THE INDUSTRIAL TRIBUNALS

Case Ref: 5704/18

CLAIMAINT: **Ian Campbell**

RESPONDENT: **The Chairman and Secretary as representatives of the Police Service of Northern Ireland Football Club**

DECISION

The decision of the tribunal is:-

1. That the claimant was not an employee of the respondent and the tribunal therefore has no jurisdiction to hear the claimant's claims of unfair dismissal, breach of contract or notice pay. These claims are therefore dismissed in their entirety.

2. That the claimant was a volunteer who was not working under a contract and therefore he was not entitled to the National Minimum Wage. The claim in respect of National Minimum Wage is therefore dismissed in its entirety.

3. That the claimant was not a worker and therefore his claims for unlawful deductions from wages and holiday pay are also dismissed in their entirety.

Constitution of tribunal:

Employment Judge: **Ms J Turkington**

Members: **Ms N Wright**
Mr A Carlin

Appearances:

The claimant appeared and represented himself.

The respondent appeared and was represented by the Club Secretary.

The Claims

1. The claimant brought the following claims before the tribunal:

    1. Unfair dismissal.

    2. Unlawful deduction of wages in respect of the payment as set out in the written contract document issued to the claimant in April 2016 and, in addition, failure to pay the National Minimum Wage.

    3. Breach of contract, namely failure to make the payment as referred to at para 2 above together with failure to pay mileage expenses.

    4. Failure to pay notice pay.

    5. Failure to pay holiday pay.

The Issues

2. The primary issue in this case was the status of the claimant, that is whether he was an employee, a worker or had some other status. The determination of the claimant's status would essentially determine whether the tribunal had jurisdiction to hear his various claims. It was agreed by all parties at the outset of the hearing that, if the claimant was successful in establishing that he was an employee, the statutory dismissal procedure had not been followed in this case and therefore the termination of the employment must be automatically unfair. Accordingly, the hearing in this case was primarily focused on the question of employee or worker status.

Contentions of the parties

3. The claimant contended that, from March or April 2016, he was an employee of the respondent or failing that, a worker. He invited the tribunal to look beyond the label which was applied in the contract which he had signed. The claimant referred the tribunal to a number of the leading cases on the issue of employment or worker status. In his very comprehensive oral submissions, the claimant took the tribunal in turn through each of the various factors which the courts have stated point towards employment or worker status. In doing so, the claimant sought to draw parallels between the facts of his case and those factors referred to in the caselaw.

4. The factors which the claimant relied on included control, personal service, mutuality of obligation and integration. In relation to control, the claimant contended that the club controlled where and when he carried out his work. He was prevented from working for another football club and was also subject to the Club's Disciplinary Code and was required to attend management meetings. The claimant also relied on the fact that certain coaching staff were appointed without even consulting him. In relation to personal service, the claimant argued that he was obliged by the job description to personally carry out all his duties. As regards mutuality of obligations, he contended that this was present in this case. The claimant also outlined the respects in which he believed he was integrated into the business of the club. He argued that each of the

relevant determinants were present in his case. In relation to the issue of payment, the claimant relied on the terms of the written contract whereby he was to be paid £250 per month.

5. For the respondent, the Club Secretary contended that the claimant was neither an employee nor a worker. The claimant had signed a contract for consultancy services. In relation to the question of pay, the Secretary argued that the claimant was aware that the club intended that the full £400 per month available for manager's fees should continue to be paid to Mr Kirk and that the claimant had confirmed in his evidence that his only concern had been that, if this payment was to be passed via the claimant, this could give rise to tax implications for the claimant. The Club Secretary contended that, at no time had the claimant raised any issue in respect of fees due to him. He also argued that the committee do not advise or control the manager. It was also emphasized by the Secretary that the claimant as a serving police officer had not sought permission for any business interest with the club, only seeking such permission in relation to football management or coaching after he had left the club. In the Club Secretary's submission, this suggested that the claimant did not consider himself to be employed.

6. In concluding his submissions, the Club Secretary sought to draw distinctions between the facts of this case and those of some of the leading cases on employment status arguing that mutuality of obligation did not apply in this case, nor was the claimant required to provide personal service.

