difference to the outcome, which would have been the same if any flaw in the process had not taken place; and it disputes that in any event reinstatement is an appropriate remedy or that Ms Dymoke has proved any loss caused by the termination of her membership.

The contractual framework

10. It was common ground that at the material times there were express terms of a contract between Ms Dymoke and ADMP to be found in the articles of association, and two documents published in September 2013 being the Code of Ethics and Professional Practice (“the Ethics Code”) and the Complaints Procedure.
11. The articles of association provide for the business of the association to be conducted by members of a Council, of no fewer than three members, with three being the quorum for Council decisions. These Council members were the directors of the company from time to time. There was a company secretary and administrator who at the material

times was Andrew Clements. The articles made no provision for the circumstances in which membership could be terminated other than by notice of retirement or resignation.

12. The Ethics Code had a section on complaints which included the following:

“10. Complaints

- 10.1 Dance movement psychotherapists are responsible for being aware of the Association’s Complaints Procedure and relevant legislation and for informing clients of these if required.
- 10.2 Dance movement psychotherapists who have ethical concerns related to a colleague’s practice are responsible for raising these with the colleague and/or organizational setting in which the work takes place. If the above have not proved effective, psychotherapists are responsible for raising their concerns with the Association.
- 10.3 Dance movement psychotherapists are responsible for informing the Association’s Chair without delay if they become aware of a complaint or possible legal action brought against them in relation to their practice.
- 10.4 Complaints received by the Association related to practice are forwarded to the Association’s Chair. At his/her discretion, the Chair may refer a complaint to the Executive Council, to clarify further steps to be taken.
- 10.5 The psychotherapist concerned is informed of any such complaint and invited to comment on it. In doing so it may be in the therapist’s interest to consult any relevant sections of the Public Interest Disclosure Act/Order, 1999.
- 10.6 Following investigation of a complaint the Executive Council has recourse to the following recommendations: reprimand; a period of required supervision; suspension or withdrawal of registration and/or membership of the Association.
- 10.7 All complaints proceedings involving a member of the Association are treated as confidential.
- 10.8 The complainant and recipient of the complaint are kept appropriately informed.”

13. The Complaints Procedure explained that it was intended for registered members and members of the public or clients, and was intended to cover how a “complaint or

concern” could be raised and would be handled. Although the procedural section is framed in terms of a complaint, it is clear that where that term is used it was also intended to apply to a “concern”. It provided amongst other things:

“Procedure once a complaint is received

The steps outlined below describe the processes set in motion once a complaint is received. All complaints are initially forwarded by the administrator to the Chair of the Association.

Step 1

The Chair of ADMP receives a complaint in writing and carries out an initial check that could include speaking to the complainant to gather further information. Keeping the complainant’s identity confidential, the Chair can call upon a senior advisor to judge whether the issue warrants investigation or some other course of action, such as the complainant following the concern with a more appropriate organisation. If a complaint is not within the Association’s remit and cannot be processed further, the complainant is informed of the reasons for this.

Once the nature of the complaint is clarified, the recipient of the complaint, if not already informed by the complainant, is informed and invited to respond.

Both parties are made aware that throughout the investigative process evidence or statements provided by the complainant are shared with the recipient of the complaint, and vice versa, with the aim of gathering further information and/or clarifying specific points. In its effort to manage complex transferenceal dynamics that may be present in ethical cases, the Association may decide not to pass on certain information to the other party.

If a complaint or concern suggests a practitioner’s conduct is placing the public at risk, the Association has the right to make an Interim Suspension Order to prevent a registered member from practising. This can be done at any point in the investigative process.

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Step 2

If further inquiry is deemed appropriate the Chair shares an outline of the issue with the Executive Council, requesting confidentiality. Three senior, registered practitioners without prejudice or prior involvement with the case are nominated to enact and sit upon an Ethics Committee (EC). Depending on the

nature of the complaint, the appropriate ADMP committee may also be consulted, maintaining confidentiality as appropriate.

Where appropriate this committee also acts as an Inquiry Panel (IP). This group can call upon relevant external consultants for guidance where necessary. The Executive Council and Ethics Committee/Inquiry Panel is charged with maintaining confidentiality about processes and identities where known.

The Inquiry panel decides the best means of collecting and setting out information, including closed meetings, confidential interviews, collaborative open meetings etc. In each case the EC/IP reviews and selects appropriate methods which enable them to gather information, evaluate the situation and compile a report with recommendations.

Step 3

The IP's report is submitted to the Executive Council so that the profession is able to take the steps necessary to protect the interests of clients, students, supervisees and colleagues of registered members.

The Executive Council has recourse to the following recommendations reached by consensus or a majority vote:

a) A reprimand (including requests for changes in practice):

A reprimand is recommended when clarification of ethical issues relevant to the complaint is deemed adequate

b) A period of required supervision, training and/or personal therapy:

Periods of required supervision, training or therapy are recommended when further processing or understanding of the issue by the recipient of the complaint is deemed appropriate. A written statement outlining the practitioner's learning and present understanding of the issue should be provided to the Council when recommended periods of supervision, training or therapy are completed. The statement should also be signed by the practitioner's supervisor or therapist.

c) Suspension of registration:

Suspension of registration is recommended when the issue considered is severe enough but it is thought that the practitioner can process and develop an understanding of the problematic nature of the issue that would enable them to practice ethically in future.

d) Withdrawal of registration, and/or membership of the Association:

Withdrawal of registration is recommended when the actions of the practitioner breach the Code of Ethics in a wilful or premeditated manner. Attempts at concealing such actions or refusal to comply with the Council's recommendations would also lead to withdrawal of registration.

Finally, the complainant and recipient of the complaint are informed of the decision made by the Executive Council and the reasons behind these in writing. The Association has the right to publish on its website and/or journal the decisions of the Executive Council and to inform other professional bodies and/or agencies.

A practitioner has the right to appeal against a decision within 28 days of a recommendation being made. Appeals and reviews will be heard by a new panel. Appeal/review panel decisions will be final.”

