



EMPLOYMENT TRIBUNALS

First Claimant: Mrs Christine Hotham
Second Claimant: Miss S Penman
Respondent: Acre Rigg Social Club Limited
Heard at: Newcastle CFCTC in person
On: 23, 24, 25, 26, 27, 30, 31 October 2023
1, & 2, November 2023

Before: Employment Judge Loy
Members: S Moules
S Wykes

Representation

First and second Claimant: Mrs M Hotham
Respondent: Mr Ramsbottom, litigation consultant

RESERVED JUDGMENT ON LIABILITY

The unanimous Judgment of the Employment Tribunal is that:-

The first claimant's claims

1. The first claimant's claim for ordinary unfair dismissal is well founded and succeeds.
2. The first claimant's claim of direct disability discrimination is not well founded and fails.
3. The first claimant's claim of disability related harassment:
 - a. is well founded and succeeds in respect of allegations 9 and 15; and
 - b. fails in respect of all other allegations.

4. The first claimant's claim for discriminatory constructive dismissal is well founded and succeeds.
5. The first claimant's claim for a failure to make reasonable adjustments is not well founded and fails.
6. The first claimant's claim for victimisation is not well founded and fails.

The second claimant's claims

7. The second claimant's claim of sexual harassment
 - a. is well founded and succeeds in respect of each of her allegations 3, 4, 5, and 6;
 - b. fails in respect of allegation 7
8. The second claimant's claim for discriminatory constructive dismissal is well founded and succeeds.

Withdrawal of certain allegations

9. The first claimant's allegation 10 and the second claimant's allegations 1 and 2 were withdrawn.

REASONS

Background

1. By a claim form dated 28 June 2022 the claimants brought a number of claims against the respondent.
2. The respondent denied all liability to the claimants.
3. Preliminary hearings took place before on 14 September 2022 (before Employment Judge Johnson); 13 January 2023 (before Employment Judge Jeram) and 11 April 2023 (also before Employment Judge Jeram). At those hearing decisions were made on which of the claims set out in the claim form would be allowed to proceed to a final hearing. The remaining claims and issues, which were agreed between the parties, are set out immediately below. It was common ground that the first claimant had sufficient qualifying service to bring a claim for ordinary unfair dismissal whereas the second claimant did not. There was no issue on time limitation remaining in issue as at the time of the Final Hearing.

The claims and issues

The claims

10. The claimants bring the following claims:

- a. Constructive Unfair Dismissal contrary to sections 94 – 98 Employment Rights Act 1996 ('ERA') (**first claimant only**)
- b. Discriminatory Constructive Dismissal (**first and second claimant**)
- c. Direct Disability Discrimination contrary to section 13 Equality Act 2010 ('EqA') (**first claimant only**)
- d. Disability Related Harassment contrary to section 26 EqA (**first claimant only**)
- e. Victimisation contrary to section 27 EqA (**first claimant only**)
- f. Failure to make reasonable adjustments contrary to sections 20, 21 EqA (**first claimant only**)
- g. Sexual Harassment contrary to section 26(2) and/or (3) EqA (**second claimant only**)

The factual issues alleged

11. **Constructive Unfair Dismissal (first claimant only); Discriminatory Constructive Dismissal (first and second claimant)**

- h. In relation to **the first claimant**, did the Respondent do the following things:
 - i. Allegation One: July 2021 – Mr Rought told the first claimant that she must not work more than 44 hour per week and if she did she would not get paid.
 - ii. Allegation Two: the first claimant did not get paid for hours worked in excess of 44 per week after April 2021.
 - iii. Allegation Three: December 2021 – Mr Rought refused to allow the first claimant to be accompanied by another member of staff when she commenced work at 6am in case she had a dizzy spell. This is a reasonable adjustments claim, where the PCP is 'attending work unaccompanied at 6am', the substantial disadvantage is 'suffering dizzy spells, and increased risk of injury'

and the reasonable adjustment contended for is 'being allowed to be accompanied'

- iv. Allegation Four: December 2021 – Mr Rought reduced the first claimant's hours of work to 40 hours per week because he believed the claimant was not capable of doing her job, after having sought the adjustment at allegation 3 above.
- v. Allegation Five: December 2021 – Mr Rought told the first claimant that if she was not capable of doing her job she should get out.
- vi. Allegation Six: 6 February 2022 [*in fact 31 January 2022*] - grievance hearing; Jim Peacock was laughing, belittling and intimidating every time the first claimant tried to speak.
- vii. Allegation Seven: 7 February 2021 – the first claimant tried to bring up the behaviour of bar staff Deborah Green (who is Mr Rought's sister-in-law) and Mr Rought tells the first claimant that staff matters were not a matter for her.
- viii. Allegation Eight: 26/27 February 2022 – Debora Green (who was on sick leave at the time) was verbally abusive and physically abusive (she dug her nails into the first claimant's arm) leading to the police being called.
- ix. Allegation Nine: End of February 2022 – Mr Rought falsely accuses the first claimant of putting things on social media about her multiple sclerosis.
- x. Allegation Ten: Withdrawn.
- xi. Allegation Eleven: Early March 2022; on the last day of the first claimant's medical treatment and whilst she was on sick leave, Mr Rought demanded that she came in to deal with matters at work while she was on holiday.
- xii. Allegation Twelve: Early March 2022; whilst the first claimant was on sick leave, Mr Rought threatened to call the police because she had the keys to the safe.
- xiii. Allegation Thirteen: From mid-January to mid-March 2022, Mr Rought and Douglas Robinson (Chairman of the General Committee) on several occasions told the first claimant to wait to raise matters at its weekly committee meeting (sexual innuendos made by Mr Rought to Sianon Penman, seeing the CCTV footage of Jim Peacock, the assault on the first claimant by Deborah Green) only to be told the meeting had ended.

- xiv. Allegation Fourteen: Failing to carry out an investigation into Deborah Green's assault on the first claimant.
 - xv. Allegation Fifteen: failing to address the treatment of the first claimant by Mr Rought's family such as walking past and sniggering making comments, being snubbed - all of which worsened after she reported the Jim Peacock incident.
 - xvi. Allegation Sixteen: 18 March 2022; Mr Rought called the first claimant a 'c***' for submitting a (second) grievance; this is the last straw.
 - xvii. Allegation Seventeen (first claimant's 'last straw'): on 25 March 2022, Ms Smith spoke to two of my friends Aunty Lynn and Uncle Ken. Ms E Smith shouted, I tried to diffuse the situation, Mrs Smith said 'get out of my effing face, whilst constantly shouting 'what are you going to effing do'. The claimant met with Mr Robinson about the incident and left work that night.
- i. In relation to **the second claimant**, did the respondent do the following things:
- i. Allegation One: Withdrawn.
 - ii. Allegation Two: Withdrawn.
 - iii. Allegation Three: Late 30 December 2021 to early 31 December 2021 – Mr Rought grabbed the second claimant by the arm and pulled her, shouting at her to get behind the bar and groped the second claimant's bottom.
 - iv. Allegation Four: On 15 March 2022, Mr Rought referred to the second claimant's breasts.
 - v. Allegation Five: On numerous occasions, the second claimant's breasts were commented on by Mr Rought.
 - vi. Allegation Six: On the date of Mr Rought's 60th birthday party referring to an image on her t-shirt, Mr Rought said that he wished it was his face on the second claimant's breasts, not a picture of his face.
 - vii. Allegation Seven (the second claimant's 'last straw'): The lack of acknowledgement of the second claimant's grievance was the last straw.

- j. If the respondent did do the things highlighted in paragraphs h to i above, does this conduct constitute discriminatory conduct?
 - i. The first claimant will argue that the conduct constituted disability related discrimination.
 - ii. The second claimant will argue that the conduct constituted sexual harassment.
- k. If the respondent did do the things highlighted in paragraphs h to i above, did this conduct breach the implied term of trust and confidence? The Tribunal will need to decide:
 - i. Whether the respondent acted in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimants and the respondent; and
 - ii. Whether it had reasonable and proper cause for doing so.
- l. Did the claimants resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for each of the claimants' resignations.
- m. Did the claimants affirm their contracts before resigning? The Tribunal will need to decide whether the claimants' words or actions showed that they chose to keep the contract alive even after the breach.

12. Direct Disability Discrimination (the first claimant only)

- n. Did the respondent do the following things:
 - i. Allegation One: July 2021 – Mr Rought told the first claimant that she must not work more than 44 hour per week and if she did she would not get paid.
 - ii. Allegation Two: the first claimant did not get paid for hours worked in excess of 44 per week after April 2021.
 - iii. Allegation Three: December 2021 – Mr Rought refused to allow the first claimant to be accompanied by another member of staff when she commenced work at 6am in case she had a dizzy spell.
 - iv. Allegation Four: December 2021 – Mr Rought reduced the first claimant's hours of work to 40 hours per week because he believed the claimant was not capable of doing her job, after having sought the adjustment at allegation 3 above.
 - v. Allegation Five: December 2021 – Mr Rought told the first claimant that if she was not capable of doing her job she should get out.

- vi. Allegation Nine: End of February 2022 – Mr Rought falsely accuses the first claimant of putting things on social media about her multiple sclerosis.
 - vii. Allegation Eleven: Early March 2022; on the last day of the first claimant's medical treatment and whilst she was on sick leave, Mr Rought demanded that she came in to deal with matters at work while she was on holiday.
 - viii. Allegation Fifteen: failing to address the treatment of the first claimant by Mr Rought's family such as walking past and sniggering making comments, being snubbed - all of which worsened after she reported the Jim Peacock incident.
- o. Was that less favourable treatment?
- i. The tribunal will decide whether the first claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the first claimant's circumstances.
 - ii. If there was nobody in the same circumstances as the first claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.
 - iii. The first claimant must identify any actual comparator that she seeks to rely upon in this claim.
- p. If so, was it because of the first claimant's disability?
- q. Did the Respondent's treatment amount to a detriment?

13. Disability Related Harassment (first claimant only)

- r. Did the Respondent do the following things:
- i. Allegation One: July 2021 – Mr Rought told the first claimant that she must not work more than 44 hour per week and if she did she would not get paid.
 - ii. Allegation Two: the first claimant did not get paid for hours worked in excess of 44 per week after April 2021.
 - iii. Allegation Three: December 2021 – Mr Rought refused to allow the first claimant to be accompanied by another member of staff when she commenced work at 6am in case she had a dizzy spell.

- iv. Allegation Four: December 2021 – Mr Rought reduced the first claimant’s hours of work to 40 hours per week because he believed the claimant was not capable of doing her job, after having sought the adjustment at allegation 3 above.
 - v. Allegation Five: December 2021 – Mr Rought told the first claimant that if she was not capable of doing her job she should get out.
 - vi. Allegation Nine: End of February 2022 – Mr Rought falsely accuses the first claimant of putting things on social media about her multiple sclerosis.
 - vii. Allegation Eleven: Early March 2022; on the last day of the first claimant’s medical treatment and whilst she was on sick leave, Mr Rought demanded that she came in to deal with matters at work while she was on holiday.
 - viii. Allegation Fifteen: failing to address the treatment of the first claimant by Mr Rought's family such as walking past and sniggering making comments, being snubbed - all of which worsened after she reported the Jim Peacock incident.
- s. If so, was that unwanted conduct?
 - t. Did it relate to the first claimant’s disability?
 - u. Did the conduct have the purpose of violating the first claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the her?
 - v. If not, did it have that effect? The Tribunal will take into account the first claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

14. *Victimisation (first claimant only)*

- w. Did the first claimant do the following:
 - i. Ask to be accompanied by a member of staff when she commenced work at around 6am in case she had a dizzy spell.
- x. If so, does the above constitute a protected act?
- y. By doing so, did it subject the first claimant to detriment namely:
 - i. Allegation Four: December 2021 – Mr Rought reduced the first claimant’s hours of work to 40 hours per week because he believed the claimant was not capable of doing her job, after having sought

the adjustment (i.e. the first claimant's allegation 3 set out at 11 (h) (iii) above.

- ii. Allegation Five: December 2021 – Mr Rought told the first claimant that if she was not capable of doing her job she should get out.
- z. If so, was it because the first claimant did the protected act?

15. Failure to Make Reasonable Adjustments (first claimant only)

- aa. Did the Respondent know or could it reasonably have been expected to know that the first claimant had the disability? From what date?
- bb. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
 - i. Requiring staff to attend work unaccompanied at 6AM.
 - ii. Requiring staff to attend work while on sick leave.
- cc. Did the PCPs put the first claimant at a substantial disadvantage compared to someone without the first claimant's disability? The disadvantage identified by the first claimant: suffering dizzy spells and increased risk of injury.
- dd. Did the Respondent know or could it reasonably have been expected to know that the first claimant was likely to be placed at the disadvantage?
- ee. What steps could have been taken to avoid the disadvantage? The first claimant will claim that the respondent could have allowed the first claimant to be accompanied at work at 6AM.
- ff. Was it reasonable for the respondent to have to take those steps? If so, when?
- gg. Did the respondent fail to take those steps?

16. Sexual Harassment (second claimant only)

- hh. Did the respondent do the following things:
 - i. Allegation Three: Late 30 December 2021 to early 31 December 2021 – Mr Rought groped the second claimant's bottom.
 - ii. Allegation Four: On 15 March 2022, Mr Rought referred to the second claimant's breasts.
 - iii. Allegation Five: On numerous occasions, the second claimant's breasts were commented on by Mr Rought.

- iv. Allegation Six: On the date of Mr Rought's 60th birthday party referring to an image on her t-shirt, Mr Rought said that he wished it was his face on the second claimant's breasts, not a picture of his face.
- v. Allegation Seven: The lack of acknowledgement of the second claimant's grievance was the last straw.
- ii. If so, was that unwanted conduct?
- jj. Did it relate to the second claimant's sex?
- kk. Alternatively, was the unwanted conduct of a sexual nature?
- ll. Did the conduct have the purpose or effect of violating the second claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the second claimant
- mm. Did the Respondent treat the second claimant less favourably because the second claimant rejected or submitted to the conduct?

17. **Remedy [included in this list for completeness but to be considered separately]**

- a. Should the Tribunal make an award of compensation to the first claimant for unfair dismissal?
- b. If so, what basic award is payable to the first claimant, if any?
- c. If so, what compensatory award is payable to the first claimant? In determining this, the Tribunal should consider:
 - i. Have the first claimants taken reasonable steps to replace lost earnings, for example by looking for another job?
 - ii. If not, for what period of loss should the first claimant be compensated?
 - iii. Should the first claimant's compensatory award be subject to a *Polkey* deduction?
- d. Should the Tribunal make an award of compensation:
 - i. To the first and second claimant for direct discrimination;
 - ii. To the first and second claimant for harassment; and/or

iii. To the first claimant for victimisation?

e. If so, at what level?

Background to the Acre Rigg Social Club and its officers

4. The issues to be decided in these proceedings took place between July 2021 and April 2022 at the Acre Rigg Social Club in Peterlee, County Durham. It is helpful to understand something about the club itself, the club committee responsible for managing the day-to-day activities of the club and the officeholders in place during the relevant time period. All references marked as [] below are references to pages in the bundle of documents.
5. Acre Rigg is a licensed members' social club in Peterlee. It opened in 1985, although it appears to have a pre-history dating back many years. It has about 350 – 380 members who pay relatively modest subscriptions. It is located in a purpose-built building. It has a bar area and a function room. The bar itself is located in between the two rooms. There is also a kitchen located off the function room and a small club committee room leading off from the kitchen. The club has a fairly comprehensive CCTV system in operation which is accessible on screens in the bar area and from linked mobile devices.
6. As a legal entity, Acre Rigg Social Club Ltd is a mutual society registered under the Co-operative and Community Benefit Societies Act 2014. It was originally registered on 10 September 1985 under the Industrial and Provident Societies Act 1965 which now comes under the umbrella of the 2014 Act. The rules of the club are at [201 – 215].
7. The club has a General Committee to manage its affairs. Committee membership is open to members only. Members are elected to the committee at the annual AGM which normally takes place in the spring. Current or former members may seek re-election on an unlimited basis. There are a maximum of 12 committee members on the General Committee at any one time. The General Committee may appoint subcommittees for such purposes as it deems appropriate. General Meetings or subcommittee meetings are quorate when 1/3 or more of the elected members are present. The rules prescribe [205] that there shall be a Chairman, Secretary and Treasurer to be elected annually by ballot.
8. In November 2021, the Chairman was Doug Robinson; the Secretary was Tony Rought and the Treasurer was Margaret Hotham. Mr Rought and Mrs Margaret Hotham are the two most central individuals to the inter-family dispute that arose at the club and which led directly to a number of the issues being raised in these proceedings. It was common ground that the Secretary had the most operational control over the day-to-day management of the club. The rules say at [205]:

'Subject to any direction given to him by the General Committee, the Secretary may, on behalf of the club, engage domestic staff and other club servants as

necessary for the efficient and economic running of the club and may lawfully terminate any such engagement.'

9. On 13 December 2021, Mrs Margaret Hotham resigned her position as Treasurer. She was replaced by Kelly Kettell. Kelly Kettell volunteered to become the Treasurer after Mrs Hotham's resignation. Kelly Kettell is the daughter of the then Chairman, Doug Robinson.
10. By the time of these proceedings, Stephen Miles had become Chairman; Elsie Smith had become Secretary and Kelly Kettell remained Treasurer.

The relationship between the claimants, the committee and the club members most directly involved in these proceedings

11. It is important in this case to be aware of the relationships amongst the claimants, the members of the committee including committee officers and certain club members in order to fully understand the events that generated this dispute.
12. It would be an understatement to say that a highly acrimonious dispute developed at the club towards the end of 2021 which remained in full flow at the date of the resignation of both claimants on 16/17 April 2022. That dispute was essentially between Margaret Hotham and her family and friends and Tony Rought and his family and friends. At the time this dispute arose, Margaret Hotham was (until her resignation on 13 December 2021) club Treasurer and Mr Rought was club Secretary.
13. The first claimant, Christine Hotham, is Margaret Hotham's daughter. The first claimant (Christine Hotham) became Bar Steward(ess) at the club on 12 April 2019. It was common ground that that was an employed position and that the employer was the respondent limited company. In the way in which the club operated, this meant that the first claimant's line manager was Tony Rought as club Secretary. The first claimant had previously been elected as a member of the committee so was experienced in its affairs and working practices.
14. Kirk Winter, who was a witness called by the claimants, is the first claimant's husband. Mr Winter was also a committee member at the time these events started to unfold.
15. Sianon Penman, the second claimant, was appointed by the first claimant as Bar Staff. The second claimant's continuous employment started on or around August 2021. That was also an employed position. The Tribunal was told that The first claimant was friendly with the second claimant's mother, Sarah Davies. The first claimant was the line manager of the second claimant.
16. Mr Rought was the club Secretary during the period covered in these proceedings from their inception in late 2021 until his resignation as Secretary and

replacement at the AGM on 27 March 2022. It is Mr Rought who is accused by both claimants of a significant amount of the perceived wrongdoing that culminated in the resignation of both claimants. The majority of the first claimant's allegations and all of the second claimant's allegations of sexual harassment are alleged to have been perpetrated by Mr Rought.