Sources of Evidence

7. The tribunal heard evidence from the claimant and from David Gardner and Robert Cargin on his behalf and from Danny Brennan, Patricia Black, Ken Green and Ronnie Hawthorn on behalf of the respondent. Each of the witnesses submitted a written witness statement and adopted this statement as their evidence in chief to the tribunal. Each witness was then cross examined by the opposite party. The tribunal was also referred to a number of documents in the tribunal bundle.

Facts of the Case

8. Having heard and considered all the evidence in the case along with the submissions of the parties, the tribunal found the following relevant facts proven on the balance of probabilities.

9. The claimant became a coach at the respondent football club around December 2012. He was invited to join the Club by the then Chair and Vice Chair. The claimant was recruited as he was a senior serving police officer and an experienced and qualified football coach.

10. The claimant received no remuneration for his role as coach. A few times per year, he received around £40 for petrol expenses. This fell far short of the claimant's actual out of pocket expenses for travelling to training and matches. There was an established practice at the Club that serving police officers who were players or coaches did not receive any fee for their role at the Club. However, each match day, the Club

compiled a list of all those serving police officers who had been at the match in a playing or coaching/managerial capacity. This list was submitted to the PSNI and eligible serving police officers could claim for duty/sporting credits, that is paid absence from work, in respect of the time spent representing a PSNI sporting club. The claimant was not normally eligible for duty/sporting credits as he usually worked standard office hours and was not rostered for duty on Saturdays. The claimant did, however, claim duty/sporting credits in respect of a weekend trip made by the PSNI police football team for a UK police football tournament.

11. On a regular basis, the claimant was rostered as senior PSNI officer on call over a full weekend. Whilst on call, subject to operational demands, the claimant was normally able to attend Saturday afternoon matches, but from time to time he had to deal with PSNI operational matters, including responding to urgent phone calls, before or during matches.

12. Around March 2016, the team became eligible for promotion to Championship league 1 (senior football) and this required the Club to have a manager qualified to at least the level of UEFA B license. The then manager of the Club, James Kirk, did not hold such a license. The claimant held a UEFA A license which was a higher level than that required. Some years before, the claimant had received financial assistance from the Police Rehabilitation and Retraining Trust towards obtaining this qualification.

13. In March 2016, a meeting was held between the committee and the coaching staff and, having considered the options available to the Club, it was decided to swap the roles of the claimant and James Kirk so that the claimant would become the Manager, at least for external purposes. Within the Club, at least to some extent, Mr Kirk continued effectively as manager. The claimant was very clear in his evidence to the tribunal, repeating on numerous occasions, that he did not ask for nor expect pay in respect of his new role. In the course of the discussions regarding the new management/coaching arrangements at the Club, the claimant said that he wanted things to remain as they had been.

14. On 23 April 2016, the claimant signed a document which was headed "*Contract of Services Statement".* This contract was in the form recommended by the RUC Athletic Association, an umbrella organization for police sporting clubs. This format had also been used for previous managers of the Club who were not serving police officers and who had received fees/expenses. The document stated:

> "*This statement sets out certain particulars of the terms and conditions which form part of the Contract for Consultancy Services on which PSNI FC hires the services of [the claimant]".*

15. This contract also included the following terms:-

> *"1. This contract will begin on 28 March 2016. Termination of the contract must be in writing giving 1 month's notice by either party. As an independent contractor you are responsible for all your income tax and national insurance payments and returns.*

2. *PSNI FC will pay you a Consultancy Fee of two hundred and fifty pounds (£250) per calendar month up to 31 May 2017. This may be extended mutually per agreement between both parties. Invoices to be submitted monthly in arrears.*

3. *Your actual days of work will be as agreed by PSNI FC to fulfil the requirements of your services to the satisfaction of the organization."*

16. A form was submitted to the Irish Football Association which showed the claimant as First Team Manager/Head Coach along with confirmation that he was the holder of a UEFA A licence. The Job Description set out in this form specified that the role of the Manager includes:-

"1. Full responsibility for the first teams coaching sessions, team selection, tactics and management.

2. Working with support staff in the preparation and running of each session and match day.

3. Maintaining high ethical standards at all times and promote the best interest of the club.

4. To attend club meetings and report on progress."

There was a dispute on the evidence as to whether the claimant had been given a copy of this contract to retain. The tribunal concluded on the balance of probabilities that the claimant had not received a copy of this contract.