14. From 2008 Ms Dymoke had been using dance spaces at EHU during the vacations to provide BMC courses, together with Ms Lisa Dowler, who was a member of EMA and a senior dance lecturer at EHU. Lisa Dowler also taught BMC classes as part of the undergraduate BA degree in Dance.
15. In 2010 the Head of the Dance Department, Mr Philip Christopher, approached Ms Dymoke with a view to setting up a postgraduate MA course in DMP. Two aspects were central to the course. First it would require accreditation from ADMP. Secondly BMC was to be an integral part of the course, and the modules were written and developed accordingly; although it was not strictly speaking necessary for MA students to take the BMC modules in order to get the MA degree, nevertheless the MA course was built around BMC as one of its core elements. This second aspect necessitated the involvement of Ms Dymoke herself. In order to advertise and run the course as one which included accredited BMC modules, it was necessary that EMA approve the accreditation, in practice through Ms Dymoke. EMA, again through Ms Dymoke, would also have to approve the use of the BMC mark in the university materials promoting the course (albeit that it is Ms Dymoke's case that EHU were never themselves licensed to offer BMC, which was always being provided by her and two teaching colleagues, Dr Coaten and Ms Scarth). It was also inevitable that Ms Dymoke would have to be employed to run the BMC part of the course, because she was one of only four licensed teachers in the UK and the only one qualified to be a programme co-ordinator.
16. Approval of the course within the relevant faculty of EHU and the process of accreditation by ADMP took place as part of an iterative process. It was originally hoped to commence the course in September 2012, but in the event it was not ready until the following academic year. Within ADMP, accreditation was handled by the Education and Training Committee (of which Ms Dymoke was not a member) who delegated some of the work to individuals to produce “reader's reports” and to an accreditation panel. The accreditation decision was ultimately taken by the Council.

17. In late 2011 Mr Christopher sent to ADMP's Education and Training Committee an initial proposal for accreditation with a view to starting the course in September 2012. On 7 February 2012 a reader's report was sent by two representatives of ADMP who were members of its Education and Training Committee and its Council. On 24 April 2012 a validation submission was sent to the university faculty for the purposes of a meeting on 14 May 2012, at which Ms Dymoke spoke in support of the course and its BMC content. In June 2012 the faculty issued a validation report approving the course subject to ADMP accreditation.
18. In July 2012 a further reader's report by ADMP was sent to EHU, who provided a response. On 7 December 2012 there was a visit to EHU by the accreditation panel of ADMP. Ms Dymoke was present. Course materials were submitted by EHU to ADMP on 29 May 2013 and were followed by further correspondence raising and answering queries, in which Ms Dymoke was involved for the purposes of providing information and clarification to ADMP. There was a second visit, followed by further exchanges, again involving Ms Dymoke on behalf of EHU. In due course accreditation of the course was granted by ADMP's Council and notified to EHU on 26 November 2013. The accreditation was retrospective because the course had already started in October 2013. Ms Dymoke was engaged by EHU, as anticipated, as a senior lecturer, on the basis of 18.5 hrs per week. This was a probationary contract for the first year of the course in 2013/14.
19. During the process Ms Dymoke was heavily involved as a consultant to EHU in advising on course content both for the purposes of setting up the course within EHU, and for the purposes of gaining accreditation for the course from ADMP. She advised on how to meet the ADMP accreditation criteria. She was involved in writing the content for the BMC modules and advised on all aspects of the course which related to BMC. She was also involved in PR and marketing to promote the course. For all this she was paid by EHU at a daily rate for her time. She played no part in the formal accreditation process on behalf of ADMP, and did not participate in the accreditation decision of the Council of which she was Chair. However, there may not have always been a clear distinction in her mind between her role as consultant to EHU and her position within ADMP. In answer to a question in evidence before me, she said that the capacity in which she attended the accreditation panel visit to EHU in December 2012 was on behalf of ADMP, so as to be able to assist in the association being satisfied that its DMP requirements were fulfilled for the purposes of accreditation.
20. 16 students enrolled on the course for the 2013/14 year, 12 full time and 4 part time. In addition, 8 external students took advantage of the BMC modules. The external students paid tuition fees. There was also a licence fee for the BMC element of the course, which for the university students was paid by EHU. It was set as a percentage of the tuition fees paid by external students. It was paid by EHU to EMA, and passed on in full by EMA to the School of Body Mind Centering based in the United States.
21. The BMC aspects of the course encountered problems in 2013/14, which Ms Dymoke attributed to fault on the part of EHU, exacerbated by the departure of Mr Christopher. On 29 September 2014 Ms Dymoke was told that her probationary contract would not be renewed. For the purposes of the issues I have to decide it is not necessary to go into the detail of the complaints made by the university, nor their merits, the validity of which are contested by Ms Dymoke. It is important to bear in mind, however, when addressing Ms Dymoke's complaints about the procedures adopted by ADMP, that

these complaints were a significant part of the context in which ADMP conducted its investigation, and that Ms Dymoke thought that these were allegations which she would have to meet notwithstanding that they did not ultimately form any part of the grounds for ADMP's termination of her membership in due course.

