

# Breach of Contract: Foundation trust did not breach consultant's contract when it investigated its concerns outside the MHPS framework

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## The Facts

Dr Jain was employed by Manchester University NHS Foundation Trust as a consultant radiologist. The Trust had concerns about Dr Jain's clinical practice and about his working relationships, and it commissioned an investigation by an external independent investigator into its concerns. Dr Jain claimed that commencing the investigation and the manner of the investigation were breaches of his contract of employment. In particular, he claimed that the provisions of the Maintaining High Professional Standards framework (MHPS) were incorporated into his contract, and that the Trust was in breach of these provisions.

The High Court dismissed Dr Jain's claims. It held that:

- The MHPS framework was not expressly incorporated into Dr Jain's employment contract as it had not been formally agreed and adopted by the Foundation Trust via its LNC, nor was it implied into his contract of employment by custom and practice.
- However, the Trust had said that it would follow MHPS as guidance, and the framework was therefore relevant as to whether or not the Trust had breached the implied term of trust and confidence.
- The Trust had not breached Dr Jain's contract of employment by commencing an external investigation outside of the guidance in MHPS at a point in time when an existing investigation following Part IV of the MHPS framework were suspended. Although the matters under the MHPS investigation were linked, the focus of each investigation was different.
- Dr Jain and the Trust had previously entered into mediation. The disclosure and use of mediation materials did not amount to a breach of contract. The use of such documents was limited to a defined purpose and the objective of the mediation could only be achieved if the documents were shared with a small group of people within the Trust.
- The Trust imposed restrictions on Dr Jain's practice ( the court found this did not amount to an exclusion). This was not a breach of contract because the decision to restrict was made in good faith and justified on the grounds of patient safety.
- The Trust did not fail to consider alternative re-skilling plans as it had sought advice from NCAS and attempted to implement an alternative approach.

## What does this mean for employers?

This is another helpful case for employers as it confirms that it is possible to undertake investigations (in this case into working relationships) outside of the remit of MHPS and not be found to be in breach of contract. It also provides clarity that MHPS may not be incorporated into the consultant's contract where an NHS Foundation Trust has not formally adopted it as a local policy. Each case will however turn on its own facts and it is important to consider if a Trust has either expressly, or impliedly by custom and practice, adopted the MHPS framework.

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