17. Up to March 2016, in his role as Manager, James Kirk had been receiving £100 per week fees/expenses. The Club's officers considered that it may look odd, not least to the IFA, if Mr Kirk as Assistant Manager /Coach under the new arrangement was receiving payment whereas the Manager, that is the Claimant, was not. There was therefore a discussion with the claimant about the possibility of fees/expenses for James Kirk being paid into the claimant's account which the claimant would then pass on to Mr Kirk. The claimant was concerned that this may result in some additional tax liability to him and asked, if that occurred, for the Club to reimburse him. It was confirmed that the Club would do so.

18. In the event, this approach was not adopted and Mr Kirk continued to be paid £400 per month directly by the Treasurer made up of cheques for £250 and £150 respectively. The Club's accounts for the year 2016 show managers expenses of £4030. This sum was made up of 10 x monthly payments of £400 made to Mr Kirk plus £30 paid to the claimant for petrol expenses. A document produced to the tribunal appears to show payments of £250 per month to the claimant, but it was agreed by both parties that this is not accurate. Payments of £250 per month were never made to the claimant. Throughout his time as Manager, the claimant received no payment, save for occasional payments of very modest sums in the region of £30 or £40 towards petrol expenses. Up until December 2017, the claimant never requested or demanded

payment of any expenses or fees. The claimant never submitted any invoices to the Club.

19. Whilst he held the position of Manager of the Club, the claimant attended the vast majority of training sessions and matches, save when he was away on holiday or detained by professional commitments. The claimant usually spent around 10 hours per week between training sessions and match days. Training sessions were held on the same evenings each week and matches generally took place on Saturday afternoons and hence the hours worked by the claimant were regular. Away matches could take place anywhere within Northern Ireland at the home ground of any of the teams in the relevant division.

20. When going on holiday, the claimant generally informed the committee of when he would be absent, but he did not seek permission to take leave and was not required to do so.

21. The claimant was identified on the Club website, to the IFA and to the media as Manager of the Club and in this capacity, he gave a number of media interviews. He also attended the Football Writers Dinner on one occasion. The claimant received a prestigious award from the Club in recognition of his contribution and the team's success on the pitch.

22. The claimant attended meetings of the Club committee to provide a manager's report. He attended 9 of approximately 20 committee meetings during his time as manager.

23. At training sessions and on match days, the claimant often wore an overcoat with the Club logo on it. These coats had been bought by a donor with the intention that they be used primarily by the substitutes on the bench, but spare coats were available for use by others and were worn by the claimant and other coaches.

24. The equipment used at training sessions was supplied by various organisations including the Club itself, Newforge sports club and the IFA. The claimant was not required to provide equipment.

25. The claimant did not bear any financial risk in connection with his role as Manager.

26. During his time as manager, two new coaches were brought into the Club, namely Taylor Kirk (son of James Kirk) and Brian Khan. The claimant was not responsible for the appointment of either and nor was he consulted about their appointment, although he had no objection.

27. In the first season following their promotion to Championship 1 (2016/17), the team was successful, coming close to gaining further promotion to the Premiership. However, at the beginning of the next season, the team lost a number of games. Tensions had already begun to emerge between the claimant and James Kirk. The claimant felt that, as manager, he should have more of a say in team selection and other important decisions, but Mr Kirk was unwilling to give up control. Some of the club officers were aware of the tensions within the managerial team by around the Autumn of 2017, but the Club did not intervene.

28. In December 2017, Mr Kirk announced his resignation from the Club citing differences with the claimant as a primary reason for his departure. At this stage, the Club chairman Ken Green felt that the claimant should also leave the Club. However, he was persuaded by David Gardner, then Vice Chair of the Club, that the claimant should be allowed an opportunity to form a new management team and try to turn things around. Concerns regarding the team's performance or the claimant's role or performance as manager were not raised directly with the claimant at this time.