22. On 10 October 2014 Professor Talbot, as Pro-Vice Chancellor and Dean of Arts and Sciences of EHU, wrote a letter to ADMP drawing attention to the termination of Ms Dymoke's employment for what were said to be breaches of ADMP's Ethics Code. Because Ms Dymoke was the Chair of ADMP's Council, the letter was addressed to the Vice Chair who was Victoria Jones (née Smith). The conduct complained of was not identified, but the passages in the Ethics Code identified were concerned with abuse or exploitation of the relationship with students, supervisees and clients. The thrust of the complaints, which were not articulated in detail, seemed to be that students had suffered as a result of Ms Dymoke's handling of the course. The expressed reason for writing to ADMP was that it was understood by EHU that there was to be a meeting within ADMP on 16 October 2014 at which accreditation might be withdrawn, and asking that such a decision be postponed until after EHU had had an opportunity to meet ADMP. In that context Professor Talbot said that Ms Dymoke had a clear conflict of interest in relation to any review of the accreditation. She was not in fact involved in any such review and that is not one of the alleged conflicts which subsequently formed the grounds for terminating her membership of ADMP.
23. On 20 October 2014 Ms Dymoke wrote to ADMP to update it on the BMC issues at EHU. She explained the licensing position and that without her involvement, BMC could no longer be lawfully maintained as the core DMP model for the course. She wrote in her capacity as representative of EMA controlling any BMC programmes in the UK.
24. This email, and Professor Talbot's 10 October letter, prompted the company secretary and administrator, Mr Andrew Clements, to enquire further into the relationship between EMA, BMC and the EHU course. Meanwhile on 28 October 2014 Ms Dymoke had an "appeal" meeting in relation to the non-renewal of her employment with Linda Brady of EHU. According to an email she subsequently sent to ADMP on 30 October 2014, Ms Dymoke told Ms Brady at the meeting that EMA had withdrawn with immediate effect its permission to use the licensed BMC mark or accreditation for the courses at EHU.
25. Mr Clements had a phone conversation with Ms Dymoke, following which on 31 October 2014 he sent Ms Dymoke an email asking whether he had correctly understood the factual position as to "the relationship between you, the BMC organisations and Edge Hill". Having recited his understanding, and referred to the fact that Ms Dymoke had told Ms Brady in her appeal meeting on 28 October 2014 that EMA was withdrawing the EHU licence to deliver BMC training and all endorsement of the EHU MA course with immediate effect, his email continued: "OK then. I think we're going to have problems in two areas, one of which we have spoken about, with the conflict of interest". It is unclear whether, as Ms Dymoke suggested somewhat tentatively in re-examination, this was a reference to a discussion on the phone which was limited to a conflict of interest in relation to using the occasion of her appeal meeting, in which as a probationary employee she was seeking renewal of her contract, to represent and convey EMA's position which would prevent BMC being part of the course if it did not

involve her; or whether it was a reference to a conversation which had covered any wider concerns about conflicts of interest.

26. Ms Dymoke responded to the email correcting some of the factual content. She also prepared a schematic of the BMC licensing structure which was sent to Mr Clements with an email by Paula Hampson, Chair of EMA, on 2 November 2014, and in a letter in identical terms of 3 November 2014. Ms Hampson made clear, as Ms Dymoke had already indicated, that EMA would no longer deliver BMC certified courses at EHU in the light of the termination of Ms Dymoke's employment and the manner in which it had occurred; and therefore that any mention of the BMC service mark needed to be removed from the university website and any course materials.
27. Mr Clements thought it would be a good idea for Ms Dymoke to stand down as Chair, and on 3 November 2014 suggested to Ms Dymoke a form of wording to accompany such a move. Ms Dymoke resisted the suggestion pending further thought and consultation, and in due course expressed her decision to stay as Chair.
28. Meetings of the Education and Training Committee and the Council were set for 6 December 2014. On 28 November 2014 Mr Clements sent Ms Dymoke an email which said that he had been reflecting on his responsibilities as company secretary, which had caused him to consult a solicitor and draft a report. The draft report was attached. Ms Dymoke was invited to correct any factual errors and Mr Clements went on to say that if she wished to make a response he would circulate it.
29. The attached draft report commenced "I do not think for a moment there has been any intentional wrongdoing or intent to deceive or to profit in the events described here." It identified concern about conflicts of interest on Ms Dymoke's part expressed "specifically" in bullet points in the following terms:
 - (1) Promoting BMC to be a core component of the EHU DMP MA without declaring a personal interest as co-director of EMA.
 - (2) That the BMC Licence for the EHU DMP MA was built on [Ms Dymoke] being the teacher on the course as she was the sole accredited teacher
 - (3) That in her role as co-director of EMA she had presumed undue influence over the continuation of the BMC licence at EHU
 - (4) Not providing ADMP with full necessary information relevant to the accreditation whilst ADMP Chair, thereby undermining the validity of the accreditation process
 - (5) The knowledge that EMA could withdraw the BMC licence without consulting ADMP

The draft report made two further criticisms of Ms Dymoke's conduct:

- (1) that through EMA charging licence fees to EHU she had an undeclared financial interest; and
- (2) that the conflation of roles at the appeal meeting on 28 October involved a conflict of interest.

The draft report also raised two further concerns about issues of ADMP's professional competency as an organisation. These were:

- (3) That the absence of knowledge within ADMP of Ms Dymoke's multiple roles during the accreditation process (both in relation to EMA's licensing role and as sole UK licensed teacher) raised questions as to ADMP's competence because it could be argued that ADMP was incompetent not to have discovered this; and
 - (4) There could also be an issue that as a professional body dealing with dance movement psychotherapy, ADMP ought in any event to have been aware of the BMC structure.
30. Ms Dymoke was concerned that these criticisms of her seemed to be coming from Mr Clements rather than any of the practitioner members of the association, and her response was to ask on whose authority he was raising them and whether anyone else in Council had been involved. Mr Clements replied he was acting in his own capacity as company secretary, but that it was one of the Council members who had put a conflict of interest on the agenda for the forthcoming meeting. Ms Dymoke then responded that the draft report did contain incorrect facts, without identifying them. She was asked to identify them and did so.
 31. It appears that Mr Clements' report was not finalised for the 6 December 2014 meeting(s). There is a final version dated 18 December 2014, with attachments, which is in distinctly different terms from the 28 November draft, which was never provided by ADMP to Ms Dymoke.
 32. On 6 December 2014 the meetings of the Education and Training Committee and of the Council took place. At the ETC meeting the committee heard from Professor Piemer of EHU who repeated concerns which he and other EHU representatives had expressed to Mr Clements, Ms Smith and another Council member on a visit to EHU the previous day, 5 December 2014. A decision was taken by the Council that an Inquiry Panel should be established to conduct a full ethics inquiry into events surrounding the EHU course including Ms Dymoke's involvement; and that she should be asked to stand down as Chair with immediate effect. She was not present at the Council meeting when those decisions were taken. She was then invited to join the meeting and asked to stand aside as Chair pending an ethics investigation surrounding events at EHU. The precise issues which were to be investigated were not articulated to her, nor was she told what the EHU representatives had said during the 5 December visit or at the ETC meeting on 6 December. She was told by Mr Clements and a Council member, Ms Scarth, that if she stepped aside as Chair, she would be heard and would be able to defend herself in accordance with the association's rules. She agreed to do so on that basis.
 33. On 16 December 2014 Mr Clements wrote a formal letter on behalf of ADMP. It confirmed that she had been asked to step aside as a result of allegations and concerns raised by EHU. A copy of Professor Talbot's letter of 10 October 2014, drawing attention to his complaint of breaches of paragraphs 1.2 and 1.3 of the Ethics Code, which were then set out in Mr Clements' letter. It then identified four further issues expressed in the following terms (without numbering):