17. Jim Peacock was a committee member at the time to which these proceedings relate. Mr Peacock is Tony Rought's father-in-law. On 24 December 2021 and 26 February 2022, the second and then first claimant thought they had seen on CCTV Mr Peacock potentially mishandling money from the club's bingo money trays in the committee room. Mr Peacock gave evidence which included his own innocent explanation for what the claimants believed they may have seen.
18. Mr Rought's wife (and Mr Peacock's daughter) is Angela Rought. Angela Rought's sister (and Mr Peacock's other daughter and Mr Rought's sister-in-law) is Deborah Green. It was part of the claimants' cases that drawing attention to possible wrongdoing by Mr Peacock ruffled the feathers of Mr Peacock himself, his son-in-law/club Secretary Mr Rought and Mr Peacock's two daughters, Deborah Green and Angela Rought.
19. Deborah Green was an Assistant Bar Steward Bar and reported to the first claimant as the Bar Steward. She was also a club member and one of the club's licensees. Angela Rought was a club member and, in her professional life, a long-serving police officer.
20. Deborah Green was heavily involved in one of the incidents about which the Tribunal heard a good deal in evidence. That was the incident that took place either side of midnight Saturday 26/Sunday 27 February 2022 when a rowdy confrontation occurred involving (amongst others) Christine Hotham (the first claimant), Deborah Green and Angela Rought.
21. Angela Ellwood, who was called by the claimant to give evidence, broadly aligned with Margaret Hotham's side to the dispute. This was in part based on alleged homophobic comments made by Mr Rought and Mr Will Mann (club member) towards Shannon Clarence. This was in part based on alleged homophobic comments made by Mr Rought and Will Mann (club member) towards Shannon Clarence. Shannon Clarence is Angela Ellwood's daughter.
22. The Tribunal also heard evidence from Kaitlin Freeman, a former bank staff worker on the club bar who no longer works there and from Elsie Smith. Both witnesses said they witnessed the immediate aftermath of the second part to second claimant's allegation 3 that on 30/31 December 2021 when the second claimant accuses Mr Rought of groping her bottom.

The Tribunal's approach to the evidence

23. Before moving to our findings of fact, the Tribunal sets out a number of points of general approach, some of them commonplace in our work.

24. In this case, as in many others, evidence and submission touched on a wide range of issues. Where the Tribunal makes no finding on a point about which the Tribunal heard, or where the Tribunal does make a finding, but not to the depth with which the point was discussed before the Tribunal, that is not oversight or omission. It is a reflection of the extent to which the point was truly of assistance to the Tribunal.
25. While that observation is made in many cases, it was particularly important in this one, where the events were emotive, and where the claimants had not had professional advice, were inexperienced in the law and procedure of this Tribunal and were represented by someone who was, while not herself a claimant, very much at the emotional and factual epicentre of the issues.
26. The Tribunal approached this case on a number of common sense understandings. The Tribunal does not expect anyone to go to work and achieve perfection when they get there. This was a micro employer with little in the way of resource available to it. The Tribunal has borne that in mind throughout. The Tribunal must also approach the matter with an appreciation of proportionality. In the artificial setting of Tribunal litigation, the focus is on how the individual claimants were managed.
27. There were many radical disagreements of fact between the claimants and the respondent's witnesses on a number of the events about which the Tribunal heard, either by way of background or matters of managerial decision. The Tribunal gained no assistance when determining the factual and legal issues in this matter from the overwhelming majority of such disagreements.
28. It is not the Tribunal's role to adjudicate on each and every matter of disagreement between employer and employee (and by extension on general matters arising in the course of the broader inter-family dispute) unless it is necessary to the fair and just disposal of the claims that are brought. Where the Tribunal has not directly addressed any such disagreements that is not (as has been said) an oversight by the Tribunal. It is a reflection of the fact that the Tribunal must focus on resolving the matters that are factually and legally relevant to the dispute and to do so in a proportionate manner.
29. Indeed, this decision would have been many times longer than it already is had the Tribunal taken a different approach, without shedding any further light on the factual and legal merit of the matters in dispute. The Tribunal recognises that the parties felt very strongly indeed about many of the events that occurred. The witnesses spent a considerable amount of time in cross-examination expressing their feelings. However, it is the Tribunal's responsibility to remain analytical both in its assessment of the evidence and its application of the relevant legal principles to its factual findings. The Tribunal means no disrespect to the parties, their families and friends or to any of the witnesses by going about its role in the way described.

The evidence heard

30. The claimants gave evidence on their own and each other's behalf.

31. The first claimant produced two written witness statements:
 - a. Her first statement was on her own behalf and comprised 72 paragraphs over 18 pages.
 - b. Her second statement dealt with matters relating to the second claimant and comprised 15 paragraphs over 4 pages.
32. The first claimant was cross-examined by Mr Ramsbottom.
33. The second claimant produced a written witness statement comprising 35 paragraphs over 10 pages. The second claimant was cross-examined by Mr Ramsbottom.
34. The claimants called 7 additional witnesses to complete their cases:
 - a. Mr S Smith, who gave oral evidence in chief and was cross-examined by Mr Ramsbottom.
 - b. Angela Ellwood, who produced a written witness statement of 16 paragraphs over 4 pages. Mrs Elwood was cross-examined by Mr Ramsbottom.
 - c. Kaitlin Freeman, who produced a written witness statement of 12 paragraphs over 4 pages. Ms Freeman was cross-examined by Mr Ramsbottom.
 - d. Kirk Winter, who produced two written witness statements: the first running to 30 paragraphs over 10 pages and the second running to 8 paragraphs over 6 pages. Mr Winter was cross-examined by Mr Ramsbottom.
 - e. Lyn Martin, who gave who gave oral evidence in chief and was cross-examined by Mr Ramsbottom.
 - f. Margaret Hotham, who produced a written witness statement of 39 paragraphs over 11 pages. Mrs Hotham was cross-examined by Mr Ramsbottom.
35. The respondent called 5 witnesses:
 - a. Deborah Green, who produced a written witness statement of 12 paragraphs over 3 pages. Ms Green was cross-examined by Mrs Hotham.
 - b. Elsie Smith, who produced a written witness statement of 32 paragraphs over 8 pages. Mrs Smith was cross-examined by Mrs Hotham.
 - c. Tony Rought, who produced a written witness statement of 52 paragraphs over 11 pages. Mr Rought was cross-examined by Mrs Hotham.
 - d. Jim Peacock, who produced a written witness statement of 15 paragraphs over 4 pages. Ms Peacock was cross-examined by Mrs Hotham.

- e. Doug Robinson, who produced a written witness statement of 12 paragraphs over 4 pages. Ms Robinson was cross-examined by Mrs Hotham.
- f. Kelly Kettel, who produced a written witness statement 14 paragraphs over 5 pages. Ms Kettel was not called to give evidence. Appropriate weight was given to her untested evidence which was of marginal relevance to the issues in dispute.

Credibility and reliability of the witnesses

- 36. These were claims where the facts that it was necessary to determine in order to resolve the issues between the parties, and any inferences to be drawn from those facts, were in fundamental dispute. The accuracy of the contemporaneous documentation, particularly in the form of General Committee and Co-op Committee minutes, was also aggressively contested by the claimants' representative, Mrs Margaret Hotham. This was therefore a case where the credibility and the reliability of the witnesses themselves has been crucial to the Tribunal's factual finding set out in the following part of this judgment.
- 37. The most impressive of the witnesses from which the Tribunal heard were Sianon Penman (the second claimant); Kaitlin Freeman (a temporary worker supplied by an agency to work in the club bar as and when needed) and Angela Ellwood.
- 38. Miss Penman's evidence in particular was characterised by a degree of objectivity not found in the evidence of most of the other witnesses who were embroiled in the family feuding. Miss Penman gave evidence in a composed and focused way. At no stage during her cross-examination was she argumentative or did she seek to advocate her own case or try to score points. Rather, Miss Penman gave direct and considered answers to the questions that Mr Ramsbottom put to her.
- 39. The Tribunal acknowledges the fact that Miss Penman was inevitably aligned with the position of the first claimant and that of Margaret Hotham. The Tribunal considered the possibility that Miss Penman might be equally as partisan as the first claimant and Margaret Hotham, but rather more subtle in the way she went about it. However, the Tribunal rejected that possibility. The Tribunal concluded that Miss Penman was aligned only because she had been dragged into the broader picture of the inter-family dispute. Although Miss Penman is a young woman, she gave her evidence in a mature fashion. The following are examples of answers to questions put to her in cross examination that gave the Tribunal reassurance that she was an honest and reliable witness.
- 40. It was Miss Penman who first considered that there was something that needed to be reported about Mr Peacock's activities in the committee room when he was seen on CCTV by the second claimant handling the bingo money. The following exchanges took place in cross examination:

'Mr Ramsbottom: how did you see Jim Peacock on the CCTV?'

Miss Penman: a red dot flashes if there is movement. I saw Jim Peacock put money in his pocket so mentioned it to Christine [Hotham]. It's part of my duties to know what's going on.

Mr Ramsbottom: why was it suspicious?

Miss Penman: Jim Peacock put money in pocket. If I had put £10 from the till in my pocket that would be suspicious. I do not know if he was stealing but thought it needed to be reported. I never made any accusations

Mr Ramsbottom: Jim Peacock's statement explains he put [h]is own money in the float and was simply taking it back out after the bingo

Miss Penman: yes, makes a lot of sense

41. Unlike most of the witnesses, Miss Penman was prepared to make sensible concessions (such as that set out immediately above) where it was appropriate to do so.
42. Later in cross-examination, Miss Penman was asked about whether she had agreed to draw a line under her grievance during the General Committee meeting on 31 January 2022. The exchange was as follows:

'Mr Ramsbottom: did you agree with drawing a line

Miss Penman: I nodded my head. I didn't agree. Easiest option at the time. I did nod.'

43. Miss Penman was therefore prepared to make concessions that were not necessarily helpful to her own case.
44. Miss Penman explained in evidence that she did not put everything about which she now complains in her original letter of grievance. Miss Penman was asked why, if she was scared of Mr Rought (the club Secretary), did she not make a full statement of grievance in writing in a letter addressed to the chairman, Doug Robinson. The claimant replied:

'I could have addressed a letter to you [i.e. Mr Ramsbottom] and Tony Rought would still have opened it.

45. Unlike most of the witnesses, Miss Penman appeared to have no axe to grind. A good example is the following exchange:

'Mr Ramsbottom: page 402 [the second claimant's grievance letter of 24 March to 22] you don't say there that you were targeted by Tony Rought and Angela Rought because of seeing Mr Peacock on CCTV

Miss Penman: It was nothing to do with me. I raised it with my boss. That's not my problem to chase up. I don't know where you're going with this. Nothing to do with me. I was still told to shut up about Jim Peacock.

46. This contrasted with most of the other witnesses who were plainly seeking to cause trouble for their adversaries. The Tribunal was accordingly satisfied that Miss Penman was both a credible and reliable witness and that she provided the most measured evidence that the Tribunal heard in this matter as a whole.
47. The Tribunal was also impressed by the evidence (albeit brief) of Kaitlin Freeman. Ms Freeman was an agency worker who did occasional shifts on the bar at the club. Her evidence was independent in so far as she was not involved with either side of the dispute and was at time she signed her witness statement no longer involved with the club at all. Ms Freeman's last shift was in mid-March 2022. The Tribunal accepted Ms Freeman's evidence that she had no desire to work at the club again and it was not suggested that she had left on bad terms or had poor relationships with any of the club members or officials involved in these proceedings. Despite the relative shortness of her evidence, Ms Freeman was able to give independent direct evidence on four issues:
- a. comments made to the second claimant by Mr Rought about the second claimant's breasts (***second claimant's allegations 4 and 5***)
 - b. On 18 March 2022, Mr Rought calling the first claimant a 'cunt' for raising a second grievance (***the first claimant's allegation 16***);
 - c. Observing sniggering and laughing at Christine Hoffman's walk (***the first claimant's allegation 15***); and
 - d. Observing the first part of the ***second claimant's allegation 3*** that on 30/31 December 2021, Mr Rought had shouted at the second claimant and pulled her arm to get her back behind the bar.
48. Unfortunately, the remaining witnesses were all to a greater or lesser degree so embroiled in the acrimonious and internecine family feuding that their evidence lacked objectivity. On the claimant's side, Christine Hotham (the first claimant), Margaret Hotham (the first claimant's mother, witness and representative) were argumentative with Mr Ramsbottom in cross-examination.
49. The first claimant preferred to argue the merits of her case with him rather than give direct answers to questions. Margaret Hotham was confrontational in the manner in which she gave evidence. Margaret Hotham came across as on something of a crusade against Mr Rought and his family members. As a result, the Tribunal treated the evidence of both Christine and Margaret Hotham with considerable caution, relying on their evidence only where it appeared clearly to be correct or was sufficiently supported by the evidence of more objective witnesses.
50. The Tribunal was particularly troubled by the evidence of Mr Rought. Mr Rought's evidence was of central importance to many of the factual issues that needed to be resolved, including:

- a. all of the second claimant's sexual harassment allegations;
 - b. the way in which the grievances of both claimants were handled before, at and after the meeting of the General Committee on 31 January 2021; and
 - c. the degree to which Mr Rought (and to a lesser extent Mr Peacock) were able to, and in fact did, influence many of the decisions and actions of both the General Committee and the co-op committee whether or not such decisions and actions were ostensibly being taken or done in someone else's name.
51. The most troubling part of Mr Rought's evidence was the position he took in cross examination on **the second claimant's allegation 3**. This was in many ways the most serious and (for the wrong reasons) memorable of all the allegations. It is the allegation that on 30/31 December 2021, Mr Rought grabbed the second claimant's arm pulling her physically out of the DJ Box in the function room, physically putting her back behind the bar and then later the same evening groping her bottom. This is what Mr Rought said when this allegation was put to him in cross-examination on the morning of Wednesday 1 November 2023, day 8 of the hearing:

'Margaret Hotham: Groping Sianon's bottom on 30/31 December 2021

Tony Rought: The first time I heard of that was last week in here

Margaret Hotham: Reported to Christine [Hotham] and you called Sianon a liar so you must have known.

Tony Rought: I don't know what you are talking about.

52. The Tribunal was somewhat taken aback by this evidence.
53. The respondent's Amended Particulars of Response is a well drafted and detailed response to each and every one of the allegations being made by the claimants. The allegations were clarified during the case management stage before Employment Judge Jeram. The allegations and claims are at [100-101]. As far as **the second claimant's allegation 3** is concerned the allegation is set out straightforwardly as follows:

' On the same evening as above [late 30 December 2021 to 31 December 2022] TR [Tony Rought] groped the claimant's bottom.'

54. This is one of only 5 allegations made by the second claimant. Three of the remaining 4 allegations involve comments being made by Mr Rought about the second claimant's breasts.
55. The respondent was given permission to present an Amended Grounds of Response in the light of the clarified amended list of allegations being made by each claimant. In response to **the second claimant's allegation 3**, the Amended Grounds of Response says as follows:

'Allegation 3: Late December 2021 to early 31 December 2021 – Tony Rought groped the 2nd claimant's bottom

This allegation is denied. It is accepted that on this date, Tony Rought asked the second claimant to leave the DJ booth and go back behind the bar and do her work. The respondent accepts that Tony Rought touched the 2nd claimant's arm when he made this request, however this was not in a sexual manner. It is vehemently denied that he proceeded to touch the claimant's bottom. [underlining added] [172].

56. At the risk of stating the obvious, the instructions that needed to be given to the respondent's representatives in order to make this vehement denial can only have come from Mr Rought himself. Nobody else was in a position to make that denial. It was common ground there were no witnesses to the second part of this allegation (that Mr Rought groped the second claimant's bottom) other than the second claimant and Mr Rought himself. It is also clear that only Mr Rought was in a position to give instructions to the respondent's representatives who drafted the Amended Grounds of Response regarding all of this allegation. Clearly only Mr Rought could have told his representatives whether he accepted touching the claimant's arm (which he accepted he did) and only Mr Rought could have told the respondent's representatives what his intention was or was not in so doing i.e. that it was not touching in a sexual manner. It is, of course, also simply not possible to deny (vehemently or otherwise) an allegation while at the same time claiming to be unaware of it.
57. The Tribunal concluded that Mr Rought has given evidence under affirmation which was in flat contradiction to the respondent's own pleadings in circumstances where it is clear that Mr Rought was the source of the vehement denial in the Amended Grounds of Response that he touched the second claimant's bottom on 30/31 December 2021.
58. That is not the only contradiction in Mr Rought's position. In his own signed witness statement dated 7 September 2023 (only shortly before this hearing started on 23 October 2023), Mr Rought provided a line by line response to each of the claimants' allegations at [100 -101]. At paragraph 50 he provides the following written evidence:

'Claimant 2: Sexual Harassment Allegations

50. This allegation is totally untrue. On 30 December 2021 two female members of the club were getting married and they had the reception at the club. I was in the bar at the time having a drink and socialising with some friends. Sianon was supposed to be working that night. She may have served us during the night and had a bit of chit chat but that was as much as we discussed and there [w]as certainly no conversation with her about any bonus at all. That was not something that I would have discussed in any event with a member of staff while I am socialising.

51. *Sianon was congregating in DJ booth with the staff when she was supposed to be behind the bar working. I could see there were customers waiting so I went over to them and asked them to get to the bar and serve because I noticed there were people waiting. At no stage was there any physical contact and the situation lasted only a few seconds.* [underlining added].

59. That is a further detailed account of the precise incident to which **the second claimant's allegation 3** refers. In his witness statement, Mr Rought sets out his clear recollection of the incident. He states that the allegation is '*totally untrue*' and denies '*any physical contact*'. That account is not only inconsistent with his acceptance that he touched the second claimant's arm (albeit not in a sexual manner) in the Amended Grounds of Response, but it is again inconsistent with the position he adopted in cross examination that '*the first time I heard of that was last week in here*'. The '*in here*' that Mr Rought is referring to is the Tribunal hearing itself which he attended on each day when evidence was being given (i.e. days 2 to 8 inclusive).
60. The Tribunal had no alternative other than to come to the clear conclusion that Mr Rought was not telling the truth about **the second claimant's allegation 3** when he gave this evidence to the Tribunal. The Tribunal therefore did not consider Mr Rought to be a credible witness particularly in relation to the sexual harassment allegations brought by the second claimant. The Tribunal approached the rest of his evidence with a high degree of caution.
61. While not causing the Tribunal the same order of difficulty as was the case with Mr Rought, the Tribunal nevertheless had reservations about the evidence of Margaret Hotham. Margaret Hotham demonstrated to the Tribunal that she is someone of high intelligence. Margaret Hotham was also heavily invested in the inter-family dispute. She plainly felt the she had right on her side and genuinely felt that Christine Hotham and members of her family more generally had been very poorly treated by Mr Rought and his family members. However, it cannot sensibly be said that Margaret Hotham was a passive victim of the feuding. The way in which she gave her evidence followed on from the way in which she conducted herself during the management phase of this dispute. That conduct can fairly be described as hostile, aggressive and confrontational.
62. Margaret Hotham resigned as club Treasurer on 13 December 2021. The majority of matters with which the Tribunal was concerned happened after that date. Some of those matters involved allegations of very unpleasant treatment, such as the allegation that Mr Rought and others aligned to his position would snigger and laugh at the first claimant's gait which was on occasion impaired as a result of her multiple sclerosis. Even allowing for that degree of alleged unpleasantness towards her daughter, Margaret Hotham was a full and willing participant in the events that led to the relationship between the Hotham and Rought families spiralling out of control and causing innumerable consequential collateral problems. The Tribunal gives below a few examples of which there were very many.