29. Following the departure of Mr Kirk, the claimant recommended that an experienced coach Colin Malone be brought into the Club as joint manager and this was accepted by the Club. The claimant enquired from the Club how much money would be available for expenses for Mr Malone. He was told a maximum of £100 per week as that is what had been paid to Mr Kirk. The claimant's evidence is that this was when he first became aware of the money being paid to Mr Kirk and others by way of fees/expenses. The tribunal does not accept this. On the balance of probabilities, the tribunal believes that the claimant was aware of the monies which Mr Kirk was receiving from around March 2016 when the discussions took place about the changeover of roles. At this time, the claimant's evidence was that there was a discussion about a proposal that Mr Kirk's fees could be paid via the claimant. The tribunal therefore considers the claimant was already aware from a much earlier stage that Mr Kirk had been receiving payment.

30. The claimant agreed a figure of £80 per week with Mr Malone. The claimant proposed, and it was agreed by the Club, that the remaining £20 per week could be split between the claimant and another coach Phil Lewis in respect of petrol expenses. The claimant was paid £30 in respect of the first 3 weeks of this new arrangement, but a sum of £40 for 4 weeks in January 2018 has never been paid due to subsequent events. In mid-January 2018, the claimant met with the Club Treasurer Patricia Black to discuss the expenses due to existing and new players at the Club. At that time, the claimant said nothing to Ms Black or anyone else to suggest that he considered fees/expenses were due to him.

31. The football transfer window was open during the month of January 2018. A number of players left the Club during the transfer window, albeit the claimant also recruited a number of new players to the Club. The team lost a number of other matches during January 2018. On 29 January, the Club secretary Ronnie Hawthorn received an email from a player Paul McDowell in which he indicated that he had decided to leave the Club and stated that, in his view, the joint management system was not working.

32. These factors gave rise to concerns about the claimant's position at the Club. On 29 January 2018, the secretary Ronnie Hawthorn phoned other members of the committee to consult them about a proposal that the claimant's contract would be terminated. David Gardner was opposed to this proposal and believed that the claimant and Mr Malone should be given more time. However, it was decided that the claimant should be released.

33. As Chair, Ken Green considered that he should speak to the claimant to tell him this. The claimant was on a family holiday in Austria at this time, although he was due

home the next day. Mr Green phoned the claimant in Austria to tell him that he was being released from his contract. He gave the reason as being due to poor results. Mr Green did not believe it was appropriate to outline any more personal reasons which may have been in the minds of members of the committee. The claimant was very shocked by this call. He asked if there was any role for him at the Club and Mr Green agreed to consider this and call back.

34. Mr Green then spoke to other members of the committee. Having done so, he phoned the claimant back to tell him there could be no role for him at the Club. Mr Gardner was not in agreement with this approach. The claimant was even more upset when informed that he was to have no involvement in the Club.

35. An Extraordinary meeting of the Club was held on 31 January 2018 to ratify the termination of the claimant's contract. The claimant was permitted to attend after the formal business of the meeting had been concluded. Mr Hawthorn told the claimant that player discontent had been a significant factor in the decision to release him. At this meeting and thereafter, the claimant raised various questions about the reasons for the termination of his contract. These were not answered by the Club.

36. From the end of January, Mr Malone took sole charge of the team as Manager. On 5 February, Club Secretary Mr Hawthorn wrote to the claimant stating as follows:-

> *"In accordance with the Contract of Service Statement dated 23 April 2016 between the PSNI Football Club and Mr Ian Campbell, notice is hereby given that the said contract is terminated."*

37. On 19 February 2018, the claimant met Ken Green and Ronnie Hawthorn to discuss the termination. The claimant was accompanied by Robert Cargin, a friend, who made a covert recording of the meeting. During the meeting, the claimant outlined his shock at the call he had received whilst on holiday and his concerns about lack of natural justice and the possible impact on his reputation. The Club officers gave further detail of the reasons for the termination of the claimant's contract. Ken Green apologized for calling the claimant on holiday and Ronnie Hawthorn acknowledged that the manner in which the matter was handled was wrong, but there was no agreement reached between the parties.

38. Following the termination of his contract with the Club, the claimant made no attempts to obtain an alternative appointment as a football manager or coach, although he was approached by at least one Club. In March 2018, the claimant for the first time registered with the PSNI an outside business interest in football/coaching with permission being granted on 21 March.