- (1) “We also have concerns surrounding undeclared conflicts of interest in the establishment of the DMP MA at Edge Hill. These include your interest as co-director of [EMA] and your roles as licenced BMC teacher and licenced BMC programme leader.”
 - (2) “We have also received information that your personal BMC students, who were not on the EHU DMP MA attended BMC classes held at [EHU] as part of the DMP MA programme without the knowledge and permission of the University.
 - (3) We also have serious concerns about the circumstances surrounding the withdrawal of the BMC certification programme from [EHU].
 - (4) “...we have been told by the university that there have been contacts between ex-course staff and current students...”
34. The letter went on to say that “ADMP wishes to hear your voice in this matter” and sought a full disclosure of events with supporting documents; and that she present her case to ADMP by 15 January 2015. The letter concluded: “we now need to establish what happened and look forward to your full co-operation.”
35. On 18 December 2014 Mr Clements completed a full report on the background and issues for Ms Jones, now Acting Chair, which concluded with a recommendation, on legal advice, that an inquiry should be set up and gather evidence from all concerned. This was in different terms from the draft sent to Ms Dymoke on 28 November 2014 in many respects. In particular it no longer included the introductory words disavowing any suggestion of intentional wrongdoing; and it identified the concerns in very different terms. The three concerns were now identified as being the awarding of the accreditation to EHU, the conduct of the course and the withdrawal of the BMC licence from EHU.
36. This final report was sent on 23 December 2014 to Ms Nina Papadopoulos with a request that she chair the enquiry. It was never provided to Ms Dymoke.
37. On 14 January 2015 Ms Dymoke wrote to Mr Clement and Ms Jones saying that she would like all the issues to be outlined because it was not clear to her what the issues were to which she was being asked to respond. She repeated an earlier request that she should attend a joint meeting with the Ethics Committee together with Ms Singer and Dr Coaten to address the issues. Mr Clement was against allowing oral representations at a meeting and the deadline for responding was extended. Before it expired, Mr Johnson of Stephenson Solicitors LLP (“Stephensons”), solicitors instructed for Ms Dymoke, wrote to the association on 26 January 2015 confirming that she wished to cooperate fully with the enquiry and provide a detailed response, but that in order to do so she would need to be provided with (1) a statement of the allegations which were being investigated by ADMP, properly particularised setting out the relevant dates and parties; (2) copies of all documents provided by EHU; and (3) details of what information was being sought from Ms Dymoke, the period of time it should cover and what documentary evidence was required.
38. Mr Clements responded by email on 2 February 2015 explaining that the Chair of the Ethics Committee had withdrawn and that ADMP was currently in the process of appointing a committee, and consequently all requests for disclosure were suspended

until the new committee was in place. It concluded by saying that the new Ethics Committee would be in contact in due course. Mr Johnson sought and was given confirmation that in the meantime no submission was required by Ms Dymoke by the existing deadline of 11 February 2015. Mr Johnson said that he looked forward to hearing again in due course.

39. Nothing happened for almost three months. Therefore on 20 April 2015 Ms Hannah of Stephenson sent a chasing email. This seems to have prompted Ms Jones to get on with setting up an Ethics Committee. On 23 April 2015 she responded to Ms Hannah that it had recently been formed and a brief had been passed on to it. She said that the committee would be in contact with Ms Dymoke in the near future.
40. It is not entirely clear what “brief” was given to the Ethics Committee. It was in a document attached to emails to members of the Committee asking them to serve on it sent later that day, 23 April 2015. It may well have been a three-page document in the bundles commencing “To the Ethics Inquiry”. Whatever it was, it was not given to Ms Dymoke or her solicitors. The Ethics Committee comprised Dr Ditty Doktor as Chair; Ms Gerry Harrison and Mr Jonas Torrance who were ADMP members; and Ms Sarah Scobie who was not a member of the association.
41. Having heard nothing for another three weeks, Ms Hannah emailed asking urgently for a detailed update so that matters could be progressed. She was told that the Ethics Committee were about to have their first meeting and that she would be contacted by the panel when it was felt appropriate.
42. On 26 June 2015 Ms Hannah wrote to ADMP again repeating the request for disclosure of the exact concerns and supporting evidence and for a proper opportunity to respond. On 2 July 2015 Mr Clements emailed Ms Hannah stating that the brief for the Ethics Committee together with all documentation submitted to them was available via a Dropbox link which was also emailed both to her and Ms Dymoke. In fact the documents in the Dropbox, which were numerous, did not include any “brief” to the Committee, nor did they include Mr Clements final report of 18 December 2014, which had been provided to the Ethics Committee and was no doubt an important document in their deliberations. Mr Clements’ email to Ms Hannah said that the inquiry panel were still looking at the documentation and awaiting further information from EHU. It promised that she would be informed when there had been a response from EHU and that thereafter Ms Dymoke would be invited to provide a full written response to the allegations.
43. That is not what happened. Ms Dymoke and her solicitors heard nothing further for many months, despite sending chasing emails on 20 October 2015, 10 November 2015 and 23 February 2016. The first substantive response came in the termination letter of 10 March 2016.
44. What had in fact occurred during this period is revealed by a number of internal documents. The Ethics Committee had produced a two-page report on 4 October 2015. It identified the two questions which it had been asked to address as (1) whether ADMP was incompetent not to know of, or investigate, the structures and operations of Body Mind Centering in the UK before awarding the accreditation; and (2) whether ADMP can be assumed to have knowledge of Ms Dymoke’s involvement with EMA, even if this information was not shared. These were not questions which directly addressed

criticisms of Ms Dymoke's conduct. The Ethics Committee concluded that a conflict of interest had occurred in relation to Ms Dymoke's EMA role, which ADMP had allowed to happen, but that this would have been disclosed if her CV (which the Committee had not seen) had been submitted with the course validation papers, which would normally have occurred. The report was not critical of Ms Dymoke's conduct. On 8 October 2015 there was a Skype conference call between four members of the Council. A fifth sent her apologies. Three members who were thought to be sympathetic to Ms Dymoke were not notified and were not involved. The four Council members who were involved together with Mr Clements concluded that Ms Dymoke's membership should be terminated "because of the conflict of interest" and that once Ms Dymoke had been informed of the findings and that her membership was terminated, the Ethics Committee report would then be circulated to Council members.

