EMPLOYMENT TRIBUNALS

Claimant: **Mr. Noah Duckworth**

Respondent: **Nottingham Squash Rackets Club Limited**

Heard at: **Nottingham**

On: **14th,15th, 16th & 17th March 2022**
18th March 2022 (In chambers)

Before: **Employment Judge Heap**

Members: **Mr. C Bhogaita**
Mr. R Jones

Representation

Claimant: **Mr. K Zaman - Counsel**
Respondent: **Miss N Twine - Counsel**

RESERVED JUDGMENT

1. The complaint of wrongful dismissal is well founded and succeeds.

2. The complaint of a failure to pay a redundancy payment is well founded and succeeds.

3. The complaint of unfair dismissal fails and is dismissed.

4. The complaints of discrimination arising from disability in respect of allegations that the Respondent refused to provide the Claimant with a comprehensive response to his data subject access request; made unfounded allegations of misconduct against him and failed to correct comments made by a Mr. Roger Cockle in an email of 26th August 2020 are dismissed on withdrawal.

5. The remainder of the complaints of discrimination arising from disability fail and are dismissed.

6. The complaints of a failure to make reasonable adjustments fail and are dismissed.

7. The complaints of unlawful harassment related to the protected characteristic of disability fail and are dismissed.

8. The complaints of victimisation fail and are dismissed.

9. The parties are Ordered to confirm within 28 days of the date of this Judgment being sent to them whether the successful complaints of wrongful dismissal and a failure to pay a redundancy payment have been resolved or whether a Remedy hearing is required.

RESERVED REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Mr. Noah Duckworth (hereinafter referred to as "The Claimant") against his now former employer, Nottingham Squash Rackets Club Limited (hereinafter referred to as "The Respondent" or "The Club").

2. By way of a Claim Form presented on 25th February 2021 the Claimant brought a number of complaints against the Respondent. Those complaints were as follows:

    - Wrongful dismissal;
    - A failure to pay a redundancy payment;
    - Discrimination arising from disability;
    - A failure to make reasonable adjustments;
    - Harassment related to the protected characteristic of disability; and
    - Victimisation.

3. At the time that the Claim Form was presented, it was disputed by the Respondent that the Claimant was an employee within the meaning of Section 230 Employment Rights Act 1996. It was contended in that regard that the Claimant had been at all material times with which his claims were concerned a "casual worker". That issue was determined and resolved in the Claimant's favour by Employment Judge Butler at a Preliminary hearing which took place on 17th August 2021.

4. The Respondent therefore now accepts that the Claimant was at all material times with which this claim is concerned - and indeed from 1st July 2018 until his dismissal on 30th November 2020 - an employee of theirs. Miss Twine therefore accepted on behalf of the Respondent that the Claimant had been entitled to notice pay upon termination of employment and that part of the claim was conceded subject to agreement as to the calculation of the sums to which he was entitled in that regard.

5. Miss Twine also sensibly conceded that should the Tribunal find that the Claimant was dismissed by reason of redundancy, that being the reason relied upon by the Respondent, that he was also entitled to a redundancy payment and that part of the claim was also no longer resisted.

6. The parties had agreed a list of issues prior to the commencement of the hearing and those were included within the hearing bundle between pages 56 and 60. Whilst we refer to that list as being agreed, there was one element which remained controversial. That was paragraph 25 which included 7 further acts of victimisation which Mr. Zaman on behalf of the Claimant candidly accepted did not form a part of the pleaded victimisation claim. We made it plain to Mr. Zaman that if those matters were to be advanced then in light of that concession there needed to be an application to amend the claim. Following instructions being taken Mr. Zaman made that application and we refused it with reasons given orally at the time. Neither party has asked us to embody those reasons within this Judgment and therefore we need to say no more about them.

7. There was, however, other discussion as to the list of issues before the commencement of the evidence. We should note that in this regard it was conceded by the Respondent that the Claimant had at all material times been disabled by reason of the following conditions:

    a) Bilateral hearing loss.
    b) Dyslexia.
    c) Dyscalculia.
    d) A speech impediment; and
    e) Learning difficulties.

8. Originally it was not conceded, however, that the Respondent had actual or constructive knowledge of the Claimant's disabilities by reason of dyslexia and dyscalculia. However, Miss Twine on behalf of the Respondent conceded the issue of knowledge given a document within the bundle where the Claimant had set out that he suffered from those conditions. There were also further concession by the Respondent which we record within the issues below.

9. We had also discussed with Mr. Zaman some areas of the complaints which were being advanced on behalf of the Claimant which appeared to us to be unclear as to how they would amount to unlawful discrimination in the way that they have been pleaded. After taking instructions Mr. Zaman withdrew the following complaints/parts of them on behalf of the Claimant:

    a) Discrimination arising from disability:

        (i) Refusing to provide the Claimant with a comprehensive response to his data subject access request;
        (ii) Making unfounded allegations of misconduct; and
        (iii) Failing to correct comments made by a Mr. Roger Cockle in an email of 26th August 2020.

b) Victimisation:

(i) Reliance on an email from the Claimant of 14th November 2020 at 9.30am as being a protected act; and
(ii) Reliance on the Claimant's email of 16th November 2020 at 3.05pm as a protected act.

10. Following the various concessions and withdrawals the following were the agreed issues which the Tribunal had to determine:

Unfair Dismissal

10.1. Why was the Claimant dismissed?

10.2. Was the Claimant dismissed as a reaction to him raising grievances dated 21st August 2020 and 3rd September 2020 and/or his continued sickness absence.

10.3. Was there a genuine redundancy situation at the Respondent Club in November 2020?

10.4. Was the dismissal of the Claimant attributable to that redundancy situation?

10.5. Was the dismissal of the Claimant fair in all the circumstances and particularly:

a) Was the Claimant's dismissal predetermined?

b) Was it reasonable for the Respondent to seek to progress the redundancy consultation when the Claimant was unwell?

c) Did the Respondent take reasonable steps to understand the impact of the Claimant's disabilities on his abilities to participate in a redundancy consultation process?

d) If so, would it have been reasonable to adjust its processes and did it.

e) Did the Respondent consult with the Claimant about his selection for redundancy?

f) Did the Respondent select the Claimant for redundancy and/or dismiss him whilst he was signed off sick from work? <u>As a matter of fact, that is not disputed by the Respondent.</u>

g) Did the Respondent apply a fair system for selecting the Claimant for redundancy?

h) Did the Respondent consider alternative job opportunities?

i) Was the Respondent required to and if so, did they give consideration to placing the Claimant on furlough under the Coronavirus Job Retention Scheme ("CJRS") as an alternative to dismissing him.

j) Did the Respondent provide the Claimant with a proper and fair appeal process?

Discrimination Arising from Disability

10.6. Did any of the following arise in consequence of the Claimant's disabilities:

a) Difficulties in attending and participating meetings due to impaired hearing, communication, speed of learning and ability to process information. This is conceded by the Respondent.

b) The need to take sick leave related to his disabilities.

c) The need for reasonable adjustments to be made in meetings to help the Claimant cope with those matters identified in (a) above. This is conceded by the Respondent.

8.7 Did the following occur and if they did, did they amount to unfavourable treatment?

a) The Respondent emailing the Claimant and pressing him to attend the redundancy meeting during the period when he was signed off sick and recuperating.

b) Refusing or not offering the Claimant any welfare meetings before requiring him to attend any redundancy consultations.

c) Not providing the Claimant with reasonable adjustments.

d) Taking the Claimant off the Respondent's list of approved coaches. Mr. Zaman, on behalf of the Claimant, confirmed that this related only to his need to take sick leave.

e) Dismissing the Claimant.

7.7. Was any of the unfavourable treatment caused by the something arising from the Claimant's disability.

Failure to make reasonable adjustments

7.8. Did the Respondent's grievance and redundancy processes amount to a PCP?

Mr Zaman confirmed that the following issues were taken with those

procedures:

a) The speed of the process.

b) The Respondent dealing with the processes while the Claimant was off sick.

c) The grievance procedure and redundancy procedures happening together making it difficult for the Claimant to engage in either of them.

d) Not waiting until the Claimant's health had recovered before proceeding with either process.

e) The Respondent proceeding with the processes without the benefit of an Occupational Health Assessment.

7.8. Did the Respondent's approach to its grievances and redundancy process place the Claimant at substantial disadvantage in comparison with persons not suffering from his disabilities?

a) Because of his impaired ability to process information.
b) Because of his problems with communicating.
c) Because of the impact of stress on his speech impediment.
d) Because of the effect of anxiety on his health generally.

7.9. Was the Respondent aware or could we have been reasonably expected to know of any such substantial disadvantage?

7.10. Would the various disadvantages the Claimant faced have been ameliorated by:

a) It separating grievance and redundancy processes and not running them together; and/or

b) Dealing with the grievance process first before the redundancy process; and/or

c) Waiting until the Claimant's health recovered before continuing with either process; and

d) Obtaining an Occupational Health Report on the Claimant.

7.11 If so, would it have been reasonable for the Respondent to have taken any such steps or alternative steps.

Harassment

7.11. Was the Claimant subjected to unwanted conduct through the actions of Steven Payne between 5th to 19th November 2020 and seeking to engage the Claimant in discussions and attend meetings about a proposed redundancy

whilst he was off sick due to stress and anxiety. The Respondent has conceded that that amounted to unwanted conduct.

7.12. If so, did that conduct have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or otherwise offensive environment for the Claimant.

7.13. Was the conduct related to the Claimant's disabilities?

Victimisation

7.14. Did any of the following amount to a protected act?

a) The Claimant's grievance letter dated 21st August 2020.

b) The Claimant's email to Mr. Steve Payne dated 7th November 2020 at 4.33pm. This is conceded to be a protected act by the Respondent.

c) A letter from the Claimant's Solicitors, Shakespeare Martineau dated 17th November 2020 addressed to Nick Hargreaves. This is again conceded by the Respondent to amount to a protected act.

d) Did any of the following acts/omissions occur and did they amount to a detriment by the Respondent:

(i) The Respondent's decision to conduct an investigation into the validity of the Claimant's contract of employment. Mr. Zaman confirmed the relevant date when it is said that that decision was taken was 5th November 2020; and

(ii) Dismissing the Claimant on 19th November 2020.

e) If so, where those acts materially influenced by the fact that the Claimant had done a protected act.

THE HEARING

8. The claim was listed for 5 days of hearing time which took place between 14th and 18th March 2022.

9. Evidence and submissions concluded on the fourth day of the hearing and the Tribunal determined that given the number of issues involved and the importance of them to both parties we would deliberate on 18th November 2022 and reserve our decision so that the parties were not waiting around to be sent away if we did not have sufficient time to make our decision and then deliver that orally. That was also in part due to the fact that we wanted the Claimant to be able to fully digest and understand our decision which was more likely to be achieved if it was provided by way of a reserved rather than oral decision.

10. We should observe that the Claimant of course does suffer from a number of disabilities and it was necessary as a result to consider what adjustments the Tribunal needed to put in place to ensure that he was not disadvantaged and was able to give his best evidence and fully participate in the hearing. Adjustments had helpfully been identified at the earlier Preliminary hearing before Employment Judge Butler and there was helpfully no objection from Miss Twine to those same adjustments also being put in place for the purposes of this hearing. Those involved asking short questions, allowing the Claimant to begin his answers in cross examination again if he stuttered or lost his train of thought and allowing his father to sit next to him to help to find the page numbers in the bundle that the Claimant was referred to.

11. We reminded the Claimant's father that that should not of course extend to assisting otherwise with the evidence that the Claimant was giving to us because that must come from him alone. We are satisfied that that direction was helpfully heeded by Mr. Duckworth during the course of the hearing.

12. In addition to those adjustments which had been in place at the earlier Preliminary hearing, Mr. Zaman also asked us to schedule regular breaks for the Claimant of 10 or 15 minutes for every 45 minutes of hearing time. There were no objections to that position by the Respondent and those were duly implemented by the Tribunal at the point that they were requested.

13. We would also like to thank Miss Twine for the sensitive and appropriate way in which she approached cross examination of the Claimant and to the Claimant himself for the professional way in which he conducted himself at the hearing despite how upsetting it clearly was to him to relive certain events.

14. Due to the Covid-19 pandemic for the most part observers at the hearing attended remotely by use of Cloud Video Platform. We are satisfied that we were able to have a fair and effective hearing at which any observers who did wish to attend were able to see and hear what the Tribunal did during the course of the public hearing time.

15. The Judge wishes to extend her thanks to the parties for their patience in awaiting this decision and apologises for the delay in it being able to be finalised. That was in part due to other cases in the list and periods of leave taken and once again the patience of both parties has been appreciated.

WITNESSES

16. During the course of the hearing, we heard evidence from the Claimant on his own behalf. On behalf of the Respondent we heard from Gawain Briars, the now Chairman of the Club and Steven Payne, the former Honorary Secretary of the Club. We make our observations in relations to matters of credibility in respect of each of the witnesses from whom we have heard below.

17. In addition to the witness evidence that we have heard we have also paid careful

reference to the documentation to which we have been taken during the course of the proceedings and also to the submissions made by Mr. Zaman on behalf of the Claimant and Miss Twine on behalf of the Respondent.

18. We should observe that Mr. Zaman, rather unusually in our view, decided that he would only make submissions as to the unfair dismissal claim and indicated that he did not intend to make any submissions at all as to the numerous discrimination claims advanced by the Claimant. Given the unusual nature of that position, Mr. Zaman reaffirmed that he would not wish to make any additional submissions and simply rely on what had already been said and heard.

19. We did, however, raise some issues with Mr. Zaman in relation to certain of the discrimination complaints and which he duly agreed to address us on. One of those issues was that it was common ground that the Claimant's sick leave had been certified as being either in relation to work related stress or glandular fever. It was therefore difficult to see at first blush how the Claimant's sick leave arose from any of his pleaded disabilities. Mr. Zaman submitted in this regard that because of the Claimant's disabilities he was more likely to be susceptible to work related stress and therefore that period of sick leave did arise, in his submission, from the Claimant's disabilities.

20. We also raised with Mr. Zaman how the Claimant's grievance letter of 21st August 2020 was said to amount to a protected act. Mr. Zaman had previously confirmed he was relying upon that letter as making an allegation the Respondent had infringed the provisions of the Equality Act 2010 but again at first blush it was difficult to see where that allegation arose. Mr. Zaman relied on point 9 of the grievance letter on the basis that it made reference to the Claimant's disability. He contended that that of itself was sufficient to create an allegation of an infringement of the Equality Act.

21. We also asked Mr. Zaman for submissions on how the Claimant's dismissal on 19th November 2020 could have been motivated by any of the other protected acts relied on other than the grievance letter of 21st August given that on the case advanced by Mr. Zaman at the hearing was that the actual decision to dismiss had been taken some weeks before any of those protected acts were done (that is on 28th October 2020) and no case appeared to be being advanced as the Respondent believed that the Claimant would do a protected act. Other than saying that he took our point, Mr. Zaman advanced no positive case in relation to that particular matter.

CREDIBILITY

22. One issue that can impact upon our findings of fact is the matter of credibility and therefore we say a word about that now.

23. We begin with our assessment of the Claimant. Miss Twine, sensibly in our view, took no issue as to the credibility of the Claimant's evidence. We similarly took no issue in that regard we consider him to have given a candid and truthful account to us during the course of the hearing. What we would say, however, is that the Claimant was very regrettably the victim of bullying whilst he was in full time

education and that has clearly affected him very badly. We find it more than likely that in view of that background he is likely to be more sensitive to any perceived criticism or bluntness and view that through the prism of what he had previously been subjected to. We accordingly find it more likely than not that actions which might be a little insensitive or out of the ordinary would be readily seen by the Claimant as amounting to bullying. We make no criticism whatsoever of the Claimant for that position, it is not unusual, and we accept that it is a genuine perception of events but that does not necessarily mean that it is the reality of what happened.

24. We turn then to the Respondent's witnesses and firstly to Mr Briars. Whilst we did not consider his evidence to be untruthful, we did consider that Mr Briars sought to downplay his treatment of the Claimant and given his general blunt and rather forceful demeanour we found it more likely than not that he had not been as polite with the Claimant in, for example, asking him to leave the office or to undertake certain cleaning tasks, in the way that he described. Again, it is not unusual for someone who is, effectively, accused of bullying to downplay the impact that they believe that their behaviour may have had. We are not saying, objectively, that Mr. Briars did bully the Claimant but we consider that his blunt and direct approach would have been perceived in that way.

25. In reality, we found it was more likely than not something of a halfway house between the bullying and harassment that the Claimant described and the polite and respectful way in which Mr Briars contended that he had spoken to the Claimant. We did not consider that to be a point as to credibility, however, as it is not unusual for matters of that nature to be downplayed or to be affected by the perception of the alleged perpetrator as we have already said.

26. We then turn, finally, to the evidence of Mr. Payne. Again, we did not consider there to be issues which led us to doubt his credibility as a witness although we were troubled as to his lack of knowledge of key policies and procedures such as the grievance procedure and equal opportunities policy of the Respondent.

27. Whilst we take into account the fact that Mr. Payne and other members who served on the Respondent's Committee are volunteers and give their time without charge for the good of the Club, it must nevertheless at all times be borne in mind that the Respondent is employing people and those who are ostensibly running that Club and making decisions about grievances and ongoing employment have a duty to its employees to be conversant with the very key policies and practices which will affect them and their employment. We sincerely hope that this is something that the Respondent heeds for the future.

THE LAW

28. Before turning to our findings of fact we remind ourselves of the law which we are required to apply to those facts as we have found them to be.

Unfair dismissal – Section 94 Employment Rights Act 1996

29. Section 94 Employment Rights Act 1996 ("ERA 1996") creates the right not to be unfairly dismissed.

30. Section 98 deals with the general provisions with regard to fairness and provides that one of the potentially fair reasons for dismissing an employee is that the employee was redundant. The burden rests upon the employer to satisfy the Tribunal on that question.

31. Assuming that the employer is able to do so, the all important test of reasonableness is then set out at section 98(4) ERA 1996 and provides as follows:

> *"Where the employer has fulfilled the requirements of subsection (1),* (that is that that they have shown that the reason for dismissal was redundancy) *the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

32. Insofar as redundancy dismissals are concerned there is statutory definition provided for by Section 139 Employment Rights Act 1996. This provides as follows:

> *"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-*
>
> *(a) the fact that his employer has ceased or intends to cease:-*
>
> *(i) to carry on the business for the purposes of which the employee was employed by him, or*
>
> *(ii) to carry on that business in the place where the employee was so employed, or*
>
> *(b) the fact that the requirements of that business:-*
>
> *(i) for employees to carry out work of a particular kind, or*

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish."

33. Key to the consideration of fairness in the context of a redundancy dismissal (once it has either been established that there was a potentially fair reason to dismiss on that basis) is the process adopted for selecting employees for redundancy. The relevant considerations are whether the employer:

    a. Identified the correct pool for selection for redundancy;

    b. Applied fairly and reasonably to that pool fair and objective selection criteria;

    c. Undertook appropriate consultation with the employee on the method for selection and the process adopted (including consideration and consultation on the question of suitable alternative employment).

34. The burden is no longer upon the Respondent alone to establish that the requirements of Section 98(4) ERA 1996 were fulfilled in respect of the dismissal. This is now a neutral burden.

35. However, we remind ourselves that an Employment Tribunal hearing a case of this nature is not permitted to substitute its judgment for that of the employer (see **Sainsbury's Supermarkets Limited v Hitt [2002] EWCA Civ 1588** and **Williams v Compare Maxam Ltd 1982 ICR 156, EAT**). It judges both the employer's processes and decision making by the yardstick of the reasonable employer and can only say that the dismissal was unfair if either falls outside the range of responses open to the reasonable employer. Put another way, could it be said that no reasonable employer would have done as this Respondent did?

Disability discrimination

36. The discrimination complaints brought by the Claimant are of discrimination arising from disability, a failure to make reasonable adjustments, harassment and victimisation and the relevant statutory provisions dealing with those complaints are contained within Sections 15, 20, 21, 26, 27 and 39 Equality Act 2010 (EqA 2010).

37. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

(1) An employer (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(2)An employer (A) must not discriminate against an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(3)An employer (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(4)An employer (A) must not victimise an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(5)A duty to make reasonable adjustments applies to an employer.

(6)Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a)unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b)if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7)In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a)by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b)by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

Discrimination arising from Disability – Section 15 EqA 2010

38. Section 15 deals with the question of discrimination arising from disability and provides as follows:

"(1) A person (A) discriminates against a disabled person (B) if:

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

39. There is no requirement in a Section 15 complaint for there to be identification of a comparator. All that is required is that the Claimant is able to show unfavourable treatment, in that regard some detriment, and further that there are facts from which it can again be established that that unfavourable treatment was in consequence of something arising from their disability.

40. The EHRC Code (see further below) assists in the interpretation of the term "unfavourable" treatment and provides that it requires the employee to have been "put at a disadvantage" (paragraph 5.7 of The Code).

41. It is not sufficient, however, to simply show that a person is disabled and receives unfavourable treatment, that unfavourable treatment must be in consequence of something arising from the disability.

42. Equally, the unfavourable treatment in question is not the disability itself but must arise in consequence of the employee's disability – such as disability related sickness absence. This means that there must be a connection between whatever led to the unfavourable treatment and the disability (paragraph 5.8 of The Code). This can be referred to as the "causation" question.

43. The Employment Appeal Tribunal provided a useful analysis with regard to the causation question in the context of a Section 15 EqA 2010 claim in **Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305**. **Weerasinghe** sets out a two-stage approach and that, firstly, there must be something arising in consequence of the disability and secondly, the unfavourable treatment must be "because of" that "something".

Failure to make reasonable adjustments – Sections 20 and 21 EqA 2010

44. Section 20 EqA 2010 provides that:

> *"Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
>
> *(2)The duty comprises the following three requirements.*
>
> *(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(4)The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.*
>
> *(6)Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.*
>
> *(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.*
>
> *(8)A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.*

(9)In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a)removing the physical feature in question,

(b)altering it, or

(c)providing a reasonable means of avoiding it.

(10)A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a)a feature arising from the design or construction of a building,

(b)a feature of an approach to, exit from or access to a building,

(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d)any other physical element or quality.

(11)A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12)A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13)The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

45. Section 21 provides that:

"A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3)A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise."

46. It will therefore amount to discrimination for an employer to fail to comply with a duty to make reasonable adjustments imposed upon them in relation to that disabled person (paragraph 6.4 of The Code).

47. However, the duty to make reasonable adjustments will only arise where a disabled person is placed at a substantial disadvantage by:

    - An employer's provision, criterion or practice ("PCP");
    - A physical feature of the employer's premises; or
    - An employer's failure to provide an auxiliary aid.

48. Where the claim relates to a PCP, this "*should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions"* imposed by the employer (paragraph 6.10 of The Code).

49. Matters resulting from ineptitude or oversight on the part of the employer will not, however, amount to a PCP (see ***Newcastle Upon Tyne Hospitals NHS Foundation Trust v Bagley UK EAT 0417/11***).

50. The duty to make reasonable adjustments only arises insofar as an employer is required to take such steps *as it is reasonable to take* (our emphasis) in order to avoid the substantial disadvantage to the disabled person. A Tribunal is required to take into account matters such as whether the adjustment would have ameliorated the disabled person's disadvantage, the cost of the adjustment in the light of the employer's financial resources, and the disruption that the adjustment would have had on the employer's activities.

Harassment – Section 26 EqA 2010

51. Harassment is dealt with by way of the provisions of Section 26 EqA 2010, which provide as follows:

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

52. The conduct complained of, in order to constitute harassment under Section 26, must relate to the protected characteristic relied upon by the complainant. However, in respect of a complaint of harassment, the word "relate" has a broad meaning (see for example paragraph 7.10 of the EHRC Code).

53. As restated by the Employment Appeal Tribunal in **Nazir & Anor v Aslam [2010] UK EAT/0332/09** the questions for a Tribunal dealing with a claim of this nature are therefore the following:

a) What was the conduct in question?

b) Was it unwanted?

c) Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?

d) Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?

e) Was the conduct related to the protected characteristic relied upon?

Victimisation – Section 27 EqA 2010

54. Section 27 Equality Act 2010 ("EqA 2010") provides that:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

55. In dealing with a complaint of victimisation under Section 27 EqA 2010, a Tribunal will need to consider whether:

(i) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);
(ii) If so, was the Claimant subjected to a detriment; and
(iii) If so, was the Claimant subjected to that detriment because he or she had done a protected act.

56. In respect of the question of whether an individual has been subjected to detriment, the Tribunal will need to consider the guidance provided by the EHRC Code (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (see paragraphs 9.8 and 9.9 of the EHRC Code).

57. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit, nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

58. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

59. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had done a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination.

The EHRC Code

60. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

FINDINGS OF FACT

61. We ask the parties to note that we have only made findings of fact where those are required for a proper determination of the issues in this claim. We inevitably therefore have not made findings on each and every area where the parties are in dispute with each other where that is not necessary for the proper determination of the complaint before us. Particularly a central theme of difficulties which arose between the parties during the latter portion of the Claimant's employment revolved around allegations that he or someone on his behalf had manufactured an employment contract and that he and his father had entered the Respondent's Club during a period of lockdown and when they should not have done so. We do not need to make any particularly detailed findings about those matters for the purposes of dealing with the claim which we have before us. The relevant findings of fact that we have therefore made against that background as set out below. References to pages in the hearing bundle are those in the bundles before us and the witnesses.

The commencement of the Claimant's employment

62. The Respondent is a Sports and Social Club located within Nottingham. It predominantly provides squash facilities for its private members and also to what are termed elite players who, although they are not members themselves, are permitted by virtue of their elite status to use the Club's facilities.

63. The Claimant is a keen squash player and as we understand it has been from a young age. He plays to a very high standard and we understand he has competed in a number of tournaments and has played internationally as a member of the men's England Deaf Squash Team and in other notable tournaments. It is fair to say that squash is a huge part of the Claimant's life and so he came to be affiliated with the Respondent, firstly as a member but then secondly as a casual worker in 2016 when he started undertaking some work in the Club bar. As was found by Employment Judge Butler, at that time the Claimant worked for a few hours each week on effectively an "as and when" basis. Employment Judge Butler found that in July 2018 the Claimant's hours of work - and in consequence his earnings - increased substantially along with the responsibilities that he undertook. The Judge found that from 1st July 2018 the Claimant had become an employee of the Respondent. The types of tasks that the Claimant would undertake at that time would have generally been bar work and cleaning.

64. In January 2019 it was agreed that the Claimant would enter into an Apprenticeship Agreement and that commenced in March 2019 and concluded in June 2020. Unfortunately, as we shall come to the latter months of the Claimant's apprenticeship were disrupted as a result of the Covid-19 Pandemic. It is not disputed that after the Claimant's Apprenticeship Agreement ended he continued to undertake work for the Respondent. We are satisfied that that was the same sort of work that he was undertaking as part of his Business and Administration Apprenticeship and it included some administrative tasks in the Club office.

65. In addition to that he continued working on the bar and doing general cleaning of the Club and court areas. Of the administrative tasks that he did, such as ordering of stock, that was done under the supervision of the two members of the Respondent's management team. We will deal with that further below. The Claimant did not, however, deal with the membership to any great degree or membership enquiries and those matters were dealt with by the management team.

66. In this regard the Respondent employed a General Manager, Nick Hargreaves, and an Assistant Manager by the name of Kevin Emery. Both Mr. Hargreaves and Mr Emery had previous management experience and Mr. Hargreaves particularly had prior experience in sports and leisure. We accept that Mr. Hargreaves was also particularly good in dealing with the members of the Club and was popular with them. He was also instrumental in being able to bring in new business to the Respondent, which was a key issue given the effects of the Covid 19 Pandemic to which we shall come in due course.

67. In addition to Mr. Hargreaves, Mr. Emery and the Claimant there were other members of staff who worked at the Club. For the time that we are concerned with they were Michelle Hargreaves and Sam Payne. Michelle Hargreaves is the wife of Nick Hargreaves, the General Manager. For the avoidance of doubt, Sam Payne is no relation to Steven Payne although we accept that generally staff were often related to either members of the Club, other employees or members of the Committee. That arose largely because of the rather tight knit way in which the Club operates.

68. Nick Hargreaves father was at one stage a member of the Committee and the Claimant's own father, Nick Duckworth, was the Chairman of the Club between October 2019 and October 2020.

69. The work that Michelle Hargreaves and Sam Payne undertook at the Respondent Club was different to that which the Claimant undertook. Sam Payne was occupied on what seems to be a part time basis working on the bar and occasionally at functions or events which the Respondent put on. Michelle Hargreaves duties consisted in the main of preparing food and refreshments for members of the Club and visiting teams and for dealing with catering at any functions or events. The Respondent believed, albeit wrongly, that the Claimant, Sam Payne and Michelle Hargreaves were "casual workers". That flowed in our view from a fundamental misunderstanding as to what a casual worker actually was and the belief that anyone was not in engaged in a management position would be seen as a casual worker.

70. We accept, however, that there were distinct differences between the duties that the Claimant undertook and those which were undertaken by the two members of the management team. For example, the Claimant's own evidence was that when undertaking anything other than tasks working on the bar or undertaking cleaning and the like he would be supervised by either Mr. Emery or Mr. Hargreaves. They had far more experience than the Claimant and were undertaking management functions. Their work was not comparable to that of the Claimant nor, to any extent that it is suggested, do we accept that he could have stepped into the shoes of either Mr. Hargreaves or Mr. Emery and performed the duties that they undertook.

Effect of Covid 19

71. When the country first went into lockdown in March 2020 the Claimant and other members of the Respondent's workforce were placed on furlough. That included the two members of the management team because under the lockdown rules the Club had to close and there was no work for anyone to do. At that time, the Chairman of the Respondent was Nick Duckworth, the Claimant's father, and he wrote to the Claimant and presumably others to confirm the position as to lockdown and furlough on 21st March 2020 (see page 91 of the hearing bundle). As we have already observed, the Respondent has a Committee of volunteers. At this stage Mr. Duckworth was Chairman and there were approximately eight members of the Committee in total. As well as Mr. Duckworth, Nick Hargreaves' father was also a Committee member.

72. In a Committee meeting which took place shortly after lockdown commenced the financial circumstances of the Respondent were discussed. Amongst other things that discussion revealed that the Respondent had a cash deficit, including member loans of approximately £40,000.00 and it was agreed that there was a requirement to review cost structures to ensure that the Club was financially viable.

73. The meeting also noted that revenue streams would be significantly lower following

the closure of the Club because of lockdown and that was related to reduced memberships, subscriptions, cancelled events and lost income associated with the then three-month closure. It was recorded that there had been a decline in membership from 373 members generating an income stream of approximately £140,000.00 to the current level at that stage of 226 members representing a loss of income of around £50,000.00. Those figures were consistent with the evidence given by the Respondent's witnesses as to a decline in membership as a result of the closure of the Club and lockdown generally.

74. The Claimant returned to work from furlough in July 2020. At that stage we accept the Claimant's evidence that Nick Hargreaves attitude towards him had changed and prior to that point he had been on very good terms with Mr. Hargreaves. However, we consider it likely that the source of Mr. Hargreaves agitation was not directed at the Claimant personally but out of his own concern and the things that had been happening behind the scenes at the Club and which he felt might affect his own position. Indeed, it is clear to us that it was not only the Claimant who experienced the fall out of that but also the wife of one of the members who later reported that Mr. Hargreaves had been unpleasant to her when she visited the Club to return some keys.

75. The situation that had developed was that the then existing Committee were looking at ways to reduce costs given the financial predicament of the Club and that had led to both Mr. Emery and Mr. Hargreaves hearing that one or other of them might lose their job. We say more about that below but the belief was formed that the intention of the Committee was to make one of the management positions redundant and slot the Claimant into one of those posts. It is not necessary for us to make any finding about whether that was the case as it is suggested was the intention of Nick Duckworth and/or the Respondent. We are satisfied in all events that even if that had been the case the Claimant did not have any involvement in those matters. He did, however, somewhat bear the brunt of it as matters developed.

76. In this regard as we shall come to there came to be a significant rift between the members of the management team and the members of the Committee. Particularly, there was significant distrust on the part of the management of the Committee who were viewed as acting inappropriately and/or that they were trying to oust the existing management structure to the benefit of the Claimant. Matters eventually got so bad that Nick Hargreaves was found having broken down in the changing rooms because of the toll that the situation had taken on him and there was rumour that he might commence Tribunal proceedings.

77. Consultations meetings were held with both Mr. Henshaw and Mr. Emery in early July 2020 and it is clear that both were under the impression that they might be at risk of redundancy. As we have already remarked, a number of the members had formed the view that either Mr. Henshaw or Mr. Emery were being sacrificed for the benefit of the Claimant gaining a "permanent" position at the Respondent Club. There were strong views on that (see particularly page 130 of the hearing bundle) and that there was nepotism at play because of the Claimant's familial relationship to Nick Duckworth as then Chair of the Committee.

78. At the instigation of members of the Club, and Gawain Briars particularly, an agreement was subsequently reached with Mr. Henshaw and Mr. Emery as to a reduction in their hours and salary but that neither were now at risk of being made redundant. Letters were issued to both of them on 24th August 2020 confirming the position and that the revised arrangements would come into effect on 1st November 2020 (see pages 169 and 170 of the hearing bundle).

Involvement of Gawain Briars

79. Mr. Briars was a previous Chairman of the Respondent Club having been in that position from 1995 to 2004. As we have already observed, as a result of the difficulties which were prevalent between the management and the Committee of the Respondent Club this had caused a faction or so within the membership. Mr. Hargreaves was relatively close to or on good terms with a number of the members and they supported him in relation to what they perceived to be unfair treatment towards himself and Mr. Emery from the then Committee.

80. The wife of one of the members of the Club contacted Mr Briars, presumably given his status as previous Chairman and an existing member, in or around August 2020 to ask him to get involved and see if he could assist in resolving the rift between management and the Committee. Whilst Mr. Briars told us that he had initially approached this task with the best interests of the Club at heart and wanting to broker some sort of peace deal between the management and the Committee and that he was taking a neutral and independent standpoint, even on his own account that did not last very long and it seems to us that within a week or so that any neutrality had completely evaporated.

81. Mr. Briars swiftly took the view that the members of management were in the right and that the Committee were in the wrong and fixed his focus on that. Rather than brokering any peace deal, in essence Mr. Briars involvement ended up pouring petrol onto existing flames. This position led to very heated communications between Mr. Briars and Nick Duckworth/the Committee (see for example pages 162 to 164, 197 to 199, 212 to 213, 239 and 321of the hearing bundle). It is clear that the faction who had the same mind set as Mr. Briars were deeply mistrustful of the Committee and of Mr Duckworth in particular. They believed, rightly or wrongly, that Mr. Duckworth was seeking to carve out a management position for the Claimant to the detriment of Nick Hargreaves and Mr. Briars in particular viewed that as nepotism.

82. As part of his initial involvement Mr. Briars had requested a copy of the Human Resources ("HR") file from Nick Hargreaves, although we are not entirely clear why he needed to do that to assist in restoring a sense of harmony but nevertheless he did so and was provided with a copy.

83. It has to be said that it is somewhat concerning that Mr. Briars was afforded access to what should have been confidential information given that at that stage he was only a member of the Club but was not a member of the Committee. However, during his consideration of the HR file he came across a contract of employment for the Claimant which appears at page 83 to 89 of the hearing bundle. We accept that he was told by Mr. Hargreaves that he had not produced that employment contract but that the Claimant had handed it to him when he had returned from lockdown. It is not ultimately necessary for us to make any detailed finding as to the provenance of that contract but what we can say is that it caused a great deal of suspicion in Mr. Briars' faction of the membership.

84. Particularly it became a common view amongst that particular faction that the Claimant had in some way been involved in fabricating the contract of employment. By this stage some of the wider membership in that faction had become involved in matters. Of particular note was the involvement of Roger Cockle and Steve Payne. They essentially and primarily used Mr. Briars as their spokesperson and he had the bulk of the communications with Nick Duckworth although Mr. Payne and was also instrumental in pointing out his view as to the discrepancies in minutes and the like and it was clear that there was ever increasing animosity between the Committee and this faction of the membership.

Email from Roger Cockle

85. As we have already observed a number of other members had become involved in debating various issues surrounding the actions of the Committee, and Nick Duckworth particularly, and one such individual was a Roger Cockle. On 26th August 2020 he sent a frankly astonishing email to Nick Duckworth and the Committee members and he also appears to have sent that to a number of the members of the Club although we understand from the evidence of the Respondent that to have been a distribution list that he himself created and such we have no way of knowing how many of the membership it in fact went to. The email is a lengthy one setting out a number of areas of dissatisfaction that Mr. Cockle apparently had in relation to the action of the then Committee. The pertinent points for our purposes concerned the view of Mr. Cockle in relation to staffing matters and the relevant parts of his email said this:

> *"This brings us on to another major concern, that of staffing decisions. Firstly, we think all the committee would agree that there were only 2 permanent members of staff at the point of close down (a contract needs to be signed by both parties to be legal). Secondly, there appears to be have been an initial break down of relationships between the Chair and the staff at this point, and as far as we are aware no move to resolve.*
>
> *So, it becomes difficult to understand why decisions were made regarding staffing. Why were three people involved in the initial consultation? Clearly the Chair had a conflict of interest so why was he involved at all? Where was the redundancy plan? There is reference in earlier action plan notes of DH*

and ND[1] implementing the new staff structure – what is it? There was no 'consultation' during the consultation period. What are the major changes to the job descriptions? The Chairman has now confirmed recently that there are no redundancies planned in the foreseeable future.

It is clear to any dispassionate person looking at the decision making process that it potentially exposes the club to an Employment Tribunal application with the real prospect of significant legal costs and damages having to be paid by the Club, which we can hardly afford, for constructive/ and or unfair dismissal and bullying, which has no upper limit in damages. Our advice is that the club's instance will not cover the above costs and damages.

We need the committee to stop the staff selection process immediately and set up an independent group to review the reasons for the approach and map out a legal way forward. Unfortunately, the current committee is tainted in respect of this issue, with stories of committee members allegedly asking for the current manager to be 'sacked'. The matter of nepotism is a very serious issue.

We are aware that Noah Duckworth would appear to have presented an apparently 'fabricated' contract of employment without any knowledge of the two permanent members of staff. If this is the case, he should be suspended until the matter has been clarified.

Noah, not being an employee and no longer on apprentice terms, is casual labour. He is surplus to the main staffing requirement because NH and KE[2] have capacity between the two of them to cover the hours the club is open but he remains regularly at the club without any real role. This cost is not affordable. We understand that he received over £1,200 last month (July 2020) in casual pay, which is more than KE, an employee of the club, received.

There is frustration within the membership that the reasons for these decisions were not clearly communicated. As members we have a close relationship with the staff – there is a co-operative and friendly atmosphere. This frustration was compounded by the instruction of the Committee to dispense with the casual staff, without appearing to consider holidays, sickness and cover. It is noted, however, that the instruction did not include dispensing with the services of Noah Duckworth who was at that time, and remains, casual labour.

……..

We feel that in the immediate future the following actions should be taken:

1. All aspects of staffing changes should be placed on hold, to be reviewed by an independent panel, and if not, then the Committee directors in

[1] A refence to Nick Duckworth and another member of the Committee, Dean Henshaw.
[2] A reference to Nick Hargreaves and Kevin Emery.

opposition undertake to be personally liable for any costs and damages incurred as the current process appears not to comply with employment law regulations.

2. Noah should be suspended immediately until the provenance of the contract he has presented has been established. There is CCTV of both the Chairman and his son entering the club and entering the office during the lockdown period.

3. An EGM should be called immediately to resolve all matters outlined above.

Members just want to turn up and play squash and socialise. We do not want to impede the Committee in these difficult times but as members we cannot just and watch as the Club spirit and ethos is thrown away as well as the current actions around staffing which could end in a Tribunal, which would be catastrophic for the club".

86. The email was signed off by Mr. Cockle and also had the name of a number other individuals ascribed to it at the end. That included Steven Payne. It was said that the email had been sent to all of the membership but again we do not have any way of knowing whether that was the case given that the distribution list was apparently one of Mr. Cockle's creation rather than the Respondent.

87. The reference in that email to the possibility of their being Employment Tribunal proceedings was not to this claim or any anticipation that the Claimant might bring a claim but to the fact that it was by that stage understood that Mr. Hargreaves had been seeking advice in relation to a potential constructive dismissal complaint.

88. The Claimant became aware of the content of that email from a friend of his and unsurprisingly the content of it upset him greatly. We are not surprised that it did it was in our view an extraordinary email for Mr. Cockle to have sent. We raised with Mr. Briars whether it was typical for members to seek to involve themselves in matters which are in reality little if any of their concern rather than what would appear to be the more typical position for them to concentrate on playing squash and socialising. Mr. Briars confirmed that this was an extraordinary situation and that no communications of that nature had emanated from the membership previously.

89. It is clear that the position taken by Mr. Cockle was not only shared by Mr. Payne but also by Mr. Briars and he too called for the Claimant to be suspended during the course of the investigation into his alleged wrongdoing in respect of his contract of employment (see pages 163 and 164 of the hearing bundle). Whilst that was a strong position to have taken on the basis of the evidence that was at hand at the time, we are satisfied that this did not feed into the later decision to make the Claimant redundant because it was plain that all staff who the Respondent viewed (albeit wrongly) as being "casual staff" were dispensed with. There can be no reasonable suggestion that that was done when it was not necessary simply to affect an exit in respect of the Claimant.

90. It should be noted that on 20th August 2020 Mr. Briars sent an email to Dean Henshaw, a member of the then committee, suggesting that immediate savings could be made by discontinuing with what he referred to as the Claimant's "redundant position". Whilst that was clearly not a particularly well thought out strategy, we are ultimately satisfied that it was not a remark which demonstrated that a decision had already been taken in respect of the Claimants continued employment and that his redundancy was pre-determined. The position may well have been different if only the Claimant was later affected by the decision to dismiss him as redundant but, as we shall come to, all "casual" staff were made redundant because there was no requirement for them to undertake the work that they had been doing anymore and the Respondent was looking to save costs because of the financial position that they were now in because of the Covid-19 lockdowns.

The Claimant's Grievance

91. Shortly before the email was sent by Roger Cockle, the Claimant raised a grievance. In that grievance email, which was dated 21st August 2020, the Claimant set out 10 points which he wanted the Respondent to deal with. As that grievance is relied upon as a protected act it is worth setting out the content of the email in full and it said this;

> *"Since returning to work from furlough I have experienced unfair treatment;*
>
> *1. I have been isolated from other staff members and forced to work on my own whilst others worked together.*
>
> *2. I have been spoken to abruptly on many occasions.*
>
> *3. When entering the office, the Manager, Assistant Manager and Director would stop talking all leave the room to continue.*
>
> *4. I have not been asked to do Administration tasks as previously.*
>
> *5. I have not been allowed to give any input to the work as previously.*
>
> *6. The Manger's* (sic) *wife complained about my work in front of the assistant manager.*
>
> *7. I have tried to re-inforce* (sic) *Covid-19 guidelines and have been verbally abused by customers and not supported by my manager.*
>
> *8. The Assistant Manager has been creating rumours to customers about me being the next manager and others losing their job which is creating bad feelings towards me.*
>
> *9. I have now been accused of making up my own contract of employment which my manager gave to me. My disabilities would not make this possible.*

10. When I am doing my work and I have to go to the office I am being asked to leave.

I have worked really hard since coming back to work for the club I am feeling stressed, anxious and upset and this is affecting my mental wellbeing. I feel that I have been treated unfairly and bullied and yesterday this brought me to tears during work and last night I was unable to sleep.

Please can you help me."

92. The grievance was passed to Oliver Michaels, Neil Boston and Dean Henshaw who were members of the then Committee to deal with on behalf of the Respondent. We have not heard evidence from any of them but do not consider that unusual as no allegation directly relating to the grievance or its investigation is pursued in these proceedings. However, we feel compelled to comment that the way in which the Respondent dealt with the grievance is probably one of the most, if not the most, shambolic processes that this Tribunal has ever seen. We come to the reasons why we have taken that view below.

93. The Claimant sent in a further email to the Respondent in which he complained about the actions of Mr. Cockle and a number of other individuals and asked that that be considered alongside his original grievance. That email was dated 3rd September 2020 and the subject line was *"Additions to my previous grievance dated August 21st 2020"*. It was sent to Dean Henshaw and Oliver Michaels who were of course two of the Committee members tasked with investigating the Claimant's grievance.

94. The Claimant set out in his further grievance the following points (which we have paraphrased here for brevity):

94.7. That more than once Mr. Briars had asked him to leave the office when he was working and go and clean the Courts and had made him feel intimidated and that he appeared annoyed with him;

94.8. That Mr. Hargreaves had allowed an email to be sent out which included allegations that the Claimant had falsified his contract of employment and called for his suspension and that had made him feel that the management did not want him to be there;

94.9. That he was not getting any clear direction in respect of his duties from the management;

94.10. That he felt that relations between him and the management had deteriorated after he had returned after lockdown and that he believed that to be because of changes that the then Committee had made and his connection to the Chairman (who was of course his father);

94.11. That Mr. Cockle's email had shared personal information about his wages with the membership and he was concerned how he had come into

possession of those details;

94.12. That the email had caused him a lot of distress because he had done nothing wrong but had been painted in a bad light;

94.13. That calls for his suspension were unfair because he had done nothing wrong and had had no previous warnings; and

94.14. That the email had made him very low and unwell and he wanted to add the names of all those involved into his grievance.

95. Despite the fact that it is plain from the subject line that the Claimant was adding further complaints to his grievance that he wanted to be investigated, as we shall come to below, nothing was done about that email and none of the issues contained within it were, as far as we can ascertain, ever investigated by the Respondent.

96. Whilst a number of former members of staff were asked for statements it is not clear what, if anything, they were told as to the substance of the complaints which were made by the Claimant in his grievance. However, it is plain that whatever that position some of those who gave statements considered the Claimant to have been badly treated and referred to the fact that they too believed that they had experienced negative treatment from Mr. and Mrs. Hargreaves (see for example pages 172, 175 and 177 of the hearing bundle). Equally, there was support for some of the Claimant's complaints from one of the witnesses as to what he had told her at the time about treatment that he had received from Mr. Hargreaves and Mr. Briars (see pages 176, 195 and 196 of the hearing bundle). None of that was reflected in the grievance outcome and as we shall come to below, no findings were actually made about any of the things that the Claimant was complaining about.

97. Those investigating the grievance met with both Mr. Hargreaves and Mr. Emery and also the Claimant to discuss the complaints that he had raised.

98. The grievance investigation report appears at page 287 of the hearing bundle. It is worth setting out the findings and conclusions given that none of them in reality touched upon the core issues that the Claimant had raised in his grievances. The relevant sections of the report said this:

"Findings

Having interviewed Noah Duckworth, Nick Hargreaves and Kevin Emery, three versions of events have been presented to the investigators of the grievance.

The integrity of the investigation may have been compromised. Nick Hargreaves shared Noah Duckworth's grievance with Kevin Emery prior to the investigators interviewing him.

Noah Duckworth has been off work due to sickness since the end of August 2020, he has shared that this is due to stress and anxiety.

A member made an allegation that Noah Duckworth's contract was fabricated. The club investigated the matter and was unable to find any evidence to support the allegation. The investigation did reveal a breakdown in communication and lack of support from Nick Hargreaves.

A member sent out an email to members of NSRC that included personal information about Noah Duckworth. When Noah Duckworth questioned Nick Hargreaves about the email, he claimed to have no knowledge of it and suggested he couldn't help any further.

Conclusion

Due to the lack of evidence and/or testimony from an independent witness, the club's investigation has been inconclusive".

99. There was a recommendation as to mediation between the Claimant, Mr. Emery and Mr. Hargreaves.

100. The Claimant was informed of the outcome of his grievance by an email from Mr. Boston dated 29th September 2020 (see page 288 of the hearing bundle). It was a short email which initially apologised to the Claimant for the delay in concluding the grievance and went on to say this:

"…. we believe the investigation was undermined as documentation addressed to one witness was passed to another.

Thirdly, due to the lack of evidence and/or testimony from an independent witness, the Club's investigation has been inconclusive".

101. As we understand it, the reference to the investigation being undermined was that Mr. Hargreaves appeared to have shown a copy of the Claimant's grievance to Mr. Emery prior to him being interviewed by the Respondent.

102. Dealings with the grievance did not, however, include any apparent investigation let alone conclusions into the Claimant's email of 3rd September 2020 which was completely ignored by the Respondent. We have not heard from either Mr. Henshaw or Mr. Michaels and so cannot ascertain why they did not deal with the additional complaints that the Claimant had raised. However, we are satisfied that there could have been investigation into those matters by the Respondent because Mr. Briars gave evidence that previously the Club had had to reprimand a member for his conduct in the bar area and so that could have been considered and any appropriate action recommended in respect of the complaints against Mr. Cockle and others. Why Mr. Henshaw and Mr. Michaels ignored the email therefore remains a mystery to us.

103. The Claimant was advised of his right to appeal against the decision on his grievance although he was not told how he should go about doing so. Quite understandably given the fact that the investigation had yielded no conclusions

whatsoever, the Claimant appealed against the outcome. He did that by email to Neil Boston on 30th September 2020 (see page 305 of the hearing bundle).

104. Again, the way in which the appeal was dealt with (or perhaps more accurately not dealt with) was nothing short of shambolic. In this regard, the Claimant's appeal was passed to another member of the then Committee, Brian Cripps, who appears to have been asked to deal with the appeal based on a review of the notes made by Mr. Boston.

105. Mr. Cripps did not ask the Claimant for further details as to his grounds of appeal nor did he invite the Claimant to a meeting as he should have done under the ACAS Code on Disciplinary & Grievance Procedures. In fact, he did not contact the Claimant at all. He simply replied to Mr. Boston to say *"On reading your notes I cannot find any evidence to support Noah's claim due to lack of witnesses"*. That response, unsatisfactory as it was, was never even conveyed to the Claimant. In fact, he only came to be aware of it following enquiries by his solicitor after the Claimant's employment had been terminated (see page 411 of the hearing bundle). Whilst the Respondent attempted at that stage to offer a further review of the grievance outcome, that was understandably rejected by the Claimant.

Investigation into the Claimant

106. As a result of the suspicions which had arisen within some parts of the membership of the Club, the Respondent determined that they would commence an investigation into the provenance of the Claimant's contract of employment. That was a matter that had apparently aroused suspicions when Mr. Briars had obtained a copy of that contract from the Claimant's personnel file which he had been given by Mr. Hargreaves. Mr. Hargreaves had apparently told Mr. Briars that the Claimant had given that contract to him when he returned to work after lockdown. There had also been some rumour that the Claimant and his father had been seen entering the Club premises and going into the office during lockdown. We have already referred to that to some degree in the context of complaints made in Mr. Cockle's email.

107. That led to some members of the Club taking the view that the Claimant had manufactured his contract of employment to wrongly give him permanent status.

108. The Respondent therefore commenced an investigation. As with the Claimant's grievance, the investigation was dealt with by the same members of the Committee – Oliver Michaels, Dean Henshaw and Neil Boston. It does not appear to have been a particularly detailed investigation and it resulted in a short report dated 26th September 2020 (see pages 283 and 284 of the hearing bundle). The conclusion reached was that no evidence had been found to support the allegation that the Claimant's contract of employment had been falsified. A recommendation was made that the Claimant be provided with a new "team member" contract, although that does not appear to have taken place before the Claimant was made redundant.

109. Mr. Boston notified the Claimant of the outcome of the investigation by email on 29th September 2020. The pertinent parts of his email said this:

> *"On behalf of the Committee, I am very happy to tell you on behalf of the investigators, that this matter has been concluded in your favour.*
>
> *We are very sorry that such a serious allegation was made against you. You have been completely exonerated in this matter and we hope you can chalk this up as a David and Goliath event.*
>
> *Thank you for your patience and we hope to see you at the Club as soon as you are ready to return".*

110. Despite the fact that the Claimant had been told that the previous investigation had already concluded and he had been exonerated of any wrongdoing, some members of the Club, including Mr. Payne and Mr. Briars, did not consider that the matter had been dealt with properly. They therefore determined that there would be a further investigation.

111. Mr. Payne wrote to the Claimant on 16th November 2020 saying that there was to be an investigation into *"the production of an allegedly fraudulent contract on the 7th July 2020"*. He set out that there were "gaps" in the process in respect of the original investigation which needed *"to be completed before a decision is made as to the final resolution"*. The email set out that he wanted to meet with the Claimant and asked him to let him know when he was available for a meeting. It was indicated that if there was a case to answer then the Claimant would be invited to a formal disciplinary meeting.

112. We should observe that by the time of the letter from Mr. Payne being sent there had been an Extraordinary General Meeting ("EGM") which had been called by members of the Club with the proposal to remove the existing Committee and replace it with four new members, including Mr. Payne and Mr. Briars. The EGM took place on 13th October 2020. The day before the EGM Nick Duckworth and a number of the other members resigned from their positions on the Committee (see page 351 of the hearing bundle) and the resolution to adopt the new Committee was passed the following day at the EGM itself. At that stage Mr. Briars became the Chairman and Mr. Payne the Company Secretary.

113. We can see, given the previous email from Mr. Boston, why this matter came as a complete shock to the Claimant and we have no doubt that it has fuelled suspicion that the Respondent was out to engineer his dismissal from the Club. However, we are satisfied that ultimately that was not the case and, as we shall come to, there was a genuine redundancy situation. The position with the further

investigation arose it seems to us from the continued suspicion of the new Committee as to the actions of the former and the belief that Mr. Duckworth had been engaged in nepotistic activities to seek to secure a position for the Claimant which would otherwise not have been available for him.

114. The Claimant had by the time that he received the letter from Mr. Payne concerning his further investigations instructed solicitors who wrote to the Respondent on 17th November 2020. The letter was a lengthy one and so we do not set it out here in full but it raised the following issues:

114.7. That the Claimant had concerns about the legitimacy of the redundancy process that the Respondent was operating and that this was a sham process and a kneejerk reaction to bring about his dismissal because of his grievances and sickness absence;

114.8. That the Claimant had numerous complaints about Mr. Briars and in particular that he had been marginalised by him;

114.9. That Mr. Cockle had made disparaging comments about the Claimant which were particularly hurtful in light of his disabilities;

114.10. That the grievance outcome was extremely disappointing and that he still had no information about his appeal over a month after it had been raised;

114.11. That the position in relation to the Claimant's contract of employment had been dealt with but that was now being re-opened;

114.12. That the Claimant was being subjected to bullying and harassment and that there was a failure to make reasonable adjustments;

114.13. That there were data protection concerns in light of the information that had been disseminated in the email from Mr. Cockle;

114.14. That the Claimant was unfit for work and would continue to consult with his General Practitioner and that all future correspondence from the Respondent should be sent to his solicitor;

114.15. That the redundancy consultation process should be put on hold until the Claimant's grievance and his subject access request had been dealt with; and

114.16. That the Claimant would be advised on the potential claims open to him which included complaints of disability discrimination.

115. The second investigation did not reach a conclusion because the Claimant was dismissed by reason of redundancy without meeting with Mr. Payne. We come to that redundancy process further below. We should note that we do not suggest that there was any impropriety in respect of the Claimant or his contract of employment and that appears to have simply been born out of the distrust that had

emerged between the membership and the then Committee. Indeed, we accept the Claimant's evidence that his contract of employment was the one that featured in the hearing bundle at pages 83 to 89.

The coaching list

116. Following receipt of the email from Mr. Cockle the Claimant had become unwell and he advised the Respondent that he was not able to attend work because of the impact that it had had on him (see page 191 of the hearing bundle). That is not surprising given the tone of that communication and the accusations that were levelled at the Claimant within it.

117. The Claimant submitted thereafter a series of statements of fitness for work ("Fit Notes"). The first of those was submitted on 4th September 2020 certifying the Claimant as being unfit for work on account of stress at work (see page 509 of the hearing bundle). The Claimant submitted a second Fit Note on 17th September 2020, again with stress at work. That was followed by a third Fit Note on 2nd October 2020 confirming that the Claimant was unable to attend work because of glandular fever and a fourth on 23rd October again stating stress at work. The Claimant's evidence was that whilst stress made his speech impediment worse, he would have been caused upset and been absent from work in all events because of his upset at the treatment that he had experienced, and the email from Mr. Cockle particularly, irrespective of his disabilities.

118. During the Claimant's absence the Respondent circulated a coaching list to the membership (see page 433 of the hearing bundle). That list was compiled by Mr. Hargraves and Mr. Emery and set out the names, accreditations and contact details for available coaches.

119. The Claimant was not included in that list. It is not disputed that he had previously undertaken coaching for members at the Club and given his considerable accreditations and experience in squash that is not surprising. However, we are satisfied that the reason that the Claimant was not included within that coaching list was because at that time he was off sick and so would not have been available to undertake coaching work had members contacted him. He remained on the Club website as being a coach and there had been no removal of him from the Coaching list because this was the first time that one had been distributed. The list was merely an update and the Claimant's evidence was that he did in fact remain on the Respondent's website as a coach even after he had been made redundant.

Redundancy process and the termination of the Claimant's employment

120. As a result of the impact of Covid-19 and the national lockdowns on the Respondent, they had been reviewing their finances and their staffing requirements. Whilst there remained money in the bank, we accept the evidence of Mr. Briars and Mr. Payne, which is supported by documents within the hearing

bundle before us, that the membership had diminished significantly and that had in turn obviously impacted on revenue. Although the Respondent had obtained some Government grants which had been made available to ease the impact of the lockdowns, we accept that the Respondent's view was that there was a reduced need for staff because of the declining members. In addition, whilst there was money in the bank the Respondent also had to take into account that funds needed to continue to be expended in the maintenance of the Club going forward and that included a large capital expenditure of approximately £25,000.00 repairing the roof of one of the squash courts. We accept that the financial position of the Respondent was such that measures were necessary to cut any unnecessary costs so as to ensure the ongoing viability of the Club.

121. The Respondent had already entered into discussions with Mr. Emery and Mr. Hargreaves as we have already noted above and they had been issued with revised terms and conditions, including a reduction in their hours of work to accommodate the impact that the pandemic had had on the membership of the Respondent.

122. However, further discussions took place within the Respondent about finances and staffing levels and a decision was taken that there was no longer any need for "casual" staff because of a reduction in the membership. We come to what is meant by casual staff in the mind of the Respondent (or at least the Respondent Committee as it came to be on 13th October 2020) below.

123. On 28th October 2020 there was a committee meeting by the new committee that had formed following the EGM. The financial position of the Club was discussed and it is plain from the minutes of the meeting that there were ongoing concerns for the Respondent. Particularly, the finances of the Club were likely to be affected by the area moving into a Tier 3 restrictions as a result of the ongoing Covid-19 pandemic. Particularly, it was noted that membership was likely to decrease further and bar takings would substantially reduce. A bank overdraft of £20,000.00 had been arranged so as to cover any issues and it is plain that the Respondent had and continued to suffer financially as a result of the effects of the pandemic and the lockdowns and Covid restrictions.

124. As a knock on effect of those financial difficulties the issue of staffing was discussed at the meeting and the relevant parts of the minutes in that regard said this:

> *"The committee discussed staffing and the numbers required. Currently there are 2 permanent members of staff, and three casual members, one of which has an accepted implied contract. There did not appear to be any chance of the bar opening in the short term or any events prior to next March, and therefore no or minimum requirements for any further staff. The Club was also incurring costs around holiday pay.*
>
> *When looking forward we were unsure what would be required in terms of staffing levels and skills required and that would not be clear until next year and there are the financial implications. The committee agreed that it required a consistent approach.*

ROC indicated that costs could be in the region of £1800 for redundancy payments plus £700 for holiday pay.

After further discussions SP put forward a proposal that to give the Club flexibility and a cost effective approach the 3 members of staff would be released. This was carried unanimously.

Actions – NH to contact and meet 2 of the casual staff and inform them. SP to arrange a meeting with ND[3] to inform him of the decision".

125. We are satisfied that that position as outlined in the minutes was a genuine one and that the financial position of the Respondent and the reduced need for staff other than those in management positions was the reason why the Claimant and his two colleagues had their employment terminated.

126. At that meeting the position regarding furlough was discussed. We are satisfied from the evidence of Mr. Payne and Mr. Briars that further furlough arrangements were considered as a measure to avoid redundancies but that the Respondent concluded that that was not viable because at some point in the near future they would have to make contributions under the scheme and, in all events, the role of the "casual" staff was no longer required and was not going to be required in at least the short to medium term.

127. There was a further Committee meeting on 4th November 2020. At that time it was discussed that the Respondent had £35,000.00 in the bank but that there was still a reduced need for staff members given the continuing lockdown situation. The relevant parts of the Committee meeting minutes in that regard said this:

"The process of releasing staff was discussed. Consideration was given to the current situation regarding lockdown, however, it was felt that there was no prospect of further staff requirements in the immediate future, even post lockdown, and there were no alternative positions. The decision to release all the casual staff was confirmed and the process was finalised".

128. On 5th November 2020 Mr. Payne wrote to the Claimant advising him that the Respondent was commencing a redundancy consultation process. The email to the Claimant said this:

"The NSRC is considering making all casual employees redundant because we have reviewed the issues around the current situation and the financial issues and we can see no option in respect of employing casual staff in the immediate future. Unfortunately, your post is one of those at risk of redundancy.

The organisation will now start the consultation process. The purpose of

[3] References to SP being to Mr. Payne and ND to the Claimant.

consultation is to give you the opportunity to make suggestions and raise any questions you may have.

The organisation will consult with you on an individual basis and I am writing to invite you to a zoom meeting to discuss the process. I am available at any time apart from Monday 9th November PM and Tuesday 10th November PM, so can you please provide a convenient time for the meeting to discuss the issues outlined in this letter, and any other concerns that you may have.

We appreciate that this is likely to be an upsetting and difficult time for you, but we would like to resolve this as soon as possible".

129. Mr. Payne followed up on his email on 7th November 2020 asking the Claimant to let him know when would be convenient for a meeting and who would be there to support him. We accept the evidence of Mr. Payne that the Claimant's mother had previously attended meetings with him at the Club and so he had anticipated that the Claimant may want her to also attend the consultation meeting with him.

130. The Claimant replied by way of a lengthy email the same date. In that email the Claimant made the following points:

130.7. That the redundancy consultation process was a sham and a knee jerk reaction to the grievances that he had raised and his ill health absence;

130.8. That the situation had exacerbated his stress and anxiety and that he was not fit to attend any meetings, including the redundancy consultation meeting;

130.9. That he would seek the further advice of his General practitioner but that he remained unfit for work;

130.10. That the invitation to the meeting at short notice was a further instance of bullying and isolation and that there was no indication that he could be accompanied or that any adjustments would be made despite the Respondent being aware of his disabilities;

130.11. That he had instructed solicitors and would be seeking their further advice;

130.12. That the communications that he had received about the contract investigation were distressing and contrary to previous correspondence from the Respondent;

130.13. That too long was being taken to deal with a subject access request that had been made and that there were concerns about how his personal data was being processed; and

130.14. That as a reasonable adjustment the Respondent should deal with his grievance and subject access request first before and redundancy consultation

process and if that was not done it would support his view that matters had been predetermined and caused by his grievance, subject access request and sickness absence.

131. The Claimant ended his email by saying that he would be in touch once he had spoken to his solicitor the following week and that he was now switching off to recuperate and would not be contactable.

132. Mr. Payne replied to the Claimant on 12th November 2020 setting out his position that he had acted reasonably in relation to the consultation notices and pointing out that the Claimant had been given the opportunity to have someone with him at the meeting. He noted that the Club had been under financial strain as a result of the Covid-19 pandemic and that there was no work available for casual staff at that time or in the foreseeable future. He referred to the fact that redundancies were necessary and not for what he termed as the incorrect reasons set out in the Claimant's email. He asked the Claimant to revert to him within three days with a date and time for a consultation meeting to take place.

133. The Claimant replied to Mr. Payne on 14th November 2020. He said that his email had been upsetting and had added to existing concerns. He set out that he was not fit enough to attend any meetings and that his doctor had advised him to remain off work. The Claimant's email also noted that the Respondent was aware of his mental health and that because of that he was unable to attend any meetings. He reiterated his belief that the redundancy exercise was a retaliation to the grievances that he had raised, his subject access request and his continued sickness absence and that the consultation was a foregone conclusion. He noted that his lawyers would be in touch with the Respondent and that he was not able to liaise directly with Mr. Payne anymore because of the stress that his correspondence had caused.

134. As we have already set out above in the context of the re-opening of the contract of employment investigation, the Claimant's solicitors then wrote to Mr. Payne on 17th November 2020. We do not need to set out again the content of that correspondence as we have already dealt with it above.

135. There was a further committee meeting on 18th November 2020 at which the Claimant and the redundancy process had been discussed. This was the day after the Respondent had been sent the letter from the Claimant's solicitor. The relevant parts of the minutes of the meeting, which appear at pages 393 and 394 of the hearing bundle, said this:

> *"With regard to redundancy ND[4] has been served with the consultation notice but has declined to meet citing health and outstanding investigations. The other two casual staff have been informed of the consultation by NH as there is no opportunity for work at the club until March/April due to Covid.*

[4] A reference to the Claimant by his initials.

Discussed the options available in terms of work opportunities, other opportunities, there being no other vacancies, and he need to manage the finances in these flexible and changing times. It was agreed unanimously that we should continue with the redundancy process for all casual staff.

ND's status was again discussed and it was noted that there was no permanent contract, apprenticeship had been completed and therefore employed on a casual basis, and with no options for work in the future decision was confirmed".

136. On 19th November 2020 Mr. Payne sent an email to the Claimant terminating his employment by reason of redundancy. The relevant parts of the email said this:

"As you are aware the Club has been considering redundancy for its Casual Staff due to the Covid issues and the likelihood of requiring any other staff in the near future.

Unfortunately, we have not been able to identify any suitable alternative work for you.

Your employment will terminate on the 30th November 2020. You will not be required to work your notice period and the organisation will make a payment in lieu of notice to you[5].

Any annual leave you have accrued but have not taken at the end of your employment will be added to your final pay.

Your details will be passed to our payroll who will resolve your redundancy payment[6].

If you believe you have been selected unfairly, you can appeal against the Clubs decision to select you for redundancy. You should do so in writing, setting out the reasons for your appeal, within 7 days from receipt of this letter to myself. You will then be invited to an appeal meeting so that the basis of your appeal can be discussed and considered.

If you have any further questions, please contact me.

I understand that this is a difficult time for you and if you need any support then please let me know. If there are opportunities to work in the future then we will contact you.

Please accept my best wishes for your future."

137. The letter was sent without the Claimant having attended any consultation meetings with the Respondent. However, there was no certainty as to when the

[5] Albeit that that payment was in fact never made to the Claimant.
[6] There is no dispute that that payment was not made to the Claimant either.

Claimant would be able to attend a meeting, the Club genuinely had no need for staff other than Mr. Hargreaves and Mr. Emery going forward and the Respondent also had the other two "casual" staff members to consider who needed to be informed that they were being made redundant. Against that backdrop and the written explanations that the Claimant was given about why he was being made redundant, we do not consider that it was unreasonable for Mr. Payne to have gone ahead and terminated employment without giving further time for the Claimant to agree to attend a consultation meeting. Indeed, the Claimant's solicitors had made it plain that he would not be fit to attend any consultation meetings or return to work until at least 22nd December 2020 (see page 392 of the hearing bundle).

138. The reference to "casual" staff within the email from Mr. Payne was a misuse of the term that Mr. Payne and Mr. Briars particularly used to describe those who were not part of the management team (i.e. not either Mr. Hargreaves and Mr. Emery). However, it is unsurprising that the Claimant took issue with the use of that term and its application to him given that he was by that stage a permanent member of staff and the Respondent now accepts that at least one of the other "casual" staff referred to was most likely also a permanent employee.

139. However, all three "casual" members of staff who were employed by the Respondent at that time had their employment terminated at the same time. The only employees who were retained by the Respondent were Mr. Hargreaves and Mr. Emery and we accept the evidence of the Respondent that even at the date of the hearing before us, there was still no requirement for any other staff other than Mr. Hargreaves and Mr. Emery who were still managing to discharge all required duties, including those that the Claimant had performed, on reduced hours. That was even the case taking into account when annual leave was taken.

140. The Claimant's solicitors responded to Mr. Payne on the Claimant's behalf following his receipt of the dismissal email. The response set out that the Claimant did not wish to appeal the decision to dismiss him on the basis of how his grievances and subject access request had been dealt with. The letter reiterated the Claimant's distress and that the Respondent should only correspond with his solicitors moving forward. The response also set out that the belief that the Claimant's dismissal was discriminatory and an act of victimisation, that they would be advising him in connection with the claims available to him and that ACAS would be contacted to commence early conciliation after the date of termination of employment had passed.

141. The Claimant subsequently entered into early conciliation and then presented the claim that is now before us for determination.

CONCLUSIONS

142. Insofar as we have not already done so we deal with our conclusions in respect of the remaining complaints before us.

Redundancy Payment and Notice Pay

143. We can deal with these complaints in short terms. As we have found that the Claimant was made redundant it is accepted by the Respondent that he was entitled to a redundancy payment. It is not in dispute that that payment was not made. Accordingly, this part of the claim is well founded and succeeds.

144. It is not in dispute that the Claimant was entitled to notice pay on termination of his employment nor that that was not paid to him. This part of the claim is therefore well founded and succeeds.

Unfair dismissal

145. We turn then to the complaint of unfair dismissal and begin with consideration as to whether the Respondent has discharged the burden of proving that the Claimant was dismissed by reason of redundancy. We are satisfied that it has. Whilst Mr. Zaman relies on the fact that the Respondent had money in the bank, that is not the be all and end all in a redundancy situation. The fact was that the Respondent did have a reduced income given the effect of lockdown and also a reduced membership. That had the result that they needed to consider where savings could be made and could not retain staff members that were no longer required. There was a diminished need for employees to do work of the type for which the Claimant was employed because those duties could comfortably be absorbed by the members of the management team. There was no anticipated need for staff to undertake bar work, cleaning or the basic administration tasks that the Claimant did under supervision of Mr. Hargreaves or Mr. Emery. We accept that the Respondent accordingly had a potentially fair reason to dismiss the Claimant by reason of redundancy and that was the genuine reason operating in the mind of Mr. Payne and the Committee when terminating his employment.

146. We do not find that the Claimant's grievances, his subject access request or his sickness absence were the real reason for dismissal or indeed that they played any part of it and, as we have said above, are satisfied that he was dismissed by reason of redundancy.

147. However, that is not the end of the matter and we still need to consider if the Respondent acted fairly and reasonably when treating that as a sufficient reason for dismissal.

148. We were not entirely sure whether Mr. Zaman was advancing an argument that the Claimant should have been pooled with Mr. Hargreaves and Mr. Emery but on the basis that he said that that might be the case, we have presumed that it is a live issue. We reject any notion that there was a requirement to pool the Claimant with the members of the management team. On the Claimant's own evidence he did not perform management tasks with the exception of some administration work which was done under the direction and supervision of the General or Assistant Managers. He accepted in cross examination that he was not of a managerial level as Mr. Emery and Mr. Hargreaves were and that his involvement was to assist and help out where that was needed.

149. The Claimant would not have been able to step into the shoes or either Mr. Hargreaves or Mr. Emery and was not undertaking comparable work such that it was necessary to consider pooling him with either or both of those individuals.

150. Particularly, the Claimant had no dealings with the membership or membership enquires and was not able to undertake the sort of work that, Mr. Hargreaves particularly, was undertaking to try and boost membership numbers. The cohort which more readily aligned to the sort of work that the Claimant was undertaking were Sam Payne and Michelle Hargreaves who performed work that was not of a managerial nature and all three were of course made redundant. To the extent that it is therefore contended that the Claimant should have been pooled with Mr. Hargreaves and Mr. Emery, we reject that suggestion or that it was outside the range of reasonable responses for the Respondent to have failed to do so.

151. However, even if we had found that the Respondent should have pooled the Claimant with the members of the management team, it is plain that he would still have been made redundant because his skills and experience were not at all comparable with that of Mr. Hargreaves or Mr. Emery such that he would have received the lowest in any scoring exercise.

152. There were no other employees with which the Claimant should have been pooled given that all "casual staff" were made redundant and the only employees that remained were Mr. Hargreaves and Mr. Emery. The issue of applying selection criteria did not therefore arise nor did the need to consult on such criteria and scoring.

153. We then turn to the specific allegations of unfairness raised by the Claimant in these proceedings. The first of those is whether the Claimant's dismissal was pre-determined. We do not believe that the termination of the Claimant's employment was determined from the beginning of the involvement of Mr. Payne and Mr. Briars in August 2020. We can see why the Claimant may have formed that view given that Mr. Payne had put his name to the Roger Cockle email which called for the Claimant's suspension and Mr. Briars had previously referred to the Claimant's position as being redundant. However, we are satisfied that no decision was taken until the Committee agreed on the need for redundancies of all of the non-managerial staff at the Committee meeting on 28th October 2020.

154. The position was, however, predetermined at that point. However, we are satisfied that this did not of itself render the dismissal unfair because this was not a situation where there needed to be consultation on way of avoiding redundancies or discussion of pooling, selection criteria or scoring. The role of the Claimant and the "casual workers" was genuinely redundant and the Respondent was in our view entitled to conclude that that was the case before discussing the position with the employees concerned.

155. Even then, the Respondent did not simply communicate that position to the Claimant but did seek to enter into discussions during a proposed consultation

meeting to discuss matters and we accept that had the Claimant attended the meeting then Mr. Payne would have considered anything that he had to say about his redundancy.

156. The Claimant also contends that it was unfair for the Respondent to seek to progress the redundancy consultation while he was unwell. We do not agree that that was unreasonable given the circumstances. The Claimant's role was genuinely no longer required and the Respondent also had two other members of staff who needed to be informed about the redundancy situation. The Respondent would continue to incur unnecessary cost at a time that they could ill afford to do so (and which would be until at least 22nd December 2020) and the Claimant had been able to participate in a grievance meeting with his mother attending with him for support. The Respondent had extended to the Claimant the ability to be accompanied at the consultation meeting and given all of those factors we do not consider that it was unfair or outside the band of reasonable responses for the Respondent to have sought to progress consultation whilst the Claimant was off sick.

157. It is also contended that the Respondent did not take time to understand the impact of the Claimant's disabilities on his ability to participate in the redundancy consultation process. We remind ourselves that the Claimant was absent with stress and anxiety rather than as a result of his disabilities and his own evidence was that he had become stressed in that regard as a result of receipt of the Roger Cockle email. There was nothing to say that the Claimant would be disadvantaged in participating in the redundancy consultation process, he had done so in the grievance process and he had been offered the opportunity for support from a person of his choosing and the opportunity to suggest a date for a meeting.

158. The difficulty that the Claimant would have potentially had had he attended a consultation meeting was with his speech impediment because stress made that worse. However, he did not of course attend a meeting but we have no reason to think if he had that the Respondent would not have dealt with matters sensitively. We do not therefore consider that any unfairness was caused to the Claimant in this regard nor was there any need for the Respondent to further adjust its processes.

159. We turn then to the question of whether the Respondent consulted with the Claimant. We are satisfied that they did or at least attempted to do so. The Claimant had a written explanation about why he was being made redundant, was invited to a meeting with someone to support him to discuss the matter further and when he said that he was unable to attend given the opportunity to propose a date for a meeting. For the reasons that we have already given we do not consider that it was unreasonable for the Respondent to end that process when they did and confirm the Claimant's dismissal without him having actually attended a consultation meeting.

160. The list of issues then requires us to consider whether the Claimant was

selected for redundancy and dismissed whilst he was signed off sick from work. It is not in dispute that both of those things happened. However, his sickness absence was not the reason for his dismissal nor was it unfair to make him redundant whilst he was still signed off sick.

161. We are then required to determine if the Respondent applied a fair system for selecting the Claimant for redundancy. We have already dealt with that above in the context of the question of pooling and the fact that all employees who were not part of the management team were selected for redundancy. No selection process was therefore required in this case.

162. We are then required to consider if the Respondent considered alternative employment for the Claimant. We can answer that in short terms because there was no alternative employment that could be offered to the Claimant nor has any been suggested.

163. The next question is whether the Respondent was required to and did give consideration to placing the Claimant on furlough again under the CJRS as an alternative to dismissing him. We are satisfied from the evidence of Mr. Payne that the Respondent did give consideration to that position but that it was not considered to be viable as the Respondent would at some point incur costs under the scheme and there was no prospect of there being work for the Claimant in the short to medium term. We remind ourselves that the purpose of the CJRS was to seek to save viable jobs that would otherwise be unable to be maintained not those where the employees position was genuinely redundant so as to delay what was going to be the inevitable. We do not find therefore that the decision not to place the Claimant on a further period of furlough caused unfairness.

164. Finally, we are asked to consider if the Respondent provided the Claimant with a proper and fair appeal process. Again, we can deal with this in fairly short terms because Mr. Payne offered the Claimant a right of appeal in his letter of 18th November 2020 and explained the mechanism by which he should appeal. The Claimant, via his solicitors, declined the Respondent's offer of an appeal and it is therefore difficult to see what else they could have done in this regard to affect an appeal process.

165. For all of those reasons we are therefore satisfied that the Claimant's dismissal was fair having regard to equity and the substantial merits of the case and, particularly, the size and resources of the Respondent.

166. Even if we are wrong about any of that and the Claimant was unfairly dismissed he was not able to indicate in his evidence any way in which his redundancy could have been avoided that had not already been considered by the Respondent and therefore even had the consultation meeting taken place it is in our view inevitable that the Claimant would have still been made redundant in any event. We would therefore have reduced any compensatory award to nil by way of a **Polkey** reduction.

167. For all of those reasons, the claim of unfair dismissal therefore fails and is dismissed.

Discrimination arising from disability

168. We turn then to the complaints of discrimination arising from disability. It is conceded by the Respondent that the Claimant had difficulties attending and participating in meetings of his hearing impairment, communication, speed of learning and his ability to process information and that those arose from his pleaded disabilities. It is similarly conceded that as a result of those matters there was a need to make reasonable adjustments for the Claimant to cope in meetings and that that similarly arose from his disabilities.

169. It is not conceded that the need to take sick leave related to his disabilities. We remind ourselves that the Claimant was absent from work with glandular fever and work related stress. Neither of those are pleaded disabilities and other than Mr. Zaman's contention that because of his disabilities the Claimant was more susceptible to suffering from stress, there is no evidence to that effect. Indeed, at one stage the Claimant's evidence was such that he would have had to take sick leave in all events because of the effect of the Roger Cockle email and what had gone before it irrespective of whether he was disabled or not. We are therefore not satisfied that the Claimant's sick leave had anything to do with his pleaded disabilities and that instead that was simply an understandable reaction to the email from Mr. Cockle and what the Claimant felt was inappropriate or bullying behaviour from management which had preceded it.

170. We turn then to whether the Claimant experienced unfavourable treatment. There are now five remaining complaints in that regard. The first of those is the requests from Mr. Payne for the Claimant to attend a redundancy meeting whilst he was signed off sick and recuperating. We accept that that was unfavourable treatment because the Claimant did not want to attend such a meeting. The question then is whether that treatment arose from any of the matters relied on as arising from the Claimant's disabilities. The Claimant's own evidence, which was sensible in the circumstances, was that the requests to attend a meeting did not arise from either his difficulties in attending and participating in meetings nor the need to make reasonable adjustments. Moreover, even if we had found that the Claimant's sick leave arose from his disabilities, it is plain that that was not the reason that he was asked to attend consultation meetings. The reason that the Claimant was asked to attend the meeting was to discuss the fact that his role was no longer required and to consult with him about that. That was not something that was done for a reason arising from his disabilities.

171. The second complaint is a refusal or failure to offer the Claimant any welfare meetings before requesting that he attended any redundancy consultations. It is not in dispute that the Claimant was not offered a welfare meeting. However, we do not agree that that amounted to unfavourable treatment. The Claimant was

under the care of his General Practitioner and also had considerable support from his parents. It is not clear what more a welfare meeting would have ultimately achieved or who it is suggested should have conducted it given that relations between the Claimant and Mr. Payne had broken down as evidenced by the Claimant's own emails in reply to the suggestion that he attend a redundancy consultation meeting and the fact that he had accused Mr. Briars in terms of bullying him.

172. However, even had we not reached that conclusion the failure to offer a welfare meeting was not something that arose from the Claimant's difficulties attending or participating in meetings or his need as a result for reasonable adjustments. Equally, even had we found the Claimant's sick leave to have been something arising from his disabilities, it is plain that the failure to hold a welfare meeting with him was not because of that either.

173. We turn then to the next complaint which is not providing the Claimant with reasonable adjustments. This is in essence the same complaint as the ones advanced under Sections 20 and 21 Equality Act 2010. It is accepted by the Respondent that not all adjustments that the Claimant sought were made and to that extent we accept that that was capable of amounting to unfavourable treatment. However, that did not happen either because the Claimant had difficulties in attending and participating in meetings nor the need to make reasonable adjustments. The latter argument is somewhat perplexing as it appears to be a somewhat circular argument given that the allegation is that the Respondent did not make reasonable adjustments because the Claimant needed reasonable adjustments.

174. Moreover, even if we had found that the Claimant's sick leave arose from his disabilities there is no basis that we can see to say that the Respondent did not make reasonable adjustments because of that sick leave.

175. It follows that that complaint of discrimination arising from disability also fails and is dismissed.

176. The next complaint of discrimination arising from disability is the removal of the Claimant from the list of approved coaches. We are satisfied that as a matter of fact that did not happen because the Claimant was never removed from any list. He was simply not included in a list of available coaches which was circulated during the pandemic. He remained on the Club website at all times as being a coach with the Respondent. We do not accept that this amounted to unfavourable treatment because it does not appear to be in dispute that the Claimant was not at that time actually able to undertake any coaching work had he been included on the coaching list in all events.

177. Mr. Zaman relied only on the Claimant's sick leave for the purposes of this part of the claim. As we have concluded that the Claimant's sick leave was not something that arose from his disabilities for the reasons that we have already given, it follows that this complaint must fail and be dismissed. We should observe, however, that had we found that the Claimant's sick leave did arise from his

disabilities and him not being included on the coaching list to amount to unfavourable treatment then we would have concluded that that did amount to discrimination arising from disability because he was not included given that he was on sick leave at that time and unavailable.

178. The final remaining complaint of discrimination arising from disability is the Claimant's dismissal. We have little difficulty in concluding that that amounted to unfavourable treatment. However, that unfavourable treatment did not arise from the Claimant's disabilities. Particularly, it had nothing to do with the Claimant's inability to attend or participate in meetings or his need for reasonable adjustments. The unfavourable treatment was quite simply because his role was redundant.

179. Had we found that the Claimant's sick leave was something arising from his disability we are also satisfied that that had no bearing on the decision to terminate his employment. We agree with Miss. Twine that there is simply no evidence to that effect. Again, the reason for the Claimant's dismissal was that he was redundant as a result of the Respondent's financial position and the reduced need for employees to undertake the sort of work which he was employed to do.

180. It follows that the remaining complaints of discrimination arising from disability therefore fail and are dismissed.

<u>Failure to make reasonable adjustments</u>

181. The Claimant relied upon a broad PCP which was the Respondent's redundancy processes. Whilst the list of issues referenced also the grievance procedure, we accept the submissions of Miss. Twine that that is not the case pleaded at paragraph 36 of the Grounds of Complaint as that is limited to the redundancy consultation process. We agree with her that we should limit our consideration of the claim to the pleaded case and there was no application to amend it.

182. At our request on the first day of the hearing Mr. Zaman confirmed that it was the following matters within the redundancy process with which the Claimant took issue:

a) The speed of the process;

b) The Respondent dealing with the process while the Claimant was off sick;

c) The grievance procedure and redundancy procedures happening together making it difficult for the Claimant to engage in either of them;

d) Not waiting until the Claimant's health had recovered before proceeding with either process; and

e) The Respondent proceeding with the processes without the benefit of an Occupational Health Assessment.

183. We are not satisfied that the issues relied upon by the Claimant were sufficient to amount to provisions, criterions or practices of the Respondent and the Claimant's case was not advanced in that way in cross examination. They were things that occurred personally to the Claimant in the redundancy process rather than being wider practices operated by the Respondent.

184. However, we have further considered these complaints in the event that we had not reached that conclusion. It is accepted by the Respondent that it's grievance and redundancy processes placed the Claimant at a substantial disadvantage because of the impact of stress on his speech impediment. The remainder of the substantial disadvantages pleaded are not conceded.

185. We do not accept that the processes were conducted hastily as the Claimant contends. The Claimant was notified of the commencement of the consultation process on 5th November 2020 with an invitation to a meeting. The process did not conclude until just shy of two weeks later. We do not consider that that period of time rendered the Claimant at a substantial disadvantage because of an inability to process information, his problems with communication and the effect of anxiety on his health generally. The Claimant's evidence on the latter point was that anxiety affected his speech impediment, but the speed of the process had no impact on that.

186. We are also satisfied that the Claimant was not put at a substantial disadvantage by the grievance and redundancy processes taking place at the same time because in reality that did not occur. The Claimant's grievance had concluded in late September 2020 and whilst he had appealed against that decision, that was not progressed and so the Claimant did not have to deal with two processes at the same time given that the redundancy consultation did not commence until 5th November 2020. Where information about different topics needed to be conveyed to the Claimant that was done by Mr. Payne in separate emails and the Claimant was able to deal effectively with what his position was in correspondence, albeit no doubt with assistance from his parents. Moreover, the Claimant was able to attend a grievance meeting and participate without difficulty with the support of his mother who accompanied him at that time and that had happened whilst he was off sick with stress and anxiety.

187. We are also not satisfied that dealing with the process whilst the Claimant was off sick and not waiting until he was recovered (those two things being interlinked) placed him at a substantial disadvantage because of his disabilities. The Claimant was not absent because of his disabilities but because of work related stress and anxiety. His evidence was that that exacerbated his speech impediment but not that it made processing information or communicating more generally difficult for him. As we have already touched upon above, he had also attended and participated in a grievance meeting whilst off sick with stress and anxiety without any apparent difficulty.

188. We are also not satisfied that proceeding with the grievance or redundancy processes without an occupational health assessment placed the Claimant at a substantial disadvantage because that did not affect any of the things that the

Claimant relies upon as being the cause of such substantial disadvantage.

189. However, had that not been our conclusion we go on to consider whether the Respondent should have made the adjustments sought by the Claimant. The first of those is the separation of the grievance and redundancy processes. As we have already observed above, they were not in all events run together and no communication sent by Mr. Payne to the Claimant dealt with more than one matter.

190. The second proposed adjustment was to deal with the grievance process before the redundancy process. Again, in reality that had occurred because the grievance had been concluded in late September and no steps were taken to properly address the appeal which required the Claimant to engage with the Respondent directly. To any extent that there was still communication about the grievance process that was direct with the Claimant's solicitor and did not require the Claimant to engage. Particularly, the Claimant's solicitor rejected the Respondent's offer to hold a further review of the grievance outcome. There is nothing to persuade us that the proposed adjustment would have had the effect of ameliorating any disadvantage that the Claimant contends that he was under.

191. The same is the case with the proposed adjustment of delaying the redundancy process until the Claimant's health had recovered. The stress of the process would have continued to affect the Claimant and to impact upon his speech impediment. There is no evidence that delaying matters further would have improved that position. However, even if we had we found to the contrary we are not satisfied that such a delay would be a reasonable adjustment. The Claimant would not have been able to attend a meeting until at least 22nd December 2020 according to the letter from his solicitors. That represented over a months further delay during which the Respondent would continue to incur unnecessary costs for a redundant post and would also have had to either also delay the redundancies of the other two "casual" staff or risk treating them differently by only delaying matters for the Claimant. Given that the Claimant's role was genuinely no longer required, we do not consider that delaying the process as proposed would have amounted to a reasonable adjustment.

192. Finally, it is contended that it would have been a reasonable adjustment to obtain an occupational health report before concluding the redundancy consultation process. We have not heard any evidence as to how that would have ameliorated the disadvantages relied upon by the Claimant but in all events we do not accept that obtaining such a report of itself would amount to a reasonable adjustment. At most it may have identified any adjustments that did need to be made but it would not of itself remove any disadvantages suffered.

<u>Harassment</u>

193. The sole complaint of harassment is the actions of Mr. Payne in seeking to

engage the Claimant in discussions and attend meetings to consult about the redundancy situation between 5th and 19th November 2020 at a time when he was absent on the grounds of ill health with stress and anxiety. It is conceded by the Respondent that that was such to amount to unwanted conduct.

194. The purpose of that conduct was not to violate the Claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive working environment. It was simply an attempt to engage with the Claimant and consult with him in respect of the redundancy situation that was to affect his ongoing employment. We also do not find that, objectively, the actions of Mr. Payne were such that they could have had that effect on the Claimant.

195. However, even had we not reached that conclusion it is plain that the conduct of which the Claimant complains was not in any way related to his disabilities. The Claimant's evidence about how the conduct related to his disabilities was to the effect that dealing with matters in a short space of time (which we do not accept was the reality for the reasons that we have already given) made it difficult for him. He was clear that he was not saying that Mr. Payne had communicated as he did deliberately because of his disabilities and we did not have any submissions from Mr. Zaman as to how the conduct was said to relate to the Claimant's disabilities. We are satisfied that all it related to was an attempt to engage with the Claimant about the redundancy process as we have already observed above.

196. It follows that the complaint of harassment accordingly fails and is dismissed.

Victimisation

197. The first issue to consider is whether the Claimant did a protected act. It is conceded by the Respondent that two of the remaining items of correspondence relied upon (namely an email to Mr. Payne of 7th November 2020 from the Claimant and the letter from his solicitor of 17th November 2020) amounted to protected acts. The only issue in this regard that we therefore need to determine is whether the Claimant's grievance of 21st August 2020 was a protected act. Mr. Zaman contended when we asked him about that that the only part of the letter relied upon was paragraph 9 which we remind ourselves said this:

"I have now been accused of making up my own contract of employment which my manager gave to me. My disabilities would not make this possible".

198. Mr. Zaman contended that this amounted to an allegation of a contravention of the Equality Act. He did not wish to expand upon how those two sentences were said to amount to such an allegation. The Claimant's own evidence was that he was not making a complaint that he had been discriminated against in this regard. It is plain from that and the reading of that paragraph that what the Claimant was actually giving was an explanation as to why the allegations that had been levelled against him were plainly wrong. It follows that the Claimant's grievance did not amount to the doing of a protected act because he did not and was not making an allegation that the Equality Act had been contravened.

199. However, we then need to consider if the Claimant was subjected to detriment. The first complaint of victimisation is the decision of the Respondent to undertake an investigation into the validity of the Claimant's contract of employment by Mr. Payne. We have no hesitation in concluding that that was a detriment to the Claimant. He had already been told that that investigation had taken place and he had been cleared of any wrongdoing. That was then re-opened when it was a matter that he had considered closed and was of considerable upset to him given that his disabilities meant that he could not be guilty of what he was again being accused of.

200. We then need to consider if any protected act that the Claimant did materially influenced the Committee in their decision to re-open that investigation. Mr. Zaman confirmed that the Claimant's case as to the date on which that decision was taken was 5th November 2020. As there is no suggestion that the Respondent believed that the Claimant might do a protected act in the future, the only communication relevant to this part of the claim is his grievance of 21st August 2020 because all other protected acts post date the act complained of. As we have found that the Claimant's grievance did not amount to a protected act it follows that this particular complaint of victimisation fails and is dismissed.

201. However, we should observe that even if we had found the Claimant's grievance to have been a protected act, we would not have found that it materially influenced the decision of the Respondent to conduct an investigation into his contract of employment. The reason for that was the continued suspicion as to the actions of the "old" Committee - and of Nick Duckworth particularly - and the fact that the then Committee still harboured the belief that the contract of employment had been fabricated based on what Mr. Hargreaves had told Mr. Briars; that that had not been properly investigated and that there were "gaps" in the investigation. The content of the Claimant's grievance had nothing to do with that position.

202. We turn then to the question of whether the Claimant's dismissal on 19th November 2020 was an act of victimisation. Again, we have little hesitation in concluding that dismissing the Claimant was such as to subject him to detriment. It had the result of terminating his employment from a job that he very much enjoyed and wished to continue with. It cannot realistically be the case that that could be said not to amount to a disadvantage or detriment to him.

203. We then need to consider whether the Claimant's dismissal was materially influenced by either the Claimant's grievance (had we found it to be a protected act) or his email of 7th November or his solicitors' letter of 17th November 2020. This was a matter which it was necessary for the Tribunal to put to the Respondent in evidence as Mr. Zaman did not do so.

204. We accepted the evidence of the Respondent in that regard and are satisfied that that the dismissal was not in any way motivated by any of those communications. Firstly, on the Claimant's own case the decision to make him redundant had been taken on 28th October 2020 which pre-dated the two protected acts which were done by or on behalf of the Claimant. Again, there is no suggestion

that the Respondent believed that the Claimant might do a protected act.

205. The only act which pre-dated the decision to make the Claimant redundant is the Claimant's grievance. The claim must fail on the basis that that grievance did not amount to a protected act but even had we not reached that conclusion we are satisfied that that grievance did not influence the decision to terminate the Claimant's employment. We are entirely satisfied that that happened because the Respondent was facing financial difficulties and had a reduced need for what they termed as "casual staff". We remind ourselves that the Claimant's evidence was that he did not perform the same duties as the members of the management team and that all other "casual staff" who performed "non-management" functions were also made redundant. It is plain from the minutes of the Committee meetings that we have seen that redundancy was the reason for the Claimant's dismissal and his grievance had no bearing on that.

206. It follows that the complaints of victimisation also fail and are dismissed.

207. However, the Respondent should not take the conclusions that we have reached as an endorsement that their treatment of the Claimant was at all times fair and reasonable. Far from it. We consider the content and tone of the email that Mr. Cockle was permitted to send without redress and calling for the suspension of the Claimant to be extraordinary and it is plain that he became an unfortunate casualty in that regard of the faction between the then Committee and the membership. It would be damaging to anyone but particularly to the Claimant given his disabilities and history of having been bullied in his earlier years.

208. Instead of the Respondent dealing with matters as they should have via the Committee, members inexplicably became involved in considering matters such as the Claimant's contract of employment and the wages that he received, all of which should have been kept confidential.

209. The Respondent also failed the Claimant in respect of their dealing with his grievance. One part of the grievance about Mr. Cockle and others was never addressed at all and the outcome of the complaints about Mr. Hargreaves and Mr. Emery was never properly addressed with any actual outcome. When the Claimant attempted to appeal against that outcome, it was apparently dealt with without any reference to him and he was never notified of any decision taken in connection with it. The Claimant also again faced a previously concluded investigation into alleged serious misconduct being re-opened when he had been assured that he had been cleared of any wrongdoing.

210. Moreover, despite the finding of Employment Judge Butler that the Claimant was an employee of the Respondent as at the date of the hearing no attempt had been made to pay the Claimant his notice pay and redundancy payment that it was admitted were owed to him.

211. We sincerely hope that the Respondent will reflect on these failings and commit to ensuring that those who deal with human resources matters in the future – and whether voluntarily or otherwise – have some professional training to enable them to do so properly.

212. We would also observe given the Claimant's evidence that this was never a case about money – and we do not doubt that he was genuine in that regard - that it is a great shame that he appears to have been advised to withdraw from a planned Judicial mediation. That may well, had it gone ahead, have been able to provide an acceptable resolution for the Claimant to these proceedings without the stress that giving evidence clearly had upon him. Nevertheless, we again thank him for the measured and professional way that he dealt with the hearing before us in what were clearly stressful and difficult circumstances.

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Employment Judge Heap

Date: 17th June 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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