39. In April 2018, David Gardner, a friend of the claimant who had been involved with the Club for 44 years, resigned from the committee due to his unhappiness with how the claimant had been treated.

40. The claimant lodged his claim with the tribunal office on 22 April 2018.

Statement of Law

Unfair dismissal

41. By article 126 of the Employment Rights (Northern Ireland) Order 1996 ("the ERO"), an employee has the right not to be unfairly dismissed by his employer.

42. If the claimant was not an employee of the respondent, the tribunal would have no jurisdiction to hear this claim. If, on the other hand, the tribunal was satisfied that the claimant was an employee, the statutory dismissal procedure was applicable in this case. Compliance with this procedure would require the respondent to write a step 1 letter to the claimant setting out the grounds for the termination of his employment. Thereafter, the respondent would have been required to hold a step 2 meeting to discuss the contemplated termination and then the claimant would have had the right to a step 3 appeal meeting. It was conceded by the respondent that none of these steps were followed in this case and therefore, if the claimant was found to be an employee, there was no doubt that he had been automatically unfairly dismissed by the respondent due to failure to comply with the statutory dismissal procedure.

Breach of contract

43. Article 3 of the Industrial Tribunals Extension of Jurisdiction (Northern Ireland) Order 1994 (the Extension Order) states as follows:-

> "*Proceedings may be brought before an industrial tribunal in respect of a claim of an employee for the recovery of any other sum if …*
>
> *(c) the claim arises on or is outstanding on the termination of the employee's employment."*

Therefore, if the claimant was found not to be an employee of the respondent, the tribunal would have no jurisdiction to hear the claimant's claim of breach of contract. If the claimant was found to be an employee, the tribunal would have to determine if any claims arose or were outstanding on the termination of the employment.

Notice pay

44. Article 118 of the ERO sets out the minimum periods of notice required to be given by an employer to terminate the employment of an employee. If the claimant is held not to have been an employee of the respondent, then he will be unable to rely on this provision. If, however, the tribunal concludes that the claimant was an employee, then the respondent accepted that the claimant was dismissed without any notice. The respondent did not seek to argue that there was any justification for a summary dismissal in this case.

National minimum wage

45. Section 1 of the National Minimum Wage Act 1988 ("the NMW Act") states as follows:-

> *"1 Workers to be paid at least the national minimum wage.*

(1) A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage.

(2) A person qualifies for the national minimum wage if he is an individual who—

(a) is a worker;

(b) is working, or ordinarily works, in the United Kingdom under his contract; and

(c) has ceased to be of compulsory school age."

Unlawful deductions from wages

46. By article 45(1) of the ERO, an employer shall not make an unauthorised deduction from the wages of a worker employed by him. If the claimant was a worker employed by the respondent, then he was entitled to the protection of this right and the tribunal would be required to determine the wages due to the claimant under his contract. If, however, the tribunal found that the claimant was not a worker, then this provision is not applicable.

Holiday pay

47. Regulation 17 of the Working Time Regulations (Northern Ireland) 2016 states as follows:-

"Compensation related to entitlement to leave

17.—(1) This regulation applies where—

(a) a worker's employment is terminated during the course of the worker's leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion of leave taken to which the worker is entitled in the leave year under regulation 15 and regulation 16 differs from the proportion of the leave year which has expired."

Therefore, if the tribunal found that the claimant was a worker, he would be entitled on termination of his employment to holiday pay in respect of untaken annual leave. If, on the other hand, the tribunal found that the claimant was not a worker, he would have no such entitlement under the Regulations.

Employment status or worker status

48. In accordance with article 3(1) of the ERO,

> "*In this Order "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment."*

Further, by article 3(3),

> *"In this Order "worker" means an individual who has entered into or works under (or, where the employment has ceased, worked under)— …*
>
> *(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly."*

49. It is basic law that a contract between parties is formed by the acceptance of an offer where there is intention to create legal relations and consideration.