45. However, as is apparent from the history already recited, Ms Dymoke was not then informed of the termination of her membership. Ms Jeannette Macdonald, who succeeded Ms Jones as Acting Chair, and Mr Clements set about trying to persuade the Ethics Committee to amend its report, recognising that "it is problematical to proceed with the Ethics Inquiry Report in its current form because of its general rather than specific nature". The Ethics Committee declined to do so. It was only in February 2016 that Ms Macdonald, in conjunction with Mr Clements and two Council members, Ms Loutsis and Ms Rova, determined to proceed with the termination. Their decision resulted in the termination letter dated 10 March 2016, which was posted to Stephenson's on 11 March 2016. The following day the letter of termination and Ethics Committee Report was sent by email to the other Council members.
46. The termination letter of 10 March 2016 identified the two conflicts of interest which were said to form the grounds for termination, namely:
 - (1) a failure to notify ADMP during the process of accreditation that she was a co-director of EMA which was the sole UK licence holder for BMC; and that she was herself the sole licenced UK programme leader for BMC; and
 - (2) the giving of a notice to EHU during her personal appeal hearing on 28 October 2014 which was given in her capacity as co-director of EMA.
47. The termination letter did not identify why these were regarded as justifying termination of membership rather than some lesser sanction, and did not refer to or address the criteria for termination identified in step 3 of the Complaints Procedure.
48. By letter of 7 April 2016 Stephenson's sent on behalf of Ms Dymoke a Notice of Appeal with 10 detailed grounds of challenge to the decision, focussing largely on the procedural deficiencies and unfairness of the process.
49. On 6 May 2016 ADMP's solicitor, Mr Turner of Kitsons LLP, sent a document described as "our client's reply to the Notice of Appeal". The Reply addressed each of the 10 grounds briefly and concluded that "we are not of the view that the appeal should be allowed. That letter had been approved in draft by Ms Macdonald without consultation with any of the other Council members. Stephenson's queried whether it was the decision on the appeal and if so who comprised the appeal panel. A curt response was sent by Mr Turner on 3 June 2016 saying that it was "the position as far as our client is concerned" and that that was now an end to the matter. Internal

documents suggest that Mr Turner advised ADMP that he constituted the panel and was making the decision as legal adviser. The Reply did not articulate any reasoning why the conduct alleged was regarded as justifying termination and did not refer to or address the criteria for termination identified in step 3 of the Complaints Procedure.

Express terms

50. On the true construction of the provisions set out above from the Ethics Code and Complaints Procedure, there were express terms of the contract between Ms Dymoke and ADMP that in the event of any complaint against her or concern about her:
- (1) once the nature of the complaint or concern had been clarified by the Chair, she would be informed of it and invited to respond;
 - (2) throughout the investigative process at Step 1, she would be provided with evidence and statements received for the purposes of investigating the complaint or concern, subject only to any restraints imposed by questions of confidentiality or other ethical bars to sharing information;
 - (3) throughout the process, including steps 2 and 3, she would be kept appropriately informed;
 - (4) the decision to impose a sanction at Step 3 would be made by the Executive Council by a unanimous decision or majority vote;
 - (5) the decision to impose a sanction at Step 3 would take into account the recommended criteria set out under each heading, which for termination of membership was breach of the Code of Ethics in a wilful or premeditated manner, or attempts to conceal such actions, or a refusal to comply with the Council's recommendations;
 - (6) if she exercised her right of appeal from the imposition of a sanction at step 3, it would be heard by a new panel;
 - (7) any decision by an appeal panel to uphold a decision to terminate membership would take into account the criteria identified in step 3 for that sanction.
51. Mr Levisseur submitted that the appeal panel had to be a panel of the same type as constituted for step 2, in other words a fresh Ethics Committee. I see no warrant for interpreting the Complaints Procedure in that way. It contemplates that the Executive Council will unanimously or by a majority have made the disciplinary decision. Thereafter an appeal will be by way of review. It is common for bodies to appoint panels consisting of one or more external members, sometimes lawyers, to conduct such a review. There is nothing to prevent ADMP from appointing a lawyer as the new panel for the purpose of hearing an appeal.

Implied terms

52. Ms Dymoke submits that there was an implied term of her contract with the association that ADMP would act in accordance with the rules of natural justice in relation to a decision to terminate her membership.

53. On behalf of ADMP Mr Dodge submitted that the existence of the implied term contended for is precluded as a matter of law by the decision of Megarry J, as he then was, in *Gaiman v National Association for Mental Health* [1971] Ch 317. In that case the defendant association, a company limited by guarantee, passed a resolution terminating the membership of 302 members “known or reasonably suspected of being Scientologists” so as to preclude them from voting at forthcoming AGM which was usually attended by about 100 voting members. There was a long history of hostility between the association and Scientologists. There had been a flood of membership applications in the previous month, many of which had been accepted. The termination of membership for the 302 members came without any forewarning to them or opportunity to respond. Megarry J rejected an argument that the resolution to terminate membership was invalid as being in breach of the rules of natural justice on the basis that although there had been a breach of the most elementary form of natural justice, there was no term that the rules of natural justice would be observed which was to be implied into article 7(B) of the articles of association, which provided that members must resign if requested to by a resolution of the Council. At p. 335D-H he said:

“In the case of a company, whether limited by shares or guarantee, a new legal entity comes into existence, namely, the company; and many of the powers have to be exercised for the benefit of that entity. This distinguishes a company from an ordinary club, which is not a legal entity distinct from its members; and although a trade union, of course, possesses some of the characteristics of corporate personality, it is not a corporation either. The conversion of a club into a limited company, too, is no mere formality, but a change of substance. Where there is corporate personality, the directors or others exercising the powers in question are bound not merely by their duties towards the other members, but also by their duties towards the corporation. These duties may be inconsistent with the observance of natural justice, and accordingly the implication of any term that natural justice should be observed may be excluded. Furthermore, Parliament has provided a generous set of statutory rules governing companies and the rights of members, as contrasted with the exiguous statutory provisions governing trade unions and the even more exiguous provisions governing clubs. Yet again, the authorities cited by Mr. Neill, though not establishing his proposition, do indicate the extent to which the courts will go in enforcing the provisions of the articles, even where those provisions appear to operate harshly or unjustly. These considerations seem to me to militate against the application of the principles of natural justice in this field.”

54. At p. 336B-337B he gave four reasons for rejecting the implication of such a term in that case:

“In the present case, my conclusion is that there are indications a-plenty to exclude any implication of the requirements of natural justice. First, as I am concerned with a corporation, there

is the duty owed by the council to the corporation to exercise their powers in what they bona fide believe to be the interests of the corporation. The power under article 7 (B) is one which must be exercised thus, and the exercise of this power is one in which the question that may arise is not only whether it is to be exercised, but when. Where, as in the present case, their duty may impel the council to exercise the power with great speed, whereas natural justice would require delay, I think that this indicates that the council is intended to be able to exercise its powers unfettered by natural justice.

Secondly, the cases on companies limited by shares indicate that provisions in the articles of a company for expropriation or expulsion are valid, even though they deprive the member of valuable property rights. Companies limited by guarantee are, in a sense, in a position a fortiori; for the element of expropriation is lacking, at any rate to any appreciable extent. A member who joins does so on the terms of the articles, including article 7 (B), so that what he gets is not an absolute right of membership, nor a right of membership until expelled for misconduct, but a right of membership until that membership is terminated by the council acting bona fide in what they believe to be the interests of the association. The terms of the contract which bind the members must at least be of some importance.

Thirdly, the wording of article 7 (B) seems to me to militate against the implied term. True, it lacks any phrase like “in their absolute discretion,” such as appeared in *Russell v. Duke of Norfolk* [1948] 1 All E.R. 488: but it is a wholly unrestricted power, not confined to cases of misconduct, and so on. In other words, if the power had been confined to cases of misconduct or the like, that would have been some indication that the principles of natural justice ought to apply: for since there could (be expulsion only if misconduct were established, not only would the machinery of natural justice in making and adjudicating on the charge be readily applicable, but also reputation might well be at stake. It is otherwise where, as here, the power given is absolute in its terms.

Fourthly, the cases in which the principles of natural justice have been held to be applicable have in the main been cases in which what was at stake was liberty, property or a means of livelihood (as in the trade union cases). That does not exhaust the field. Thus in *Cohen v. National Union of Tailors and Garment Workers*, *The Times*, January 13, 1962, what was in issue was not membership of a trade union but the right to hold office in a trade union; and on motion Plowman J. held that the principles of natural justice applied. But I think that one of the elements which points to the applicability of the principles of natural justice is the importance and gravity of what is at stake. The mere

membership of the association, involving no real interest in property, and no question of livelihood or reputation, does not seem to me to be prima facie a matter in respect of which there is any strong claim to have the principles of natural justice applied, at any rate on motion.”

55. Care needs to be taken as to what is meant by “natural justice”. In ***Local Government Board v Arlidge*** [1915] AC 120 Hamilton LJ described the phrase “contrary to natural justice” as “an expression sadly lacking in precision”. It is commonly treated as having two central principles:
- (1) the principle encapsulated in the Latin tag *audi alteram partem*, namely that the decision maker should afford to a person adversely affected by the decision a reasonable opportunity to be heard (which will generally also require sufficient notice of the nature of the matters under consideration by the decision maker); and
 - (2) the principle that the decision maker shall not be a judge in his own cause and will be free from bias.
56. So for example in ***Ridge v Baldwin*** [1964] AC 40, 132 Lord Hodson identified the three principle features of the requirement of natural justice as being the right to an unbiased decision maker, notice of the charges and a right to be heard in answer to the charges.
57. However, the rules of natural justice involve requirements which are flexible and fact specific in their application. They will often, but not always, require a person adversely affected to have an opportunity to be heard, depending on the circumstances: see for example Ormerod LJ in ***Norwest Holst Ltd v Secretary of State for Trade & others*** [1978] Ch 201 at p. 226. This is in keeping with the duty being expressed simply as one to act fairly. Sir Robert Megarry V-C himself observed in ***McInnes v Onslow-Fane*** [1978] 1 WLR 1520 at p. 1530C-G that the expression “natural justice” is problematical for the reasons there explained, and that it will often be preferable to address the question as whether there is a duty to act fairly. This was how the implied term was characterised by Lord Woolf in ***Wilander v Tobin*** [1997] 2 Lloyds Rep 293 at pp. 299-300.
58. In ***Bradley v The Jockey Club*** [2004] EWHC 2164 (QB) (approved on appeal [2015] EWCA Civ 1056), Richards J treated the duty on private bodies imposed by the ***Nagle v Fielden*** principle as one which is to be equated with the principles applicable to claims for judicial review of decisions of public bodies; in each case the essential concern should be with the lawfulness of the decision taken which includes whether the procedure was fair: see [37]. This was the approach in contractual cases where disciplinary proceedings were being brought: see [41] adopting the approach of Lord Woolf in the unreported interlocutory judgment of 28 July 1997 in ***Modahl v British Athletic Federation Ltd.***
59. Further guidance may be found in the line of cases considering the exercise of a discretion conferred by one party to a contract on the other. It is well established that such discretion must be exercised in good faith and not arbitrarily, capriciously or unreasonably in the public law sense of *Wednesbury* unreasonableness i.e. irrationality: see for example the summary by Rix LJ in ***Socimer International Bank Ltd (in***

liquidation) v Standard Bank London Ltd [2008] EWCA Civ 116 [200] Bus LR 1304 at [66]. The scope of the fetter on the exercise of contractual discretion was considered in the context of an employment contract by the Supreme Court in *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661. The issue there was not one of procedural fairness but of whether the evidence justified the conclusion on a rationality basis. Nevertheless, some of the observations are of assistance. Baroness Hale, whilst recognising that the content of the decision maker's duty must depend upon the terms and context of the particular contract involved (see [18], and [31,32]), observed at [28] that there are signs that the contractual implied term is drawing closer and closer to the principles applicable in judicial review; Lord Neuberger too, although dissenting in the outcome, agreed that the applicable principles should be the same as the approach of domestic courts to the decisions of the executive: see [103]. The judgments make clear that in a contractual context the inquiry includes whether the decision-making process was lawful and rational: Baroness Hale at [23] – [30], Lord Hodge at [53], [57], Lord Neuberger at [104].

60. Of course, generally an implied term must not be inconsistent with any express term. The duty to act fairly in relation to decisions to terminate membership of a company must be consistent with the articles of association and with the fiduciary duties of the directors. However, I see no difficulty in the content of the duty of fairness in any given circumstance being fashioned to ensure such consistency. It is common ground in this case that the contract included the terms of the Ethics Code and Complaints procedure which confer powers to impose sanctions ranging from reprimand through suspension to withdrawal of registration and termination of membership. In the context of an organisation such as ADMP, there is every reason to treat those decision-making powers as subject to an obligation of procedural fairness in just the same way as would apply to decisions of a public body. Indeed one would only have the now out of fashion officious bystander ask, "Can the Council act unfairly in deciding to terminate membership?" for the testy suppression "of course not" to be forthcoming.
61. Expressed in this way, there is no inconsistency between implying a duty of procedural fairness and the fiduciary duties of a director, which include now those now statutorily defined in s. 172 of the Companies Act 2006:

"172 Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.”

62. The content of the duty to act with procedural fairness towards a particular member of the ADMP is informed by all the circumstances, including the s. 172 duty of directors. What fairness to a member requires in any particular case is informed by the interests of the company as a whole as well as the interests of the individual member concerned. But that does not mean that the directors should be free to reach sanctioning decisions in a way which is disadvantageous to the member concerned where there is no sufficient interest in doing so for the company as a whole; indeed s. 172(1)(f) would require the directors to act fairly towards a member insofar as behaving in that way did not impinge on any of the other considerations: it is not generally in the interests of a company as a whole to treat any individual members unfairly when deciding whether to sanction them.
63. It is also right to observe that what procedural fairness requires in practice may differ from body to body. A small voluntary organisation may not be expected to employ the more formal and elaborate procedures which are required of a larger and better resourced organisation.
64. If *Gaiman* stood for the proposition that principles of natural justice can never be implied into the contract between a company limited by guarantee and its members, it would be incompatible with the subsequent authorities I have identified; a requirement to follow the rules of natural justice is not inconsistent with the performance of the directors’ fiduciary duties and the content of the duty is one of procedural fairness which takes its content from the particular circumstances, which might in some circumstances involve no notice or no opportunity to respond. But in any event *Gaiman* is readily distinguishable on its facts from the present case in a number of important respects. First, there is in this case nothing in the implied term which is incompatible with the need to exercise a power with great speed, which formed Megarry J’s first ground. In this case the court is concerned with a disciplinary procedure which itself confers the ability to impose an Interim Suspension Order at any stage of the investigative process. Secondly, in *Gaiman* the court was concerned with an alleged implication into the contract between a company and its member contained in the articles of association, based solely on those articles. In this case the contractual framework is not confined to the articles of association but includes the important additional element of a contractual disciplinary procedure for investigating and adjudicating upon complaints and concerns and the imposition of appropriate sanctions. The power to do so in this case, unlike in *Gaiman*, is not a matter of absolute discretion but is expressly required to be informed by the criteria set out in the Complaints Procedure. Megarry J’s second reason does not therefore apply in this case and his third reason recognised that this was an important point of distinction. Third, the term which it is sought to imply in this case is not said to be of universal application, as it

was in *Gaiman*. It is a term said to apply specifically to Ms Dymoke who was at the time Chair of ADMP and a longstanding member.

65. Accordingly, I conclude that it was an implied term of the contract between ADMP and Ms Dymoke that she would be treated fairly in relation to her termination; and in particular that she would be informed of the complaints or concerns in sufficient detail to enable her to respond to them and would be given a reasonable opportunity to respond. That applies not only to the substance of the complaints or concerns, but also to the question whether they justified the sanction of termination of membership. Such a term satisfies the test in *Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72; [2016] AC 742, and accords with public law principles and those which govern the exercise of a contractual discretion. It is no more than was recognised at times by ADMP itself: on several occasions identified above, Mr Clements, Ms Jones and Ms Scarth expressly recognised that Ms Dymoke should have an opportunity to put her case, and promised that she would be able to do so. Indeed that was what persuaded her to agree to step down as Chair at the 6 December 2014 meeting and was the quid pro quo for her doing so.

Bad faith

66. Ms Dymoke advanced a case that ADMP had acted in bad faith both in the Notice of Appeal and in these proceedings. However, it was withdrawn during the course of the hearing when Mr Levisieur made clear that he was not alleging bad faith against any individual.

Breach

67. In terminating Ms Dymoke's membership ADMP acted contrary to the express and implied terms identified above in the following substantial respects:
- (1) Ms Dymoke never had clearly articulated to her the criticisms she faced; although the draft report of 28 November 2014 went some way towards identifying them, this was in the context of evidence gathering as part of Step 1 which at that stage was incomplete. There were at the time wide-ranging allegations being made most of which in the event were not maintained. The request in Stephenson's letters of 26 January 2015 and 26 June 2015 for a clear articulation of the allegations and the evidence on which they were based was a necessary and reasonable one: it was the minimum necessary to afford Ms Dymoke a fair opportunity to put forward her response. Ms Dymoke was not given a fair opportunity at any stage before receiving the termination letter to respond to the concerns or put her side of the story. She had been promised the opportunity to do this at the 6 December 2014 meeting, and again in correspondence in response to her solicitor's requests, and repeatedly expressed her willingness and desire to do so. In the event the Ethics Committee reached their conclusions without hearing from her and so did those responsible for deciding to terminate her membership.
 - (2) Ms Dymoke was never given an opportunity to address whether her conduct merited the sanction of termination of membership. At no stage was she forewarned that there was a possibility that her membership would be terminated.

- (3) The decision to terminate her membership was not taken by the Council, but by three members without notice to or consultation with the other Council members.
- (4) Throughout the process Ms Dymoke was not kept appropriately informed. She was not given the full report of 18 December 2014 which went to the Acting Chair and the Ethics Committee. She was not given a copy of the brief to that committee or told its terms of reference or scope of inquiry. She was not told that it would not receive evidence or submissions from her. She was not told when it reported, or indeed at any time prior to her termination that it had reported. She was not given a copy of its Report of 4 October 2015. She was not given any articulation during the process of the grounds being considered for terminating her membership, either as to her conduct or as to the appropriateness of any sanction for such conduct.
- (5) The decision in relation to the imposition on sanction was (a) irrational in the public law sense of the word, that is to say it was not the subject matter of any process of reasoning; and (b) contrary to the express terms because it did not take into account the criteria identified in step 3 for that sanction. There was no explanation for departing from the assertion in Mr Clements' draft report of 28 November 2014 that there was no intentional wrongdoing or intent to deceive; or for treating something less as warranting dismissal rather than one of the lesser sanctions available.

Nagle v Fielden

68. As a result of my conclusions it is not necessary for Ms Dymoke to establish that the principle in *Nagle v Fielden* applies. My strong inclination is that ADMP is not a body to which such rule applies, not least because membership does not substantially determine whether a dance movement psychotherapist can practice as such. ADMP aspires to set standards for such practitioners but membership is not a prerequisite for practice either in theory or in reality. However, since the point is not determinative of the outcome of the present case, I would prefer not to express a concluded view on the precise ambit of the principle.

Remedies

69. It was made clear on Ms Dymoke's behalf that the principal remedy sought was restoration of membership; and that should she succeed on her case, the consequence would not be automatic reinstatement but a requirement that ADMP should conduct the process afresh and consistently with the express and implied terms of the contract. I will hear the parties on the precise form of relief.
70. In addition Ms Dymoke sought damages for losses caused by the termination of her membership. The losses claimed were primarily loss of income from various potential sources said to have been suffered as a result of losing membership. It was conceded on her behalf that none of the heads of loss could be established on the balance of probabilities, but the claim was put on the basis of a loss of chance. That requires a threshold of showing a real or substantial chance of the benefit accruing from the third party had the contract not been broken.

71. The losses which were said to have been suffered fall into the following categories:
- (1) Loss of income from private clients, supervisees, and student therapists, and from working in a health and social care setting for various organisations, specifically One Education, Dance Voice and at the Priory Hospital in Roehampton.
 - (2) Loss of opportunity to apply for membership of the United Kingdom Council of Psychotherapy (“UKCP”) and consequent earning opportunities with the benefit of that membership.
 - (3) Loss of publication of a book chapter giving rise to loss of the opportunity for professional kudos and consequently loss of earnings.
 - (4) Loss of the opportunity to complete her PhD and thereby the loss of opportunity of enhanced earnings.
72. As to lost earnings, the evidence shows that Ms Dymoke’s earnings did not fall off following termination of membership in March 2016. Her accounts are made up to 30 September each year. The net earnings were £14,727 for 2014/15, £18,728 for 2015/16 (covering 6 months either side of the termination) and £ 21,075 for 2016/17. She was not able to identify any occasion on which any prospective employer or source of income had declined to provide her with work on the grounds that she was not a member of ADMP. As I have already observed, membership of ADMP is not a prerequisite to being able to practice as a dance movement psychotherapist. What makes a real difference for those wishing to practice in this field is recognition by the Health and Care Professions Council (“HCPC”) and/or the Professional Standards Agency (“PSA”). Ms Dymoke had recognition from neither, and I accept the evidence of Ms Edwards that all ADMP’s members who have neither are finding it difficult to find work; and that having ADMP membership would not make the difference. There was no significant documentary evidence or third party evidence to support the claim that opportunities for earnings were lost. I am not persuaded that this head of claim meets the necessary threshold of involving a real and substantial prospect of earnings having been lost. It is entirely speculative.
73. The same is true of the other three heads. Membership of ADMP is not a necessary prequalification for membership of UKPC, nor does it entitle the person to membership of UKCP. It may to some extent reduce the training steps which need to be undertaken, but not in a way which the evidence suggested was quantifiable in pecuniary terms. The loss of income from losing the book chapter is entirely speculative. There is no causative link established between loss of ADMP membership and a failure to progress or complete a PhD.
74. Accordingly, the claim for damages fails.
75. I should nevertheless deal with Mr Dodge’s submission that any procedural deficiencies were irrelevant because it was clear that Ms Dymoke had no answer to the allegations for a conflict of interest. He submitted that the underlying facts were not addressed or disputed in Ms Dymoke’s Notice of Appeal or her evidence in the case before me; accordingly, it was submitted, Ms Dymoke would have suffered any losses established to have flown from the termination even if there had been no breach of contract in

respect of the procedures adopted; and the discretion would have been exercised in the same way anyway. I cannot accept this submission. It is clear that she never had an opportunity to address the underlying facts other than in her response to Mr Clements' draft report and that she was not then responding in full to what was then identified. Her evidence in the case was aimed at the grounds on which the action was founded which were the procedural deficiencies identified. Nevertheless it was clear from her evidence before me that she maintained that any conflict of interest had been disclosed to ADMP, in particular at the December 2012 visit to EHU. Moreover there are clearly issues which arise as to whether the sanction of termination was appropriate for the conduct alleged.

Conclusion

76. The claim succeeds to the extent identified above. I will hear the parties on the form of order.