63. In a reference which can only be to the Rought family, Mrs Hotham describes the family in a post on social media as a *'Pack of Dirty Bastards'* [538]. Another post on social media from someone (Sarah Davies/Angelas Ellwood) aligned to the Hotham family and with whom Margaret Hotham was friends on social media, posts (again in reference to the Rought family): *'I'm not been [sic] funny who would want a paedos family running a community club.'*[532].
64. In another social media post-dated 5 March 2022, under the title *'Margaret Hotham doesn't recommend The Real Acre Rigg Social Club Page'*, Mrs Hotham posts:
- 'The Ones running it are Sexist Biased Bully staff out there jobs Homophobic and corrupt.'*
65. After the incident on the night of 26/27 February 2022 when it is alleged that Deborah Green dug her nails into the first claimant's arm leaving marks, Margaret Hotham wanted Deborah Green to be charged with assault occasioning ABH. When during the same incident, Angela Rought allegedly threatened to make 'lives hell' for Christine Hotham and her family by allegedly using her contacts in the police, Margaret Hotham took this to mean that Angela Rought had subsequently used her influence to get PC Cornforth, the police officer looking into the first claimant's report to the police about the 26/27 February 2022 incident, to back off.
66. The matter was raised with the Chief of Durham Police. As the Tribunal can see from [434 – 435], PC Cornforth indicates that police professional standards had become involved and that a different officer would need to handle any subsequent complaint from the first claimant. At the start of these proceedings, Margaret Hotham indicated that she wanted a witness order requiring the attendance of Angela Rought in these proceedings. Although that application was not proceeded with, it was clear to the Tribunal that Margaret Hotham was looking to use the Tribunal processes as a way to cause professional difficulties for Angela Rought.
67. The only evidence that Margaret Hotham had to support her allegation that Angela Rought had misused her powers as a police officer was the alleged initial threat by Angela Rought on 26/27 February 2022 to make 'lives hell' for the first claimant and those associated with her and the fact that PC Cornforth had allegedly told the first claimant that Deborah Green would be receiving a police caution for common assault whereas it later transpired that the police had marked the file NFA meaning that no further action was to be taken. Whatever the rights and wrongs of the incident on 26/27 February 2022 at the Acre Rigg Social Club, the incident had been blown, largely by Margaret Hotham, out of all proportion.
68. In cross-examination, Mr Ramsbottom addressed the motivation for Margaret Hotham's conduct succinctly with her as follows:

'Mr Ramsbottom: you were directing all this. Arranging all this. You have a vendetta against the Rought family stemming from resentment for your reasons for resigning from the club. You are escalating it to get back at the Rought family through Deborah Green, who was Tony Rought's sister-in-law.

Margaret Hotham: No

69. Even allowing for the compound nature of the question, Margaret Hotham's answer that she was not escalating matters to exact retribution on Mr Rought and his family was implausible. Margaret Hotham was plainly looking to cause as much damage as she could to Mr Rought and his family members as supported by the examples of her inflammatory behaviour at paragraphs 63 to 67 above. Indeed, it was difficult to avoid the conclusion that these proceedings (whatever their legal merit) were at least to some extent part of that strategy.
70. Margaret Hotham was prepared to accept in response to a question from the Tribunal, that her conduct between December 2021 and April 2022 was not conducive to making peace. The Tribunal found that Margaret Hotham proceeded with a sense of righteous indignation arising out of the perceived wrongdoing towards her and her daughter (and to a lesser extent towards Miss Penman and Shannon Clarence). Margaret Hotham plainly inflamed and perpetuated the situation believing that she had right on her side and was prepared to do whatever it took to inflict damage on Mr Rought and other members of his family.
71. In the circumstances, while the Tribunal do not question the credibility of Margaret Hotham in the sense that she plainly believed that she was justified in taking the steps that she did, the Tribunal does not find her evidence to be reliable on the basis that she appeared incapable of seeing the matters that unfolded from any other perspective than her own.
72. The task of the Tribunal is, of course, to stand back from the mutual antipathy that characterised these proceedings and to assess in as an objective a way as possible whether or not the employment rights asserted by the claimants were each well-founded factually and well-founded legally after the application of the relevant legal principles.

Findings of fact: The first claimant

73. Where there was a dispute on the evidence, the Tribunal's findings of fact have all been made on the balance of probabilities and informed by the Tribunal's assessment of the credibility and/or reliability of the witnesses as set out at paragraphs 36 to 71 above.
74. On 12 April 2019, the first claimant commenced employment with the respondent as Bar Steward(ess). Her line manager was Mr Rought, club Secretary.

75. On 2 August 2021, the second claimant commenced employment with the respondent as Bar Staff. Her line manager was the first claimant, Christine Hotham, who was employed in the role of Bar Steward.
76. In April 2021, the General Committee considered the first claimant's request for a pay rise of £1.00 per hour. The club had only recently reopened after lockdown. The pay rise was agreed in principle, but a final decision was delayed until a General Committee meeting in July 2021 to allow the club time to assess how things had progressed following reopening.
77. At the club's AGM in July 2021, Margaret Hotham asked the membership to approve a £200 Christmas Bonus for the club's staff as a gesture of goodwill for their work during the pandemic. Membership approval was given.
78. At a General Committee meeting on 25 July 2021 [250-251], the committee approved the first claimant's pay rise by £1.00 per hour as agreed in principle at the April 2021 meeting. An issue arose whether the pay rise should be backdated to April or would start from the date of the July meeting at which final approval was given. The chairman, Doug Robinson, thought it should be the latter. Margaret Hotham thought it should be the former. Upon consulting the notes of the April meeting, it was agreed that the pay rise would be backdated to April 2021.
79. The first factual dispute (**first claimant, allegation 1**) has two parts. The first part was whether Mr Rought had said at the meeting on 25 July 2021 that the claimant must not work more than 44 hours per week otherwise she would not be paid; and the second part is whether Mr Rought also said that the reason this limit was being imposed was because of the first claimant's MS.
80. The minutes of the meeting read, '*And her maximum 44 hours per week.*' [250]. At clause 9 of the claimant's contract of employment the express term is:
- 'Hours of work*
- Your working week will comprise of 40 hours. These hours will be organised as agreed with the Secretary.'* [220]
81. Mr Rought's position is that any discussion about hours being reduced or capped was in the context of increased hours being worked during the period of Covid restrictions. It was common ground that the Covid-restrictions (such as table service) increased the hours required to run the bar area and common ground that those hours needed to be reduced to 'business as usual' when the restrictions were lifted. It was also common ground that it was the role of the Secretary and other members of the committee to keep a close eye on club expenditure given that budgets in a social club will normally need to be tightly controlled.
82. The Tribunal heard from Lynn Martin (a witness called by the claimants) that Mr Peacock '*brought up wages at every meeting and the need to reduce hours*'.

Plainly hours and wages for hourly paid workers are either side of the same coin. Lynn Martin also gave evidence that she heard Mr Rought link the weekly maximum of 44 hours to the claimant's medical condition of MS.

83. Margaret Hotham was present at the meeting on 25 July 2021. Christine Hotham was not at the meeting until the end which was after the 44 hour limit had been mentioned. Margaret Hotham also says that Mr Rought linked the 44 hours weekly limit to the claimant's MS. Margaret Hotham was adamant that the minutes had been altered to remove a reference she knew had originally been there to MS.
84. This allegation was not in the claim form. When it appears in the list of allegations at [100] there is no mention of the 44 hour weekly limit being linked to MS. At [100], the allegation on its face seems to be directed towards the first claimant's claim for constructive unfair dismissal only. This point is taken directly in the respondent's Amended Grounds of Response at [163] where the respondent correctly points out that there is no reference to the first claimant's protected characteristic at all in the ***first claimant's allegation 1***.
85. The first claimant says nothing in her witness statement about anything happening before 16 October 2021. It appeared from her answers in cross-examination that the claimant might be saying that she was told of the 44 hour weekly limit and that it was because of her MS when she attended at the end of the 25 July 2021 General Committee meeting. It is unsatisfactory to be inferring evidence in that way when the first claimant ought to be making her case clear. In cross-examination, the first claimant accepted that there had been two occasions when she had worked more than 44 hours and had been paid for all the hours she worked.
86. Margaret Hotham did not challenge Mr Rought in cross-examination about what was said about MS at the 25 July 2021 meeting. There were some general questions put to Mr Rought about what he knew about MS, but that was not directly in relation to ***the first claimant's allegation 1***.
87. The Tribunal finds that ***the first claimant's allegation 1*** was not properly in issue before the Tribunal as an allegation of disability discrimination since:
 - a. It was not pleaded at any stage as an allegation of disability discrimination;
 - b. It was not framed as an allegation of discrimination in the list of allegations attached to the Case Management Summary of Employment Judge Jeram of 13 January 2023;
 - c. The allegation was amended at the third preliminary hearing before EJ Jeram on 11 April 2023 but only to change the date from 'In April 2021' to 'In July 2021' and not otherwise;

- d. It was accepted at the third preliminary hearing that this was not in the claim form and needed to be introduced by way of amendment (permission for which was given along with 5 other new allegations at the third preliminary hearing);
 - e. It was subject to an order (paragraph 13) at the third preliminary hearing that the claims and issues identified at that hearing were to be treated as definitive unless the parties notified the Tribunal within 14 days of the date on which the orders were sent to the parties;
 - f. The first claimant did not write to the Tribunal further to the order referred to at (e) above;
 - g. The first claimant provided no evidence in her witness statement of having heard anything directly about MS at the meeting of 25 July 2021;
 - h. The first claimant provided no evidence in her witness statement of having being told anything about the meeting of 15 July 2021 by anyone (including her mother) who was at that meeting;
 - i. The first claimant failed to mention this allegation in either of her grievances;
 - j. The first claimant accepted that she was paid on the two occasions that she did work more than 44 hours after July 2021 and accepted that she was contracted for 40 hours per week;
 - k. Mr Rought gave an objective rationale (i.e. to reduce hours back down to pre-Covid levels) unconnected to the claimant's MS for seeking to limit hours that applied not only to the claimant; and
 - l. The respondent did not have an opportunity because of the absence of any reference to MS in the allegation as framed to adduce any evidence of how the respondent managed any comparator's hours at the relevant time.
88. The Tribunal does however need to make a finding of fact for the purposes of the first claimant's constructive dismissal claim. The Tribunal was not persuaded by Margaret Hotham's evidence that Mr Rought or anyone else at the meeting of 25 July 2021 linked the 44 hour weekly limit to the claimant's MS. Case management orders were made during this final hearing to get disclosure of all of the notes of General Committee meetings in the relevant period. There was no meaningful evidence that anything had been altered. For example, Margaret Hotham's attempts to undermine the integrity of the minutes of 25 July 2021 at [250-251] were unconvincing. Her attempt to show that the minute in the notes of that meeting for an advert to be placed in the paper for the week commencing 1 August 2021 demonstrated that the minutes were inaccurate ultimately went nowhere.
89. The Tribunal finds that both Margaret Hotham and Lynn Martin were mistaken about there being a link made between the 44 hourly weekly limit and MS at the meeting of 25 July 2021. Both witnesses may have come to believe that it was mentioned at that meeting as this case has progressed, but memory can be

unreliable. It is telling that the first claimant failed to make any such link until very late in the litigation phase of this dispute and the Tribunal finds that the first claimant assisted by her mother would have been unlikely to have omitted to make that connection much earlier in these proceedings if they had believed that to be the case at the time.

90. The Tribunal was satisfied that the minutes of the meeting of 25 July 2021 are an essentially accurate contemporaneous reflection of what happened at the meeting and reflected that there was no link to MS made at the July meeting. Had the Tribunal needed to consider this allegation in the context of an allegation of direct discrimination, the Tribunal would have found that the first claimant had failed to establish an initial case sufficient to shift the burden of proof.
91. The Tribunal also rejects the **first claimant's allegation 2** factually. The first claimant has brought no evidence at all that she worked in excess of 44 hours and was not paid for it. The Tribunal accepts (as did the respondent) that the claimant worked hard and was committed to the club. It is one of the sadnesses in this case that that commitment has been lost in all of the argumentation.
92. The first claimant does not specify when the hours she refers to were worked; produced no request for payment she made to the respondent but which were not met; and brought no claim either in these proceedings or at any earlier stage for unlawful deduction from wages or breach of contract. Given the strength of feeling on the part of the first claimant and her mother, the Tribunal finds it highly unlikely that the first claimant would have overlooked that redress.
93. In December 2021, the first claimant alleges that she asked Mr Rought to be accompanied by another member of staff on the occasions that she started work at 6 a.m. The claimant says that Mr Rought refused her request for an adjustment. This is **the first claimant's allegation 3**. The club was not open at that time in the morning. The reason the claimant was required to attend the premises at 6 a.m. was that a member of staff was required to be there because an external contractor attended the club once a week to clean the lines through which the beer passed from barrel to tap. The claimant says that the reason she requested accompaniment was because of concern that MS related dizzy spells may cause her expose her to an increased risk of injury if she was alone in the workplace. Mr Rought accepts that he was asked in December 2021 by the first claimant for another member of staff to be present on the weekly occasion that the lines were being cleaned
94. The area of factual dispute is that Mr Rought says that the reason the first claimant gave for requesting to be accompanied was that she wanted company not that she was concerned for any MR related reason. On that basis, Mr Rought was content to agree to the request but not for the companion to be paid for his or her time.

95. There is nothing in the first claimant's first grievance letter [263-264] about allegation 3 at all. The claimant was asked in cross-examination to explain why there was nothing in her grievance about this matter. The first claimant explained that she wanted to take allegation 3 to the whole committee not just to Mr Rought. When she was then asked why not inform the Chairman (Mr Robinson). The claimant's reply was not convincing. She said,

'He's a farmer, less time in club.'

96. There is then nothing in the first claimant's witness statement about allegation 3 at all. There was only the claimant's evidence in cross-examination that she was experiencing MS related dizzy spells and only the claimant's evidence in cross-examination that she gave that to Mr Rought as the reason for asking to be accompanied. The Tribunal also noted that as part of her duties, the first claimant was available for call outs during the night and was a keyholder. There was no parallel suggestion that the claimant needed a companion when she was called out or to be excused those duties due to any MS related vertigo-like symptoms.
97. The Tribunal also had difficulty in understanding **the first claimant's allegation 3** on its own terms. It was common ground that the reason that the claimant needed to attend the club at 6 a.m. was to let in the beer line cleaning contractor while he carried out his task and for no other reason. The claimant would therefore not have been unaccompanied since the line cleaner would have been there as well. This was not put as a security issue about a lone female worker concerned about her personal safety. It was put as a request for an adjustment because of a symptom of her MS.
98. The Tribunal finds that the first claimant did not in December 2021 give the reason for her request to be accompanied that she was experiencing symptoms related to MS. The absence of any evidence in her witness statement, the absence of any mention of the issue in her first (or second) grievance letter together with the difficulty the Tribunal had of making sense of allegation 3 on its own terms led the Tribunal to the conclusion that no part of the reason at the time for her request for accompaniment related to her concerns about MS related dizzy spells. The first claimant has therefore failed to establish the factual case she puts forward as allegation 3.
99. On 13 December 2021, Margaret Hotham resigned from her position as club Treasurer. She continued to do the payroll for a while after her resignation.
100. The first claimant alleges that Mr Rought reduced her hours to 40 hours per week with effect from December 2021 *'because Mr Rought believed the claimant was not capable of doing her job after having sought the adjustment [in allegation 3].* This is the **first claimant's allegation 4. The first claimant's allegation 5** is that also in December 2021, Mr Rought told the claimant that *'if she was not capable of doing her job she should get out.'*

101. The Tribunal has already found that the first claimant did not ask for the adjustment she claims to have asked for in allegation 3. It must follow that this cannot have led to a view on the part of Mr Rought that this was a reason for Mr Rought believing that the claimant was not capable of doing her job. Critical as the Tribunal has been of much of Mr Rought's evidence, the Tribunal noted that at no stage in the contemporaneous documents is Mr Rought critical of the claimant's competence in the role of Bar Steward. Mr Rought was careful to say that others (Geordie Lloyd, Verna Robertson and Stevie Miles) wanted the first claimant out of her role as Bar Steward and, whatever his motives for so doing, he was careful not to align himself with that objective and Mr Rought never said that the first claimant's alleged detractors had any concerns about the claimant's competence. The Tribunal concluded that when Mr Rought was stating that other members wanted the first claimant out of her role he was simply trying to undermine the first claimant as part of the broader inter-family dispute and hiding behind proxies when doing so.
102. It was common ground that the claimant was an effective Bar Steward, a job which no doubt can at times be a difficult one. Managing significant numbers of members and guests towards closing time on a Friday and Saturday night in licensed premises is a notoriously difficult task and from what the Tribunal has seen and heard, the first claimant was plainly well suited to the role.
103. There is also every reason to suppose that the club would want to make sure that the working hours of its staff were managed back down to their pre-Covid levels. In the first claimant's case that case meant the 40 hours set out in her contract of employment.
104. There is also no mention of **allegations 4 or 5** in the first claimant's first grievance on 16 January 2022 [263-264] or in her second grievance on 17 March 2022 [372-377]. There is no evidence in support of **allegation 4 or 5** in either of first claimant's witness statements. In those circumstances, the Tribunal finds that Mr Rought did not say to the claimant any of the things that he is alleged to have done in either of these two allegations. The first claimant has therefore failed to establish the factual case she relies upon in support of **her allegation 4 and 5**
105. On 24 December 2021, the second claimant said that she thought she had seen Mr Peacock take cash out of the club's bingo money. The Tribunal saw a video of the committee room showing what the second claimant said she had seen. A similar incident also involving Mr Peacock took place on 26 February 2022 which was seen on CCTV by the first claimant. The Tribunal does not have to make any finding about what Mr Peacock may or may not have been intending to do with the bingo money on either occasion. However, the Tribunal was satisfied that the second claimant had on 24 December 2021 seen something potentially suspicious on the CCTV that she thought should be reported to her line manager, the first claimant. Mr Peacock's accepted that the CCTV did show that he was taking money out of the bingo takings. That much was common ground. In his evidence, Mr Peacock provided an innocent explanation that he was recovering

his own money that he customarily put into the bingo float at the start of the evening.

106. The Tribunal finds that the second claimant was simply acting conscientiously when she reported what she had seen and that she considered that it was a matter for others what, if anything, should be done about it. The Tribunal also finds that this ruffled the feathers of Mr Rought and Mr Peacock who treated the information as an insinuation of dishonesty on Mr Peacock's part and as something of a temerity. The tribunal also finds that the second claimant had done nothing wrong at all by drawing what she had seen on CCTV on 24 December 2021 to the attention of her line manager.
107. On 30 December 2021, there was a wedding reception held at the club for two of its members. The **second claimant's allegation 3** is that late in the evening of 30 December 2021 or in the early hours of 31 December 2021, Mr Rought grabbed the second claimant's arm, pulled her from the DJ box and shouted at her *'to get behind the fucking bar.'* Later that same night, the second claimant says that Mr Rought came up behind her and asked her what she was getting for the £200 Christmas bonus she had been given and groped the second claimant's bottom.
108. Mr Rought's version of events is at paragraphs 50 and 51 of his witness statement. Mr Rought says that he saw the second claimant with other staff congregating in the DJ box when she was supposed to be working behind the bar. In order to get the second claimant serving customers who were waiting, Mr Rought says he asked the staff members to go to the bar to do their jobs. Mr Rought says in his witness statement that *'at no stage was there any physical contact'*.
109. The Tribunal has set out at (and repeats in these findings of facts) paragraphs 50 to 60 above in which it explains why it does not accept Mr Rought's version of events. In particular, Mr Rought's evidence in cross-examination that the first he heard of any allegation that he had groped the second claimant's bottom was when he heard it given in evidence at this Tribunal hearing. The Tribunal has found that evidence from Mr Rought to be untrue, not least because in the Amended Particulars of Response Mr Rought vehemently denies the second claimant's allegation 3 and provides a detailed account of how he removed the second claimant from the DJ box (albeit an account which materially differs from the account in his witness statement).
110. The Tribunal accepts the second claimant's version of **her allegation 3** in its entirety. The Tribunal found the second claimant to be a credible and reliable witness. Furthermore, the second claimant evidence in relation to being physically pulled out of the DJ box by Mr Rought was supported by other witnesses. Kaitlin Freeman says at paragraphs 3 to 7 of her witness statement as follows:

'On that night I witnessed Tony Rought coming through the bar to the lounge this is not allowed unless Christine gives permission for someone to do so but he did.

I then saw Sianon being pulled by the arm by him and him shouting for her to get behind the bar from the DJ box we were in total shock because me and another member of bar staff was already behind the bar, who could have served him.

Sianon was upset at this went on to serve customers.

I was in the bar after finishing work and have just got a drink with Angela Ellwood and saw Tony go behind the bar into the lounge, he was quite drunk.

The next I know Christine came out her office and asked myself and Angela to take Sianon to the toilets she was physically shaking up.

In the toilets Shannon (sic) told me and Angela that Tony had come up behind her and felt her backside and asked what she was giving him for the Christmas bonus.

We were in the toilets for around 10 to 15 minutes when Christine came and told Sianon to come to her office.

I can confirm on several occasions that Tony Rought would comment on Sianon's breasts with comments like I wish that was my face that T-shirt and not a picture.'

111. At paragraphs 3 and 4 of her witness statement, Angela Ellwood says as follows:

'On 30 December I was in the bar when Tony Rought was very drunk... Sianon Penman was uneasy in his company the next I knew Christine came to me and asked me to go to take Sianon to the toilet so myself and Katlyn (sic) Freeman went with her she was very upset and crying she told us she was in the lounge and Tony had come behind her and felt her bum and asked what she was giving him for the £200 Christmas bonus she got she said she pushed him away and went to Christine we stayed in the toilets for about 10/15 mins when Christine came and told us he had left.

I have heard Tony on a few occasions make inappropriate remarks like get your tits out to Sianon Penman and thought it was funny he has two daughters of his own and thought yea you wouldn't like it if it was your daughter.'

112. The Tribunal found Miss Freeman and Angela Ellwood to be two of the more credible, reliable and objective witnesses in this case. Their evidence about the incident on 30/31 December 2021 was of assistance to the Tribunal in that it supported the second claimant's version of events on 30/31 December 2021. The Tribunal was therefore satisfied that the **second claimant's allegation 3** was factually true in its entirety.

113. On 12 January 2022, there was a confrontation between Margaret Hotham/Christine Hotham and Mr Rought and his daughter Emily Rought. Mr

Rought believes that Margaret Hotham felt resentment towards him as club Secretary for not appointing her to the position of Kitchen Manager. The club kitchen was refurbished at the end of 2021 following the end of lockdown. According to Mr Rought, this is what lay behind the confrontation 12 January 2022 when Margaret Hotham is accused of having called Mr Rought ‘*spineless*’ for not sticking up for her when she resigned as club Treasurer; having sworn at Emily Rought and calling her father (i.e. Mr Rought) an ‘*arsehole*’. Margaret Hotham for her part denies ever having had any interest in becoming Kitchen Manager. This was a matter that the Tribunal found it unnecessary for it to consider any further detail. It is included only insofar as it is part of the chronology and tends to show the underlying hostility between the two families.

114. On 16 January 2022, the first claimant raised a grievance on her own behalf, on behalf of the second claimant and on behalf of another member of bar staff, Shannon Clarence [263-264]. The Tribunal noted that a number of matters are not raised in this first grievance. For example, there is no reference in this letter to the events of 30/31 December 2021 which later become the **second claimant’s allegation 3**. Nor is there a reference to any concern that Mr Peacock may be taking money from the bingo cash despite the first occasion on which the second claimant says she saws him doing this was 24 December 2021.
115. The grievance letter refers to matters relating to the conduct by certain club members towards the first claimant and her bar staff. In that letter, the first claimant refers to (amongst other matters):
 - a. Mrs Miles allegedly advising the bar staff ‘**to pick the right side**’ a reference to the aggravation between the Hoffman family and the Rought family;
 - b. allegations of homophobic remarks made by Mr Will Mann (club member) on 1 January 2022 to Shannon Clarence (bar staff);
 - c. the appointment of Tammy Graveling as Kitchen Manager without the knowledge of the first claimant as her manager; and
 - d. complaints by Mr Mann that the second claimant was pouring his pint into a different type of glass to the one he preferred.
116. Before the General Committee was able to consider this matter at a meeting, a further grievance was received on 30 January 2022 from the second claimant’s mother, Sarah Davies [274-275]. In summary, this grievance letter raised the following matters on behalf of the second claimant:
 - a. On 30/31 December 2021, Mr Rought grabbing the second claimant’s arm and pulling her from the DJ box.; and
 - b. Mr Mann shouting and swearing at the second claimant for putting his drink in the wrong glass and Mr Mann threatening to ‘sort out’ the second claimant’s father if she did not ‘*sort her fucking self out*’.

117. The letter does not mention the allegation that Mr Rought groped the second claimant's bottom later on the same night as the DJ box incident. Nor does the letter mention anything about Mr Peacock apparently taking cash out of the bingo money.
118. At paragraph 18 of his witness statement, Mr Rought contradicts the Amended Particulars of Response by denying that he touched the claimant as alleged. In particular, at paragraph 18 Mr Rought says, '*At no time did I touch her as she alleges.*' By way of reminder, at paragraph 80 of the Amended Particulars of Response, Mr Rought says, '*The Respondent accepts that Tony Rought touched the second claimant when he made this request, however this was not in a sexual manner.*'
119. On 31 January 2022, there was a General Committee meeting at which the first and second claimant are in attendance in part. **The first claimant's allegation 6** refers to events at a committee meeting on 6 February 2022. This meeting was brought forward to 31 January 2022 and the Tribunal has treated **the first claimant allegation 6** as referring to 31 January 2022. It was common ground that there was no meeting on 6 February 2022.
120. The specific allegation is that at this General Committee, meeting when the claimants' grievances were apparently going to be being heard, that Jim Peacock was laughing, belittling and intimidating every time the first claimant tried to speak. It was at this General Committee meeting that the first claimant raised the matter of what the second claimant had seen on the CCTV monitor showing Mr Peacock (Mr Rought's father-in-law) apparently taking money from the bingo float.
121. What happened at this General Committee meeting was in dispute. The notes of meeting are at [281-283]. Those notes are so brief that it does not suggest that they can be relied upon as either a complete account of what was said or done at the meeting. The notes indicate that the meeting was attended by Mr Rought (Secretary), Mr Peacock, Lynn Martin, Mr Robinson (Chairman), Mr Bob Kyle (Concert Chairman), Kelly Kettell (acting Treasurer), Mr Winter and Mark Wilde.
122. Before either of the claimants entered the meeting, Mr Rought read out the first claimant's grievance letter of 16 January 2022 [263-264] and the letter from the second claimant's mother (Sarah Davies) [274-275]. The second claimant entered the meeting first. She was accompanied by Mr John Arkwright. Mr Winter suggested that the CCTV footage should be looked at to see if Mr Rought had grabbed the second claimant on 30/31 December 2021 in the way alleged. That was not done and no meaningful reason for not doing so was provided to the Tribunal.
123. The respondent invited the Tribunal to believe that both the second claimant and Shannon Clarence were both content to 'draw a line' under the complaints that had been raised against an understanding that there would be a fresh start and if anything happened again 'it would be dealt with properly'. The notes of the

meeting on 31 January 2022 reflect Mr Winter making that initial suggestion [281] and the second claimant accepting it. When it was put to Mr Winter in cross examination that it had been his suggestion that a line should be drawn under events, he replied succinctly as follows: *'I did not make that remark 100%'*.

124. The Tribunal accepted Mr Winter's evidence that it was not his suggestion and that the notes of the meeting were inaccurate to that extent. This was because Mr Winter's evidence was both generally reliable and because he was the first claimant's husband. At the point in time at which the second claimant is alleged to have agreed to Mr Winter's suggestions to 'draw a line', Mr Winter's own wife (the first claimant) had not yet entered the meeting to say anything about her own written grievances on which the Tribunal accepts she intended to expand and infers that Mr Winter as her husband would have known that it was her intention to do so. The Tribunal found it to be inherently unlikely that Mr Winter would be so quick to accept what became the respondent's position on the resolution of the grievances at this meeting even before his wife had been given an opportunity to ventilate her concerns in front of the General Committee.

125. The Tribunal prefers the evidence of Ms Penman and Mr Winter. Ms Penman's account is that the meeting was 'hijacked' (witness statement paragraph 13.5) by Mr Peacock and Mr Rought. Ms Penman and Mr Winter gave evidence that Mr Winter had to step in during the period the second claimant was in front of the committee to stop Mr Peacock's intimidating the second claimant. The Tribunal finds that the committee meeting on 31 January 2022 was controlled by Mr Rought and Mr Peacock (both of whom would by then have been aware of the potential issue to do with the bingo money) who took it upon themselves to manipulate the second claimant into effectively waiving her grievances and moving on. Such an outcome was plainly in the best interests of Mr Rought, Mr Peacock and Mr Mann, all of whom had a vested interest in the grievances being contained and managed away.

126. Ms Penman was very frank in her evidence on this point. In response to a question in cross examination about whether she agreed to 'draw a line' Ms Penman responded:

'I nodded my head. I didn't agree. Easiest option at the time. I did nod.'

127. Ms Penman's evidence has to be put in the context of her broader account of the meeting. She says, and the Tribunal accepts, Mr Peacock accused her of being a *'like a stupid little girl and not taking it seriously.'* Mr Peacock is a mature man with a lot of life experience both within and outside of the club committee. Ms Penman was a young woman in her first job. She says she was nervous as she no doubt would be as a young woman in front of the club committee populated in part by people about whom she had made complaints or raised suspicions. The Tribunal accepted that it was Ms Penman's intention to widen out her grievance in front of the committee to include the matters relating to Mr Peacock pulling her out of the DJ box and shouting and swearing at her to get back behind the bar.

The behaviour of Mr Peacock in particular at the committee meeting deterred her from so doing. The Tribunal could understand why Ms Penman would remain reticent in such circumstances.

128. The Tribunal also accepted the second claimant's explanation for why she did not at that stage raise the allegation that Mr Rought had groped her bottom on the night of 30/31 December 2021. The second claimant explained that she kept it to herself and even from her own mother because she was concerned that her father would be very unhappy about it and matters might easily escalate. The Tribunal find that it was for that reason alone that Sarah Davies letter of grievance sent on behalf of her daughter on 30 January 2022 did not refer to the allegation that Mr Rought had groped her bottom or commented on her breasts. The second claimant had for the reason she gave to the Tribunal withheld that information at that stage even from her own mother.
129. When the first claimant was asked to attend the meeting (again with Mr Arkwright accompanying her) Mr Peacock and Mr Rought appeared to have taken the same approach as they did with the second claimant. Mr Peacock and Mr Rought again used their positions to dominate the committee meeting. By this stage Margaret Hotham had resigned as Treasurer and there was no countervailing force on the committee to ensure that Mr Rought and Mr Peacock did not get things all their own way. The Tribunal concluded that Mr Peacock and Mr Rought manipulated the committee processes to suit their own agendas and had no intention at all at any stage of giving conscientious consideration to the claimants' grievances on their merits.
130. Indeed, when the first claimant was called into the meeting, the notes reflect that first claimant's grievance letter was not read out while she was in attendance rather, the notes only recorded the first claimant being asked about the problem that Mr Mann had with members of bar staff pulling his pint before he came into the club. The first claimant agreed to have a word with her bar staff about it. The notes then reflect the first claimant saying that she was also prepared to draw a line. The Tribunal preferred the evidence of the first claimant about who was really driving the amnesty that the short notes of the meeting purport to reflect when the first claimant said at paragraph 17.2 of her statement that:
- '...Jim and Tony took over the meeting and said right can we all agree to draw a line under things and get on. We have no further say we got no outcome letter or the right to appeal it was a total disgrace.'*
131. By the end of the committee meeting on 31 January 2022, the only matter that appears to have been properly ventilated was not anything raised in the claimants' grievances. Rather, it was a discussion about Mr Mann's problem about when and in what type of glass his pint should be pulled. Clearly that is not consistent with any meaningful attempt to address the claimants' concerns. Put simply, Mr Rought and Mr Peacock wanted in their own best interests to whitewash the grievances of both claimants.

132. The Tribunal has therefore concluded that the **first claimant's allegation 6** about the way in which Mr Peacock conducted himself at the grievance hearing on 31 January 2022 was both belittling and intimidating.
133. On 10 January 2022, Mrs Hotham had a significant operation. She underwent a femoral artery bypass. On 12 February 2022, there was an incident in the club between Mr & Mrs Hotham and Mr Rought & his daughter Emily Rought. The Tribunal again records this because of its impact on the relationships between the claimants and the respondent and not because it has any direct bearing on the claimants' employment rights.
134. On 12 February 2022, Mrs Hotham was in the club and she confronted Mr Rought about animosity that Mrs Hotham believed was being stirred up involving her. In particular, Mr Rought had earlier accused Mr and Mrs Hotham of 'slagging him off'. As Mrs Hotham puts it rather histrionically at paragraph 11 of her witness statement, *'[she would] not live under a lie and be accused of something I did not do.'* Mr Hotham took issue with Mr Rought about the situation and a disagreement occurred. Mr Hotham called Mr Rought 'a wanker' and told his daughter to 'to fuck off.'
135. The Tribunal accepted **the first claimant's allegation 7** as a matter of fact. The claimant gave evidence in her witness statement at paragraph 19 to the effect that Debora Green, a member of bar staff who was on sick leave, attended the club on 7 February 2022. The first claimant says that Debora Green was working in the kitchen with Tammy Graveling at a time when she was unable for health related reasons to work in the bar. The claimant says that she raised this with Mr Rought but was told to 'fuck off' as it was none of the first claimant's business.
136. In his witness statement, Mr Rought does not engage with this allegation. Mr Rought appears to think that the first claimant is alleging that this allegation occurred at a committee meeting. That is not what the claimant says when framing this allegation at [100]. Mr Rought appears to confuse this allegation 7 with allegation 8 in relation to the incident referred to below 26/27 February 2022. The Tribunal has come to that conclusion because of the reference at paragraph 34 of Mr Rought's witness statement where he says that he believes that the first claimant reported the matter to the police. The matter that the first claimant reported the police was the harm allegedly occasioned by Deborah Green on 26/27 February 2022 which is part of the first claimant's allegation 8. The Tribunal finds that **the first claimant's allegation 7** is true as a matter of fact.
137. At closing time on Saturday night 26 February/Sunday morning 27 February 2022 an incident occurred in the foyer and then outside the club premises. The Tribunal heard a good deal of evidence and saw a number of CCTV videos about this incident and its aftermath. **The first claimant's allegations 8 and 14** arise out of this incident. **Allegation 8** is that Deborah Green (who was on sick leave from her role as bar staff at the time) was verbally and physically abusive to the claimant. The physical abuse is an allegation that Deborah Green had dug her

nails into the first claimant's arm. That allegation led to the police becoming involved at the instigation of the first claimant. **Allegation 14** is that the respondent failed to carry out an investigation into Deborah Green's alleged assault on the first claimant. Deborah Green is one of Mr Peacock's daughters and as such is Mr Rought's sister in law. The obvious implication is that the General Committee under Mr Rought's influence was ensuring that a blind eye was being turned to the alleged wrongdoing of his own sister-in-law.

138. Having heard the evidence and considered the video footage, the Tribunal came to the conclusion that the events of 26/27 February 2022 were in many ways a microcosm of the antipathy between the two families. The Tribunal heard that Angela Rought had referred to some of the attendees aligned to the first claimant as '*council house scrubbers*' and threatening the first claimant and Angela Ellwood that she would have her police friends make the make their lives a 'living hell'. The first claimant said that Deborah Green and others were '*making faces in the window*' as an act designed to cause further confrontation.
139. The video evidence showed that there was a confrontation in the foyer and in the club exit area while the club was emptying out at closing time. The Tribunal could see that there was a degree of physical contact between Deborah Green and the first claimant. The first claimant is carrying out her role as Bar Steward and trying to get people to leave the premises. Deborah Green behaves confrontationally towards the first claimant placing her mobile phone directly in her face recording her. There is a degree of contact where Deborah Green has hold of the first claimant's arm. The first claimant says that Deborah Green left marks on her arm and nipped the back of her arm.
140. The first claimant reported the matter to the police. Yet another dispute arose about whether the police officer had initially told the first claimant that Deborah Green was to receive a caution but then changed his position (the implication being due to Angela Rought using her influence as serving police officer) by then deciding to take no further action.
141. The Tribunal notes that at the time of the incident Deborah Green was employed by the respondent as Assistant Stewardess reporting to the first claimant. Between September 2021 and April 2022, Deborah Green was on sick leave and that would have been her status on 26/27 February 2022. Deborah Green left her role at the club in April 2022. At all times she was also a club member and licensee and socialised at the club along with her father Jim Peacock, her sister Angela Rought, her brother-in-law Mr Rought and friends.
142. The respondent's position on **allegation 8** is that the incident arose because the first claimant was serving drinks after hours and/or to underage patrons and that Deborah Green had a legitimate interest in pointing this out as she was one of the licensees of the premises. The respondent says that it was the first claimant who was the aggressor and that Deborah Green did not assault the first claimant with the marks on the first claimant's arms being present before the altercation

143. The Tribunal did not find it either necessary or helpful to inquire into the seemingly endless details of this dispute. The only point of significance to the Tribunal was whether the first claimant had a legitimate criticism of her employer when she says at **allegation 8** that the committee members present on the night of the 26/27 February should have intervened and/ or at **allegation 14** when the first claimant says that the respondent failed to carry out an investigation into her alleged assault by Deborah Green.
144. The respondent's position in its Amended Particulars of Response [165 & 167] is that the first claimant did not report the matter to the Respondent or ask the respondent to investigate, choosing instead to report the matter to the police who took no further action. The respondent says that while the matter was being looked into by the police *'it was unable to make any finding or carry out any substantive investigation.'* [167]
145. It was Deborah Green's evidence [Witness Statement paragraph 10] that she did receive a letter from the club to go before the General Committee to explain her actions but that she was later told that this would not be necessary as the club had reviewed the CCTV and did not feel it necessary for her to attend the committee after all.
146. The Tribunal concluded that the decision of the General Committee not to ask Deborah Green to attend a committee meeting to explain her actions was a decision taken by the committee under the influence of Mr Rought in all likelihood supported by Mr Peacock. The General Committee during this period was very heavily influenced by Mr Rought who was by common consent the most influential person on the committee and at the club more generally. The Tribunal noted that during the period under consideration not one decision of the General Committee supported any of the concerns or considerations raised by the Hotham side to the dispute with the sole exceptions being the decision to backdate the £1.00 per hour pay rise for the first claimant and the payment of the 2021 Christmas bonus. In both cases the General Committee was being forced to give effect to the decisions of the membership taken as a whole at the 2021 AGM and in both cases it was Margaret Hotham who stood up for the interests of the bar staff.
147. Examples of the General Committee favouring the interests of the Rought side of the dispute include:
- a. the manipulation and whitewashing of the first and second claimants' grievances at the meeting of 31 January 2022;
 - b. the decision to suspend Mr Hotham from the club at the meeting of 17 March 2022 [360]; and

- c. the mistreatment of the first claimant at the meeting of 7 March 2022 when she was allowed, to Mr Rought's knowledge, to wait outside the meeting for over 2 hours expecting to be called in but with the meeting ending without the committee doing so. The first claimant was simply being messed about by Mr Rought.
148. The Tribunal concluded that these were all examples of a blatant misuse of the power and influence Mr Rought and his family members had over the committee as a whole at that time. It was Mr Rought's forceful personality and status as Secretary which enabled him to exercise this influence with no evidence that Mr Robinson as Chairman was prepared to use his position to prevent him from doing so.
149. In contrast, no steps at all were taken by the committee to look into the concerns raised by the first and second claimant relating to Mr Peacock's use of the bingo money despite the CCTV evidence appearing to show him taking money out of the bingo cash on a number of occasions including on 3 occasions on one night. It may very well be that Mr Peacock had an innocent explanation, but the material point is that the committee showed no interest in looking into this concern at all.
150. The Tribunal's summary factual findings about the incident of 26/27 February 2022 are:
- a. Two committee members witnessed the incident or its immediate aftermath: Doug Robinson and Jim Peacock;
 - b. The first claimant complained of an assault on her by Deborah Green;
 - c. Deborah Green accepts that she was intoxicated at the time of the incident;
 - d. The incident took place at closing time of licensed premises when many of those present are likely to have been drinking and some of those present are likely to have been intoxicated;
 - e. persuading intoxicated patrons to leave the premises at closing time was within the job duties of the first claimant as Bar Steward;
 - f. There was a verbal abuse directed towards the first claimant by Deborah Green;
 - g. There was physical contact in the form of Deborah Green grabbing the first claimant's arm;
 - h. The degree of physical contact has been exaggerated by the first claimant and the Tribunal does not accept the first claimant's evidence that Deborah Green dug her nails into the first claimant's arm causing marks and bruises; the photo the Tribunal were shown of bruises on the claimant's arms did not seem to be consistent with the degree of contact the Tribunal observed on the video of the incident in question and may very well have been pre-existing;

- i. Deborah Green was an employee of the respondent at the time of the incident but was attending the club that night socially as a club member;
 - j. Deborah Green's own evidence (Witness Statement, paragraph 7) was that she raised an issue with the first claimant in her capacity as licensee when she noticed that the first claimant may be serving under age patrons and/or serving alcoholic drinks after hours;
 - k. The matter was raised with the police who on 28 March 2022 said that they did not intend to take any further action. Raising the matter with the police was a step taken more in the context of the inter-family dispute as a whole than in the context of the incident on 26/27 February 2022, a conclusion which the Tribunal infers from the many steps taken or influenced by Margaret Hotham to cause trouble for Mr Rought and his family members;
 - l. Mr Winter raised the incident generally with the General Committee at its meeting on 7 March 2022 [354];
 - m. The incident was plainly common knowledge;
 - n. The General Committee said that it had looked at the CCTV and decided it was not going to ask Deborah Green to explain her actions (although there were no notes of when or how that review of the CCTV footage had actually taken place); and
 - o. The decisions of the General Committee not to investigate the incident either at all; after the police interest had ended; or because CCTV had been viewed rendering no further investigation necessary were all decisions taken under the considerable influence of Mr Rought whose wife and sister-in-law were both directly involved in the incident.
151. It was Mr Rought supported by his father-in-law Mr Peacock who procured these decisions of the General Committee. Put simply, there was never any intention that the General Committee (or the co-op committee) would be allowed to look into the first claimant's allegations about the events of 26/27 February 2022. This was done in order to protect Mr Rought and his family members from scrutiny or criticism.
152. The Tribunal therefore finds that:
- a. Deborah Green was both verbally and physically abusive towards the first claimant, so to that extent **the first claimant's allegation 8** is factually well-founded. That general finding is subject to the finding at paragraph 150 (h) above; and
 - b. **the first claimant's allegation 14** is factually well founded. The respondent failed to investigate the claimant's allegation that she had been assaulted by Deborah Green. Deborah Green was at the time of the incident an employee of the club (albeit on sick leave). Although she was attending the club that evening in a social capacity that was not a sufficient reason to fail to look into the matter

at all. The Tribunal also finds that the respondent had no proper reason for failing to investigate the alleged assault and that this failure was brought about by Mr Rought (supported by Mr Peacock) who ensured that there would be no scrutiny or criticism of his sister-in-law/Mr Peacock's daughter.

153. Towards the end of February 2022, the first claimant says that Mr Rought falsely accused her putting of things on social media about her multiple sclerosis (***the first claimant's allegation 9***).
154. This is another allegation which is not referred to in the first claimant's witness statement. However, the Tribunal can see from the contemporaneous direct message screenshots at [339-341] to what the first claimant is referring. At [339-341] is the following exchange of messages between Mr Rought and the first claimant.

Mr Rought: *I've been getting messages from people saying you put on a page about Discrimination is that right*

The first claimant: *what do you mean who has said this?*

Mr Rought: *I Don't do pages for Obvious reasons but apparently you put Discrimination with Ms [i.e. multiple sclerosis] whatever that is and your Mam putting stuff on page and Peterlee have your say like I say I don't go on your Mam shouldn't be putting stuff on our page it needs closing down if not I'm calling the police*

The first claimant: *Tony I was at work all day yesterday came back last night till 2 this morning and back at half 9 why do you feel the need to text me I don't know who your listening to is all fiction not facts*

Mr Rought:... *Staff do not go on Facebook and slag there work of place if I did it at Hitachi I would be sacked Staff do not spout of lie after lie Staff do not get together and Decide to go on sick as a group I could go on and on all I've ever done is my best for you and the Members and don't forget it's a Members club*

The first claimant: *Tony when have I ever put anything on I never have ever neither have I ever commented on it. As you well know? The club as my employer and I have put grievance letters into address my concerns as per company policy you have yet to redress this that's why you had to go off ILL until this is been done. I have never had a meeting with anyone regarding anyone going sick they did this on there own and take acceptance to implications that I have*

Mr Rought: *I didn't mean you putting stuff on Facebook but if I was....[end of screenshots*

155. It follows from these screenshots, which were not challenged as being in any way inaccurate by the respondent, that Mr Rought does accuse the first claimant in the following way '*but apparently you put Discrimination with Ms [i.e. multiple sclerosis] whatever that is.*' That is Mr Rought directly challenging the first claimant about posting something about discrimination and multiple sclerosis on

Facebook. Mr Rought then goes on to back down in the last screenshot as set out above. **The first claimant's allegation 9** is therefore factually accurate.

156. **The first claimant's allegation 11** is that in early March 2022 on the last day of the first claimant's medical treatment and while the first claimant was on sick leave, Mr Rought demanded that she came in to deal with matters at work. This is another allegation which is not referred to in the first claimant's witness statement. The Tribunal heard no evidence about what 'matters at work' the claimant was referring to.
157. Mr Winter says at paragraph 24 of his witness statement that there were occasions (which he does not date) when the claimant was asked by Mr Rought to come in when the first claimant was on her days off. However, that is not what the first claimant is alleging in her allegation 11. The Tribunal does not uphold **the first claimant's allegation 11** factually. The first claimant bears the initial burden of proof and she has provided no evidence in support of this particular allegation.
158. **The first claimant's allegation 12** is that in early March while she was on sick, Mr Rought threatened to call the police because she had the keys to the safe. The safe referred to was the respondent's safe at its club premises. It was common ground that the safe keys belonged to the respondent. It was also common ground that Mr Rought, as club Secretary, was the first claimant's line manager. The instruction given to the first claimant was plainly a lawful and reasonable instruction. The claimant was on sick leave so had no operational need to retain the safe keys.
159. The reason the first claimant gave for retaining the keys and disobeying the line management instruction she had been given was that on 26 March 2022 Mr Rought came to her house and told her that the tills were down by £200 [first claimant's witness statement paragraph 55]. The first claimant said that she was concerned that it might be being suggested that she was in some way responsible for that shortfall. The first claimant, with the plain support of her mother, therefore considered herself justified in retaining the safe keys until a safe check was done.
160. The Tribunal was unconvinced by that explanation. In the same paragraph 55, the claimant goes on to say that Mr Rought '*later rang to say that Tammy had counted them wrong and they were right.*' It is difficult to see how the claimant could rely on a matter taking place on 26 March 2022 as a reason to withhold the return of the safe keys as requested by Mr Rought in early March 2022. After all, allegation 12 is that it was in early March 2022 that Mr Rought threatened to call the police. Mr Rought accepted in his witness statement that he 'might have to contact the police' if the safe keys were not returned.
161. The Tribunal finds that the first claimant had no good reason not to comply with Mr Rought's instruction to return the keys. This is another example of the first claimant and her mother getting caught up in the broader dispute and losing sight of the reality that as an employee of the respondent she was obliged to comply

with its lawful and reasonable instructions. The Tribunal finds that on this occasion it was the first Claimant and not Mr Rought who was behaving unreasonably. In those circumstances, while **the first claimant's allegation 12** is factually correct as far as it goes, the Tribunal on this occasion prefers the evidence of Mr Rought to the effect that:

- a. he was right when he said in evidence (and at the time) that he was entitled to ask for the safe keys back from the first claimant who was on sick leave; and
 - b. to the extent that Mr Rought '*threatened*' (as opposed to simply saying he would do so) to call the police he was entitled to do so because the first claimant was improperly retaining the club's important security-related property.
162. At a General Committee meeting on 17 March 2022, a decision was taken to ban the first claimant's mother from the club for a period of 6 months, ostensibly because of the incident between Mr Hotham and Mr Rought on 12 February 2022.
163. **The first claimant's allegation 13** is that from mid-January 2022 to mid-March 2022, Mr Rought and Mr Robinson (club Chairman) on several occasions told the first claimant to wait to raise matters at its weekly committee meeting (the first claimant says those matters were sexual innuendos made by Mr Rought to the second claimant; the first and second claimant having seen CCTV footage of Mr Peacock removing money from the bingo trays; and the alleged assault on the first claimant by Deborah Green) only to be told the meeting had ended.
164. The respondent's position is that the claimant would attend the committee meetings if she wanted to or asked to. Scheduled meetings would sometimes not take place because of insufficient numbers attending or be stopped because they became too heated. Mr Rought in his witness statement at paragraph 44 adds that the first claimant declined to attend the co-op subcommittee meetings that he says were specifically convened to hear her grievances. It was common ground that the first claimant did not want to attend the co-op subcommittee because she felt strongly that her employer was the General Committee and she should therefore have the right to present her grievances to the General Committee as a whole.
165. In the period under consideration, the committees met on the following dates: 31 January 2022 (General Committee), 14 February 2022 (General Committee), 7 March 2022 (General Committee), 11 March 2022 (co-op committee), 17 March 2022 (co-op committee), 25 March 2022 (co-op committee), 29 March 2022 (co-op committee) and 20 April 2022 (General Committee).
166. The Tribunal has rejected at paragraphs 119 to 131 above that the General Committee meeting of 31 January 2022 resolved the claimants' grievances. The meeting of the General Committee of 14 February 2022 did not discuss the claimants' grievances at all. The closest that the notes reflect any matter of concern to either claimant is a contribution from Mr Peacock who expresses

concern that Mrs Margaret Hotham is able to watch the club CCTV from her phone. The notes reflect Kelly Kettell saying that she would '*pop up Wednesday with Jim to sort this out.*'

167. At paragraph 20 of her first witness statement, the first claimant says that on 14 February 2022 although she was not on shift she attended the club in order to speak to the General Committee who were meeting that day. The Tribunal accepts the first claimant's evidence that the reason she wanted to see the committee was because after the claimants' grievances had been submitted '*things got worse*' for her and others at the club. The Tribunal also accepts the first claimant's evidence that she waited for 2.5 hours outside the committee room to the knowledge of Mr Rought and Mr Robinson the Chairman, but that the meeting closed without the first claimant being called into the meeting.
168. At the General Committee meeting of 7 March 2022 [353-355], there is a discussion and apparent agreement to create a co-op committee to consider the claimants' letters of complaint. The Tribunal assumes that at the very least the letter of grievance from the first claimant and the letter of grievance from the second claimant's mother were intended to be included in that scope. The stated objective of creating a co-op committee was to ensure independence from the members of the respective families who are involved in the dispute.
169. As the first co-op committee meeting on 11 March 2022 [366-368], a total of 15 letters of complaint were read out. The majority of the letters were complaints about aggressive behaviour on the part of Mrs Margaret Hotham and her husband Chris Hotham together with complaints about the atmosphere in the club. Neither of the claimants' grievances were among the 15 that were read out.
170. Having considered all of the committee meetings (General and co-op) in the period covered by ***the first claimant's allegation 13***, the Tribunal concluded that on at least one occasion, namely 14 February 2022, Mr Rought and Mr Robinson were aware that the first claimant was waiting to be called into a General Committee meeting for 2.5 hours with the meeting closing before the first claimant was called in. The Tribunal preferred the first claimant's evidence on this point not least because it was Mr Rought's own evidence that committee meetings during this period were cut short because feelings were running high.
171. That said, and consistent with the Tribunal's findings that Mr Rought was manipulating the committee to his own ends, the Tribunal also finds that the failure of the committee to call the first claimant into the meeting(s) and to leave her to wait outside the meeting room for over two hours was part of Mr Rought's strategy to minimise the information the first claimant was able to bring to the attention of the General Committee motivated by his desire to protect himself, his family and friends. To that extent ***the first claimant's allegation 13*** is factually well founded.

172. By letter dated 17 March 2022, the first claimant brought a second written grievance [372-377]. In the second grievance, the first claimant says that matters have escalated since her first letter of grievance of 16 January 2022. Examples of such escalation include:
- a. being called a ‘cunt’ on 30 January 2022 by Mr Rought because he had asked a staff member who happened also to be Mr Rought’s daughter to put her phone away while on duty;
 - b. the incident between her parents and Mr Rought on 12 February 2022;
 - c. the incident of the night of 26/27 February 2022 and the failure of the committee to investigate Debora Green’s alleged assault;
 - d. being falsely accused of putting things on Facebook relating to her disability; and
 - e. and the treatment of the second claimant when she was suspended and warned for taking a notice down from the club notice board.
173. The first claimant attributes this escalation to favouritism on the part of Mr Rought’s family members towards each other and their friends.
174. At the second co-op committee meeting on 17 March 2022 [378-385], Mrs Margaret Hotham was allowed to attend in part. It was at this meeting that the co-op committee voted by a majority to impose a bar from the club on Mrs Hotham for 6 months after which she would again be asked to attend in front of the committee. Later, Ms Davies, the second claimant’s mother, attends the committee meeting in order to explain her alleged part in a fracas at the club on 14 February 2022. Mrs Davies is given a written warning regarding her conduct by the co-op committee.
175. This meeting also voted to remove Mr Beer from the co-op committee for undisclosed reasons. The meeting also voted in favour of removing someone called Cheryl from the co-op committee also on account of her behaviour. Part of the behaviour which led to this action being taken against Cheryl was that ‘*she also made sexual advances to subcommittee person making him feel uncomfortable.*’
176. ***The first claimant’s allegation 15*** is that the respondent failed to address the (undated) treatment of the first claimant by Mr Rought’s family who the first claimant said would snigger at the first claimant’s gait which would become impaired by her MS when she was at the end of her treatment cycle. The respondent is right to say that in the list of issues this allegation is not directly connected to the claimant’s disability. However, unlike for example ***the first***

claimant's allegation 1 which does not inherently infer a connection to the claimant's MS, **the first allegation 15** does inherently infer such a connection. The Tribunal treated this allegation therefore as an allegation that Mr Rought's family were sniggering at an impairment to the claimant's gait resulting from her MS. The Tribunal noted that this allegation was framed in the list of issues as a complaint of a failure to address this alleged treatment. However, it was clear to the Tribunal that the claimant was also complaining about the underlying treatment *per se* and not just about it not being dealt with through corrective action. That can be seen from the written witness evidence (excepts of which are set out below) which also show that this how the respondent has understood this allegation.

177. The evidence on this allegation is predictably divided along partisan lines. The witnesses most closely aligned to the first claimant remember this treatment. In paragraph 46 of his witness statement Mr Rought in direct response to **the first claimant's allegation 15** denies that he snubbed the claimant or made comments directed at her. Mr Rought does not directly engage with the allegation of sniggering at the claimant's gait. Mr Peacock does not deal with this allegation at all. Neither Mr Mann nor Jean Joyce (both of whom were aligned to the Rought side of the inter-family dispute) gave evidence.

178. The Tribunal has therefore looked to the evidence of the witnesses who were less directly involved in the inter-family dispute and the witnesses in whose evidence the Tribunal had the most confidence.

179. At paragraph 11 of her witness statement, Kaitlin Freeman says:

'Tony and his family would laugh at Christine because of the way she walked at times it was not right what they put her through....'

180. At paragraph 14 of her witness statement, Angela Ellwood says:

'I witnessed Angela Rought Tony Rought their daughters along with Jean Dowse and her daughter Kelly Kettell laughing at the way Christine would walk they commented on she (sic) shoes and would laugh it was horrible to see what they were doing to her...'

181. At paragraph 4 of her witness statement, the second claimant says:

'Tony and his family and friends Will Mann and Jean Joyce would be deliberately laugh at Christine walking due to her MS especially when she was due her treatment which we all knew about as it was very evident when she was tired, they would pass remarks on the way she walked, and she would sometimes bump into things this was awful to see and hear this happened on numerous occasions.'

182. The Tribunal accepts that evidence from all 3 witnesses at paragraphs 179 - 181 above and has concluded that **the first claimant's allegation 15** is well founded factually. Although undated, it is clear to the Tribunal that those comments were made on more than one occasion between December 2021 and March 2022.
183. **The first claimant's allegation 16**, is that on 18 March 2022 in the bar area at the club, Mr Rought called the claimant a 'cunt' for submitting her second grievance on 17 March 2022 [378-385]. The claimant identifies this allegation as (one of two along with her allegation 17) last straws when it comes to her claim to have been constructively dismissed by the respondent. Mr Rought denies that he used this word to the first claimant (witness statement paragraph 16).
184. Again, the Tribunal turns to the witnesses whose evidence the Tribunal found had the most objectivity and/or were the most credible and reliable.
185. At paragraph 4 of her witness statement, Kaitlin Freeman says:
- 'On 18 March 2022 ...Tony Rought had come behind the bar and he called her a cunt for submitting it I was in the kitchen at the time but I clearly heard as did Angela Ellwood... he then said let it be on your own head your staff are poison...'*
186. In her witness statement, Angela Ellwood says:
- 'On 18 March 2022 he called Christine a cunt re the grievance submitted in kitchen Katlyn (sic) also heard this Christine was upset ...and said she wanted to speak to the committee.'*
187. The Tribunal also noted that, consistent with the language allegedly used on 18 March 2022, that on 30 January 2022 after the first claimant brought her first grievance, Mr Rought went around to Margaret Hotham's home. In Margaret Hotham's words regarding Mr Rought:
- 'He was not happy at this and said Christine was a cunt for taking it this far.'*
188. Even allowing for the caution the Tribunal attaches to the evidence of Margaret Hotham, there is a consistency of evidence including evidence of reliable witnesses who directly overheard what was said on 18 March 2022 (the day after the first claimant's second grievance) that Mr Rought did call the first claimant 'a cunt' in the open bar area. The Tribunal accordingly finds that Mr Rought did use that objectionable and offensive remark directly at the first claimant on 18 March 2022 and that he did so because the first claimant had raise a second grievance. **The first claimant's allegation 16** is therefore factually well founded.
189. By a letter dated 24 March 2022 [401-402], the second claimant wrote in her own name to the committee to complain that her original grievance about Mr Rought's conduct on 30/31 December 2021 had not been resolved and that a vendetta had started against her by Mr Rought, his daughter Emily Rought and his sister-in-

law Deborah Green. The second claimant repeats the allegation of a physical assault by Mr Rought but again fails to make any reference to the allegation that later the same evening Mr Rought groped her bottom.

190. The second claimant also refers to a number of additional matters in this letter as follows:
- a. Mr Peacock falsely accusing the second claimant and her mother of putting multiple letters into the committee when in fact only one from each had been submitted;
 - b. The second claimant's mother had been called in front of the committee due to allegations of misconduct when the others involved, Angela Rought and her daughter Emily Rought, were also involved but were not summoned before the committee.
191. The second claimant goes on to say that the situation is becoming intolerable and that she feels intimidated while at work. As in the case of the first claimant, the second claimant also says that she feels she has been targeted and victimised because she had spoken out about harassment involving Mr Rought and his family members.
192. The third co-op committee meeting was on 25 March 2022 [409-412]. Further consideration is given to the alleged misconduct on the part of Mr Chris Hotham. A decision was taken by majority to bar Mr Hotham for 12 months. Angela Ellwood also makes reference to alleged aggressive behaviour on the part of Angela Rought. A note is also made about an allegation that Mr Mann had apparently been seen spitting on the second claimant's car. Mr Arkwright called the co-op committee a '*kangaroo court*' and expressed his dissatisfaction with the decision to bar Mr Hotham from the club. Mr Arkwright then resigned from the co-op committee. At no stage in the meeting was there any consideration of any of the claimants' grievances.
193. ***The first claimant's allegation 17*** (and second last straw) is in the aftermath of a co-op meeting of 25 March 2022. Elsie Smith had been in attendance at that meeting as a member of the co-op Committee. It was at that meeting that the first claimant's father, Mr Chris Hotham, had been barred by a vote of 5 to 3 from the club for a period of 12 months. The first claimant attended the club to start her shift. She says that Elsie Smith spoke to two of her friends: Lyn Martin and Ken Martin (referred to by the first claimant as Auntie Lyn and Uncle Ken). The claimant says that Elsie Smith, Ken Martin and Lyn Martin were all shouting and when the first claimant tried to diffuse the situation Elsie Smith shouted at the first claimant:

'...get out of my effing face...what are you effing going to do.'

194. Elsie Smith appears to think that this incident took place after the co-op meeting on 29 March 2022 [witness statement paragraphs 19-20]. However, the Tribunal considered the first claimant to be correct since she also recalls that Mr Arkwright was present and it was common ground that Mr Arkwright left the co-op committee of 25 March 2022 not to return due to his displeasure at the way the co-op Committee had barred Mr Chris Hotham from the club.
195. The only direct evidence that the Tribunal heard about this allegation was that from the first claimant herself and from Elsie Smith. The Tribunal finds that there was an angry confrontation on 25 March 2022 of a type which characterised the interactions between the committee members and the bar staff during the period under consideration. The Tribunal finds that insults were traded between Lynn/Ken Martin and Elsie Smith and that the first claimant became involved. Notwithstanding the Tribunal's reservations about the first claimant's evidence, the Tribunal accepted that Elsie Smith swore at the first claimant using words to the effect of '*fuck off*' and used threatening language towards the claimant. To that extent, ***the first claimant's allegation 17*** is factually well founded.
196. On 25 March 2022, the first claimant went home and started a period of sick leave from which she did not return before her resignation on 16 April 2022. The second claimant did not return to work before her resignation on 17 April 2022. The respondent says (and the Tribunal accepts) that because the bar staff had all left together the club had to rely on volunteers from its membership to keep the bar open.
197. The fourth and last meeting of the co-op committee was on 29 March 2022 [429]. This meeting brings an end to the co-op meetings. The explanation for doing so is that the letters of complaint from members which were still coming in make it unclear whether they are to be considered by the General Committee or by the co-op committee. In order to avoid stepping on anyone's toes, the co-op committee effectively agrees to disband itself and allow the new General Committee which was to be constituted at the forthcoming AGM to deal with all of the complaints. Again, there is no consideration of any of the grievances brought by the first and second claimant.
198. The Tribunal were told by a number of witnesses that the purpose of the creation of the co-op committee was (amongst other things) to consider the first and second claimants' grievances. However, the co-op committee plainly failed to achieve this objective. No consideration was given at any of the co-op committee meetings to those matters.
199. The Tribunal found that the co-op committee never really stood a chance of achieving its purposes. There were no terms of reference. Its authority under the club rules was unclear. There were no agendas for the meetings and on the evidence of the notes of the meetings there was no structure to any of the meetings. The co-op committee meetings proceeded much the same way as the General Committee meetings which was by way of a 'free for all' which, given the prevailing acrimony, predictably degenerated into inactivity and without any

meaningful managerial decisions being taken. The Tribunal is mindful that this is a social club without the benefit of significant resources. However, the Tribunal has taken those factors into account when concluding that the co-op committee manifestly failed to achieve its purposes, including the purpose of considering the claimants' grievances.

200. On 11 April 2022, Mrs Margaret Hotham received a letter from the Professional Standards Department of Peterlee Police Office. In particular, a Head of Professional Standards informs Mrs Margaret Hotham that her complaint against Angela Rought (PC Rought) has failed to meet the threshold required in respect of complaints about the behaviour of an off duty police officer. It is clear from the terms of that letter that Mrs Margaret Hotham had brought a complaint that Angela Rought (a serving police officer) had instigated the assault on the first claimant (presumably a reference to the incident of 26/27 February 2022) by Angela Rought's sister, Debora Green. The Tribunal concluded that this was another example of Mrs Margaret Hotham using her daughter's employment situation as a way to advance the increasingly acrimonious dispute Mrs Margaret Hotham had with Mr Rought, his family and associates.

201. On 13 April 2024, Mr Peacock posted a message on Facebook in which he referred to Mrs Margaret Hotham, her family and associates in the following terms, '*...the ranting and comments that have been put on social media by Mrs Putin and her comrades about the club will be proven to be fake news...*'.

202. By a letter dated 16 April 2024, the first claimant resigned her employment [453-455]. The first claimant gives the following reasons (amongst others) for her resignation:
 - a. Submitting grievance letters on 16 January 2022 and on 17 March 2022 which were insufficiently addressed or, in the case of the second grievance letter, not addressed at all despite every opportunity being given to the respondent to do so;
 - b. failure by the respondent to follow its own club rules;
 - c. the Rought family conducting a 'witch hunt' against her and a number of her staff following her grievance of 16 January 2022;
 - d. failure by the respondent to look into her allegation of assault by Debora green 26/27 February 2022;
 - e. failure by the respondent to look into the CCTV evidence of Mr Peacock who was in the first claimant's view 'stealing';

- f. The smashing of her mother and father's windows on 12 April 2022; and
- g. Mr Peacock posting a remark on Facebook calling her mother, herself and her bar staff 'Mrs Putin and her comrades'.
203. By a letter dated 17 April 2022, the second claimant resigned her employment. Plainly there had been a degree of coordination between the first and second claimant both in respect of their decisions to resign and the timings of them. Not only do the letters of resignation come within a single day of each other, both letters have drafting similarities and start with the rather unusual following sentence:
- 'Due to Constructive discharge Tactics used Regularly by Anthony Rought/You the Secretary of Acre Rigg Social Club Ltd and his/your family.'*
204. A General Committee meeting took place on 20 April 2022 [491-492]. The letters of resignation from both claimants were read out at that meeting. That meeting was attended by (amongst others) Mr Peacock, Deborah Green (who was by now an elected member of the General Committee) and Kelly Kettell (Mr Robinson's daughter).

Findings of fact: the second claimant

205. The second claimant originally made 7 factual allegations, the first two of which had been withdrawn before this final hearing.
206. The Tribunal has already set out at paragraphs 36 - 60 above why it prefers the evidence of the second claimant to that of Mr Rought. The Tribunal has set out its conclusions (and its reason for those conclusions) on the relative credibility, reliability and persuasiveness of the evidence of the second claimant and that of Mr Rought in those paragraphs. Out of the 5 allegations made by the second claimant, four are allegations against Mr Rought. The four allegations of sexual harassment made by the second claimant against Mr Rought are mutually corroborative in that they demonstrate a tendency by Mr Rought (particularly when he had been drinking alcohol) to make sexually charged comments about and directly to the second claimant.
207. ***The second claimant's allegation 3*** has effectively already been resolved in the second claimant's favour at paragraphs 50 - 60 above. For the avoidance of doubt, the Tribunal was satisfied that on 30/31 December 2021 Mr Rought grabbed the second claimant's arm, pulled her by the arm from the DJ Box to back behind the bar and that later that night Mr Rought grabbed the second claimant's bottom and with clear sexual innuendo asked the second claimant what he was going to get from the second claimant in return for the Christmas Bonus the General Committee had recently agreed to pay her.

208. The Tribunal also repeats the points set at paragraphs 107 - 112 that although the second claimant and Mr Rought are the only direct witnesses to the allegation that Mr Rought grabbed the second claimant's bottom and ask what he was getting in return for her Christmas bonus, there was supporting evidence from other witnesses who witnessed the immediate aftermath of the incident and the effect it had on the claimant. In particular, the evidence of Angela Ellwood and Kaitlin Freeman. **The second claimant's allegation 3** is therefore well founded factually in its entirety.

209. **The second claimant's allegation 4** is that on 15 March 2022 Mr Rought referred to the second claimant's breasts. That allegation is expanded on at paragraph 23 of the second claimant's witness statement. The second claimant explains that she attended the club to check the shifts she had been allocated for the following week. The second claimant was dressed to go out for dinner with her partner. At paragraph 23.1, the second claimant says:

'I then asked if we [the second claimant and Katyn] could get a drink, [Tony] said no you're on the sick then said if you get your tits out I will buy you a drink we left I thought he just can't help himself.'

210. This evidence is corroborated by Kaitlin Freeman at paragraph 9 of her witness statement where she says:

'Tony Rought said to Sianon if you get your tits out I will buy you a pint I thought how disgusting he then told her she should not even be in the club as she was on the sick.'

211. The Tribunal noted that there were minor discrepancies between these two accounts of what happened, but the Tribunal considered that they were likely to be a matter of the normal difficulties of recollection and indeed the Tribunal was reassured that there had been no coordination of the evidence between the two witnesses.

212. Mr Rought's position at paragraph 52 of his witness statement is that he that *'at no time did [he] ever make any reference to her breasts.'* At paragraph 81 of the Amended Particulars of Response, the respondent again *'vehemently denies'* allegation 4 adding that the second claimant was on sick leave at the time and the respondent was not aware of the second claimant attending the workplace during that period of time.

213. The Tribunal has already found that Mr Rought's 'vehement denial' of the second claimant's allegation 3 was not credible. The Tribunal concludes that the same applies to his denial that he ever made any reference to the second claimant's breasts. The quality and weight of evidence is substantially in favour of upholding **the second claimant's allegation 4** which the Tribunal finds to be factually well founded.

214. **The second claimant's allegations 5 and 6** may be taken together. **The second claimant's allegation 5** is that on numerous occasions Mr Rought commented on her breasts. This is in substance an allegation that allegation 4 was not a one-off. **The second claimant's allegation 6** substantiates that by giving another concrete example. That example is that on an unspecified date in the club during a 60th birthday celebration held for Mr Rought, the bar staff wore t-shirts with an image of Mr Rought's head on them. Mr Rought is alleged to have said to the second claimant *'that he wished it was his face on the second claimant's breasts not a picture of his face.'*

215. The second claimant expands on her **allegation 6** where she says in her witness statement:

'Throughout my employment Tony Rought would make sexual innuendos...it was his 60th birthday...he said wish that was not a picture of me on your tits but my face this was in front of everyone I felt belittled worthless and very uncomfortable, and it was offensive.'

216. **The second claimant's allegation 5 and 6** are corroborated by Mr Winter. Acknowledging that Mr Winter is the first claimant's husband, the Tribunal nonetheless accepted his evidence as credible and reliable. Like the second claimant he was measured and at one-step removed from the hostilities. The overwhelming impression that Mr Winter made on the Tribunal was of someone who had little appetite for getting involved in the broader dispute while at the same time doing being understandably supportive of his wife. At paragraph 1 of his witness statement, Mr Winter says as follows:

'In December 2021 I spoke to Tony Rought several times saying what he was doing and saying to Sianon [the second claimant] was inappropriate and upsetting Sianon.'

He would comment on her Breasts all the time I remember his [sic] a few months previous on his Birthday when he said he would like his face on her boobs not a picture everyone knew he was out of order.'

217. The Tribunal noted and accepted his evidence that Mr Winter had actually called out Mr Rought about his behaviour to Mr Rought's face which was consistent with the thoughtful and considered way in which he gave his evidence. The Tribunal also noted that standing up to Mr Rought was unusual amongst the members of the General Committee.

218. The first claimant also recorded reports that were made to her by the second claimant as the second claimant's line manager in the first claimant's diary [647-664]. Again, notwithstanding the reservation the Tribunal had about the first claimant's evidence, the Tribunal was prepared to accept her evidence in relation to comments made by Mr Rought about the second claimant's breasts since that evidence was also corroborated by the second claimant herself, Mr Winter and Kaitlin Freeman all of whose evidence the Tribunal found to be reliable.

219. In those circumstances, the Tribunal concluded that ***the second claimant's allegations 5 and 6*** were both factually well-founded.
220. ***The second claimant's allegation 7*** is what she describes as the lack of acknowledgement of her grievance. This is also the 'last straw' she relies on for the purposes of her claim of discriminatory constructive dismissal.
221. The Tribunal has already made findings that the respondent wholly failed to engage with the grievances brought by both claimants. The respondent adopted the same approach to both grievances and the second claimant was also subjected to the deliberate manipulation under the influence of Mr Rought (supported by Mr Peacock) of the General Committee on 31 January 2022.
222. The Tribunal finds that Mr Peacock behaved inappropriately towards the second claimant on 31 January by trying to intimidate her about her behaviour at that meeting. The second claimant is a young woman in her first job. It was plainly a daunting prospect for the second claimant to go before the General Committee, all the more so when she was facing senior committee members against whom she had raised concerns including Mr Peacock who the Tribunal finds will have known from his son-in-law Mr Rought that the second claimant had raised a concern about his handling of the bingo money on 24 December 2021. The Tribunal considers that it was entirely inappropriate for Mr Peacock to have been at that meeting because it was a clear conflict of interest. It was understandable why Mr Arkwright felt he had to intervene to restrain Mr Peacock at that meeting due to his behaviour towards the second claimant.
223. The Tribunal finds that the second claimant did not agree (in any meaningful sense) to draw a line under her grievances on 31 January 2022. This was a transparent powerplay by Mr Rought and Mr Peacock who were able to use their positions and authority on the General Committee to brush aside the second claimant's grievance while presenting it as the outcome that she wanted. It was no such thing. In short, they abused their positions on the General Committee to serve their own ends. This is the inverse of giving fair consideration to the second claimant's grievance.
224. It remained unexplained why, if the General Committee genuinely thought the second claimant had agreed to 'draw a line' under her grievance, that the General Committee decided to set up the co-op committee with the express purpose of resolving the claimants' grievances. If one or both of the grievances had been resolved then that additional step would not have been entirely unnecessary.
225. The Tribunal finds that the reason why the co-op committee was established was simply a reflection of the division of opinion on the General Committee about how to respond to the claimants' grievances. Mr Rought and Mr Peacock took the

view that they had strong armed the second claimant into submission whereas Mr Winter and others saw that tactic for what it was.

226. The Tribunal has also already found that none of the meetings of the co-op committee considered either of the claimants' grievances. They remained unaddressed let alone fairly resolved. In the circumstances set out at paragraphs 220 to this paragraph 226, the Tribunal concluded that ***the second claimant's allegation 7*** was factually well founded.
227. The Tribunal finds that it would be wrong to criticise either claimant for not mentioning all of their concerns in their initial letters of grievance. Both claimants were rightly fearful of the influence Mr Rought and Mr Peacock had on the General Committee. In those circumstances, the Tribunal could understand why both claimants thought the only way they would stand a chance of getting a fair hearing was to wait and present the totality of their concerns when there were hopefully more fair-minded committee members present and without providing Mr Rought and Mr Peacock with the advantage of being able to spike the claimants' guns.
228. The Tribunal finds that both letters of resignation should properly be understood as a general articulation of both claimants overall concerns. It would be wrong to look at each line of those letters and infer that something missing was not operative on their minds when they decided to resign.
229. The second claimant was more forthcoming about her concerns about Mr Rought's behaviour in her letter of resignation. The Tribunal could again understand why she felt able to do so only when she had nothing else to lose and did not have to subject herself to Mr Rought's inevitable attempt to thwart any hope she might have of conscientious and objective consideration of her legitimate and sensitive concerns about his behaviour towards her.

The relevant law

Direct disability discrimination

230. Section 4 EqA provides that disability and sex are both protected characteristics.

231. Section 13 EqA concerns direct discrimination and provides that:

13 Direct discrimination

(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.

232. The test requires a comparison exercise in order to determine whether the treatment complained of is because of disability. The requirements of an

appropriate comparator is set out in section 23 EqA. Section 23(1) provides as follows:

23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13 ...there must be no material difference between the circumstances relating to each case.

233. Section 23(2) EqA provides that where the protected characteristic is disability the comparison of the circumstances relating to each case for the purposes of section 13 include a person's abilities.
234. The EHRC Code of Practice (2011) at para 3.23 explains that although the circumstances need not be identical, the circumstances that are relevant to the way the claimant was treated must be the same or nearly the same for the claimant and comparator. Where there is no appropriate actual comparator, it is incumbent on the Tribunal to consider how a hypothetical comparator would have been treated: Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting [2002] ICR 646, CA.
235. Section 136 EqA identifies where the burden of proof lies. It is for the claimant to prove facts sufficient to establish a prima facie case. At this stage, the Tribunal must have regard to all of the facts, from whichever party the evidence originated. A prima facie case is established if, in accordance with section 136(2), there are facts from which the Tribunal could decide, in the absence of any other explanation, that the employer contravened the provision concerned. A difference in status and a difference in treatment is not, without more, sufficient material from which a Tribunal 'could decide' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination: Madarassy v Nomura International [2007] ICR 867. That is not a rule of law, however, there should be some fact or feature which the tribunal identifies as potentially capable of supporting an inference of discrimination: Jaleel v Southend University Hospital NHS Foundation Trust: [2023] EAT 10.
236. However, there will be no contravention if the employer shows that it did not contravene the provision: section 136(3). This is the second stage and it is only reached if the claimant has successfully discharged the burden on him/her; it requires careful consideration of the employer's explanation for the treatment complained about: Igen Ltd v Wong [2005] ICR 9311 approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054.
237. It is not always obligatory to follow the two-stage process, particularly where the Tribunal is in a position to make positive findings on the evidence one way or another (Hewage).
238. In the case of direct discrimination, it is necessary to consider the mental processes, conscious or unconscious, operating on the mind of the alleged discriminator: Amnesty International v Ahmed [2009] ICR 1450 EAT. Motive is irrelevant. In order for the treatment to be 'because of the protected

characteristic', it is sufficient that it was an effective cause. It need not be the main or sole cause.

239. In some cases, the best way to approach the question whether or not there has been direct discrimination within the meaning of section 13 EqA is by asking what was the reason why the conduct or omission in question occurred. That is the effect of the decision of the House of Lords in: Shamoon v Chief Constable of the RUC [2003] ICR 337.

Reasonable Adjustments

240. Sections 20 and 21 EqA provide as follows:

20 Duty to make adjustments

(1) 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.

...

21 Failure to comply with duty

(1) 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.

...

241. Paragraph 20(1) of Schedule 8 provides that a person is not subject to the duty to make reasonable adjustments if he or she does not know, and could not reasonably be expected to know that a disabled person:
- a. has a disability; and
 - b. is likely to be placed at a disadvantage by the employer's provision, criteria or practice (PCP).

242. Under section 39(5) EqA a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination: EqA section 21.
243. Section 20 EqA provides that the duty to make reasonable adjustments comprises three requirements, set out in sections 20(3), (4) and (5). This case is concerned with the first of those requirements, which provides that where a provision, criterion or practice of an employer's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with the duty to make reasonable adjustments.
244. In considering whether the duty to make reasonable adjustments arises, a Tribunal must consider the following:
- (1) Whether there was a provision, criterion or practice ("PCP") applied by or on behalf of an employer;
 - (2) The identity of the non-disabled comparators (where appropriate); and
 - (3) The nature and extent of the substantial disadvantage in relation to a relevant matter suffered by the employee: Environment Agency v Rowan [2008] IRLR 20.
245. The concept of a PCP is one which is not to be construed narrowly or technically. Nevertheless, as the Court of Appeal said in Ishola v Transport for London [2020] EWCA Civ 112 IRLR 368:
- "[To] test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantaged caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. However widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief that the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP. In context, and having regard to the function and purpose of the PCP in the 2020 Act, all three words carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. 'Practice' connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises."*

246. A duty to make reasonable adjustments does not arise unless the PCP in question places the disabled person concerned not simply at some disadvantage viewed generally, but at a disadvantage which is substantial (i.e. more than minor or trivial) and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.
247. Simler P in Sheikholeslami v Edinburgh University [2018] IRLR 1090 held:
“The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP...”

The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see section 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see paragraph 8 of App 1. The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.”
248. The substantial disadvantage must be “*in relation to a relevant matter*”. Schedule 8 of the EqA makes it clear that, in this context, a “*relevant matter*” means employment by the respondent.
249. An employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that the employee is likely to (i.e. could well) be placed at the substantial disadvantage.
250. The predecessor to the EqA, the Disability Discrimination Act 1995, contained guidance as to the kind of considerations which are relevant in deciding whether it is reasonable for someone to have to take a particular step to comply with the duty. Although those provisions are not repeated in the EqA, the EAT has held that the same approach applies to the 2010 Act: Carranza v General Dynamics Information Technology Ltd [2015] IRLR 43, [2015] ICR 169. It is also apparent from Chapter 6 of the Code of Practice on Employment (2011), issued by the Equality and Human Rights Commission, which repeats, and expands upon, the provisions of the 1995 Act. The 1995 Act provided, as does the Code of Practice, that in determining whether it is reasonable for an employer to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had in particular to:
- (1) Whether taking any particular steps would be effective in preventing the substantial disadvantage;

- (2) The practicability of the step;
- (3) The financial and other costs of making the adjustment and the extent of any disruption caused;
- (4) The extent of the employer's financial and other resources;
- (5) The availability to the employer of financial or other assistance to help make an adjustment; and
- (6) The type and size of the employer.

Harassment

251. Section 26 EqA provides 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)

(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.*

252. The tribunal has had regard to the guidance given by the EAT in Richmond Pharmacology v Dhaliwal [2009] IRLR 336 as reviewed by the Court of Appeal in Pemberton v Inwood [2018] EWCA Civ more per Underhill LJ at [85-88].

Victimisation

253. Section 27 EqA provides as follows:

(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.

Constructive dismissal

254. Section 95 Employment Rights Act 1996 (ERA) sets out the circumstances in which an employee is dismissed:

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if) –

a. the contract under which he is employed is terminated by the employer (whether with or without notice),

b. he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract,

or

c. the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

255. Plainly, if an employee has been expressly dismissed by his employer then section 95(1)(a) applies, and there is no need for the employee to show that he has been constructively dismissed. The test of whether an employee has been constructively dismissed is as set out in section 95(1)(c) ERA and is the statutory version of a principle originally established at common law. However, where there has been no express dismissal and there has been no termination by virtue of a limiting event under section 95(1)(b), it will be for the employee to show that the provisions of section 95(1)(c) have been satisfied and that s/he has been constructively dismissed .
256. If an employee who has resigned his/her employment is unable to show that the provisions of section 95 (1)(c) have been satisfied, that employee will not be treated as having been dismissed. It follows that if an employee has resigned and not been dismissed s/he cannot assert a right not to have been unfairly dismissed. If an employee does satisfy the provisions of section 95(1)(c) then his/her resignation would be treated as a dismissal for the purposes of the law of unfair dismissal set out in Part X ERA.
257. Importantly, satisfying section 95(1)(c) establishes only that a claimant has been dismissed. Provided that the employee satisfies the other qualifying conditions to bringing a claim of unfair dismissal (such as any requirement for a qualifying period of service), that employee has the right not to be unfairly dismissed and the right to bring proceedings in the Employment Tribunal complaining of unfair dismissal. An Employment Tribunal might nevertheless find in appropriate circumstances that a constructive dismissal is fair where that dismissal is for a potentially fair reason under section 98 (1) or (2) ERA and that the claimant's constructive dismissal for that reason meets the requirements of fairness under section 98(4) ERA.
258. In order to establish that the requirements of the section 95(1)(c) are met, the employee must show:
- a. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment;
 - b. the employer's breach caused the employee to resign; and
 - c. the employee did not delay too long before resigning, thereby affirming the contract.

Breach of contract

259. The first step is to identify the term of the contract of employment which is said to have been breached by the employer, and to consider whether there has been a breach of that term. The breach relied upon may be of either an express or implied term or, where the breach has not yet occurred, an anticipatory breach of an express or implied term.
260. The term relied upon by both claimants is the implied term of trust and confidence. Breach of the implied term of mutual trust and confidence is the breach most frequently relied on in constructive dismissal cases. The term provides that employers (and employees) will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties – Malik v Bank of Credit and Commerce International SA 1997 ICR 606, HL.
261. In cases where a breach of the implied term is alleged, the Tribunal's function is not the same as the range of reasonable responses test. That test applies in relation to the statutory test for unfair dismissal, not the contractual test for constructive dismissal.
262. An example that has been given by the Employment Appeal Tribunal (EAT) to illustrate the reasonable and proper cause element of the test is that in any employer who proposes to discipline an employee for misconduct is likely to be doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence between employer and employee, whatever the result of the disciplinary process. However, if the employer had reasonable and proper cause for taking the disciplinary action, the employer cannot be said to be in breach of the implied term of trust and confidence - Hilton v Shiner Ltd Builders Merchants 2001 IRLR 727, EAT.
263. The second element of the test is whether the conduct was calculated or likely to destroy or seriously damage trust and confidence. This requires the Tribunal to consider the circumstances objectively, from the perspective of a reasonable person in the claimant's position Tullett Prebon plc v BGC Brokers LLP 2011 IRLR 420, CA. The test is met where the employer's intention is to destroy or seriously damaged trust and confidence, or where the employer's conduct was likely to have that effect.
264. A breach of the implied term of trust and confidence can be caused by one act, by the cumulative effect of a number of acts or a course of conduct. A last straw incident which triggered the resignation must contribute something to the breach of trust and confidence itself - Omilaju v Waltham Forest London Borough Council 2005 ICR 481, CA. There is no need for there to be proximity in time or in nature between the last straw and previous acts - Logan v Commissioners of Customs and Excise 2004 ICR 1, CA.

Fundamental breach

265. If there has been a breach of contract, the breach must be fundamental. This requires considering whether the conduct is:
- “a significant breach going to the root of the contract of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.”* Western Excavating (ECC) Ltd v Sharp 1998 ICR 221, CA.
266. Fundamental breach is probably synonymous with repudiatory breach, that is a breach which is a repudiation of the whole contract - Photo Production Ltd v Securicor Transport Ltd 1980 ACA 27, HL.
267. This stage is not needed where the Tribunal has found that there was a breach of the implied term of trust and confidence: any breach of that term is a fundamental breach necessarily going to the root of the contract – Morrow v Safeway Stores plc 2002 IRLR, EAT.
268. Whether a breach of a term is a fundamental breach is a question of fact and degree. Some points about this:
- a. the effect on the employee is relevant;
 - b. the employer’s subjective intention is not a key part of the test. It may be relevant, but the intention must be judged objectively - Leeds Dental Team Ltd v Rose 2014 ICR 94, EAT.
269. Some cases have considered whether an employer can remedy a fundamental breach of contract before the employee accepts it. Other than an anticipatory breach of contract, which may be withdrawn up to the moment of acceptance, a fundamental breach of contract cannot be remedied by the wrongdoer. After a fundamental breach has occurred, it remains open to the employee to agree to affirm the contract, or to accept the fundamental breach once it has occurred, whatever action the employer takes following the fundamental breach. This means that the only option available to the employer who wants to correct their action is to invite the employee to affirm the contract - Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA.
270. However, there is a distinction between a fundamental breach of contract that cannot be remedied, and action taken by an employer that prevents the breach of contract occurring or becoming a fundamental breach – Assamoi v Spirit Pub Company (Services) Ltd EAT 0059/11.

Resignation

271. If the employer fundamentally breaches the contract of employment, the employee may accept the repudiation and terminate the contract by resigning, either with or without notice. The contract comes to an end at the time of the communication of the resignation to the employer. If the employer is in continuing

breach of contract, the employee can resign at any point to while it is continuing – Reid v Camphill Engravers 1990 ICR, EAT.

272. The employee may resign by words or conduct. For example, an employee's failure to return to work following maternity leave has been considered sufficient to communicate acceptance of the employer's fundamental breaches of contract.
273. There are some conflicting authorities as to the relevance of an earlier fundamental breach by the employee, with some authority suggesting that an employee cannot allege constructive dismissal if s/he is in breach of contract him/herself - RDF media group plc v Clements 2008 IRLR 207, QBD . However, there appears to be acceptance that if one party commits a fundamental or repeated breach that the other does not accepted as bringing the contract to an end, the contract and the obligations under it continue. The obligation of trust and confidence is not suspended when one party breaches the contract, and so it remains open to an employee who has committed a fundamental breach to accept a later repudiation by the employer and end the contract -Atkinson v Community Gateway Association 2015 ICR 1, EAT.
274. In Aberdeen City Council v McNeill 2015 ICR 27 the claimant committed acts of gross misconduct, including sexual harassment and being intoxicated at work. He claimed constructive dismissal in relation to the disciplinary investigation, which the employer carried out in a way which breached the implied term of trust and confidence. The Court of session rejected the employer's argument that the employee's breaches prevented the employee from relying on a later breach of trust and confidence by the employer. However, the employee's own breach could be relevant to compensation. For example, in a complaint of constructive unfair dismissal, breaches such as misconduct could be found to be contributory conduct resulting in a reduction to the basic and compensatory awards.

Resignation caused by breach of contract

275. The breach must have caused the resignation, but it need not be the only cause. The test is whether the employee resigned in response to the conduct which constituted the breach. This is a question of fact for the Tribunal.
276. Once an employer's fundamental breach has been established, the Tribunal should ask whether the employee has accepted the breach and treated the contract of employment as at an end. It does not matter if the employee also objected to other actions (or inactions) by the employer that were not a breach of contract. Constructive dismissal is made out if the employee resigned at least partly in response to the employer's fundamental breach of contract - Logan V Celyn House Ltd EAT 0069/12. The crucial question is whether the repudiatory breach played a part in the dismissal, i.e. whether it was one of the factors relied on by the employee when resigning Abby cars (West Hornden) Ltd v Ford EAT 0427/07.

Delay and affirmation

277. If the employee waits too long after becoming aware of the breach of contract before resigning, s/he may be taken to have affirmed the contract. The question is whether the employee has shown an intention to continue in employment, rather than an intention to resign. This will depend on the particular circumstances of the case. Factors relevant to this question include the employee's conduct, as well as the length of time which has passed since the breach.
278. In addition to affirmation by delaying, the employee may affirm the contract by taking action which is consistent with employment continuing, irrespective of the timeframe, for example, considering alternative roles, accepting a promotion or a pay rise.
279. Where there is a continuing cumulative breach of the implied term, the employee is entitled to rely on the totality of the employer's acts even if she has previously affirmed the contract. The effect of the last straw is to revive the employee's rights to resign.
280. In a case where a number of breaches of contract are relied on by the claimant, the Tribunal may be assisted by the step-by-step approach of Lord Justice Underhill in Kaur v Leeds Teaching Hospitals [2018] E WCA Civ 978:
- a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, the resignation?
 - b. Has the employee affirmed the contract since the act? If so, there cannot be a constructive dismissal in respect of that act or earlier acts.
 - c. If not, was that act (or omission) by itself a repudiatory breach of contract?
 - d. If not, was it nevertheless a part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence? If it was, there is no need for any separate consideration of a possible previous affirmation.
 - e. Did the employee resign in response (or partly in response) to that breach?
281. It follows that if the last straw was part of a course of conduct which cumulatively amounted to a breach of the implied term, affirmation of the earlier acts does not need to be considered: the last straw revives the right to resign even if there has been an earlier affirmation. However, if the last straw is not part of a course of conduct which breaches the implied term, the Tribunal will have to consider whether earlier acts have been affirmed. In such a case, the claimant can succeed in establishing constructive dismissal if:

- a. there has been no affirmation of the contract by the claimant;
- b. the earlier act or course of conduct was repudiatory; and
- c. the earlier act or course of conduct at least contributed to the eventual decision to resign.

Conclusions

282. Applying the relevant law to the facts as found by the Tribunal, the Tribunal's conclusions are as follows.

The first claimant

283. The first claimant withdrew allegation 10.

284. The Tribunal has found that the claimant has not proved facts sufficient to establish an initial case to shift the burden of proof under section 136 EqA in respect of the first claimant's allegations 1, 2, 3, 4, 5, 11 and 12.

Section 26 EqA: Disability related harassment.

285. In relation to the first claimant's claim of disability related harassment, only the following allegations were established factually: allegations 9 and 15.

286. Allegation 9 is the allegation that the Mr Rought accused the first claimant of putting things on social media about her multiple sclerosis. Multiple sclerosis is a deemed disability. The Tribunal's findings that this allegation is well founded are based on written evidence from direct messages between Mr Rought and the first claimant. The key exchanges and the Tribunal's factual findings are set out at paragraphs 154- 155 above.

287. As those messages reveal on their face, Mr Rought was accusing the first claimant in hostile terms of posting information on Facebook about '*discrimination with Ms*'. He then tells the first claimant that this should no be being done and that he will be '*calling the police*' unless the page is closed down. Mr Rought goes on to say that Facebook should not be used as a place to '*slag off*' the first claimant's place of work and that he (Mr Rought) would be sacked from his own job if he were to '*spout ...lie after lie*' about his employer on Facebook. In truth, the first claimant had not put anything on Facebook to the effect that Mr Rought alleged as he appears to concede from his final direct message to the first claimant set out at paragraph 154 above.

288. Mr Rought was the first claimant's line manager. This follows from the role that Mr Rought had at the club as its Secretary. Mr Rought was aware that the first claimant has multiple sclerosis.

289. Turning to the terms of section 26 EqA. The Tribunal accepts that the claimant's position in this allegation that the remarks being made against her by Mr Rought were not only untrue but unwanted. The first claimant makes that abundantly clear from her own messages set out at paragraph 154 where she says that she has been at work until 2 a.m. the previous night returning to work at 9 a.m. the next morning. The first claimant goes on to say she doesn't know who Mr Rought has been listening to but *'it is all fiction not facts'*. The first claimant is plainly upset by these false accusations and goes on to say she takes exception to the implications of what Mr Rought is suggesting. The Tribunal was therefore satisfied that Mr Rought was engaging in conduct that was unwanted by the first claimant.
290. The Tribunal was also satisfied that this conduct related to the claimant's disability. This was a case where the unwanted conduct related explicitly to the claimant's disability.
291. The Tribunal also considered the fact that an employer is entitled to refer directly to an employee's disability and to do so critically without necessarily contravening section 26 EqA. In certain circumstances, that may include challenging an employee about critical comments that have been put on social media by or on behalf of the employee. However, the context of the direct messages in this context went far beyond courteous professional inquiries. The Tribunal has found that Mr Rought engaged (amongst other things):
- a. in a concerted effort to use his influence over the General Committee to thwart the first claimant's grievances;
 - b. attempted to intimidate the first claimant for bringing both of her grievances: calling the first claimant *'a cunt'* to her parents for bringing her first claimant grievance and calling the first claimant *'a cunt'* to her face for bringing her second grievance;
 - c. causing the first claimant to wait outside at least one General Committee meeting for over 2 hours when he knew she wanted to bring her grievances before the General Committee on her own terms;
 - d. in conduct in which he participated in sniggering at the claimant's gait which he knew was caused by her muscular sclerosis; and
 - e. had behaved generally in a partisan and hostile way towards the first claimant.
292. In those circumstances, the Tribunal was satisfied that his aggressive and erroneously based berating of the claimant for putting remarks on social media about her disability had as its purpose the violation of the claimant's dignity and creating an intimidating and hostile environment for her. Alternatively, the tribunal

accepts that even if that was not Mr Rought's purpose, it was the first claimant's perception that it had that effect in the circumstances referred to in paragraph 291 and in all the other circumstances of this case and that it was reasonable for it to do so.

293. The first claimant's allegation 9 is therefore well founded as an allegation of harassment contrary to section 26 EqA.
294. Allegation 15 is the allegation that Mr Rought and his family and associates would snigger at the first claimant's gait which became impaired due to her multiple sclerosis and was expanded upon in evidence to include evidence that they would laugh openly at her and make comments on her shoes. Paragraphs 179 – 181 set out the relevant evidence.
295. The Tribunal has also found at paragraph 8 above that Mr Rought as club Secretary had the power to engage club staff and terminate any such employment. It was common ground that Mr Rought acted as the first claimant's line manager in his capacity as club Secretary. While there may be a potential argument that the respondent cannot be liable for the discriminatory conduct of its club members, the same cannot be said for Mr Rought given his powers and responsibilities under the club rules and in the course of the operation of the employment relationship between both claimants and the respondent.
296. The Tribunal has accepted the evidence of Kaitlin Freeman, Angela Ellwood and the second claimant that Mr Rought directly personally contributed to the mocking of the claimant's disability related physical challenges and their evidence that this was not an isolated single one-off occurrence.
297. As the Tribunal understood this allegation, the first claimant regarded it as Mr Rought's responsibility as club Secretary to protect her from such discriminatory behaviour and that is the context in which the first claimant is saying that the respondent failed to address this treatment of her. The Tribunal concluded that Mr Rought was both a perpetrator of this behaviour and that he was in dereliction of his responsibilities as club Secretary and line manager when he both participated in such conduct and failed to take any steps to prevent the first claimant from having to endure it.
298. Applying section 26, the Tribunal accepts that this conduct was unwanted. It is close to self-evident that a person who has multiple sclerosis would regard as unwanted conduct which publicly mocks her (no doubt) distressing symptoms and the shoes she wears to help her cope with her day to day work activities. The Tribunal also notes that this conduct was directly addressed to her gait which was impaired because of her disability and to that extent the conduct is related to her disability. It was common knowledge that claimant had multiple sclerosis and that she was undergoing treatment for it. It is equally clear that Kaitlin Freeman, Angela Ellwood and the second claimant all knew that the claimant's gait and shoes were both directly connected to her disability and the Tribunal has

concluded that Mr Rought, his family and associates all knew that perfectly well themselves too.

299. The Tribunal repeats its conclusions at paragraphs 291 (a) – (e) above about the overarching context in which the conduct of Mr Rought in particular falls to be assessed i.e. an ongoing course of hostile conduct on his part towards the first claimant. The Tribunal was again satisfied that Mr Rought's mocking behaviour directed at the claimant's known symptoms of multiple sclerosis had as its purpose the violation of the claimant's dignity and creating an intimidating and hostile environment for her. Alternatively, the Tribunal accepts that even if that was not Mr Rought's purpose, it was the first claimant's perception that it had that effect both *per se* and in the circumstances referred to in paragraph 291 and in all the other circumstances of this case and that it was reasonable for it to do so.

Section 13 EqA: Direct disability discrimination

300. In relation to the first claimant's allegations of direct disability discrimination, only the following allegations were established factually: allegations 9 and 15.
301. The Tribunal has already found both of those allegations to be well founded allegations of disability related harassment contrary to section 26 EqA. By virtue of sections 39(2)(d) EqA and 212(1) EqA (definition of detriment) it is not open to (and indeed for unnecessary for) the Tribunal to find these same two allegations of detrimental treatment to be also well founded allegations of direct disability discrimination contrary to section 13 EqA. In other words, the same allegations cannot be considered as both contrary to sections 13 and 26 EqA.
302. For that statutory based reason, the first claimant's allegations 9 and 15 cannot also be separately be considered as allegations of direct disability discrimination. For those reasons, allegations 9 and 11 do not succeed as allegations of direct disability discrimination.

Section 20/21 EqA: Failure to make reasonable adjustments

303. It is for the first claimant to establish that the respondent has the PCPs upon which the first claimant relies as a necessary step in establishing that the respondent was under a duty to make adjustments under section 20(3) EqA.

The PCPs

304. The first claimant relies upon two PCPs:
- a. Requiring staff to attend work unaccompanied at 6 a.m.
 - b. Requiring staff to attend work while on sick leave.

305. It is accepted by the respondent that once per week the claimant was required to attend work unaccompanied at 6 a.m. to allow the line cleaner contractor to attend the club and clean the beer lines. The first PCP is therefore established by consent.
306. As the Tribunal has found at paragraphs 156 – 157 above, the allegation that the first claimant was required to attend work while on sick leave was not established by the first claimant. The principal reason for that factual conclusion was that the first claimant provided no evidence in support of it in either her own witness statement or in any of the statements of the other witnesses she called to give evidence. There was simply no evidence of what the work matters she says she was required to do were and nor were any dates provided on which she was alleged to have been required to do them. As paragraph 157 above sets out, Mr Winter gave evidence that the first claimant was asked to come in on her days off. That is not the second PCP alleged which is directed at coming in on sick leave.
307. The Tribunal has concluded the respondent did not have the second PCP. The Tribunal was given no indication of the second PCP's existence in any documentary or oral evidence. Equally, there was no evidence of any such PCP being applied to the first claimant. The first claimant provided no evidence of even a single occasion on which she was required to attend to work matters while on sick leave.
308. The first claimant's case that there was a duty on the respondent arising from the first or second PCP therefore fails.

Substantial disadvantage

309. The Tribunal has found at paragraph 94 that the first claimant did not tell Mr Rought that the reason she wanted to be accompanied during the 6 a.m. starts was her concern about injury arising from MS related dizzy spells. It is one of the requirements of a duty arising under section 20 EqA that the respondent either knew or could reasonably have been expected to know that the claimant has a disability and that the employee is likely to be placed at the substantial disadvantage relied upon.
310. The Tribunal has concluded at paragraphs 94 – 98 above that the respondent had no actual or constructive knowledge of the disadvantage relied upon by the first claimant. The respondent has satisfied the Tribunal that the reason given by the first claimant for requiring to be accompanied on the 6 a.m. starts was that she wanted company and had nothing to do with MS related dizzy spells. As the Tribunal has also found at paragraphs 94 – 98 above, it was unable to see how the first claimant would be subjected to that disadvantage when she would throughout the period after the 6 a.m. be accompanied the line cleaner. In any event it would not have been reasonable for the employer to be required to provide a paid member of staff when any disadvantage was already alleviated by the presence of the contractor.

Conclusion on reasonable adjustments

311. The Tribunal, was therefore not satisfied that the a duty was imposed on the respondent under section 20 EqA. The first PCP was established but the respondent had no actual or constructive knowledge of the disadvantage relied upon by the first claimant who was not in any event put to any disadvantage as a consequence of it.
312. The second PCP was not established at all.

Section 27 EqA: Victimisation

313. It is an essential requirement under section 27 EqA that an employee has done a protected act within the terms of section 27(2). The protection under section 27(1) against detriment only extends to detriments that are *'because'* the employee does or is believed to have done or may do a protected act.
314. The act that the first claimant relies upon as amounting to a protected act is that she asked to be accompanied by a member of staff when she commenced work at around 6 a.m. in case she had a dizzy spell. Although not accompanied by an explicit connection to her multiple sclerosis, that is an obvious inference from the claim taken as a whole.
315. There are a number of difficulties with the contention that this request falls within the definition of a protected act within the terms of section 27(2) EqA. The precise subsection was not identified by the first claimant. As a lay person represented by her mother, another lay person, the Tribunal adopted responsibility for identifying which, if any, subsection might apply.
316. Plainly sections 27(2)(a) and (b) are not engaged. Those subsections are concerned with steps relating to existing Tribunal proceedings under the Act. Section 27(d) relates to circumstances where an employee is alleging a contravention of the EqA. This again does not apply to a request that an accommodation be made by way of an adjustment. The alleged protected act does not involve a com..plaint at all.
317. However, it appeared to the Tribunal that the first claimant was trying to exercise what she considered to be a right under the EqA for an adjustment to be made under sections 20/21 EqA. The Tribunal therefore concluded that the claimant's act was potentially an act falling within section 27(2)(d), namely an act doing something for the purposes of or in connection with the EqA. Those words appear to the Tribunal to be ones of wide import to be construed generously.

318. However, the fundamental, unavoidable difficulty that the claimant has are the Tribunal's factual findings that neither of the detriments alleged under section 27 EqA happened as a matter of fact. Those detriments are allegations 4 and 5 (that Mr Rought reduced the claimant's hours because in the light of the requested adjustment he thought that the claimant was not capable of doing her job; and the allegation that Mr Rought told the first claimant that if she was not capable of doing her job she should get out).

319. The Tribunal has rejected that those detriments occurred as a matter of fact for the reason set out at paragraphs 100 – 104 above. In those circumstances, the first claimant's claims of victimisation fail.

Sections 94–98 Employment Rights Act 1996 (ERA): unfair constructive dismissal

320. The first claimant resigned her employment by a letter dated 16 April 2022.

321. The onus is on the first claimant to show she was dismissed within the terms of section 95(1)(c) ERA. The first claimant relies on allegations 1-9 and 11-17 in support of her contention that she resigned in circumstances falling within section 95(1)(c) ERA entitling her to terminate the contract with or without notice because of her employer's conduct.

322. The Tribunal has rejected allegations 1-5 and 11& 12 in its factual findings. The allegations that the Tribunal accepted were factually well founded were allegations 6-9 and 13 -17. To re-cap:

- a. Allegation 6: that Mr Peacock was belittling towards the first claimant at the General Committee meeting on 31 January 2022 when she tried to speak;
- b. Allegation 7: that the first claimant tried to bring up staff matters relating to Deborah Green but was prevented from doing so by Mr Rought;
- c. Allegation 8: that on the evening of 26/27 February 2022 Deborah Green was verbally and physically abusive towards the first claimant;
- d. Allegation 9: that Mr Rought falsely accused the first claimant of putting things on social media about her multiple sclerosis;
- e. Allegation 13: that the first claimant was made to wait outside General Committee meetings for extended periods without being called in;
- f. Allegation 14: that no investigation was carried out into the alleged assault by Deborah Green on the first claimant;

- g. Allegation 15: that sniggering at the first claimant's multiple sclerosis related physical problems were not addressed;
 - h. Allegation 16: that on 18 March 2022 Mr Rought called the first claimant 'a cunt' for bringing her second grievance; and
 - i. Allegation 17: that on 25 March 2022 Ms Elsie Smith swore at both the first claimant and at the first claimant's Aunty Lynn and Uncle Ken as well as threatening the first claimant.
323. The allegations that have been factually upheld took place over a period of some two months from the end of January 2022 until the end of March 2022. The Tribunal has derived much assistance from the guidance of Lord Justice Underhill in **Kaur**. That said, the Tribunal remains alive to the fact that guidance is no substitute for the plain words of the statute which the Tribunal has also considered before arriving at its conclusions.
324. The first step is to identify the term of the contract allegedly breached by the employer. The term relied upon by the first claimant is the implied term of mutual trust and confidence. In this case, the first claimant says that there was a course of conduct by the respondent largely coordinated by Mr Rought which amounted to a fundamental breach of that implied term.
325. The Tribunal reminds itself that any breach of this implied term will be treated as a fundamental breach going to the root of the contract (**Morrow v Safeways Stores plc**).
326. The Tribunal noted that allegations 16 and 17 were both said by the first claimant to be 'the last straw'. The Tribunal put no weight on this description. It was clear to the Tribunal that the first claimant was simply labelling the last alleged breach in the sequence of breaches and the reason why allegation 17 came to bear the description of the second of the 'last straw' was that it was chronologically last and introduced by way of amendment.
327. This is in any event a case where a number of alleged breaches of contract are relied upon. Following the guidance in **Kaur**, the most recent (prior to resignation) act triggering the first claimant's resignation was the incident involving her Aunty Lynn and Uncle Ken (allegation 17).
328. The second stage in **Kaur** is to determine whether the first claimant affirmed the contract of employment after that last act occurred on 25 March 2022. The Tribunal has concluded that the first claimant did not affirm the contract of employment during this period.

329. The first claimant was on sick leave all of that time. The Tribunal accepted that the first claimant was on sick leave because of the way she had been treated. In that context and more generally, there is nothing from which the Tribunal infers that the first claimant has in any way shown an intention to continue in employment. Receipt of sick pay (which on the facts was statutory sick pay) is entirely consistent with the claimant taking time to consider whether she is prepared to forego her livelihood and sole/principal source of income as a disabled person or whether the circumstances have reached a point where remaining in her employment was simply intolerable for her. In the Tribunal's assessment she did not wait too long before crystallising such an important decision and neither did she do or accept anything consistent only with an intention to continue the contract underpinning her employment relationship. The first claimant did not affirm the contract of employment before she terminated it on 16 April 2022.
330. The third step is to assess whether the most recent act or omission was itself a repudiatory breach of the contract of employment. The Tribunal noted that Elsie Smith was to become the successor club Secretary to Mr Rought. The Tribunal was in no doubt that Ms Smith was aligned to Mr Rought's side of the inter-family dispute while at the same time being a club member. Ultimately, the Tribunal did not have to decide whether allegation 17 in and of itself amounted to a repudiatory breach of the contract of employment by the respondent. This was because this is a case that falls squarely within the next step of the Kaur guidance which addresses a course of conduct.
331. In the Tribunal's judgment, all of the allegations that were factually upheld were part of a course of conduct to the detriment of the first claimant under the influence of Mr Rought. The Tribunal has already explained in this judgment why it has come to that conclusion. To take a few examples: Mr Rought emasculating the first claimant's grievance in order to protect his own family members; failing even to investigate the first claimant's complaint of assault by Deborah Green; sniggering at the physical challenges of the first claimant; and calling the first claimant 'a cunt' for raising a second grievance when her first grievance had been spirited away by Mr Rought's influence over the General Committee were all examples of detrimental conduct orchestrated by Mr Rought which cumulatively amounted to conduct which was calculated (and not just likely) to destroy or seriously damage the relationship of trust and confidence between the parties.
332. In short, Mr Rought oversaw and participated in a course of conduct that was at the same time overtly grossly abusive to the first claimant (allegations 15 and 16) and which also deliberately prevented her from gaining access to basic employment procedures designed to help employees to resolve their concerns about their treatment in the workplace (allegations 6 and 7). The Tribunal was accordingly satisfied that the respondent had acted in multiple breach of the implied term relied upon and that such multiple breaches of the term of trust and confidence were necessarily fundamental.

333. The Tribunal also needs to consider whether the respondent had reasonable and proper cause for its conduct that was calculated and likely to destroy the relationship of trust and confidence. It was not suggested by the respondent that there was any reasonable and proper cause so to do. Indeed, on the facts of this case and, given the deliberate and ongoing conduct designed to undermine the first claimant's position in the workplace this part of the guidance in **Kaur** does not arise for further consideration.
334. The last step in the guidance is to assess whether the first claimant resigned in response or partly in response to the breaches of conduct identified. The Tribunal has noted the reasons given in the first claimant's letter of resignation. However, the Tribunal also considers that it would be entirely artificial to construe the first claimant's letter of resignation as if it were an isolated and free standing document to be considered apart from the events as a whole. It was not. The first claimant nevertheless gave ample reasons in that letter, particularly those at paragraph 202 (a) (c) and (d) in her letter of resignation, to establish an explicit connection to the respondent's breaches of contract identified by the Tribunal. The Tribunal was therefore satisfied that the first claimant resigned at least in part to the breaches of her contract of employment by the respondent.
335. The first claimant was therefore constructively dismissed withing the terms of section 95(1)(c) ERA.
336. As set out at paragraphs 257 above, the Tribunal must go on to consider whether a constructive dismissal is for a potentially fair reason under section 98(1) / (2) ERA and, if so, whether dismissal for such a reason was fair in all the circumstances within the terms of section 98(4) ERA. This requires the Tribunal to identify the reason for the breaches of the implied term of trust and confidence. They are identified by the Tribunal at paragraph 322 (a) – (i). The initial onus is on the respondent to establish that the reasons for those breaches was for a potentially fair reason. Given that the reasons for those breaches are all examples of wilful detrimental treatment of the claimant without any reasonable and proper cause the Tribunal has concluded that the respondent failed to discharge that onus with the effect that the first claimant's constructive dismissal was unfair.

Discriminatory constructive dismissal

337. The first claimant also alleges that her constructive dismissal was discriminatory.
338. There are two well founded allegations of discriminatory conduct that are in common with the test of constructive dismissal: allegations 9 and 15. The Tribunal notes that in her letter of resignation, the first claimant refers to a 'witch hunt' against her. The Tribunal understands that as wide enough to include what the claimant describes in allegation 15 as the worsening situation against her which included sniggering and comments regarding her impaired gait as a result of her multiple sclerosis.

339. The Tribunal concludes that such conduct was in and of itself a (fundamental) breach of the first claimant's contract of employment. Mocking an employee's disability related physical impediments is plainly conduct likely to destroy the relationship of trust and confidence between employer and employee. Equally plainly, there was no reasonable and proper cause to do so.
340. The Tribunal is satisfied that the mocking of the first claimant's gait was both being indirectly referred to in the first claimant's letter of resignation and was separately a key part of the course of conduct that led the first claimant's resignation on 16 April 2022. Indeed, it is hard to imagine such treatment not remaining operative on the mind of the first claimant when she took her decision to resign.
341. In those circumstances, the claimant's constructive dismissal was in response to discriminatory conduct on the part of the respondent and amounted to a discriminatory dismissal contrary to section 39(2)(c) EqA.

The second claimant

342. The second claimant withdrew allegations 1 and 2.

Section 26 EqA: harassment related to sex

343. In relation to the second claimant's claim of harassment, the Tribunal has found at paragraphs 205 – 226 that all of the second claimant's allegations 3, 4, 5, 6, and 7 were established factually.
344. Allegations 4, 5 and 6 are all allegations that Mr Rought made comments on the second claimant's breasts. Allegation 4 is in highly sexually charged terms. The comment '*...if you get your tits out I will buy you a drink*' is on any view crass and offensive. The same applies to Mr Rought's comment in allegation 5 that he '*...wished it was his face on the second claimant's face not a picture of his face.*' That comment is also sexually explicit.
345. The Tribunal accepts the second claimant's evidence that these remarks were unwanted (as well as Mr Winter's evidence that in December 2021 he called out Mr Rought about this behaviour) and of a sexual nature within the terms of section 26(3) EqA. In those circumstances, the Tribunal was satisfied that ***allegations 4, 5 and 6*** were all contraventions of section 26(3) EqA.
346. The same analysis applies to second part of allegation 3 which is the allegation that Mr Rought groped the second claimant's bottom on 30/31 December 2021. That amounts to physical touching in a sexual manner particularly in the context

of Mr Rought's ongoing comments about the second claimant's breasts and the contemporaneous sexual innuendo from Mr Rought about what he '*was going to get...in return for [her] Christmas bonus*'. The Tribunal accepted the second claimant's evidence that this conduct was unwanted and accepts that the conduct was plainly of a sexual nature. The Tribunal was therefore satisfied that **the second part of allegation 3** was a contravention of section 26(3) EqA.

347. The second claimant's allegation 7 is that her grievance (which the Tribunal understands to be a reference to her own letter of grievance of 24 March 2022 (see paragraph 189) was not acknowledged. There was no meaningful difference in the way that the first and second claimant's grievances were handled by the respondent. The Tribunal therefore repeats its findings and factual conclusions set out at paragraphs 120 – 132; 163 – 171 and 220 - 226. Mr Rought and Mr Peacock manipulated the General Committee meeting on 31 January 2022 in a successful attempt to spirit away the second claimant's first grievance and there was no acknowledgment or meaningful consideration of the second claimant's own grievance letter of 24 March 2022 at either the co-op committee meeting on 29 March 2022 or by any subsequent General Committee to which the Tribunal was referred.
348. However, it was the second claimant's own case that she did not mention the second part of her allegation 3 (that Mr Rought groped her bottom on 30/31 December 2021) in her letter of 24 March 2022 for fear of repercussions. The second claimant's first grievance letter sent by her mother does not mention any of the matters the Tribunal found to be sexual harassment and the second claimant's own letter does not mention them either. In those circumstances, although the lack of acknowledgement was no doubt unwanted it does not refer to the second claimant's protected characteristic of sex and not is it unwanted conduct of a sexual nature. Indeed, it was the second claimant's case that it was her information about Mr Peacock appearing to remove cash from the float that ruffled the feathers of Mr Rought and Mr Peacock and nothing else. **The second claimant's allegation 7** was of a contravention of section 26 EqA.

Discriminatory constructive dismissal

349. The second claimant also relies on the implied term of trust and confidence in support of her claim for discriminatory constructive dismissal.
350. The Tribunal has not placed much weight on the second claimant's description of the 'last straw' being the failure to acknowledge her grievance of 24 March 2022. This appears just to be a description of the last matter chronologically about which she complains.
351. The allegations of sexual harassment that have been upheld took place 30/31 December and 15 March 2022. The second claimant raised a grievance that was not acknowledged or dealt with on which she intended to expand on 24 March 2022. She resigned her employment by a letter dated 17 April 2022.

352. It would be unrealistic to construe the second claimant's resignation as anything other than a direct response to the sexual harassment she had endured over a period of some months and which showed no sign of stopping or being conscientiously managed.
353. The Tribunal again following the guidance in **Kaur** concluded that this was a course of conduct comprising several acts of sexual harassment which viewed individually and cumulatively amounted to a breach (necessarily of a fundamental nature) of the implied term of trust and confidence for which there was no reasonable or proper cause and that the second claimant resigned at least partly (if not exclusively) in response to those breaches.
354. The Tribunal has also concluded that the second claimant did not affirm the contract of employment at any time after the acts of sexual harassment occurred and before her resignation on 17 April 2022. The only matter of note that happened in the intervening period before the second claimant's resignation was a further attempt on her part to get some form of internal dispute resolution. The second claimant was blameless as to why that did not happen.
355. The Tribunal therefore concluded that the claimant's constructive dismissal was unlawful sex discrimination contrary to section 39(2)(c) EqA.
356. This matter will now be listed for a remedy hearing to consider the remedy appropriate for each claimant in respect of the claims which the Tribunal has upheld.

Employment Judge Loy

14 June 2024