50. The tribunal was referred by the parties to some of the leading cases on the question of employee or worker status. The claimant relied particularly on the case of ***Pimlico Plumbers Ltd v Smith [2018] UKSC 29, [2018] IRLR 872, [2018] ICR 151***. In this case, Pimlico engaged 125 'contractors', including the claimant. The plumbers wore company uniforms, drove company vans bearing the company's logo and were held out to customers as its workforce. The company directed the plumbers to particular customers who required work to be done. On the other hand, the agreement described the plumbers as self-employed, they were required to pay their own tax and NI, provide their own tools and equipment, and insurance cover. Individual plumbers were expected to resolve any customer complaints. The stated maximum working week for the plumbers was set out in the agreement, but there was no obligation on either side to give or perform work; although there was some flexibility in who did what work, there was no formal substitution provision. During his engagement with the company, the claimant considered himself to be self-employed, paid his own tax and registered for VAT. However, when his engagement was terminated he claimed unfair dismissal, disability discrimination and outstanding statutory holiday pay.

51. On the facts, the employment tribunal in the ***Pimlico*** case found that the claimant was not an employee, but was a worker. When the case eventually came before the Supreme Court, the question for the Court essentially was whether those conclusions had been open to the tribunal on the facts of the case. The Supreme Court concluded that it was open to the tribunal to determine that the claimant was a worker, but not an employee. In upholding the decision of the tribunal, the Court emphasized the many apparent contradictions in the written agreement in this case.

"Sham" contracts

52. In relation to "sham" contracts, Harvey on Industrial Relations and Employment Law states:-

> "*One well-rehearsed definition comes from the commercial case of Snook v London & West Riding Investments Ltd [1967] 2 QB 786, CA where Diplock LJ defined a 'sham' transaction in terms of a common intention by both parties to misrepresent the true position to the outside world."*

53. The tribunal was also referred to the case of ***Autoclenz Ltd v Belcher [2011] UKSC 41, [2011] IRLR 820, [2011] ICR 1157,*** another judgment of the Supreme Court. This case involved car valeters and the employer had written into the agreement clauses stating that the individual car valeters did not have to work on any given occasion and could substitute another suitably qualified valeter, although, on the facts, this did not reflect the reality of the working arrangements between the parties.

54. The Supreme Court ultimately held that the valeters in this case were employees. In his judgment, Lord Clarke concluded that the commercial law concept of a "sham" contract may not always be appropriate in the employment context due to the inequality of bargaining power between the parties and the fact that in the vast majority of cases, the contractual documents are drafted by the employer. Lord Clarke stated that the true question for the tribunal is – "*what was the true agreement between the parties"*? He also indicated as follows:-

> *"So the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part. This may be described as a purposive approach to the problem. If so, I am content with that description."*

55. The respondent referred the tribunal to the case of ***Exmoor Ales Limited & Price v Herriott UK EAT 0075/18***. This was a case where the claimant was an accountant who provided accountancy services to the respondent company. The claimant was a partner in an accountancy firm. In 2011, there had been a change in the relationship between the parties and the Employment Judge found as a fact that the monthly sum of £1000 which was paid to the claimant thereafter was effectively an "exclusivity" payment. The Judge also found that the respondent exercised a great deal of control over the claimant, that she was integrated into the business and that there was mutuality of obligations between the parties. The Judge noted in particular that substitution of the claimant would not have been contemplated by the parties. Therefore, from 2011 onwards, the tribunal found that the claimant was an employee of the respondent. This decision was upheld by the EAT on the basis that these conclusions were open to the tribunal on the facts.

Conclusions

56. The tribunal applied the law outlined above to the facts found by it in order to reach the following conclusions.

57. The outcome of this case turned very substantially on the tribunal's determination as to whether the claimant was an employee or a worker or had some other status. In considering this question, the tribunal first considered the statutory definition of a contract of employment as contained in art 3(1) of the ERO and set out at para 48 above. Essentially, an employee is a person who works under a contract of employment. The tribunal must look to case law to decipher what amounts to such a contract. In this case, much of the argument focused on the various tests for employment status or the factors which point towards such status. This included the issues of control, integration, personal service and mutuality of obligation. The tribunal considered each of these matters in turn.

Control

58. In relation to control, the claimant pointed to the fact that he took training at the Club on fixed nights of the week. Whilst that was true, the tribunal was very aware that this is the case for most sports clubs, whether amateur or professional, with the training schedule largely being dictated by the need for training to be spaced between matches. The tribunal therefore did not believe that this factor weighed particularly highly in the balance in this case.

