



EMPLOYMENT TRIBUNALS

Claimant: Mr. M Hollingworth

Respondent: Staincliffe Sports & Social Club Ltd
Heard at: Leeds **On:** 6,7,8,9 and 10 March 2023
Deliberations in Chambers: 17 and 24 March 2023

Before: Employment Judge Shepherd
Members: Ms. Noble
Dr. Langman

Appearances:
For the claimant: Mr Parascandolo, solicitor
For the respondent: Mr Cameron, consultant

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim of direct discrimination because of sexual orientation is well-founded and succeeds.
2. The claim of harassment related to sexual orientation is well-founded and succeeds.
3. The claim of failure to provide written statement of terms and conditions of employment is well founded and succeeds
4. The respondent is ordered to pay the total sum of £18,641.20 to the claimant.

REASONS

1. The claimant was represented by Mr. Parascandolo and the respondent was represented by Mr. Cameron.

2. The Tribunal heard evidence from:

Michael Hollingworth, the claimant;
Joe Pickford, the claimant's partner;
Carrie-Ann Readman, friend;
Les Hepworth, former Branch Secretary;
Ian Ellis, former Secretary;
John Joseph Speight, President.

3. The Tribunal also had sight of a witness statement from Naomi Fisher, former Steward. However, she did not attend to give oral evidence and, in those circumstances, her written statement carries much less weight as the evidence could not be challenged and her demeanour assessed.

4. The Tribunal had sight of a bundle of documents together with additional documents taking the number of pages to 188. The Tribunal also had sight of the respondent's book containing the Committee Meeting Minutes. The Tribunal considered those documents to which it was referred by the parties.

The issues

5. The issues were identified at a Preliminary Hearing before Employment Judge Anderson on 5 October 2022 which was said to incorporate details provided in Claimant's further particulars. The identified issues were as follows:

Direct Discrimination on the basis of Sexual Orientation (Equality Act 2010 s.13)

- a) Did the acts complained of in the Claimant's Scott Schedule occur as alleged or at all?
- b) Did the Respondent treat the Claimant less favourably than a hypothetical comparator of a different sexual orientation to the Claimant in respect of the acts identified in the Claimant's Scott Schedule?
- c) If so, was that treatment because of the Claimant's sexual orientation?
- d) Was the treatment a proportionate means of achieving a legitimate aim?

Harassment on the basis of sexual orientation (Equality Act 2010 s.26)

- a) Was the Claimant a recipient of unwanted conduct from the Respondent in respect of those acts identified in the Claimant's Scott Schedule?
- b) Was that conduct related to the Claimant's sexual orientation?

- c) Did that conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment?
- d) What were the circumstances in which the conduct occurred?
- e) Is it reasonable for the conduct to have had the effect which the Claimant alleges?

Remedy for Discrimination and/or Harassment

- a) What financial loss has the discrimination caused the Claimant?
- b) Has the Claimant taken reasonable steps to mitigate those losses?
- c) For what period of loss should the Claimant be compensated?
- d) What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- e) Did either party fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, is it just and equitable to increase or decrease any award?

Failure to provide statement of terms and conditions of employment (Employment Rights Act 1996 s.1, Employment Act 2002 s.38)

- a) Was the Claimant provided with a written statement of terms and conditions of employment in compliance with section 1 of the Employment Rights Act 1996?
- b) If the Respondent failed in its obligation to provide a s.1 statement, what were the circumstances in which it did so?
- c) Has the Tribunal made an award in respect of one of the Claimant's other claims?
- d) If it has, taking into account the circumstances, what remedy is it just and equitable to award?

6. It was noted at the Preliminary Hearing that the respondent had asserted that only 4 of the 24 allegations listed in the Scott schedule referred to discrimination and that many others might be more appropriate in the case of unfair dismissal.

7. The Scott schedule was repetitious and difficult to follow. However, the Tribunal has set out all the allegations within the schedule

Facts/background

8. The parties provided a detailed agreed chronology which sets out most of the factual background of the case. The agreed chronology was set out as follows:

“The Agreed chronology is to be read in conjunction with the Scott Schedule at pages 38 and 39 of the Tribunal Bundle.

1. The Claimant attended the Respondent’s premises to carry out some plumbing works in the toilets on or around 24 October 2019
2. The Claimant assisted Joe Pickford behind the bar at the Club whilst he was relief Steward between 12th October 2019 and 24th October 2019.
3. Joe Pickford was engaged by the Respondent to cover the holidays of Luke Hawes on various occasions during Mr Hawes’ employment.
4. The Respondent contacted Joe Pickford on or around the middle of August 2021 to enquire whether he would be interested to return as the Club Steward. When Mr Pickford declined the Respondent asked Joe Pickford whether the Claimant would be interested in the role.
5. On or around the end of August 2021 the Claimant and Joe Pickford attended the Club for a meeting and the Claimant’s terms of employment were discussed and agreed. The Claimant says he agreed to work Friday to Monday only which were the hours done by the former Steward Luke Hawes and the Claimant has been working those days since he commenced employment with the Respondent. The Respondent says no precise hours were agreed, except that a minimum of 35 hours per week agreed.
6. The Claimant commenced employment with the Respondent as Steward on 6th September 2022. As part of the induction the Claimant completed the new starter form on page 57 and says he intentionally omitted to complete the relationship box.
7. Between 6th September 2021 and 21st February 2022 the Claimant says that his performance was never brought into question. The Respondent denies this.
8. On or around 31st January 2022 Ian Ellis asked Les Hepworth for Naomi Fisher’s telephone number
9. On 31st January 2022 Les Hepworth contacted Naomi Fisher to ask her if he could pass her number on to Ian Ellis and she confirmed that he could.
10. On 31st January 2022, Naomi Fisher says that Ian Ellis contacted her and offered her the Relief Steward’s role in place of Les Batty who is retiring. Page 136
11. Between 6th September 2021 and 3rd February 2022 the Claimant says that he had a very good working relationship with Ian Ellis and the club in general, and that he did not have any concerns raised about his performance. In fact, he says that from December 2021 he was tasked with organising events and did so successfully. The Claimant says that he

was responsible for hiring bar staff and relief stewards during this time and he did in fact employ a number of people during this time without approval of the committee and gave examples of people he recruited. The Respondent say this was not part of this job and this did not happen.

12. On 4th February 2022, the Claimant says he disclosed to Ian Ellis that he was gay. The Respondent says that they already knew about the Claimant's sexual orientation and that it was common knowledge. They also say that the conversation did not take place. The Claimant says that since this disclosure the way he was treated by Ian Ellis changed drastically and this was due to his sexual orientation disclosed on 4th February 2022.
13. On 4th February 2022, Naomi Fisher says that Ian Ellis contacted her again this time to offer her the Claimant's role of Steward.
14. On 6th February 2022, the Claimant says that he had a conversation with Pat McDonald (a committee member) who told him that Ian Ellis had asked Les Hepworth if he knew anyone looking for a Steward's job and that someone would be starting soon. The Claimant also says that she told him to watch his back.
15. On 7th February 2022 the Claimant says that he asked Ian Ellis about the candidate for the new relief steward's role and that Ian Ellis told him he would talk later but did not do so. The Claimant says that he questioned why he was not involved in the hiring despite having hired other members of staff. Ian Ellis stated that it was the committee who hired people and not the Claimant.
16. On 7th February 2022, the Claimant says he asked for Naomi Fisher's number and is told that he cannot have this due to data protection and is called a drama queen by Ian Ellis. Ian Ellis denies this.
17. On 8th February 2022 Naomi Fisher commences employment with the Respondent and is shadowing Les Batty. The Claimant questions why he as Steward is not training Naomi Fisher and is told that Les Batty is an experienced relief Steward and he will be training her.
18. On 14th February 2022 the Claimant is instructed to give his safe keys to Ian Ellis so he could hand the keys to Naomi Fisher the recently appointed relief steward and confirms that he is not comfortable doing so as he is worried about his bond and does not want to give the keys [to someone he'd never met] . The Claimant says he is forced to give the keys and drops them off at Ian Ellis' house on 14th February 2022.
19. On 18th February Claimant returns to work. This is the first time he meets Naomi Fisher the new relief Steward. The Respondent says that the Claimant was invited to a meeting to discuss his performance. The Claimant says that he attended no such meeting as alleged or at all. He also says that the note at page 90 is a complete invention.

20. On 20th February 2022, the Claimant says he was asked by Naomi Fisher if he had any concerns about her working at the club and he confirms that he was annoyed about not being involved in her recruitment process. The Claimant also says he was told by Naomi Fisher that she was opening the club on Saturday and he says that that is his shift
21. On 21st February 2022 Naomi Fisher arranges a meeting with the Claimant and Ian Ellis to discuss the concerns that the Claimant has raised page 91. The Respondent says that this was a performance meeting. The Claimant denies this and says that it was just an opportunity for Ian Ellis to harass and gaslight him. The Claimant says he left the meeting upset and ready to quit. Page 139 to 176
22. Ian Ellis goes off on annual leave
23. On 24th February 2022 Joe Pickford, the Claimant and J Speight met at the George Pub to discuss the meeting of 21st February 2022 with Ian Ellis. Mr Speight is informed that the Claimant recorded the meeting and he asks to hear it and persuades the Claimant to return to work.
24. On 25th February 2022 the Claimant goes into work and allows Mr Speight to listen to the recording. After listening the Claimant and Joe Pickford say that Mr Speight was upset about how the Claimant had been treated.
25. On 26th February 2022 the Claimant is subjected to a Safe check. The very first since he started his employment. He was informed that a tin containing £2,000 was not part of his float. The Claimant says that David McDonald (Treasurer) tells him not to notify Ian Ellis as he was on annual leave.
26. On 27th February 2022 the Claimant says that he was told by David McDonald that Les Batty had informed Ian Ellis and he was aware of the discrepancy. The Claimant says he was not called to the normal Sunday meeting and was ignored by Ian Ellis.
27. On 28th February 2022 the Claimant opened the club and did a stocktake. Ian Ellis arrived and the Claimant was called into the committee room. The Claimant says Ian Ellis shouted at him about the discrepancy and asked him to count the takings in the safe and to sort out the banking. The Claimant left the room to do so.
28. After counting the takings the Claimant went back into the committee room followed by Joe Pickford. The Claimant says that Mr Ellis then dismissed him with immediate effect and told them that he would send them a letter.
29. On 1st March 2022 the Claimant received the dismissal letter. Page 137
30. The Claimant then submitted an Appeal letter soon after. page 94.

31. On 16th March 2022 the Claimant's appeal was heard by JJ Speight and Les Hepworth. The Respondent says Mr Hepworth was a notetaker. The Claimant says he was also asking questions in the meeting and was put there by Ian Ellis to get the result that he wanted.
32. Between the 18th March 2022 and the 21st March 2022 the Claimant and Mr Speight agreed the minutes of the appeal meeting. Page 111 to 114
33. Claimant commenced Acas Early Conciliation on 1st April 2022.
34. On 7th April 2022 the Claimant was contacted by Mr Speight and said that the Respondent would be prepared to give him his job back on a three month trial basis or process his dismissal and give him a reference.
35. On 15th April 2022 a meeting was offered by the Respondent in which the Claimant was asked to sign a resignation letter. The Claimant says he had no idea what the meeting was for and the Respondent say it was a settlement meeting and was without prejudice.
36. The Claimant Issued Tribunal Proceedings on 12th May 2022
37. The Claimant commenced new employment on 6th April 2022
38. The Claimant left that employment due to harassment from the Respondent's members and one committee member on or around October 2022. This is disputed by the Respondent.
39. The Claimant commenced his current job on 11th October 2022."

9. The Tribunal has considered any of the facts that required further determination in its conclusions below.

The law

Direct Discrimination

10. Section 13 of the Equality Act 2010 states:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim. Direct

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

11. Section 24(1) states:

For the purposes of establishing a contravention of this Act by virtue of section 13 (1), it does not matter whether A has the protected characteristic.

12. Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 IRLR 2003

“Employment Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated and she was. Was it on the proscribed ground which is the foundation of the application?”

13. London Borough of Islington v Ladele (2009) ICR 387

It was indicated that, whilst comparators may have evidential value, they often cast no useful light on the *‘reason why the claimant was treated as he or she was’*.

14. Direct discrimination is defined in domestic legislation by section 13 (1) of the Equality Act 2010 is occurring where:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”

15. In **Cordell v Foreign and Commonwealth Office [2012] ICR 280** Underhill J. Stated that the reason why question is “in truth fundamental”. Where there was an actual comparator, the less favourable treatment question may be the most direct route to the answer to both questions – firstly whether the claimant had received less favourable treatment than an appropriate comparator and then, if so, whether that less favourable treatment was on the proscribed indirect ground.

Harassment

16. Section 26 of the Equality Act provides

- (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.

- (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.

17. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. Was it reasonable for the claimant to have considered his dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

18. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

“Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

19. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated

“We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

20. Harassment and direct discrimination claims are mutually exclusive. A complaint cannot claim that both definitions are satisfied simultaneously by the same course of conduct. Section 212 (1) of the Equality Act 2010.

Burden of Proof

21. Section 136 of the Equality Act 2010 states:

(1) This Section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –

(a) An Employment Tribunal.”

22. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again in **Madarassy v Normura International plc [2007] EWCA 33**.
23. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as it did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.
24. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer “casts no light whatsoever” to the question of whether it has treated the employee “unfavourably”.
25. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

“all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour ... Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way ... The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable.”
26. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator. The respondent must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them.
27. Section 207A of the Trade Union and Labour Relations (Consolidation) act 1992 provides that:

“If, in the case of proceedings to which this section applies, it appears to the employment tribunal that (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, (b) the

employer has failed comply with that Code in relation to the matter, and (c) that failure was unreasonable, the employment tribunal may, if it just and equitable in all the circumstances to do so, increase any award makes to the employee by no more than 25%”.

28. The ACAS code sets out minimum standards of reasonableness and fairness for handling the disciplinary issues. In summary it suggests that, with regard to disciplinary matters, the employer should establish the facts of the case, inform the employee of the problem, called a meeting with the employee, at which the employee may be accompanied, decide on the appropriate action and gives the employee an opportunity to appeal.

Conclusions

29. The claimant was employed by the respondent as a steward.

30. Joe Pickford had been employed by the respondent as a relief steward and, on occasions, the claimant assisted him behind the bar in around 2019.

31. The respondent contacted Joe Pickford in August 2021 and asked whether he would be interested in taking over the post of club steward.

32. Joe Pickford declined the offer and was asked whether the claimant would be interested. The claimant was taken on as the steward 6 September 2021.

33. The relief steward was about to retire and the respondent appointed Naomi Fisher as relief steward on 31 January 2022.

34. On 4 February 2022 the claimant said that he disclosed to Ian Ellis, the then secretary and the claimant's line manager that he was gay. There was a discussion with the claimant about a trip to the Dales with Joe Pickford and he was asked whether they were more than business partners. When the claimant acknowledged that they were together as a couple Ian Ellis said that he was not sure it would work in a Sports and Social Club.

35. Ian Ellis told the tribunal that it was common knowledge that the claimant was gay. His evidence was unreliable. He was unable to give any other information than that it was common knowledge. He could provide little evidence that was within his own knowledge and repeatedly relied on what he assumed would have happened. There was no credible evidence that there had been any substantive concerns about the claimant's performance or that anything about his performance had been raised with the claimant.

36. There was a typed record of a meeting that the respondent said had taken place on 18 February 2022. For the Respondent Mr. Ellis and Mr. Speight were adamant that this meeting was called to discuss the Claimant's performance and with David McDonald, Treasurer, also present.

37. The Claimant maintained that the meeting did not occur and, as supporting evidence, referred the Tribunal to a time sheet showing that at the time of the meeting (12.00pm to 12.45pm) he was at work behind the bar.

38. In their evidence, heard on the fourth day of the hearing, Mr. Ellis and Mr. Speight both maintained that they had asked the Claimant's partner, Joe Pickford, who had come into the club with the Claimant, to staff the bar during the meeting and he did this.

39. On the fifth day of the hearing, and at the start of the day prior to submissions, Mr. Parascandolo made a request to admit a document he claimed irrefutably showed that the meeting could not have occurred. Mr. Cameron objected stating it was too late in the day to produce new evidence on which he would have to take instructions and that the Claimant had had plenty of opportunity to produce any such evidence much earlier.

40. After careful consideration the Tribunal determined it was in the interests of justice to admit the document, a screen shot of a message sent from the Claimant's mobile telephone. This showed that at 12.24pm on 18 February 2018 the Claimant had sent a Tik Tok video to his partner, Joe Pickford via WhatsApp. Mr. Parascandolo maintained that in a meeting purportedly called to discuss the Claimant's performance it would be unbelievably foolish for the claimant to have got his telephone out to send any such message and that, had he done so, this would inevitably have been noticed by the Respondent's witnesses and been subject to criticism.

41. For the Respondent, Mr. Cameron maintained that there was no way of establishing the legitimacy of the screen shot, it could have been created by the Claimant, and there was no reason as to why it could not have been produced earlier and urged the Tribunal to disregard it.

42. The Claimant, Mr. Ellis and Mr. Speight were all recalled to give further evidence on the subject (the latter two via CVP). When questioned as to why he had not produced the document earlier, the Claimant said that the previous day, day four of the hearing, was the first time that the Respondent's witnesses had said that they asked Joe Pickford to staff the bar during the meeting. After the hearing closed on the fourth day the claimant had checked his history of sent messages, not to establish his own whereabouts (he had always maintained that he was at work behind the bar), but to see if there was anything there that might help identify Joe Pickford's location on the day.

43. Both Mr. Ellis and Mr. Speight confirmed the layout of the claimed meeting ... with Mr. Ellis seated at one end of the table facing the Claimant (about '5 or 6 feet apart' according to Mr. Ellis) with the other participants sitting on either side of the table. Mr. Ellis maintained that the Claimant was known to have very good technical skills and could have sent the message whilst holding the phone out of sight underneath the table. Mr. Speight also supported this opinion.

44. The Tribunal prefers the evidence of the Claimant for the following reasons

- a) it is extremely improbable that, in a meeting called to criticise his work performance, the Claimant would have been watching even a short video (a 'funny' according to the Claimant when recalled) prior to sending it.

b) the act of logging on the video platform and sending the message would take several seconds during which the Claimant would have to look at the screen. Again it appears extremely improbable that this could have been done surreptitiously, that is with the phone held underneath the table, with three of the Respondent's members sitting in close proximity not noticing or remarking on it

c) the Claimant offered a plausible explanation for the late production of the screen shot

45. The Tribunal also rejects the Respondent's representative's argument that the Claimant could have produced the document earlier on the basis of c) above- that until day four of the hearing, and upon hearing new evidence from the respondent that they had asked Joe Pickford to staff the bar during the meeting.

46. The Tribunal also rejects the argument put forward by Mr. Cameron that the Claimant could have manufactured the screenshot that is of a message at 12.24pm on the day in question on his telephone's history. Whilst the Claimant could not be expected to have the foresight to act on the basis of evidence he had not heard until day four if he had the technical knowledge and intent to do as suggested, then he could have manufactured such comparable evidence (to show the meeting did not occur and/or that he was elsewhere in order to support his case) long before the evidence heard on day four.

47. In addition to the reasons given above for considering that the meeting did not take place as and when stated by the Respondent's witnesses the Tribunal also notes that

d) the minutes of the meeting are typed. Mr. Ellis claims to have produced these either in the club or at home following the meeting. At the end of the first day of the hearing it was established that there is a laptop and printer within the club. The Respondent was asked to produce a copy of the minutes showing the date on which it was typed. The next morning the Respondent said that a copy of the minutes could not be found. The request to undertake a search for a copy and a screen shot of the typing date was made again at the end of day four with the same response on the Friday morning

e) prior to starting his evidence on Day three Mr. Ellis asked for more time to read any documents. Apart from the claimed minutes of the meeting on 18 February 2022 most other documents produced by Mr. Ellis, including the notes of the meeting on 28 February 2022 are manuscript (handwritten). They also contain both spelling and grammar errors. Besides being typed the minutes of the meeting of 18 February 2022 contain no spelling or syntax errors.

f) The minutes of the meeting lists eight areas of alleged unsatisfactory performance by the Claimant. The termination letter, which according to the evidence of Mr. Ellis must have been written within a short time frame of the minutes, gives four different areas of unsatisfactory performance. Notwithstanding the date when it was believed £2,000 had gone missing from the safe, it is considered by the Tribunal that, having typed out eight areas of alleged unsatisfactory performance within a matter of days, the same person

would then write out four different areas of alleged unsatisfactory performance.

g) The claimant was allegedly dismissed for the reasons given in the termination letter notwithstanding the date on which the money was noticed to be missing from the safe. It is remarkable that these areas were considered sufficient to result in the claimant's dismissal but were not even raised in the performance meeting or alleged performance meeting held only a matter of days prior to the dismissal.

48. The conclusion reached by the Tribunal is that a different person to Mr. Ellis typed out these minutes subsequent to the dismissal in order to try and substantiate the claimed reasons for the dismissal, namely unsatisfactory performance.

49. Rather than supporting the respondent's position, these minutes further undermine their credibility. When it was put to Mr. Ellis by the Tribunal that the claimant would have had just six working days between the meeting on 18 February 2022 and his dismissal, and whether this was long enough to make any assessment on performance subsequent to the meeting, Mr. Ellis replied 'no'.

50. In his evidence Mr. Speight insisted the dismissal was for performance but in response to questioning, he also replied that he was not informed of the dismissal until after the event. It was apparent to the Tribunal that this left him in the unenviable position of trying to defend something of which he was unaware at the time and in which he did not participate and, indeed, his actions subsequent to the dismissal may be seen to reflect on the situation in which he found himself.

51. The Committee Minute book produced by the respondent shows no minutes between March 2020 and March 2022. It was maintained by Mr. Parascandolo that pages had been removed from the book to hide the discussions that had taken place.

52. Mr. Ellis indicated that no meetings were held in the Club committee room following the outbreak of Covid, indeed the Club did not re-open for any business until August 2020 and that subsequently, because of Covid concerns and the health conditions of two Committee members, any discussions were made by making contact from home, hence the absence of minuted meetings until resuming such meetings in the Club in March 2022.

53. The Tribunal examined the committee minute book and found it to be in poor condition with pages possibly removed. It was maintained by Mr. Cameron that this could not be the case because the minutes of the March 2022 meeting was on the turned over page of the March 2020 meeting. If minutes from other meetings had been entered and then removed this could not have been the case.

54. However, on examination, the Tribunal found that earlier in the book there are blank pages between meetings. It would have been entirely possible to enter the minutes of further meetings following March 2020 and not follow the sequential use of pages, later remove them and still have the March 2022 meeting on the same sheet of paper.

55. Because of inconclusive evidence the Tribunal has attached no weight to the argument that minutes of meetings were removed.

56. Naomi Fisher instigated a meeting with the claimant and Ian Ellis on 21 February 2022. The Tribunal heard a recording of the meeting and had sight of a transcript. During the meeting claimant was concerned about handing over the keys for the safe as he had paid a £1,000 bond and this would be at risk. The meeting became a bad tempered meeting, particularly with regard to the hours the claimant was contracted to work. The respondent said that this was a performance meeting. It was not, it was a meeting instigated by the relief steward.

57. On 28 February 2022 the claimant was called into a meeting with Ian Ellis. The notes of meeting prepared by Ian Ellis showed that the claimant was asked about £2,000 that was missing from a float in the safe. Ian Ellis considered that the claimant had not given a satisfactory explanation and he was dismissed.

58. The letter of dismissal stated that the claimant had been dismissed as a result of several issues of concern. These are set out as bringing more staff into work than required, turning up late for work on occasions, large amounts of money missing from the safe and issues with regard to taking and booking holidays.

59. The claimant appealed his dismissal. He said that the dismissal was procedurally unfair and potentially discriminatory and referred to his sexuality and the Equality Act.

60. The claimant attended an appeal meeting on 16 March 2022. The appeal was heard by Joe Speight, the president and Les Hepworth, Branch Secretary. The Committee Minutes indicated that the appeal was to be heard by Joe Speight and Les Hepworth.

61. It was said that Les Hepworth was to be the notetaker. However, he took part in the meeting asked questions and later signed a letter rejecting the appeal. The evidence of Les Hepworth was a matter of concern to the Tribunal. He had not seen the dismissal letter and gave a number of reasons for the dismissal which were different from those within the dismissal letter.

62. He had also not seen the notice of appeal from the claimant and claimed that it had nothing to do with sexual orientation. He said that had not been mentioned at the appeal hearing but only by him at the end. He said that he informed the claimant that he did not have two years' service and could not bring a claim to an Employment Tribunal unless it was to do with one of the protected characteristics including, he said, sexuality. This was not in the minutes.

63. Les Hepworth then carried out investigations by asking around the club members about the claimant's sexual orientation and whether it concerned them. The Tribunal finds that this was clearly an issue of concern to the respondent club.

64. The issue of the appeal on grounds of discrimination was not mentioned. It was a very short meeting in which some performance issues were raised together with the missing money.

65. On 14 April 2022 a letter was sent to the claimant signed by Les Hepworth and Joe Speight in which there was reference to attempts to settle the claim and stating that

“The management committee feels that there original decision stands that you be dismissed as it was not working out between the two of you There was too many mistake made by yourself at the time of your employment.”

The Scott Schedule

66. The Scott schedule sets out 24 incidents. Some of these are specified as direct discrimination and some are submitted to be both direct discrimination and harassment. As stated above, direct discrimination and harassment are mutually exclusive. Where conduct could feasibly fall under both detriment and harassment, both claims cannot succeed and the Tribunal will consider whether it is more properly defined under one label than the other.

67. The Scott schedule is repetitious and difficult to follow. However, the Tribunal has considered each of the 24 incidents described as follows:

1 – 4 February 2022 – The Claimant alleging that Ian Ellis told him “I am not sure this is going to work in a Sports and Social Club” after discovering the Claimant was gay.

68. It was stated by Ian Ellis that it was common knowledge that the claimant was gay. The claimant said that he did not want anyone to know he was gay and although he named Joe Pickford as the person to be contacted in an emergency on the new employee form, he did not complete the section specifying his relationship to the claimant. Joe Pickford said that his parents and his best friend were not informed that he was gay until over a year into the relationship as they wish to keep secret. This was confirmed by Carrie-Ann Readman.

69. The respondent's witnesses were unable to explain how they claimed that the claimant's sexual orientation was common knowledge. The Tribunal accepts that the claimant informed Ian Ellis on 4 February 2021 that he was in a relationship with Joe Pickford. The Tribunal finds that, once the claimant openly indicated that he was in a relationship with Joe Pickford, Ian Ellis said words to the effect that he was concerned that this would not work in a sports and social club. This and the subsequent treatment of the claimant established facts on which the Tribunal could conclude that the claimant was subject to less favourable treatment because of his sexual orientation. The burden of proof shifts to the respondent and it was not established that this was not discrimination on the ground of the claimant's sexual orientation.

2 – 6 February 2022– Ian Ellis asking Les Hepworth if he knew anyone was looking for a Stewards position.

70. The Tribunal is satisfied that Naomi Fisher was offered the role of Relief Steward on 31 January 2022. Any conversation between Ian Ellis and Les Hepworth on 6 February 2022 is part of the factual background and not an allegation of discrimination in itself.

3 – 6 February 2022 – the respondent looking for a replacement of the steward's role after learning that the claimant was gay.

71. The Tribunal is not satisfied that it was established that the respondent was looking to replace the steward's role. There was a difference in treatment after 4 February 2022. A relief Steward had been appointed on 31 January 2022 because the previous long-standing Steward had taken over as relief steward and intended to retire after his heart attack. The Tribunal is not satisfied that the respondent was looking to replace the claimant but then took the opportunity to dismiss him.

4 – 7 February 2022 – Failure by Ian Ellis to discuss the Relief Steward's position after requesting a discussion.

72. The Tribunal heard little evidence on this point and, once again, it is part of the factual background and not an allegation of discrimination in itself.

5 – from 7 February 2022 – Failure by Ian Ellis to provide the Claimant with an Employment Contract after being asked for it.

73. The Respondent accepts that it did not give the Claimant a contract. There was no evidence that this is on grounds of the claimant's sexual orientation.

6 – from 7 February 2022 Failure by Ian Ellis to involve the Claimant in the Recruitment process for the relief steward position.

74. The Relief Steward was appointed on 31 January 2022. The Tribunal is not satisfied that there was evidence that this was on grounds of the claimant's sexual orientation as this took place before 4 February 2022.

7 – from 14 February 2022 – Removal from the Claimant's role to employ bar staff

75. The Tribunal is not satisfied that it was established that there was any change in the claimant's role in employing bar staff after 4 or 14 February 2022.

8 – from 14 February 2022 – Not being allowed to train the new Relief Steward

76. Naomi Fisher was appointed on 31 January 2022 and trained by the Relief Steward who was about to retire. The Tribunal is not satisfied there was any evidence that this was on grounds of the claimant's sexual orientation. The retiring Steward was very experienced and it was appropriate for him to carry out the training.

9 – 14 February 2022 – Being told to give the safe keys to Ian Ellis to pass on to Naomi Fisher

77. The claimant said that he was asked if he could drop the club and safe keys off with Ian Ellis at his home so that he could give them to Naomi Fisher, the new relief steward to open the club on Monday evening. The claimant was concerned that he was handing over his safe key which was the sole responsibility of the claimant and put his bond to risk. The claimant felt he had no option but to do so. The claimant was concerned as he was being asked to give his keys to someone. The Tribunal can understand his concern. However, Naomi Fisher was the new relief steward and there was no evidence that established that this requirement to provide her with keys was a detriment to harassment related to his sexual orientation.

10 – 14 February 2022 – Being called a "Drama Queen"

78. After raising objections about the keys being released to Naomi Fisher, the Claimant said that Ian Ellis called him a drama queen.

79. It was submitted by Mr Parascandolo that The Tribunal heard both Mr Ellis and Mr Speight refer to gay people as 'them' the Tribunal to draw an inference that

such phrases such as ‘them’ and ‘drama queen’ are common in a working man’s club environment and that Mr Ellis did in fact say this to the Claimant.

80. The Tribunal is satisfied that Mr Ellis did use this phrase towards the Claimant. It could be seen as a relatively harmless expression in some contexts. However, it was said to the claimant after he had openly revealed his sexual orientation and, in the circumstances, it did have the proscribed effect. The burden of proof has shifted to the Respondent and it was not shown that this was not related to the claimant’s sexual orientation. It was unwanted conduct which had the purpose or effect of violating the claimant’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

11 – 14 February 2022 – Request to have bond returned which was refused by Ian Ellis.

81. It was submitted that the Claimant requested his bond back because he felt that he had no choice but to hand the keys over and wanted some security for his bond. That is the reason why he gave the keys to Ian Ellis who accepted that this happened under cross examination.

82. The Claimant only requested his bond back because he did not want Naomi Fisher whom he did not know, to have the keys. It was submitted that had he not told Mr Ellis he was gay, Naomi Fisher would never have been considered to replace him and he would never have asked for his bond back.

83. This submission appears to be related to allegation 10. There was no evidence heard by the Tribunal with regard to a request by the claimant to have his bond returned.

84. The Tribunal is not satisfied that, at this stage, Naomi Fisher was considered to replace the claimant. She had been appointed as the Relief Steward as the former relief steward was retiring. The keys, and any request to have the bond returned, was not established to be on the grounds of the claimant’s sexual orientation.

12 – Subjected to Harassment on meeting on 21 February 2022

85. The Respondent’s case was that this meeting was a performance meeting called by them to discuss the Claimant’s performance. It was not, it was a meeting called by Naomi Fisher, the relief steward.

86. The claimant was subject to a lot of criticism by Ian Ellis about performance issues which had not been raised before. The alleged meeting of 18 February 2022 was not mentioned and it was not mentioned in the letter of dismissal. The Tribunal is not satisfied that meeting ever occurred.

87. The Tribunal is satisfied that things had changed. No performance issues had been raised within the claimant in the previous five months of the claimant’s employment. The claimant was subject to a lot of attacks about a number of performance issues. Naomi Fisher is shown to have said to the claimant “defend yourself” when the claimant was subject to these attacks. The Tribunal is satisfied that the claimant has established that these were facts from which the Tribunal could conclude that the claimant was subject to harassment related to sexual orientation. The conduct was unwanted and it had the purpose or effect of violating the claimant’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant taking into account his perception, the other circumstances of the case and it was reasonable for the conduct to have that effect.

13 – 28 February 2022 Claimant shouted at and being dismissed for allegedly missing money from the safe.

88. The hand written minutes of this meeting refer to questioning of the claimant about money missing from the lotto machine float. He indicated that the previous steward had taken it. The claimant was then dismissed. The letter of dismissal dated the same day refers to three other performance issues as reasons for dismissal.

89. The Tribunal is satisfied that these three performance issues only arose after 4 February 2022, although not raised at the claimed meeting on 18 February 2022. The dismissal at the meeting on 28 February 2022 was not for the reasons set out in the letter of dismissal.

90. The Tribunal accepts that there were no performance issues raised throughout the claimant's employment before the claimant openly disclosed his sexual orientation on 4 February 2022.

91. The claimant has established facts from which the Tribunal could conclude that the claimant's dismissal was less favourable treatment on grounds of sexual orientation. The respondent has not shown that the dismissal was not by reason of sexual orientation.

14 – 1 March 2022 Being sent a dismissal letter after following no procedure.

92. The Tribunal has found that the dismissal was less favourable treatment on grounds of sexual orientation. There was a complete failure to follow a disciplinary procedure. The claimant was not given any invitation or notice of the disciplinary meeting and was dismissed without any reasonable investigation. The dismissal letter did not reflect the issues discussed at the dismissal meeting.

93. In the text messages between Joe Speight and the claimant, Joe Speight states that he did not know what evidence Ian Ellis had other than what was stated in the letter. He also stated that the appeal meeting shows that nothing was done correctly in the claimant's dismissal.

15 – 16 March 2022 Failure to provide the Claimant with any evidence to support the reason for his dismissal.

94. This is essentially the same issue raised at allegation 14.

16 – 16 March 2022 Les Hepworth being permitted to continue to be involved in the appeal despite the Claimant stating he was biased

95. The claimant did not want Mr Hepworth to be part of the Appeal because he was friends with Mr Ellis and considered him to be biased. This is part of the factual make-up of this case and not an individual act of discrimination. The Tribunal was concerned about the evidence of Mr Hepworth as he carried out investigations after the appeal.

96. In cross examination Mr Hepworth told that Tribunal he was there 90% to take notes and 10% to advise, which supports the Claimant's fear that he would be more involved than just a note taker.

17 – 16 March 2022 Failure to provide the Claimant with any evidence to support the dismissal.

97. With regard to this allegation, it was submitted by Mr Parascandolo that there was no evidence to show that the dismissal is based on the reasons stated in the dismissal letter and the Tribunal was invited to make a finding of fact that the claimant's sexual orientation was the reason for the dismissal. This is covered under allegation 13

18 – 16 March 2022 Failure to allow the Claimant to provide any evidence in response to the allegations.

98. Once again, Mr Parascandolo invited the Tribunal to draw an inference from this failure, and from the fact that Mr Hepworth went and spoke to members about the Claimant's sexuality after the appeal hearing, that his sexuality was an issue for the Respondent and that this was the real reason for the dismissal and the Respondent's failure to consider any evidence. This has already been covered in the earlier findings.

19 – 16 March 2022 Failure to provide any coherent and comprehensive appeal meeting notes.

99. The conduct of the dismissal and the appeal hearing was established to be conduct from which the Tribunal could conclude that there was less favourable treatment because of the claimant's sexual orientation and the respondent has failed to show that this was not on grounds of sexual orientation.

20 – 7 April 2022 – The Claimant being offered his role back but on a trial basis.

100. The Claimant submitted that the real reason for the offer was because the Respondent knew Mr Ellis' reason for dismissal was the Claimant's sexuality and they wanted to mitigate any risk. The reason the position was offered on a trial basis was because the Claimant could be dismissed with little risk. The Claimant submits the reason for this was the Claimant's sexuality.

101. The Tribunal is satisfied that it has been established that this offer was prima facie evidence of direct discrimination and the respondent has not shown that it was not by reason of the claimant's sexual orientation

21 - 15 April 2022 The Claimant was told that the 30 day period had expired and told couldn't do anything about dismissal but told to resign by signing prepared letter.

102. Once again, the Tribunal finds that the dismissal and the appeal were less favourable because of the claimant's sexual orientation

22 – 15 April 2022 Failure to follow the Clubs own procedure

103. Once again, the Tribunal finds that the dismissal and the appeal were less favourable because of the claimant's sexual orientation.

23 – 15 April 2022 Threat by Les Hepworth that If Claimant did not sign the resignation letter he would wash his hands of the matter.

104. It was submitted, on behalf of the claimant that if the Claimant's sexuality was not in the mind of the Respondent why else would Les Hepworth, as he confirmed in evidence, be asking members about the Claimant's sexuality. It makes no sense and supports that Claimant's proposition that he was dismissed for being gay.

105. The Tribunal has found that the dismissal and the appeal were less favourable because of the claimant's sexual orientation. This allegation is part of the factual matrix leading to this finding.

24 – 25 April 2022 – Threat by Les Hepworth that if the Claimant did not withdraw the claim he would counterclaim.

106. The Claimant was repaid his bond following his dismissal. This allegation of a threatened counterclaim was pressure put on the claimant to drop his claim. The Tribunal is satisfied that it was conduct that had the purpose or effect of violating claimant's dignity or creating an intimidating, hostile, degrading, humiliating or hostile environment for the claimant taking into account the perception of the claimant, the other circumstances of the case and that it was reasonable for the conduct to have that effect.

107. In the circumstances, the claims of direct discrimination and harassment succeed.

Remedy

108. The claimant's employment was terminated on 28 February 2022. He obtained employment with another club on 6 April 2022. A period of 6 weeks. He received a lower hourly rate of £10.50 as opposed to £11.00 with the respondent. The Tribunal is satisfied that there was no failure to mitigate his loss in those circumstances.

109. His new appointment was that of assistant or deputy steward. His schedule of loss provided that there was a difference in net pay of £11.97. The claimant said that he then had to move from that club to another after a period of 26 weeks due to harassment from members of the respondent club and their attempts to make him abandon his claim against the respondent. However, there was no claim brought of post-employment discrimination. He works fewer hours in this employment.

110. The Tribunal has considered the claimant's position and the availability of such employment and finds it just and equitable to award the claimant 12 weeks net loss of £11.97 from April 2022.

Injury to feelings

111. Injury to feelings awards compensate for non-pecuniary loss where a Tribunal has upheld a complaint of discrimination. The award is intended to compensate the claimant for distress and upset caused by the discrimination. It is important to note that such an award is compensatory not punitive.

112. In the case of **Vento v Chief Constable of West Yorkshire police (No2) [2003] IRLR 102** the Court of Appeal identified three broad bands of compensation

for injury to feelings which are updated annually and are presently:

The lower band: £990 – £9900 for "less serious cases, such as where the act of discrimination is an isolated or one-off occurrence".

The middle band: £9900 – £29600 for "serious cases, which do not merit an award in the highest band".

The top band: £29600 - £49300 for "the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment".

113. The claimant gave evidence that the discrimination had affected his confidence. It made him feel that he had to disclose his sexuality when starting new employment. He has continued to work and there was no medical evidence provided in respect of his injury to feelings.

114. This was a serious act of discrimination involving dismissal of the claimant and the Tribunal has considered this issue carefully. It has determined that it is just and equitable to award damages in the sum of £12,000.

115. The Tribunal also considers that it is appropriate to make an award pursuant to section 207A for failure by the respondent to comply with the ACAS Code of Practice. There was a failure by the respondent to provide the claimant with reasonable notice and a fair hearing. There was a failure to follow a reasonable disciplinary procedure. The Tribunal has considered the size and resources of the employer and whether there are circumstances which might mitigate the blameworthiness of the failure. This was very shortly after the club had gone through the Covid pandemic and Ian Ellis' wife was ill. However, the Tribunal finds that there was unreasonable failure to comply with the ACAS Code of Practice and the compensation can be increased by up to 25%. In this case the Tribunal considers it just and equitable to increase the award for discrimination of 20%.

116. Section 38 of the Employment Act 2002 states that a Tribunal must award compensation to an employee where, upon a successful claim made under any of the jurisdictions listed in schedule 5, it becomes apparent that the employer was in breach of the duty to give a written statement of initial employment particulars under section 1 Employment Rights Act 1996 the Tribunal must award the minimum amount of two weeks' pay and may, if it considers it just and equitable, in the circumstances, award the maximum of four weeks' pay.

117. It was conceded by the respondent that no such written particulars of employment had been provided to the claimant. However, the Tribunal takes into account that the respondent is a relatively small employer and does not have substantial HR resources and the Tribunal considers that it is just and equitable to award two weeks' pay.

118. The total award made to the claimant is as follows:

loss of earnings – £301.12 net weekly pay from 28 February 2022 to 6 April 2022.	£1,806.72
12 weeks partial loss of £11.97 week.	£143.64
Injury to feelings.	£12,000.00

Failure to comply with the ACAS code of practice
20% increase on £13,950.36 £2,790.07

Failure to provide written terms and conditions of employment
two weeks' gross pay (£401.50) £803.00

Interest on the award for injury to feelings

From the date of the discrimination to the date on which the Tribunal calculates
the award.

The rate of interest to be applied is 8% of £12,000 over a period of 386 days-
£1,015.23

The interest on the loss of earnings is awarded from the midpoint of the date of
act of discrimination and the date the Tribunal calculates the award as £1,806.72
plus £144.64 - £1,951.36 at 8% over 193 days £82.54

Total award £18,641.20

Employment Judge Shepherd
28 March 2023

JUDGMENT SENT TO THE PARTIES ON

5 April 2023