59. On the other hand, on the facts, the Club through its officers exercised little or no control over how the claimant did his work. For example, they gave no instruction or direction as to how he conducted training, selected the team or gave team talks.

60. It was the case that other coaches, such as Taylor Kirk and Brian Khan were brought in without the claimant's input thus suggesting that he had limited control. However, these coaches were brought in by James Kirk (father of Taylor Kirk) rather than the Club's officers. The claimant himself was invited to select and recruit his own team in December 2017 and he brought in Colin Malone and Phil Lewis. In the tribunal's view, this points away from the Club's officers exercising significant day to day control over the claimant.

61. In relation to the claimant's attendance as manager at committee meetings, the tribunal found that the claimant had attended 9 out of 20 meetings during his time as manager. This does not suggest that he was required to attend and the tribunal considers that this factor also points away from the Club exercising substantial control over the claimant's work.

62. Overall, having weighed up all the individual factors outlined above, the tribunal does not consider that the Club via its officers exercised substantial control over the claimant in his role as manager.

Integration

63. On the issue of integration into the "business" of the Club, the claimant pointed out that he was not required to provide any equipment. The tribunal found as a fact that all necessary equipment was provided for training and matches. However, in the tribunal's view, this is an area where the provision of tools or equipment is not fundamental to the nature of the work. This can be contrasted, for example, to the ***Pimlico Plumbers*** case where tools were of critical importance to the work of the plumbers. The tribunal therefore considers that this factor is of somewhat limited significance in this case.

64. The claimant referred to the fact that he wore a coat with the Club logo on it. The tribunal does not believe that the claimant was required to wear this coat or uniform. Rather, he chose to use a coat which had been supplied primarily for the use of substitutes. The tribunal considers that little or nothing turns on this factor.

65. In his submissions, the claimant relied on the fact that he was held out as the manager of the Club. The tribunal believes this is a relevant factor which does suggest that the claimant was closely identified with the "business" of the respondent.

66. Generally, the tribunal accepts that the claimant was held out to the outside world as the manager of the Club and, to that extent, to all appearances he was integrated into the "business" of the Club.

Personal service

67. It was not disputed that the claimant was not required to, and did not in practice, seek permission for periods of holiday. He simply informed the committee of his plans as a matter of courtesy. Whilst he was away, James Kirk would generally cover for the claimant. The Club's officers did not get involved in these internal arrangements between the coaching/management team. In the opinion of the tribunal, these facts point away from a requirement of personal service.

68. Whilst the claimant attended most coaching sessions and matches, he could not always do so. On occasion, he was unable to attend due to work commitments. At no time was any action taken by the Club due to his failure to attend. In the tribunal's view, this suggests that the claimant's personal attendance and service was a reasonable expectation rather than a requirement. Generally, having heard the claimant's evidence, the tribunal concluded that the main reason for the claimant's regular attendance at training and matches was his own commendable personal loyalty and commitment to the Club and the team rather than any contractual obligation to do so.

69. The practice in relation to personal service differed to the requirements set out in the written contract document and the Job Description. Overall, the tribunal has concluded that the claimant was not required to provide personal service to the Club.

Mutuality of obligations

70. As outlined above, one of the indications of employment status is mutuality of obligations between the parties, that is the obligation on the part of the employer to provide work for the employee and on the part of the employee to perform that work personally in return for pay.

71. In this case, work was certainly provided for the claimant in the form of training sessions to be conducted, the need for match team selection and direction as to tactics, preparing the team on match day and so on. The claimant pointed to the agreement which he signed along with the job description to contend that he was required to personally to carry out all these duties.

72. The tribunal found as a fact that, from time to time, the claimant was the senior PSNI officer on call on match days and was required to, and did in fact, respond immediately to police incidents and emergencies, by telephone in the first instance. The claimant clearly owed a duty of good faith to the PSNI whilst he was on call and receiving on call payment for his availability to respond. The tribunal considers this is inherently inconsistent with the claimant's contention that he was at one and the same time actively fulfilling his duties under a second contract of employment with the respondent Club. The tribunal finds it difficult to see how this apparent conflict can be reconciled.

Consideration/payment – period from March 2016 to December 2017

73. As outlined above, the presence of consideration is fundamental to the existence of a contractual relationship, including a contract of employment. In this case, the claimant repeatedly confirmed in his evidence that he had not received any payment, that is consideration, from the respondent, save for very occasional and modest payments towards petrol expenses. The claimant was very clear that he did not expect or want pay nor did he ask for pay. When the tribunal sought to clarify this area with him, he indicated that what he was relying on solely was the content of the written agreement which he had signed on 23 April 2016 which referred to payment of £250 per month.

74. However, he had never received the said payment and, during the period from his signature of the agreement up to the termination of his relationship with the Club, the claimant had never once asked about or sought payment. The tribunal finds it inconceivable that any person who believed they were entitled to receive regular payment of remuneration would not make any enquiries or seek payment for a period of almost 2 years.

75. In considering the written agreement signed by both parties, the tribunal applied the principle set out in the ***Snook*** case as set out at para 52 above. In this case, the tribunal believes that there was indeed "*a common intention by both parties to misrepresent the true position to the outside world",* particularly outside parties such as the IFA. The misrepresentation was that there had been a substantive change in the coaching/management arrangements at the Club to satisfy the IFA's Rules regarding coaching qualifications. In reality, there was little change at the Club. Whereas the written agreement indicated that the claimant was to receive a monthly payment, in reality this continued to be paid to Mr Kirk. The term in the written contract document

regarding payment to the claimant was included for the eyes of the IFA and others to reinforce the impression that the claimant as the qualified coach was in the lead role of manager. Having heard all the evidence, the tribunal firmly believes that both parties understood and intended that, in fact, the only party who would receive payment was Mr Kirk. This was a case where there was an agreement between the parties with a common intention to mislead the outside world.

76. The tribunal does not believe that this is a case where the cautionary note regarding the risks arising from inequality of bargaining power as set out in the ***Autoclenz*** case is of much relevance. Rather, in this case, the claimant was a senior police officer and experienced football coach who had been brought into the Club precisely because of those qualities. In those circumstances, the tribunal is firmly of the view that the claimant was not overawed by the discussions at the time of the Club's promotion. Rather, he was a willing and equal participant in the arrangements. The tribunal believes the claimant was fully aware that the written agreement did not reflect what was intended by the parties and that the reality of the situation would be very different. In particular, since the claimant was fully aware of the suggestion that the money for Mr Kirk could be passed through him and asked about the tax implications of that, the tribunal is satisfied that the claimant was aware from the outset that there was never any intention that he should be entitled to monthly payment. Instead, the claimant was always aware that Mr Kirk was to continue to receive the monthly payments which he had always been paid.

77. The tribunal therefore concludes that the true terms of the agreement between the parties are different to those in the written contract. There was no agreement that the claimant should be paid for his services. In other words, there was no consideration in this arrangement.

78. That being the case, the tribunal has concluded that the arrangement between the parties was not a contract. Essentially, after March 2016, the claimant continued to be a volunteer providing his time, expertise and service to the Club due to his loyalty and commitment (which were obvious during the hearing), but without any expectation of payment.

79. Since there was no contract between the parties, the tribunal has concluded that the claimant was neither an employee nor a worker.

<u>Period after December 2017</u>

80. The tribunal has found as a fact that, in December 2017, when the claimant put in place his new joint coaching team including Colin Malone and Phil Lewis, the Club agreed that the claimant should receive £10 per week towards his petrol expenses. The tribunal has concluded that this was a gentleman's agreement between the parties and there was no intention to create legal relations between the parties. There was no other change in practice. The tribunal believes that it was the intention of the parties that the claimant would continue as a volunteer receiving some modest recompense towards out of pocket expenses.

81. Accordingly, the tribunal has determined that from December 2017 to the date of termination of his role with the Club, the claimant was neither an employee nor a worker.

Final disposal of the claims

82. Since the tribunal has concluded that the claimant was neither an employee nor a worker throughout the relevant period, all claims fall to be dismissed.

Employment Judge:

Date and place of hearing: 7, 8, 9 and 29 May 2019, Belfast.

Date decision recorded in register and issued to parties: