EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **PUBLIC VERSION**

Case Number: 4113808/2021

Held in Glasgow on 15, 16, 17 and 28 June; 11, 12 and 18 and 19 August 2022

Deliberations: 22 – 25 August, 10 October and 21 November 2022

Employment Judge D Hoey

10 **Members J Lindsay and J McCaig**

Mr R Quitongo	**Claimant** **Represented by:** **Mr M Allison -** **Counsel** 15 **[Instructed by** **Bridge** **Employment** **Solicitors Ltd]**
20 **Airdrieonians FC Limited**	**First Respondent** **Represented by:** **Mr A Maxwell -** **Solicitor**
25 **Mr P Heatherington**	**Second Respondent** **Represented by:** **Mr A Maxwell -** **Solicitor**

30 **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous judgment of the Tribunal is that each of the claims is ill founded and they are dismissed.

REASONS

1. By ET1 the claimant raised a claim for race discrimination. The respondents disputed the claims.

2. A number of preliminary issues had arisen in this case. The claimant had amended his claims. Numerous requests had been made for information and documents. A number of privacy orders had been requested in this case and a significant amount of time had been expended dealing with these applications, in respect of which separate orders had been granted and written reasons given as to why the orders were granted in the terms they were granted. An agreed abbreviation list had been agreed.

3. The hearing was conducted in person with both parties being represented. Written witness statements had been provided by each witness (with the witness statement bundle running to 98 pages). Each witness was asked relevant supplementary questions and was cross examined, with the Tribunal able to ask relevant questions.

4. As judgment was about to be issued an important Employment Appeal Tribunal judgment was issued (in relation to European law) and parties' written submissions were received which delayed the issuing of the judgment.

Case management

5. The parties had worked together to focus the issues in dispute and had, by the conclusion of the Hearing, provided a statement of agreed facts and a list of issues. The Tribunal is grateful for the parties working together to assist the Tribunal deal with matters fairly and justly and thereby achieve the overriding objective. The Tribunal had asked the parties include within the statement of agreed facts a note of the key facts necessary to determine the claims which were in dispute but this had not been done.

6. A timetable for the hearing of evidence had been agreed and the parties worked together to ensure the case concluded within the allocated time. Each witness gave oral evidence and was appropriately challenged.

Issues to be determined

7. The parties had agreed the issues to be determined by the Tribunal which were as follows:

5 **Unlawful victimisation**

Protected acts

8. Was the claimant's report on 12 September 2021 to Mr Murray and Mr Agnew of alleged racist abuse on 11 September 2021 a protected act in terms of section 27(2)(d) Equality Act 2010, specifically an allegation (expressly or by 10 implication) of direct race discrimination? (protected act 1);

9. Was the claimant's tweet on 14 September 2021 a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination? (protected act 2);

10. Did the claimant's assertions throughout the meeting with the second 15 respondent and others on 5 October 2021 amount to a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination? (protected act 3);

11. Did the claimant state/reiterate during a meeting with Mr Murray and Mr Agnew on 12 October 2021 that he had been racially abused on 11 20 September 2021? If so, did that amount to a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination? (protected act 4);

12. During a meeting with Mr Murray and Mr Agnew on 12 October 2021, did the claimant allege that he was being threatened with being dropped from the 25 playing squad *"because of the colour of his skin"*? If so, did that amount to a protected act in terms of section 27(2)(d), specifically one or both of (i) an allegation of harassment on grounds of race, contrary to section 26 and (ii) an allegation of direct race discrimination? (protected act 5);

13. Did the text message from AA to Mr Murray on 16 October 2021 amount to a protected act in terms of section 27(2)(d), specifically one or both an allegation of harassment on grounds of race, contrary to section 26; and an allegation of victimisation, contrary to section 26, associated to the previous protected act by the claimant, either: on the principle of associative victimisation or because the respondent believed that this was done on behalf of any with the acquiescence of the claimant? (protected act 6);

14. Did the claimant's solicitor's email of 27 October 2021 at 11:40 amount to a protected act in terms of section 27(2)(d), specifically an assertion of an intention to bring proceedings under the Equality Act 2010 in relation to direct discrimination (or otherwise) (protected act 7)?

Detriments

15. The claimant being dropped from squad for East Fife game on 18 September;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of protected acts 1 and/or 2?

16. First and second respondent's refusal on 23 September 2021 to permit the claimant to participate in BBC interview re racism in football;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of any or all of protected acts 1 and/or 2?

17. The second respondent's threat to the claimant's agent on 4 October 2021 to terminate the claimant's contract *"because of tweet"*;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of protected act 2?

18. Mr Murray pressuring the claimant to agree to the first respondent's third media statement on 11 October 2021;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of protected act 3?

19. Mr Murray's alleged threats to the claimant with *"consequences"* at 2 meetings on 12 October 2021;

    (a) Did Mr Murray threaten the claimant with consequences?

    (b) Did these amount to detriments?

    (c) If so, was the claimant subjected to these detriments because of protected acts 4 and 5?

20. The claimant dropped from playing squad and placed on enforced leave for 2 weeks on 16 October 2021;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of any or all of protected acts 1-5?

21. The first respondent's refusal to communicate with the claimant's agent from 16 October 2021;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of protected acts 6?

22. Continuation of claimant's enforced leave;

    (a) Did this amount to a detriment?

    (b) If so, was the claimant subjected to that detriment because of protected act 7?

23. The first and second respondent's handling of allegations against claimant, including: their failure to put the allegations to the claimant; their failure to disclose to the claimant to evidence supporting the allegations; and their failure to meaningfully investigate the allegations at all

5 (a) Did this amount to a detriment?

(b) If so, was the claimant subjected to that detriment because of any or all of the protected acts?

Unlawful racial harassment

24. Mr Thompson's conduct towards the claimant on 21 September 2021

10 (a) Was this unwanted conduct?

(b) Did this relate to a protected characteristic, namely race?

(c) If so, did the conduct have the purpose or effect of: -

(i) Violating the claimant's dignity; or

(ii) Creating an intimidating, hostile, degrading, humiliating or
15 offensive environment for the claimant.

25. First and second respondent's threat of *"material breach of contract"* if claimant participates in BBC documentary;

(a) Was this unwanted conduct?

(b) Did this relate to a protected characteristic, namely race?

20 (c) If so, did the conduct have the purpose or effect of: -

(i) Violating the claimant's dignity; or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

26. The second respondent's assertion to the claimant's agent that the claimant
25 was using the racist incident for publicity;

(a) Did the second assert to the claimant's agent that the claimant was using the racist incident for publicity?

(b) Was this unwanted conduct?

(c) Did this relate to a protected characteristic, namely race?

5 (d) If so, did the conduct have the purpose or effect of: -

(i) Violating the claimant's dignity; or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

27. The second respondent's conduct towards the claimant at meeting on 5
10 October 2022;

(a) Was this unwanted conduct?

(b) Did this relate to a protected characteristic, namely race?

(c) If so, did the conduct have the purpose or effect of: -

(i) Violating the claimant's dignity; or

15 (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

28. Mr Murray pressuring the claimant to agree to the first respondent's third media statement on 11 October 2021;

(a) Was this unwanted conduct?

20 (b) Did this relate to a protected characteristic, namely race?

(c) If so, did the conduct have the purpose or effect of: -

(i) Violating the claimant's dignity; or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

29. Mr Murray's alleged threats to the claimant with *"consequences"* at two meetings on 12 October 2021;

    (a) Was this unwanted conduct?

    (b) Did this relate to a protected characteristic, namely race?

5   (c) If so, did the conduct have the purpose or effect of: -

        (i) Violating the claimant's dignity; or

        (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

30. The first respondent's letter to the claimant on 20 October 2021;

10 (a) Was this unwanted conduct?

    (b) Did this relate to a protected characteristic, namely race?

    (c) If so, did the conduct have the purpose or effect of: -

        (i) Violating the claimant's dignity; or

        (ii) Creating an intimidating, hostile, degrading, humiliating or
15   offensive environment for the claimant.

31. The second respondent's allegations to claimant's solicitor of the claimant being concerned in the supply of drugs;

    (a) Was this unwanted conduct?

    (b) Did this relate to a protected characteristic, namely race?

20 (c) If so, did the conduct have the purpose or effect of: -

        (i) Violating the claimant's dignity; or

        (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

32. Mr Murray's conduct towards Jai Quitongo at the first respondent's stadium
25 on 29 December 2021;

(a) Was this unwanted conduct?

(b) Did this relate to a protected characteristic, namely race?

(c) If so, did the conduct have the purpose or effect of: -

(i) Violating the claimant's dignity; or

5 (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Section 111 of the Equality Act 2010

33. Did Mr Miller further allege that the claimant had been concerned in the supply of drugs?

10 (a) If so, did that conduct by Mr Miller amount to harassment, contrary to section 26?

(b) If so, did the first respondent and/or the second respondent instruct, cause or induce Mr Miller to behave in this manner?

(c) If so, does this amount to a contravention of section 111 by the first 15 and/or second respondent?

Apportionment of liability

34. In respect of any findings of victimisation and harassment, whether, in respect of each of those, they should be held as contraventions of the Act by the first respondent alone; contraventions of the Act by the second respondent alone; 20 or contraventions of the Act by the first and second respondent jointly and severally.

Remedy

35. What compensation is the claimant entitled to in relation to injury to feelings; financial loss (including loss of appearance money and loss of wages 25 following transfer of clubs) and interest.

Productions and witnesses

36. The parties had agreed productions running to 355 pages with documents being inserted in the course of the hearing.

37. The Tribunal heard from the claimant, WW (witness to the incident), MM (a family member of the claimant), AA (claimant's agent), FF (a former player of the first respondent), QQ, PC (a police officer), the second respondent, Mr Murray (manager), Mr Agnew (assistant manager), Mr Millar (formerly director of football), Mr Thomson (volunteer for first respondent) and Ms Emmerson, CEO of a charity supporting individuals with mental illness.

Facts

38. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). Where there was a conflict in evidence, the conflict was resolved by considering the entire evidence and making a decision as to what was more likely than not to be the case. The Tribunal was assisted by the parties reaching agreement, in respect of some of the facts.

Background

39. The first respondent is a football club. It is a strong community club. Apart from the playing staff who are full time the majority of those working for the first respondent do so on a voluntary or part time basis. There is no dedicated HR function and the board of directors oversee and carry out investigations.

40. The second respondent is chairman and director of the first respondent and is responsible for making the key decisions in respect of the business of the first respondent, together with the board of directors.

41. Mr Murray, with whom the claimant had a good working relationship, was the manager of the club at all material times. Mr Agnew was the Assistant Manager at all material times.

42. Mr Thomson has supported the club for over 40 years and is a volunteer whose principal tasks are to help set up training and assist with logistics.

43. Mr Millar, who was director of football until February 2021, has over 40 years experience in the football industry. He kept in regular contact with Mr Russell, Director who would seek Mr Millar's advice. Mr Millar also kept in regular touch with the claimant's football agent. AA would regularly call Mr Millar for advice about a range of football and player related matters.

44. The claimant is Black African (his mother being white Scottish and father being black Angolan). He is a professional football player and was performing well when playing for the first respondent. When the claimant played with the first respondent his football agent was AA.

45. On 10 June 2021, the claimant signed a one year fixed term contract with the first respondent for the period 10 June 2021 to 10 June 2022. The contract signed by the claimant was based on the template made available by the Scottish Professional Football League (*"SPFL"*) and which must be used by clubs participating in the SPFL which the first respondent did. The first respondent has the right to select the claimant to play in a game or to choose not to select him. It is for the manager of the first respondent to select the playing squad taking account of the mental and physical position of the available players.

46. The first respondent has an anti racism policy which states that there is a zero tolerance approach towards racism. It aims to create and maintain an environment for staff and spectators free from racial harassment, abuse and violence. Everyone connected with the club has a responsibility to prevent racist behaviour. Proven harassment, abuse or violence will result in disciplinary action and police involvement as appropriate. A racist incident is defined as *"any incident that is perceived to be racist by the victim or any other person"*.

Claimant's performance

47. Prior to 11 September 2021 the claimant had played in five of the six fixtures (the claimant having been unfit for one game) with the claimant playing for the full game. No concerns had been raised as to the claimant's performance or commitment.

5 *Issues at game of 11 September 2021*

48. On 11 September 2021 the first respondent was playing an away game against Queen's Park at Firhill stadium in Glasgow. The claimant played the full game.

49. A family member of a player subsequently alleged that during 11 September 10 2021 game, she overheard a person within the stand shout *"fucking black bastard"* (or something similar) at the claimant (*"the alleged racist incident"*).

50. The claimant became aware of this on the evening of 11 September 2021 as a result of a voice note sent by Mr McCabe to an Airdrie players WhatsApp group who said: *"A family member was obviously at the game and my dad* 15 *was shouting and some guy an Airdrie fan shouted eeeh "fucks sake quitongo" or something "you fucking black cunt" or something. It was racist. And my wee one heard it and turned round and said "he no a nice man"*. It was initially reported that one family member (rather than the actual other family member) had heard a person shout a racist term. The claimant and 20 colleagues were members of the WhatsApp group. Further comments were made on the WhatsApp group including that it was embarrassing *"shouting stuff like that when kids are about"*. Mr McCabe commented: *"A know any more and think big kev* [the claimant's father, also a professional footballer] *would of given him the coconut"* followed by a laughing emoji and then he said 25 it was terrible and that was why he did not want his children going to the game and would need a family section.

51. On 12 September 2021 the claimant reported the alleged racist incident to Mr Murray and Mr Agnew. The claimant told Mr Murray and Mr Agnew that he had been made aware of the alleged racist remark that had emanated from 30 the away section when at Firhill. He said Mr McCabe had made him aware of the alleged remark and it had been a family member who had told Mr

McCabe. The claimant had said that although he had not heard the remark he wanted to raise the issue as his family could have overheard it if they had been at the match. The claimant was asked if he was OK, and he said he was, and he was told the matter would be passed to the first and second respondent. The second respondent was out of the country at the time but was informed by telephone. The second respondent told the claimant's agent that such behaviour would not be tolerated and an investigation would take place.

52. On 13 September 2021 Mr Murray spoke to the claimant and let him know that Mr Murray had raised the issue with the second respondent and that the first respondent would investigate the issue and that the claimant had the first respondent's full support. The claimant appreciated it.

53. The claimant had been in contact with his agent about the matter. He told his agent that he wanted the club to issue a statement or he would do it himself. The claimant had wished a statement to be issued making it clear that racism was not to be tolerated which could act as a deterrent to further acts. The claimant's agent told the claimant the club was investigating matters and that the claimant's family was to be offered a box at the next game. The claimant asked if no statement was being issued and his agent told him that the matter would be investigated first. His agent had been told that the claimant was well liked by the fans and the respondents.

Respondents decide to investigate

54. The respondents undertook to investigate what had happened and take appropriate action. The second respondent oversaw the investigation and decided upon the appropriate action and outcome. The second respondent believed there was more chance of identifying the perpetrator if the issue was kept out of the public domain. The second respondent discussed matters with his fellow director, Mr Russell, and agreed to progress.

55. The second respondent had several conversations with other people involved with the club and he asked Mr Russell to speak with long serving members of staff and contact fans who were in attendance to see if he could understand

what happened. The second respondent told Mr Murray what was happening and to let the claimant know he had the respondents' full support. The second respondent kept in touch with the claimant's agent (and told AA that he was playing well). The claimant's agent had not advised the second respondent that the claimant wished a statement to be issued.

Claimant upset

56. The claimant was upset that the matter had not been resolved sooner. He stays with family members, including his brother, Jai Quitongo, who is also a professional footballer. The claimant appeared down and a family member knew something was troubling him on 13 September 2021. The claimant told the family member what had happened who was upset. That family member's reaction also upset the claimant further.

Claimant does not feel match fit and tweets about incident on 14 September 2021

57. On 14 September 2021 the claimant reported to the stadium for a home game against Alloa. The alleged racist incident had been *"eating away"* at the claimant who was upset. He did not feel in the right mind to play. The claimant's parents attended the game and viewed it from the box provided to them. The claimant played well and the team won. The claimant was agitated about the alleged racist incident and feared repetition.

58. Following the game, the claimant was asked by a physio what was wrong and he explained how he felt because of the incident. He was told by the physio that the physio's wife had witnessed racial abuse of a player in an earlier year. Mr Thomson was present during the discussion. He gave his view which was that the event had not occurred. He believed this to be so as that was what he had been told by those whom he knew who had been present. Mr Thomson was concerned that the claimant was becoming agitated and wished to assure the claimant that there had been no racist abuse (in his view). He wanted to calm the claimant down and assuage any concerns he had.

59. After the discussion the claimant was upset and went to his car and on 14 September 2021 the claimant tweeted about the alleged racist incident saying: *"Cant believe I'm actually writing this but here goes… Saturday at my football game away to Queens Park I was subjected to racial abuse by one of my own Airdrie supporters, now as I'm not surprised with this still in football I am more than hugely disappointed to hear it from a section where my family would normally be sitting. Thankfully my family weren't there but it makes no difference it shouldn't be in football and I absolutely don't deserve to be personally abused for my skin colour I'm all for banter with fans etc but I will not tolerate it whatsoever. I am proud to be black and proud to be who I am I may not be the best footballer for fans but I shouldn't be singled out period. The club have a pending investigation and are supporting me as much as they can but you cant always catch the idiots that make these remarks which upsets me. This is not a cry for sympathy as [that] is the last thing Id want but more needs done for cowards to change!!!"*. The claimant felt uplifted at having issued the tweet.

60. The claimant's tweet was open to misinterpretation as he stated that he was disappointed *"to hear it"* which suggested the claimant heard the abuse. The claimant had not heard the abuse as it was reported to him by a colleague's relative. The claimant referred to the fact that the respondents were supporting him as much as they could, which was the claimant's belief.

61. The second respondent was shocked that the tweet had been issued by the claimant. He had understood that under a player's contract the club had 14 days to investigate matters. That was a misunderstanding as to the position. The second respondent was unhappy the claimant had not allowed the first respondent the 14 day period to investigate prior to making a public statement. He believed publicity could hinder the investigation. He believed the tweet was misleading as it suggested the claimant had heard the abuse. He was also unhappy as the tweet suggested that a fan was guilty of racist abuse (when the investigation had not determined exactly what had happened). The second respondent was concerned such statements could

damage the reputation of the first respondent and its fans, when the investigation was at a premature stage.

Incident discussed on radio show 15 September 2021

62. On 15 September 2021 Mr Bartley, a former professional footballer and campaigner against racism, gave an account of the alleged racist incident on GoRadio. Within that, he asserted that the claimant had been racially abused on 11 September 2021 and that a member of the claimant's family had confronted the individual responsible for the alleged racist abuse. Mr Bartley had spoken to the claimant before the radio show.

Respondent issues statement about position on 15 September 2021

63. On 15 September 2021 the first respondent issued a statement on their website and twitter feed about the alleged racist incident as follows: *"Following a social media post made by a current member of the Airdrieonians squad we can confirm that the club are conducting an investigation into alleged racist remarks made by a supporter. As a club Airdrieonians will not tolerate racism. Any individual using racist language is not welcome at Airdrieonians FC and will face a lifetime ban from attending matches. Anyone who witnessed or heard the incident during the match against Queen's Park last Saturday should contact the club in the strictest confidence at boardofdirectors@airdriefc.com. Rico Quitongo has the full support of everyone at the club. Many of our supports have contacted the club directly expressing their support and respect for Rico. Pending the results of the investigation the club will be making no further comment".*

64. The respondents wished to ascertain if there was anyone who had information as to the incident and had hoped that they would come forward following the statement the first respondent issued.

Events following the tweet

65. Mr Murray telephoned the claimant on 15 September 2021 to ask if he was OK and provided contact details for Mr Russell, director, in case the claimant

wished to discuss the matter further. Mr Murray was concerned about the claimant's wellbeing.

66. Mr Agnew also telephoned the claimant to check on his welfare. In the early evening Mr Murray texted the claimant to ask if he wished to report the matter to Police Scotland. The claimant said: *"if I genuinely thought the man will be caused then Id say yes but I know how these things play out and genuinely believe he wont be back at games any time soon so I don't think police need involved"*. He was told to let Mr Murray know if he changed his mind. The claimant's response was *"Again gaffer cant think you enough for backing me. Means the world"*.

Issues about the incident

67. On 16 September 2021 Mr McCabe told Mr Murray that the incident had been heard by a different family member to that which had initially been reported. Mr Murray then called the individual and asked that person questions about the incident. He asked if screenshots were provided could they point out the person. The person said they could not and was unable to say whether the person was male or female or an adult or a child. The person was unable to describe the person as the comment came from behind. Upon being asked as to what they said, the person said, *"Rico made a bad pass or something and I heard "fucking black bastard". If I heard it again I was going to challenge someone."* That differed to what had initially been communicated.

68. The person was asked when they heard it and said it was the 60th or 90th minute after another altercation in the stand in the second half. The altercation had occurred mid way through the second half of the game.

69. The person said that no one else had heard the remark (and the person had asked their family member who was sitting next to them but that person had not heard it). It appeared that those in the vicinity of the witness had not heard what the witness said was said.

70. The person said they was sitting in a specific place at the end of the row. Family members had accompanied them as was another player's mum and

dad and children and another player's partner who was sitting nearby. The person said they would be happy to provide Police Scotland with a statement (which they later did saying that they believed the voice was from a male).

71. The information before the respondents at the time was limited as the person was unable to determine whether the person they believed they heard was male or female, adult or child (although they subsequently told the Police they thought it might be male).

Others say nothing racist was said

72. There had been around 100 fans from the first respondent at the game. A number of fans had been spoken to and said they had not heard anything supporting what had been reported. Some suggested fans had shouted *"get back Rico you have drapped your man"*. Those persons sat near where the witness had sat but they did not hear what was alleged.

73. The investigation that was carried out was carried out on an informal basis by colleagues of the second respondent seeking information from individuals known to them, and by the club's statement asking for anyone with information to come forward. The lack of HR resource resulted in a non structured approach to the investigation but the matter was investigated and there was no information disclosed that supported what had been communicated to the respondent by the individual (with that witness being unable to identify the gender of the individual or age/age band).

74. The first respondent sought to obtain CCTV footage but the footage did not have any audio and so it was of no use.

Claimant not in fact match ready for 14 September 2021

75. On 16 September 2021, Mr Murray and Mr Agnew held a meeting with the claimant who stated that he had not felt mentally ready to play the match against Alloa on 14 September 2021 although he had not disclosed this prior to the match in question. Mr Murray was surprised as the claimant had not disclosed this to him prior to the game and there had been no indication to him prior to the game that the claimant was not fit to play the match. Mr

Murray was concerned for the claimant's well being and did not wish to put him in a position that could further affect his wellbeing.

Claimant not picked to play for 18 September 2021 match

76. On 18 September 2021, Mr Murray told the claimant that he would not be picked for the forthcoming match against East Fife.

77. Mr Murray told the claimant that the reason why he was not playing was because he did not consider the claimant to be match fit. The claimant had informed Mr Murray after the previous game that he had not been mentally fit, although he had been selected. On this occasion the claimant was not selected as Mr Murray was not satisfied the claimant was mentally ready for the game. Deciding who plays in each game is a matter for the manager and on this occasion, Mr Murray was not satisfied the claimant was fit to play the game. The board of the first respondent does not make final decisions in relation to football matters, which was a decision for the manager. The claimant's manager was mindful of the previous game when the claimant had not indicated he was unfit and yet was not mentally fit to play. Mr Murray concluded that the claimant was not fit, despite saying he was. The sole reason for being dropped from the squad for the game on 18 September was the manager's desire to put the best team on the pitch.

78. The claimant texted his agent to say that *"gaffer just pulled me"* (which meant he had been told he was not playing). The agent said that was *"good management"* with which the claimant disagreed. The agent said that *"heads not there u said"* to which the claimant said that he was not fit during the week but the weight was off his shoulders having issued the tweet. He said that he believed he was being punished *"for this"*. He said he had been told it was to protect him and the club. He said he had not wanted to play on Tuesday and after he put his tweet out he felt a weight was off his shoulders. He said it was *"not gaffers fault… if it was up to him he wants me to play every game"*.

Claimant learns of alleged comments made about him on 21 September 2021

79. On 21 September 2021 a colleague of the claimant told the claimant Mr Thomson had called him a *"fanny"*. The colleague told the claimant this was because of the stance he took over the racist incident, which Mr Thomson had said did not happen. Mr Thomson had not called the claimant a *"fanny"* and had been supportive of the claimant. Mr Thomson had a good relationship with the players, including the claimant. Mr Thomson was protective of the club and its reputation and equally protective of its players. Mr Thomson knew of the allegation but had been told to keep it confidential and not discuss it. The claimant's colleague was unhappy that Mr Thomson did not believe the incident had occurred and consequently believed that he was inferring the person who reported the alleged racist incident was a liar. The colleague was unhappy with Mr Thomson.

Claimant refused permission to participate in documentary

80. On or around 20 September 2021 the claimant was contacted by Mr Bartley who is a professional footballer and assistant manager. He is a well-known anti-racism campaigner and equality and diversity adviser to the SFA board. Mr Bartley had seen the claimant's tweet and asked him if he wished to participate in a documentary about racism in football. The claimant was keen to do so and agreed as he wished to raise awareness. An interview was arranged for 23 September 2021.

81. In terms of the claimant's contract with the first respondent the claimant requires to be given consent by the first respondent for any interviews or media work.

82. The claimant did not believe it would be controversial from the first respondent's perspective and on 23 September the claimant sent a text to Mr Murray at 0940 saying: *"Hi gaffer Just a quick one Have a interview later on and its not to do with the club etc more on racism as a whole and the affects (sic) it has in society and people aftermath, something I strongly believe in has to change, was just keeping you in the loop"*.

83. Mr Murray replied saying *"OK ill pass on mate"* and then said the club did not want any statements issued while the investigation was ongoing. Mr Murray

had contacted the second respondent to discuss the matter. The second respondent was concerned about the impact external statements could have given the internal investigation was ongoing. He provided wording to Mr Murray who then sent the claimant a text: *"The board of directors will regard this as a material breach of contract as you have already been instructed not to discuss the matter with the media as you could incriminate yourself as an investigation into serious allegations are still ongoing. I wouldn't do it Ricco personally. Can talk later at training tho if you want"*. The claimant replied: *"Okay gaffer. Topman appreciate it"*.

84. The claimant had also told his agent who had advised him that *"You cant do a interview mate. Ive already said to a family member about it. Its breach of conduct on a contract you will have breached it twice and maybe think it will help you but it wont. Clubs wont touch you in the summer"*. The claimant explained that he would not talk about the club. His agent said *"Don't do it atall. I spoke to chairman and he's tried to call me today. You need to concentrate on your football. No interviews nothing. You haven't done enough to earn a move for next season yet. The last thing you need is to not play"*.

85. The second respondent had advised the claimant's agent that the claimant had confirmed he was doing an interview on racism after being told there was to be no discussions with the media. Mr Murray was to reiterate the position to him. It would be a disciplinary matter. The second respondent told the agent that *"this is causing unnecessary embarrassment and work"* and then *"3 days before our next game and that is his priority after being told by you and the manager to focus on football"*. The agent agreed with the second respondent.

86. It was the claimant's agent's view that the claimant was seeking publicity and used the alleged racist incident to do so. This was a matter the second respondent had discussed as there had been some within the changing room who had shared that view.

87. The second respondent believed that it was premature to make any public statement on the issues whilst the investigations were ongoing. He was

concerned any media appearance by any player could bring further scrutiny on the club when the investigations were ongoing.

88. On 23 September 2021 the first respondent declined to permit the claimant to take part in a documentary to help highlight racism in football. Mr Murray informed him that if he did it would be regarded as a material breach of his contract by the board of directors. The sole reason for the decision not to allow the claimant to participate in the interview was the desire to protect the integrity of the investigation and reputation of the claimant and the first respondent.

Claimant plays in game of 25 September 2021

89. The claimant had been training well and Mr Murray decided to play the claimant for the full game on 25 September 2021.

Further issues regarding incident on 11 September 2021

90. The witness was contacted by Police Scotland and subsequently provided a witness statement to Police Scotland. Police Scotland were unable to take their investigation into the alleged incident any further because they could not identify a perpetrator.

91. The first respondent reported the alleged racist incident to the SPFL on 27 September 2021.

Conclusion of investigation into incident of 11 September 2021

92. Each of the second respondent, Mr Russell (Director), Mr Thompson (Kit Man), Ms Ballantyne (Club Secretary), and Mr Murray (Manager) participated to some extent in the internal investigation carried out by the first respondent. The overall decision on that investigation was taken by the second respondent.

93. The second respondent considered the material he had obtained. He set out an overview in writing which confirmed that an investigation was undertaken with no public comments to be made until it was complete with the claimant's agent advised. Some long term supporters the directors knew were asked if

they heard anything. The consistent feedback was no such comments had been heard, and if they had been action would have been taken (either individually or via the stewards). The second respondent's note stated that Mr Murray had asked the captain to ask for statements from those who had heard anything. No response had been received. Following the claimant's tweet the club had to make a statement *"due to media coverage"*.

94. The second respondent's note stated that following discussion with Mr Murray it was agreed to speak to the captain again at which point Mr Murray was advised that it was not a specific family member of the witness but another family member. It was agreed to seek information from the person which was done. CCTV images did not assist.

95. The summary stated: *"After assessing all the available information we have concluded that there is not enough evidence to substantiate the allegation. We have one witness claiming to have heard the racist comment who cannot determine whether it was a man woman adult or child and could not identify the person with the help of images. The witness had family members sitting next to them and close by who cannot corroborate. We have more witnesses confirming that it did not happen as there was a fairly small travelling crowd of long standing supporters. Rico confirmed he did not hear the incident but on his public statement confirms that he did hear it. Rico confirmed to his agent he did not hear the racist comment. We have in principle agreed with Rico's agent that a joint statement be issued confirming that there was a misunderstanding and Rico is satisfied with the club's investigation. The content of this has still to be agreed".*

96. Ms Ballantyne (Club Secretary) sent the document to the second respondent.

97. The second respondent sought to agree a joint statement with the claimant and had advised the claimant's agent as to the position. The second respondent was keen to characterise the alleged abuse as a misunderstanding as he believed that would protect both the claimant and the club. The second respondent believed saying otherwise could tarnish the reputation of the club. Based on the information he had available it was

unclear what had been said. That led the second respondent to wish to describe the incident as a *"misunderstanding"*.

98. The second respondent spoke to the claimant's agent who advised that the claimant was unhappy with this being characterised as a misunderstanding. A number of individuals believed that the claimant had been using the incident to seek self publicity, which was the claimant's agent's view.

Discussion between second respondent and claimant's agent

99. On 4 October 2022, the second respondent spoke with the claimant's agent. He advised him that the investigation had been inconclusive. The second respondent explained that one way forward would be to agree a joint statement referring to the incident as a misunderstanding given the results of the investigation. The second respondent stated that he was concerned about the reputation of the first respondent if there were suggestions that the incident had occurred.

Claimant meets with respondent on 5 October 2021

100. The second respondent had advised the claimant's agent that he wished to sit down with the claimant and agree a joint statement to allow the parties to move on. The claimant's agent had been told by the second respondent that the investigation had not been conclusive and it was the second respondent's opinion that the issue was more likely than not to have arisen as a result of a misunderstanding.

101. Mr Agnew sent the claimant a text at 9.44pm on 4 October 2021 asking him to *"come in for a 5pm tomo"*. The claimant agreed.

102. On 5 October 2021 the claimant attended the stadium and was met by the second respondent, Mr Murray and Mr Agnew. The purpose of the meeting was to discuss matters albeit no formal agenda had been issued.

103. Within their ET3, the respondent allege that the claimant acted aggressively during the meeting. The claimant did not act aggressively during that meeting. The claimant was and appeared agitated during the meeting which became

increasingly pronounced when the second respondent disclosed the outcome of the investigation and his view, which was that it was more likely than not to have been a misunderstanding, something the claimant was not prepared to accept.

5 104. The claimant chose to covertly record the meeting as he wished to *"cover himself"*. He did not know exactly what the purpose of the meeting was, not having met with the senior managers in a meeting before. When he saw the second respondent's car in the car park, he decided to switch his mobile phone to record so he had a record of the meeting which took place in the 10 boardroom.

105. The second respondent conducted the meeting which lasted for almost an hour. He explained that the police were investigating the incident. He summarised what had been discovered during the investigation. One person had said the comment had been made but the witness was unable to say 15 whether the perpetrator was male or female, adult or child and nobody sitting near the witness appeared to have heard anything. Ultimately the second respondent said that he did not believe the comment had been made and that they would need to agree to disagree. The second respondent was concerned about the tweet the claimant had issued and explained that given 20 the investigation had been inconclusive he was keen to work with the claimant to draw a line under matters and move on. A draft statement was provided to the claimant and read out. The claimant was not prepared to agree to that statement. The claimant believed a spectator had racially abused him. He was asked to prepare a revised statement with his advisers which the parties 25 could seek to agree with a view to issuing a joint statement. The claimant had not stated that he was not prepared to issue a joint statement and the second respondent reasonably believed the claimant would consider matters and revert.

106. The second respondent wished to agree a way forward and move on and 30 focus on football. The second respondent said he did not want the club tarnished because of one person saying a racist remark and sought the

claimant's agreement to a joint statement, giving the claimant time to consider what he wanted to say.

107. The claimant was upset during the meeting as he believed the investigation had been undertaken too quickly and the issue had not been taken as seriously as it ought to have been. He believed he had been subjected to a racist comment, even although he had not heard it. He was unhappy that the second respondent did not believe what he had been told, irrespective of the fact that no one else had heard the comment.

108. On 6 October 2021, Mr Agnew asked the claimant if he had worked on wording for a statement or if he wished to provide feedback on the draft that had been prepared.

109. On 9 October 2021, the claimant played for the full game which the first respondent played.

Claimant refuses request for joint media statement

110. On 11 October 2021, the claimant refused the first respondent's request to issue a joint media statement about the alleged racist incident which had been prepared. The proposed wording of the statement was: *"AFC has conducted a thorough investigation into the alleged racist remark towards Rico Quitongo and have concluded that there is insufficient evidence to take further action. On the basis that we have no more than one witness to one alleged unidentifiable perpetrator still one too many for all of us, we have asked Rico to give our supporters who attended the game at Firhill the benefit of the doubt as the support and backing of Rico for zero tolerance of racial abuse has been unanimous throughout the club. Rico is satisfied that the club has explored all options to identify the alleged perpetrator and he now wishes to draw a line in the sand and focus on football. The club and our supporters will continue to be vigilant and work together to ensure that all forms of abuse towards our professional football players, management and staff is eradicated as there is simply no place for this at our club."*

111. The claimant had been asked by Mr Murray by text if he wanted to chat about the statement as the club was *"looking to move on it tomorrow"*. He offered to discuss matters. The claimant was not prepared to agree to a statement being issued by the respondents. While the claimant had wished for a statement to be issued, he was not happy with the approach taken by the respondent. The claimant was of the view that any statement the first respondent issued would not be a joint one.

Respondent issues media statement – 12 October 2021

112. On 12 October 2021 the first respondent issued a statement on their website and twitter feed about the alleged racist incident. They had sought to agree a position with the claimant but in the absence of agreement the board decided to issue their own statement. The statement had the title *"Club Statement – Racism Allegation"* and stated*: "Airdrieonians FC has conducted a thorough investigation into the alleged racist remark towards our player Rico Quitongo and have concluded that there is insufficient evidence to take further action. On the basis that we have no more than one witness to one alleged unidentifiable and indistinguishable perpetrator, we have now exhausted all possible options. We will continue as a club, alongside the whole of Scottish football to have a zero tolerance approach towards racism. It has been an important process for all concerned to ensure that if a supporter of Airdrieonians FC did make this alleged remark that it be dealt with by the relevant authorities. It was also important to ensure that our club and supporters as a whole were not unfairly accused of using racist language. We believe that this process has been a vindication. Everyone involved at Airdrieonians will continue to be vigilant and work together to ensure that all forms of abuse towards our professional players and management is eradicated as there is simply no place for this at our club."*

Claimant wishes statement to be retracted

113. The claimant was unhappy with the statement and had taken advice from his union. He wished to raise his concerns with Mr Murray. On 12 October 2021 the claimant attended a meeting with Mr Murray and Mr Agnew at which he

informed them that he wished the second respondent to retract the 12 October 2021 media statement. He played the voice recording he had received about the alleged racist incident. He said the club's statement could lead to an inference that he was a liar. Mr Murray told the claimant that it was unlikely the statement would be retracted as the first respondent was keen to move on and focus on football.

114. On 12 October 2021, the claimant attended a second meeting with Mr Murray and Mr Agnew. He reiterated his request for the 12 October 2021 media statement to be retracted. The claimant was again told that it was unlikely the respondents would agree to retracting the statement as they wished to move on and focus on playing football. The claimant was upset and wanted the statement retracted.

115. After training on 12 October 2021, a colleague of the claimant stood up in the player's dressing room and announced that they would be standing by the claimant and requesting a meeting with the second respondent. The claimant had been told that a meeting had not taken place and the players had been told that the statement would not be retracted and everyone had to move on.

116. On 12 October 2021 the claimant's brother Jai Quitongo issued a tweet saying: *"Thorough investigation? It's all about looking good rather than doing good for some people lol #BLM"* whilst retweeting a newspaper tweet that said *"Airdrie drop racism investigation after Rico Quitongo said he was abused by one of his own fans"*.

A family member of the claimant attends stadium

117. On 15 October 2021 a family member of the claimant's attended the stadium seeking to speak with Mr Murray or the second respondent. The family member was angry about how that person perceived the claimant had been treated. The family member was unable to meet with Mr Murray or the second respondent.

Claimant fails to return manager's calls

118. On 15 October 2021 Mr Murray and Mr Agnew tried to speak with the claimant. They ask him to return their calls, but the claimant did not do so. He was in the barbers at the time and chose not to return the call.

119. A colleague of the claimant texted the claimant to ask him to *"call the gaffer"*. He had told the claimant that he was playing. The claimant responded: *"Nah fuck that mate"*. The claimant's colleague said he wanted to make sure the claimant was OK and try and sort *"this out".* The claimant replied: *"Aint interested in what they've got to say mate Had there time to support but didn't"*. His colleague encouraged the claimant to call Mr Murray or Mr Agnew. The claimant knew his manager and assistant manager wished to speak with him and they had called him, although they had not left a message. The claimant chose not to return their calls.

120. As a result of the claimant's refusal to answer the calls from Mr Murray and Mr Agnew and given the claimant's family member had attended the stadium seeking to speak with Mr Murray or the second respondent (despite the claimant not having raised any further issues or concerns at that time) Mr Murray was concerned that the claimant was not mentally ready to play the forthcoming game. He considered that there was a real risk the claimant would be distracted and mentally unfit to play.

Claimant unilaterally placed on cooling off period

121. On Saturday 16 October 2021 Mr Murray informed the claimant that he was to be placed on a two week *"cooling off period"*. He was not permitted to train with the first team during that period. He was not selected for matches during that period. No prior notice had been given to the claimant about this.

122. The claimant had been due to be playing the next game until a family member had attended the stadium and the claimant had not returned his manager's and assistant manager's calls. Mr Murray and Mr Agnew were concerned that the claimant was not mentally fit to play at that stage. Mr Murray believed that the circumstances (including the statements that had been issued) had led to the claimant becoming agitated and not in a mental state to participate in the match.

123. Mr Murray and the second respondent decided that it would be beneficial for the claimant to take time away and come back to the playing squad. This was called a *"cooling off period"* and was to last (initially) for 2 weeks. The rationale was that the claimant be given a break from the circumstances that had caused the claimant to feel agitated and allow him to come back fresh and concentrate on football.

124. The claimant was given full access to physio services and the gym and he was paid in full. He was removed from first team training and was removed from selection for games during the cooling off period.

125. The allegations of racism were entirely unconnected to the decision to place the claimant on a cooling off period.

Second respondent's concerns

126. The second respondent was concerned that mistruths had been communicated by the claimant and others about the issue. He was concerned that the claimant had issued a tweet which he believed contained inaccuracies when the investigation was ongoing (and no public statements were to be made) and that publicity had been given via radio broadcasts which also contained inaccuracies. The second respondent was keen to try and ensure the investigation was concluded and a joint statement was reached, allowing the claimant and respondents to move on. The respondents were concerned that the claimant was not mentally fit and wished to give him *"time out"*.

Claimant's agent's response

127. Following this, on the same date, the claimant's agent sent out a tweet as follows: *"I cannot believe being a victim of racial abuse results in you being virtually suspended for 2 weeks from your employers/club. When will the club tell the fans about the 'witnesses' and show some respect to these people instead of brushing things under the carpet…'.*

128. Later on that day, namely 16 October 2021, the claimant's agent had an exchange of text messages with Mr Murray. He said that he could not believe what he had heard from the claimant. He said to Mr Murray: *"I respect you*

for the career you've had big clubs. Surely in your head you know this isn't right? A boy you signed has been hung out to dry, been called a liar by a director who is trying to sweep this under the carpet. Rico is "suspended" for 2 weeks for being racially abused and use [sic] speak about mental health a lot. You have backed the chairman up on this showed no support for Rico or stood up for what's right. I fully get that the directors hire and fire and you need to watch what you say or do. The boy is a victim. I will be taking this further its disgusting." Mr Murray replied stating that Police Scotland is handling the situation and all club employees had no further comment to make. He was also advised that his messages were now blocked as the first respondent no longer wished any form of contact with him.

129. Relations between the claimant's agent and Mr Murray had been strained. The claimant's agent had been angry with Mr Murray the previous season because one of his players had not been selected. Disagreement had ensued and any contact from the agent was via the second respondent (and not the manager). Difficulties had arisen in relation to the relationship with the second respondent and the claimant's agent too. The decision to block communication amongst the first and second respondent and the claimant's agent impaired the agent's ability to effectively represent the claimant (and one other player whom he represented who played at the club). The claimant's agent's tweet had contained errors with regard to the position which caused the first and second respondent concerns. The second respondent was unhappy that misinformation had been communicated by the claimant's agent and the first respondent decided the claimant's agent should have no lines of communication with the club, with any matters the claimant wished to discuss being via the claimant directly, his solicitor (who was in communication with the second respondent directly) or via his union.

130. The sole reason for cutting off contact with the claimant's agent was the respondent's belief that the agent was responsible for misinformation and communicating mistruths about the claimant. The assertion that the Equality Act had been breached was in no sense whatsoever a reason for the decision.

Claimant given an explanation for the cooling off period

131. On 18 October 2021 the claimant sent Mr Murray a text saying: *"Just want to confirm that on Saturday you told me to stay away from training and games for two weeks, just want to protect myself as I have nothing in writing. Also to confirm the reasons you gave me for not playing against Falkirk were that a family member turned up at the ground asking to speak to you and you cant have that happen and that you felt I was not in the right state of mind to play. Would be grateful if you could confirm."*

132. Mr Murray did not reply to the text but on 20 October 2021 the first respondent sent a letter to the claimant with an explanation, referring to the text message from the claimant asking about the cooling off period stating that *"the board of directors requested this [the cooling off period] due to various recent events. The club are of the opinion that the comments made by Marvin Barclay on the Go Radio Football Show on 15 September were inaccurate and misleading. We are receiving legal advice in relation to this deliberate misinformation which has been detrimental to the club. This followed from your public statement on Twitter dated 14 September 2021 which contravened your agreement with the club that an investigation would be conducted internally in relation to this serious allegation. This also contravened your contractual obligations which allows the club 14 days to deal with such matters."*

133. The letter continued: *"There have been several social media accusations made by people associated and connected to you casting aspersions against the club and its board of directors. The club were also made aware and received a copy of a direct social media communication between you and a supporter not portraying you or the club in a good light. A family member arrived at the stadium on Friday 15 October looking to confront the manager and director Mr Hetherington. You subsequently refused to accept telephone calls from the club management team on the evening of 15 October."*

134. It continued: *"Events have clearly spiralled out of control and the club have referred the entire case and all information gathered by the football club to North Lanarkshire Police. With that in mind the board of directors along with the football management team felt it best that you had 2 weeks paid leave to*

allow the police investigation to progress and we will reassess the situation in relation to the cooling off period at the end of the 2 week period or when the police investigation is concluded. In the meantime Airdrieonians Football club head of medical has been instructed to provide you with a personalised training plan to ensure you remain fit for your return to football."

135. The letter ended stating that the letter was to remain strictly private and confidential and was not to be distributed to any third party or placed in the public domain.

136. The direct social media communication referred to was contact the claimant had made contact with a fan he had found online who had called him a liar with the claimant contacting the fan to call him a *"loser"*.

Police investigate but find nothing

137. In the course of October the second respondent concluded that Police Scotland should be informed. Although the claimant had not asked that the matter be remitted to the Police, the second respondent was of the view that given the claimant was unhappy with how matters had progressed (and in particular the fact no clear evidence had been obtained to identify the perpetrator or what had happened) the matter would be given to the police to see if they could take matters any further.

138. The first respondent provided Police Scotland with statements from Mr Murray and Mr Agnew and the claimant's tweet. The officer had been told that the first respondent had concluded its internal enquiries and he was tasked with identifying whether a crime had been committed. Around 20 October 2021, he spoke with the claimant and the witness. Given only one person had said the event had occurred but could not identify a suspect (or provide the gender or age) and in the absence of further leads there was no further action the police could take.

Claimant issues a statement

139. On 22 October 2021, the claimant issued a joint statement with PFA Scotland regarding the alleged racist incident. The statement noted that the union had

been advising the claimant *"following allegations that he was racially abused by an Airdrieonians fan during the match against Queen's park on 11 September 2021"*. The statement noted that the union's solicitors were considering rights under the Equality Act 2010 and as the matter was in the hands of their solicitor no further comment would be made. The claimant's statement thanked the union and said he was working closely with the union and their lawyers.

Allegations as to claimant arise

140. On 19 October 2021 the second respondent was told that there was information circulating that said the claimant and his brother had been involved in criminality. The information and communication had been unsolicited but was given to the second respondent to ensure he knew what was being said in the event that the matter did make it into the public domain. The person who told the second respondent gave him details of two individuals who had confirmed this. The second respondent spoke with both individuals who confirmed the information was correct. The second respondent had not dealt with this before and sought counsel from fellow directors. He was not sure how to deal with it.

141. The individual who contacted the second respondent had received a message as follows: *"One of my das mates was pals with a family member of Rico's afore this and she told them that during the summer Jai owed some gangster money for powder and he got dealt with that's why hes not been playing for QP. And ricos's been driving him about selling. It's 100% true, The two of them think their Ronnie and reggie Kray"*. The second respondent saw the message, which was sent to him. The recipient wanted to ensure the club had prior knowledge in the event the matter became public.

Cooling off period extended and claimant's solicitor advised

142. On 27 October 2021, during a call with the claimant's solicitor, the second respondent advised that the claimant's leave of absence was being extended as the first respondent had to investigate allegations that the claimant was involved in the supply of Class A drugs. The claimant's solicitor said that the

allegations would need to be investigated as they may not be true. The second respondent advised the claimant's solicitor that the claimant was popular and well thought of and he did not wish the allegations to get into the public domain.

143. During a telephone call with the claimant's solicitor, the second respondent explained that there had been allegations and that he wished to extend the cooling off period to conduct further inquiries into this issue.

144. On the 27 October 2021 at 19:19, the claimant's solicitor emailed the second respondent requesting details of the drug dealing allegations. The email stated that the solicitor had been advised by the second respondent that the special leave had been extended *"in order to investigate allegations that he had been dealing in/taking class A drugs"*. The solicitor noted that the second respondent told her that the first respondent had been recently informed of these allegations by two members of the public who had stated the claimant was involved in this criminal enterprise (acting as driver) along with his brother. The solicitor sought specific details of these serious allegations and confirmation as to whom had raised them and how matters would be investigated.

145. The second respondent did not reply to the email of 27 October 2021.

146. The claimant did not receive any notice of the allegations in writing and he was not interviewed by the first respondent in relation to the drug dealing allegations. He was never told who had made the allegations, nor given any details beyond those shared with his solicitor on 27 October 2021. No statements were taken by the first respondent from any witnesses. The first and second respondent wished to consider the issues that had arisen and decide what, if any, action was needed. They wished to minimise the amount of information that was released into the public domain.

147. On 27 October 2021 the claimant's solicitor sent an email to the respondent as follows: *"We represent the above named in connection with a potential legal claim arising from an alleged racist abuse incident that took place during Airdrie's away game to Queen's Park at Firhill Stadium on Saturday 11*

September 2021. We understand that the club has placed our client on special leave for a temporary period and we would be very grateful if contact could now be made with him to confirm the arrangements for his early return to work. As the alleged racist abuse incident is now the subject to both a criminal investigation and a potential civil litigation it is kindly requested that the Club refrains from discussing it with our client on his return to work. The alleged racist incident and the aftermath has caused our client considerable distress and his desire on returning to work is to focus entirely on his football. In any event we understand that the club's investigation into the alleged racist incident has concluded and so in those circumstances we would not anticipate it being necessary for this matter to be discussed with our client. If that is not the case then considering our client's age and vulnerability surrounding this mater it is kindly requested that any questions are referred to us in the first instance."

148. The claimant's agent had a good working relationship with Mr Miller who had formerly been director of football at the first respondent. During discussions between the claimant's agent and Mr Miller on 28 October 2021 (which occurred regularly when the claimant's agent was seeking advice), the claimant's agent advised Mr Miller that an allegation had arisen with regard to the claimant. Neither the first nor the second respondent had contacted Mr Miller about the allegations or instruct or ask anyone to contact the claimant's agent about these issues.

149. On 4 November 2021, the second respondent advised the claimant's solicitor that the internal investigations had concluded there was insufficient evidence to justify further action and he was to return to work on 8 November 2021. He did so.

150. The second respondent had spoken to a number of colleagues, some of whom had stated that they considered there potentially to be merit in the allegations but these were suspicion and rumour. The second respondent concluded that there was insufficient evidence to report the matter to Police Scotland or to commence any disciplinary investigation. The second respondent had not encountered a situation like this before and was

concerned about the impact upon the claimant's reputation and that of the club. The second respondent therefore decided that the claimant return to the first team squad and take no action at all. The sole reason for the way in which the allegations were dealt with was the second respondent's desire to take time to reflect on how to deal with the issues and the assertion the Equality Act had been breached was entirely unrelated to this issue.

Altercation between claimant's brother and Mr Murray

151. On 29 December 2021, during an Airdrie and Queen's Park game, there was a verbal altercation between Mr Murray and the claimant's brother. Airdrie won the game but the game had been ill tempered. Mr Murray shouted into the Queen's Park dressing room, as he walked past it, *"Go tweet that you little fanny"*. This was aimed at the claimant's bother. Emotions had been running high and the first respondent had secured a crucial victory following a turbulent match. The claimant's brother confronted Mr Murray in his office and accused him of being racist.

Claimant moves on

152. On 12 January 2022, at the claimant's request, the first respondent cancelled his player's registration. He had signed a contract with another football club on 22 January 2022. The claimant's employment with the first respondent terminated on 14 January 2022.

First respondent's experience of racial incidents

153. The first respondent was one of the earliest clubs to have signed a black player and fans will often celebrate that fact with chants and flags, the player being Mr Fashanu (which occurred over 30 years ago).

154. The first respondent also had to deal with a number of other potentially racist incidents during its history. These included the following.

155. A former player of the first respondent had believed that he had been racially abused by a fan. A member of his family had heard the abuse and remonstrated with the fan but the player himself had not heard it. The fan had

been shouting abuse at the player and manager. A relative of the player was unhappy and confronted the fan which led to an incident with the player's relative saying the fan had been racist towards the player. The player had reported the incident to Mr Murray who advised that it would be dealt with. Some evidence of a racial comment had been provided but the first respondent was not satisfied the allegation had been made out. The club issued a statement at the time reminding fans that personal attacks on players and management was not acceptable and anyone who directed abuse and spoils the matchday experience for those nearby will be removed. It had made no reference to the player having been racially abused by a fan. He had felt let down but he felt supported by his manager.

156. There was also a section of the first respondent's fan base, which had used inappropriate language and behaviour.

Claimant seeks professional support

157. The claimant has sought support since 8 February 2022 from a charity in relation to his mental health which is provided via his new club. That professional input has helped the claimant considerably.

Impact of incident

158. The way in which the issues were handled following the incident on 11 September 2021 caused the claimant considerable stress and upset. He found it difficult to sleep and it affected his family life. He felt worthless and let down. He felt he had been punished rather than supported. The enforced leave of absence affected his work and home life and he found it difficult to concentrate. He lost around a stone of weight. The allegations as to drug dealing led to him crying with anger. He was embarrassed by the social media tweets which he believed were inaccurate and contained false rumour.

159. For a four month period, the claimant suffered low mood, was deflated and lacked motivation. His position improved at his new club. For the claimant, being black and standing up to racism is more important than football.

160. One of the biggest sources of the claimant's stress and anxiety was the allegations that had been levelled against the claimant with regard to criminality (which he disputed).

161. Another source of the claimant's stress and anxiety was the Tribunal proceeding which the claimant found challenging.

Financial impact

162. The claimant was not selected to play in 7 games with the first respondent in the period September to December 2021.

163. The claimant's gross monthly earnings with the first respondent were £1,625 together with a £25 gross appearance bonus for each game. His earnings with his new club amount to £1,400 gross.

164. Had the claimant played in the games referred to above, he would have earned £175 (gross).

165. The claimant's gross weekly pay with the first respondent was £375.

166. The claimant's gross weekly pay with his new club was £323.08.

167. Had the claimant remained employed with the first respondent he would have received an end of season bonus in the sum of £920 (gross).

Observations on the evidence

168. This was a challenging case, and it was clear that both the claimant and the second respondent strongly and firmly believed in their positions. As a result in places evidence was heated and there were a number of inconsistencies, within witness testimony.

169. We agreed with counsel for the claimant's submission that in places the second respondent presented as *"belligerent"* but we did not consider him to have been *"contemptuous"* as alleged. He was focussed on the business and protecting the club. We considered that his approach was in part due to the seriousness with which he regarded the issues and the protection of the club. On occasion he was focused on seeking to answer the question he believed

had been asked to bolster the club's position. On occasion the Tribunal found that the second respondent was wrong in his recollection which was determined by reference to all the evidence led. We did not accept counsel for the claimant's suggestion that the claimant's evidence should be preferred to that of the second respondent's evidence. The passion the second respondent showed to his club was clear and we balanced his evasive approach on occasion with this.

170. The claimant on occasion similarly failed to answer the question put to him (or accept clear propositions from documents that were referred to) and sought to provide evidence that he considered suited his position. The claimant clearly had a passion for equality in sport which is commendable but on occasion this transcended the issues. We took full account of the context in reaching our decision on what was said and on the legal issues in this case.

171. There were also some challenges with the other witnesses and the Tribunal carefully considered all the evidence before it.

172. Where there were disputes in the evidence the Tribunal carefully considered what the witnesses said together with the contemporaneous documentation and made a decision as to what was more likely than not to have occurred. The Tribunal took full account of the parties' submissions on each of these issues and spent a very lengthy time considering the evidence and the issues in this case.

173. Counsel for the claimant noted that Mr Russell had not been called as a witness despite his *"significant involvement"* in matters. It was suggested that the Tribunal should make adverse inferences about that. The Tribunal was careful to consider the evidence that was led. In light of the issues arising, the evidence of the second respondent was critical. The Tribunal did not consider the evidence that Mr Russell could have led to have been critical given the scope of the second respondent's evidence but we considered the failure to call Mr Russell by the respondents when we assessed matters and assessed the evidence that had been presented in that context. The Tribunal considered what was presented to the Tribunal in evidence and made its

decision from that material. With regard to the position in relation to Mr Miller, the Tribunal found Mr Miller to be credible and reliable. He gave his evidence in a measured and fair way. It is a matter for a party to determine what evidence to lead, with the Tribunal making a decision from the evidence before it, which is what the Tribunal did. The Tribunal took into account the absence of Mr Russell and, where relevant, made findings on the evidence led before it.

174. With regard to conflicts in the evidence the Tribunal considered the oral evidence it heard together with the contemporaneous and other documentary evidence which had been presented in determining on the balance of probabilities what had happened. The Tribunal considered each factual dispute individually and determined the matter from the evidence led. While there were a significant number of factual disputes, the main ones the Tribunal required to determine were as follows.

175. The Tribunal concluded that the only reason why the claimant was not picked to play the 18 September 2021 game was because Mr Murray, whose sole decision it was, as manager, did not consider the claimant to be ready or fit to play. Mr Murray's evidence was compelling and clear and the Tribunal accepted it. The Tribunal was satisfied that the assertion by the claimant that there were other reasons for the decision was erroneous and the decision was in no sense whatsoever connected to those facts. It was notable that the claimant's agent supported the respondents' belief that the claimant was not fully fit for the game at this time. Furthermore, the claimant's messages at the time suggest the reasoning was that the respondents wished to achieve what was best for the claimant.

176. The Tribunal also had to consider alleged comments made about the claimant on 21 September 2021. It was asserted that a colleague of the claimant told the claimant Mr Thomson had called him a *"fanny"*. The colleague told the claimant this was because of the stance he took over the racist incident, which Mr Thomson had said did not happen. The Tribunal found Mr Thomson to be credible in this regard and accepted his evidence that he had not called the claimant a *"fanny"*. The Tribunal found that he had been supportive of the

claimant. Mr Thomson had a good relationship with the players, including the claimant. Mr Thomson was protective of the club and its reputation and equally protective of its players. Mr Thomson knew of the allegation but had been told to keep it confidential and not discuss it. The claimant's colleague was unhappy that Mr Thomson did not believe the incident had occurred and consequently believed that he was inferring the person who reported the alleged racist incident was a liar. The colleague was unhappy with Mr Thomson. The Tribunal found Mr Thomson's evidence on this point credible and compelling. If there had been any issue between the individual and Mr Thomson as was alleged it would have been more likely than not that the individual would have raised the matter directly with Mr Thomson given the parties' relationship and context. The fact Mr Thomson had been told not to discuss matters was important and Mr Thomson had taken that instruction seriously. It was more likely than not that Mr Thomson's evidence in this regard was correct and the Tribunal accepted it in relation to the issues around this time.

177. The Tribunal had to consider what was said on 4 October 2022 as between the second respondent and the claimant's agent. The Tribunal found the evidence of the second respondent persuasive in comparison to that of the claimant's agent, whose recollection was less precise. The Tribunal considered that the language used by the second respondent was more likely than not to be what he said in evidence rather than what was alleged. The second respondent had advised the agent that the investigation had been inconclusive and a way forward would be to agree a joint statement referring to the incident as a misunderstanding given the results of the investigation. The second respondent stated that he was concerned about the reputation of the first respondent if there were suggestions that the incident had occurred. The second respondent did not say he could *"rip up"* the claimant's contract from the evidence presented.

178. With regard to what was said on 6 October 2021, the Tribunal found that Mr Agnew asked the claimant if he had worked on wording for a statement or if he wished to provide feedback on the draft that had been prepared. The

Tribunal did not accept the claimant's assertion that he had been told he would be *"dropped"* if he did not agree the statement (which the claimant said was implied). The Tribunal found Mr Agnew's evidence in relation to this issue candid and credible. The claimant was not told that he would not play if he did not agree to the statement. The respondents were seeking to work with the claimant and agree a joint statement. There was no unfair pressure placed upon the claimant. While the situation was challenging and concerning for each of the parties, the respondents' desire was to seek consensus and move forward. The pressure the claimant implies was not presented by Mr Agnew. The claimant may well have believed the respondents were seeking to place pressure upon him but that was not what occurred in fact.

179. The Tribunal carefully considered the discussion Mr Murray and Mr Agnew had with the claimant on 12 October 2021. The Tribunal found the evidence of Mr Murray and Mr Agnew compelling and credible. The Tribunal was not satisfied it was more likely than not that the claimant had been told there would be *"consequences"* if he did not agree the statement (in the sense advanced by the claimant, namely, that he would be treated adversely if he did not agree the statement). Mr Murray told the claimant that it was unlikely the statement would be retracted as the first respondent was keen to move on and focus on football. The focus of the respondents was upon football. They held a concern that the continued focus on racism, when the investigation concluded that there was (on balance) likely to have been no such comment, was damaging to each of the parties. Mr Murray's evidence was clear and candid. He had told the claimant that the club wished to move on. He had not been threatened in the manner alleged on the facts.

180. The Tribunal also carefully examined the second meeting on 12 October 2021 with Mr Murray and Mr Agnew. The claimant reiterated his desire to have the statement retracted and Mr Murray repeated that the respondents were unlikely to agree to this as they wished to move on. Again, the Tribunal found the evidence of the respondents' witnesses more credible than the claimant in this regard. The respondents wished to focus upon football and not the alleged incident, the investigation having concluded. The Tribunal noted that

the claimant said in his witness statement that if he was dropped from the squad that would be because of the colour of his skin and not related to his performance as a professional footballer. This was not a matter that was put to the claimant in cross examination by the respondents' agent and was also not a matter put to the respondents' witnesses by counsel for the claimant. The focus at the meeting from the claimant's perspective was to have the statement retracted whilst the respondents' principal desire was to focus upon football. From the evidence before the Tribunal, the Tribunal concluded that it was more likely than not that the statement about the claimant's skin colour had not been made, albeit that may have been something in the claimant's mind, which he believed. It was more likely than not that the claimant's focus was upon the statement.

181. The next material factual dispute related to the reason why the claimant had been placed on a two week *"cooling off period"*. The letter the respondents provided to the claimant was issued because the claimant asked Mr Murray for written reasons. The claimant had been told verbally by Mr Murray (who had discussed matters with the second respondent) that it was for a number of reasons. One included the fact a family member of the claimant's attended the stadium. This was unusual and of concern to the respondents. The respondents were concerned that the claimant had been quiet at training and the general atmosphere within the team was not good. The respondents wished to give the claimant space to *"clear his head".* The Tribunal considered whether or not the statement the claimant had issued was a reason for the decision and concluded it was not. The Tribunal carefully considered the evidence before it and the context. The Tribunal found that the statement the claimant issued was in no sense whatsoever a reason for the respondents' decision. Mr Murray believed that the circumstances (including the statements that had been issued) had led to the claimant becoming agitated and not in a mental state to participate in the match. In other words, the respondents' concern was that the claimant was becoming agitated and his mental health had been affected by the context and circumstances, including the statement. The statement was not a reason for the decision but background that had led the claimant to become agitated and

(in the respondents' view) mentally unfit, requiring *"time out"*. The allegations of racism were in no sense whatsoever related to the decision to place the claimant on a cooling off period. The respondents were concerned about the claimant's mental health and that he was agitated.

5 182. The Tribunal considered the evidence with regard to the discussion between the claimant's agent and Mr Miller and the allegations that arose. The Tribunal found Mr Miller to be an impressive witness. He was candid and clear giving cogent evidence. He accepted that there had been issues with the club and he made concessions as to the facts as to what had happened.
10 The Tribunal was satisfied that it was the claimant's agent who had raised the issue with Mr Miller and not vice versa. The Tribunal was satisfied that neither the first nor the second respondent had instructed, caused or induced Mr Miller to raise these issues. The claimant's agent trusted Mr Miller and regularly sought guidance and support. Given the timeline and evidence
15 before the Tribunal, the Tribunal concluded that it was more likely than not that it was the claimant's agent who brought the issue up when he spoke with Mr Miller. The claimant's agent was, in the Tribunal's view, less clear about this issue and the Tribunal preferred the evidence of Mr Miller in this regard.

183. Counsel for the claimant made submissions that the respondents had sought
20 to actively mislead the Tribunal in a number of other concerning respects. The first issue was in alleging the claimant was aggressive during the meeting on 5 October 2021 in their ET3, only to concede he was not, following production of the recording. The Tribunal considered that the claimant was agitated during the meeting and there was a clear dispute between the
25 claimant and the second respondent. The claimant was certain that the evidence that had been provided ought to result in a finding that the alleged racist incident had occurred. The second respondent had concluded from the evidence available that it was likely that there had been a misunderstanding. The claimant was not prepared to accept that position and he steadfastly
30 maintained his position. It was incorrect to say the claimant was aggressive but it was accurate to say he was agitated and unhappy at the position the respondents took.

184. The second issue raised was that the second respondent asserted the club had investigated a previous incident of potential race discrimination when one witness confirmed the incident and investigation did not occur. The Tribunal took account of the evidence that was led, this being a background issue.

185. The third issue was denying in response to a Tribunal order that there was an allegation of racism towards a former player, which was subsequently conceded by the second respondent. This was an example of a situation where the second respondent had not properly answered a question before the Tribunal and was a fact that was taken into account by the Tribunal.

186. The remaining issues related to the evidence given by the second respondent as to the allegations of criminality involving the claimant. This was a matter that the Tribunal considered carefully and took into account in reaching its decision. The second respondent's position in relation to this chapter in evidence was unsatisfactory and something the Tribunal took into account. It was clear that the second respondent was unsure how to address the issue given the unique issues arising. His evidence was unsatisfactory in a number of respects, including stating he had contacted *"people I know and trust"* when he did not appear to personally know the people he spoke to. He had sought to keep confidential details as to the person who revealed the issues. The Tribunal carefully assessed the evidence around this issue. The Tribunal accepted the second respondent's evidence in relation to his explanation as to why he treated the allegations as he did and found his evidence in that regard credible, cogent and reliable. The only reason why he delayed the end of the enforced leave and did not pursue the allegations was because he wished time to reflect upon the allegations, given his experience and the unique situation in which he found himself and his desire to reflect upon matters and consider carefully how to progress. The Tribunal found his evidence clear in this regard and accepted it.

187. One of the concerns raised by counsel for the claimant was asking Mr Thomson to obtain information from an online group in or around Spring 2022 and passing it off, falsely, as material that was obtained and taken into account during their *"investigation"* in September 2021. The position in

relation to this passage of evidence was unclear. It had been suggested that it was necessary to revisit the material that had been looked at during the investigation subsequent to the date of investigation as no information had been retained. It was also noted by counsel for the claimant that the falsehood was repeated by producing two further batches of documents, the first of which could not have formed part of the investigation. This was in part due to the respondents seeking to produce evidence that had not been printed at the time, which required going back into postings (which had subsequently been updated).

188. These issues were taken into account in assessing the evidence and in reaching a view. The Tribunal required to take a substantial amount of time to consider the evidence that was presented, which in places was unsatisfactory. The Tribunal was concerned by the foregoing and carefully assessed the position from the oral evidence and contemporaneous documents in reaching its conclusion. It was regrettable that a clear position had not been set out, particularly by the second respondent, in the course of the Hearing and in preparation for the Hearing.

189. The Tribunal also considered the other potentially racist incidents upon which evidence had been led. The Tribunal did not consider that the respondents' approach in relation to those incidents thereby resulted in a *prima facie* case being established in relation to the current matter, but the background was taken into account in assessing the position (generally and in relation to the burden of proof). The Tribunal did not consider events that occurred after the matters relied upon to be useful in its assessment as to the position.

Law

Burden of proof

190. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides as follows:

> *"(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

191. The section goes on to make it clear that a reference to the Court includes an Employment Tribunal.

192. It is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

193. In ***Hewage v Grampian Health Board*** 2012 IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in ***Igen Limited v Wong*** 2005 ICR 931 and was supplemented *in* ***Madarassy v Nomura International Plc*** 2007 ICR 867. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question.

194. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

195. It was confirmed by Lord Justice Mummery in the Court of Appeal that it is not always necessary to address the two-stage test sequentially (see ***Brown v London Borough of Croydon*** 2007 ICR 909). Although it would normally be good practice to apply the two-stage test, it is not an error of law for a tribunal to proceed straight to the second stage in cases where this does not prejudice the claimant. In that case, far from prejudicing the claimant, the approach had relieved him of the obligation to establish a *prima facie* case.

196. The Tribunal was also able to take into account the recent Employment Appeal Tribunal decisions in this regard in ***Field v Steve Pye & Co*** EAT2021-000357 and ***Klonowska v Falck*** EAT-2020-000901. The Tribunal carefully considered the submissions made and made findings in light of the facts found, applying the burden of proof provisions, where necessary. The Tribunal was careful to consider the submissions by the parties in this regard and in many instances was able to make positive findings of fact on key issues.

Victimisation

197. Victimisation in this context has a specific legal meaning defined by section 27:

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

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

198. In terms of section 27(2)(d), namely the making of an allegation (whether or not express) that A or someone else has contravened the Equality Act, an issue has arisen as to whether an allegation of conduct for which the respondent could not be liable could still amount to a protected act. This issue was considered in ***Waters v Commissioner of Police of the Metropolis*** 1997 ICR 1073**.** In this case a woman police officer accused a male colleague of sexually assaulting her. Following this accusation, she was subjected to various forms of harassment and other unfair treatment at work. The Court of Appeal held that, on the officer's own version of events, her colleague had not committed the assault *"in the course of his employment"* and so the Commissioner of Police could not be held liable. It followed that she was not entitled to rely on her allegation of assault for the purpose of a victimisation claim as she had not alleged that her employer had committed an act which would amount to a contravention of the Act.

199. Waite LJ said*: "All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of section 6(2)(b). The facts alleged by the complaint in this case were incapable in law of amounting to an act of discrimination by the Commissioner because they were not done by him, and they cannot (because the alleged perpetrator was not acting in the course of his employment) be treated as done by him for the purposes of section 41 of the Act."*

200. That was a decision made in relation to the predecessor legislation to the Equality Act 2010 but there is no authority that suggests the position is otherwise to that set out by the Court of Appeal. This issue was not altered by the (then) House of Lords and remains good law.

201. In ***Page v Lord Chancellor*** UKEAT/0304/18/LA, the claimant, a lay magistrate sitting on family cases involving adoption decisions, gave an interview to the BBC in which he expressed his Christian faith based view that it was *"not normal"* for a child to be adopted by a single-parent or a same-sex couple. The BBC report explained that the claimant had been suspended and disciplined. The Employment Appeal Tribunal held that it could not be inferred

that there had been any specific allegation made by the claimant against the respondent so as to have amounted to a protected act. In the relevant interview, the claimant had done no more than explain his position and why he had done what he had done that had led to his reprimand. In doing so, he had made no reference to his Christian beliefs or that they had formed part of the reason for him being suspended and disciplined. Accordingly, the Employment Appeal Tribunal held that the Tribunal had not erred in finding that the comments made by the claimant in the interview had not constituted a protected act given that he had made no allegation of discrimination.

202. Something amounts to a detriment if the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment – see paragraphs 31-37 of the speech of Lord Hope in ***Shamoon v Chief Constable of the RUC*** 2013 ICR 337. It is an objective test focussed on the perception of the reasonable worker in all the circumstances of the case. Detriment is, accordingly, treatment which a reasonable worker would or might regard as being to their disadvantage. It is not necessary for the claimant to demonstrate some physical or economic consequence.

203. The (then) House of Lords confirmed the position *in* ***Derbyshire v St Helens Metropolitan Borough Council*** 2007 ICR 841. Lord Neuberger opined that the test is not satisfied merely by the claimant showing that he or she has suffered mental distress: it would have to be objectively reasonable in all the circumstances. In assessing whether there is a detriment therefore consideration needs to be given to both subjective and objective elements, looking at matters from the claimant's point of view but his or her perception must be *'reasonable'* in the circumstances.

204. This provision does not require any form of comparison. If it is shown that a protected act has taken place and the claimant has been subjected to a detriment, it is essentially a question of the *"reason why"*. In other words, the protected act must be an effective and substantial cause of the treatment, it does not need to be the principal cause. The Tribunal is concerned with establishing what the real reason (conscious or subconscious motivation) or

reasons for the treatment is. There can be more than one reason and the context is important and should be fully considered.

205. In determining whether a detriment was because of a protected act, it is important that the protected act is identified with precision and that the relationship between the detriment and that act specifically is examined. In ***JJ Food Service Ltd v Mohamud*** EAT 0310/15 the claimant went to work in jeans in breach of his employer's dress code. When challenged about this he alleged that the dress code was discriminatory as it was applied differently in relation to women. He was dismissed, ostensibly for breaching the dress code and disobeying management instructions, but he brought proceedings alleging that he had been victimised. A Tribunal upheld his claim on the basis that the fact that he had questioned the application of the dress code policy was a significant contributory factor in the decision to dismiss him. However, the Employment Appeal Tribunal allowed the employer's appeal on the basis that the tribunal should have asked itself whether the allegations of sex discrimination amounted to such a factor. While in some cases the Tribunal's language might have been acceptable short-hand, in this case it was significant that the Tribunal did not ask itself the right question because there were other grounds on which the claimant was challenging the application of the dress code. In addition, this was a case where it might have been open to the Tribunal to conclude that it was, for example, the manner or persistence of his complaints rather than the content of them which had led to his dismissal.

206. The Tribunal has to consider not just whether or not the protected acts themselves were the reason but whether or not there are any other factors relating to the protected acts which were in the respondents' mind when taking decisions. For example, employees may lose the protection of the anti-victimisation provisions because the detriment is inflicted not because they have carried out a protected act but because of the manner in which they have carried it out.

207. An approach that distinguishes between a protected act and the manner of doing that act was endorsed by Mr Justice Underhill, in ***Martin v Devonshires***

Solicitors 2011 ICR 352**.** In his view, there were cases where the reason for the dismissal (or any other detriment) was not the protected act as such but some feature of it which could properly be treated as separable — such as the manner in which the protected act was carried out.

5 208. One of the issues that arises in this case is whether or not it is possible for a protected act to have been carried out by someone other than the claimant. On its ordinary wording, section 27 covers detriments as a result of protected acts (only) by the individual concerned. The implication of that is that a protected act must be made directly by the person and cannot be made on 10 their behalf.

209. The issue that arises is whether retained European law requires the Tribunal to interpret section 27 in a way that allows for a protected act of another to be protected, bearing in mind the terms of the Equal Treatment Framework Direction (2000/78/EC).

15 210. Associative discrimination was applied in ***Coleman v Attridge*** [2008] IRLR 722, where the Employment Appeal Tribunal concluded that the then Disability Discrimination Act 1995 required to be interpreted as allowing for associative direct disability discrimination. Section 13 of the Equality Act 2010 is worded to reflect this.

20 211. In ***CHEZ Razpredelenie Bulgaria AD v Komisia*** (Case C-83/14), the European Court of Justice concluded that indirect associative discrimination was covered by the Directive. (See ***Follows v Nationwide Building Society*** 2201937/2018).

212. The position in relation to associative victimisation has not been fully 25 considered at appellate level.

213. In ***Thompson v London Central Bus Co*** [2016] IRLR 9, the claimant alleged he had been disciplined because he was a member of a union which had protested against instances of race discrimination by the employer. The Tribunal held this was too far removed but that was overturned on appeal as 30 the law required no particular relationship to be established, the issue being

one of causation: had the association in question had the relevant effect on the treatment of the claimant. The Tribunal had ruled that an associative victimisation claim could be brought as a matter of law and there had been no appeal against that decision. The case had therefore proceeded on that basis and the issue was not before the Employment Appeal Tribunal but there was no suggestion by the Employment Appeal Tribunal that the Tribunal's approach was wrong (albeit there was no argument as to this issue).

214. Victimisation under section 27 of the Equality Act 2010 is, however, differently worded to that in Thompson, referring to the victimisation of 'B' because 'B' does the protected act. On its face, that would seem to rule out discrimination by way of association, but the ET had, in the light of ***Coleman***, read the section as prohibiting victimisation *"because of a protected act"*, and HHJ Richardson's judgment contains no hint of criticism of that conclusion).

215. The Employment Judge's reasoning was that section 27 is *"quite clear that the person claiming the protection of the victimisation provision must have himself or herself done the protected act"*. The section's wording is not wide enough to cover an individual who claims to have suffered a detriment because of his or her association with someone who has done, or may have intended to do, a protected act. *"Victimisation by association"* is therefore not covered".

216. Paragraph 20 of the preamble to Council Directive 2000/43 *"the Racial Discrimination Directive"* provides *that "The effective implementation of the principle of equality requires adequate judicial protection against victimisation"*.

217. Article 9 of that Directive provides that*: "Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment".*

218. The Judge reasoned that the wording differs to that in section 27 as the reference is to *"a complaint"*, rather than to a complaint made by any particular

person, or made by the person who alleges that he or she has suffered a detriment and so she concluded Article 9 did prevent victimisation by association.

219. It was noted that in ***Coleman*** Mr Justice Underhill, as he then was, said— *"It is a principle of EU law that the courts and tribunal's of member states should "so far as possible" interpret domestic legislation in order to give effect to the state obligation under EU law, typically arising under a directive: … it is now well established in UK law that pursuant to that obligation a court or tribunal can in some circumstances go beyond traditional strict limits of statutory construction and you can read words into the statute in order to give effect to EU legislation which the statute was evidently intended to implement … but it is, equally acknowledged that it is not legitimate in every case: that is recognised by the phrase "so far as possible". The difficulty is to define the touchstone to distinguishing between the two types of case, or — to put it another way — to define the limits of what is possible."*

220. The proper approach to that question was established by the decision in the (then) House of Lords in ***Ghaidan v Godin-Mendoza*** [2004] 2 A C 557. That judgment established that courts and tribunals should give effect to the presumed intention of Parliament when making, or amending, domestic legislation which gives effect to a relevant EU Directive, to achieve full compliance with it and to honour UK's obligations under the Treaty. This can include reading words into an otherwise unambiguous domestic statute, where necessary, in order to ensure that it is read in a way compatible with the directive, provided that such an exercise *"goes with the grain of the legislation"* and not against it. Those principles were summarised by the Court of Appeal in ***Vodafone 2 v Revenue and Customs Commissioners*** [2012] WLR 288 who reiterated that the obligation to construe statutes consistently with EU law is not constrained by conventional rules of construction, does nor require ambiguity in the legislative language, and permits departure from the strict and literal application of the words which the legislature has elected to use. In so doing the court or tribunal may imply words into the domestic statute to ensure compliance with EU obligations. That approach was also

taken by the Court of Appeal in ***Jessemey v Rowstock Ltd*** 2014 EWCA Civ 185.

221. The Judge concluded that she was satisfied that (despite the wording of section 27) the Directive itself places no limitation on claims of victimisation, the real question being whether the action was taken because of a complaint. As was pointed out in ***Coleman***, establishing the necessary causation may well be more difficult where a detriment is said to be by association only, but the principle that the cause of action need not be so limited remains.

222. She concluded that section 27 should be read as encompassing victimisation by association with someone who has carried out a protected act. It is necessary to do so in order to give effect to the presumed intention of Parliament when enacting our domestic law that full effect be given to Article 9 of EU Racial Discrimination Directive. That can be achieved by deleting words so that section 27 (1) (a) reads: *"A person (A) victimises another person (B) if A subjects B to a detriment because — (a) of a protected act."*

223. In ***Jamu v Asda Stores Ltd*** UKEAT/0221/15/DA some doubt was cast upon whether or not associative victimisation could properly be applied (see paragraph 46) but there was no consideration of the matter.

224. In ***Taylor v Tesco Stores Limited*** 41086831/19 & 4110429/19 an Employment Judge Hosie considered there was no binding authority that the claim of victimisation by association was competent and said ***Thompson*** should be treated with caution given the clear statutory words and their ordinary meaning.

225. The Explanatory Notes to the Withdrawal Act 2018 state that the "Act ends the supremacy of European Law (EU), converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations". Section 1 of the 2018 Act repeals the European Communities Act 1972. Section 2 makes provision for EU derived domestic legislation to continue to have effect. Section 5(2) states that the principle of supremacy of EU law continues to apply so far as relevant to the interpretation, disapplication or quashing of any domestic provision. Section

6 states that any question as to the validity, meaning or effect of retained EU law is to be decided in accordance with retained case law. This means that the Equality Act 2010 continued in force with the European position as at that date to be applied. The claimant is able therefore to rely upon European principles if the law as it stood immediately prior to 1 January 2021 was such as to entitle that interpretation. The foregoing position is supported by the detailed analysis of the law found in **Secretary of State v Beattie and others** EA-2022-000116.

226. For the purposes of this claim, the Tribunal considers that it is permissible to read into section 27 of the Equality Act 2010 the position reached as above. A protected act of a third party can in principle amount to a protected act in respect of which the claimant is entitled to protection. That is a permissible conclusion to reach in light of the legal position as it stands. It is a necessary interpretation to give full effect to the Directive.

Harassment

227. In terms of section 26 of the Equality Act 2010:

> *(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."*

228. It is important to consider the conduct with regard to each element of the statutory test. Whether or not the conduct relied upon is related to the characteristic in question is a matter for the Tribunal to find, making a finding of fact drawing on all the evidence before it (see ***Tees Esk and Wear Valleys NHS Foundation Trust v Aslam*** EAT 0039/19). The fact that the claimant considers the conduct related to a particular characteristic is not necessarily

determinative, nor is a finding about the motivation of the alleged harasser. There must be some basis from the facts found which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in the manner alleged in the claim. In that case the Employment Appeal Tribunal held it is a matter for the Tribunal to determine making a finding of fact drawing on all the evidence before it. There must be some feature of the factual matrix identified by the Tribunal which leads it to the conclusion conduct is related to the protected characteristic and the Tribunal should articulate clearly what feature of the evidence leads it to that conclusion. The Tribunal should consider the matter objectively.

229. For example in ***Hartley v Foreign and Commonwealth Office Services*** 2016 ICR D17 the Employment Appeal Tribunal held that an Employment Tribunal had failed to carry out the necessary analysis to see whether comments made by the claimant's managers during a performance improvement meeting — accusing her of rudeness and apparently questioning her intelligence when she failed to understand a spreadsheet of comments concerning her performance — were related to her Asperger's syndrome. The Employment Appeal Tribunal emphasised that an Employment Tribunal considering the question posed by section 26(1)(a) must evaluate the evidence in the round, recognising that witnesses *"will not readily volunteer"* that a remark was related to a protected characteristic. The alleged harasser's knowledge or perception of the victim's protected characteristic is relevant but should not be viewed as in any way conclusive. Likewise, the alleged harasser's perception of whether his or her conduct relates to the protected characteristic *"cannot be conclusive of that question"*.

230. ***Warby v Wunda Group Plc*** EAT 0434/11 is authority for the proposition that the conduct should be viewed in context in assessing whether the conduct is related to the protected characteristic. The then President of the Employment Appeal Tribunal, Mr Justice Langstaff, upheld a Tribunal's decision that an employee accused by her superior of having lied about a miscarriage was not subjected to conduct *"related to"* her sex within the meaning of the sex

discrimination provisions then in force. Langstaff P held that context was important and that the tribunal had been entitled to find that the accusation was made in the context of a dispute over a work matter, about which the employer believed that the employee was lying. Thus the conduct complained of was an emphatic complaint about alleged lying; it was not made because of the employee's sex, because she was pregnant or because she had had a miscarriage. While that case considered the predecessor legislation, the issue was whether the conduct was *"related to"* the protected characteristic.

231. In ***Kelly v Covance Laboratories Ltd*** [2016] IRLR 338 an instruction not to speak Russian at work, so that any conversations could be understood by English speaking managers was not related to race or national origins, even though it potentially could have been. The conduct was because the employer was suspicious about what was being said and could not understand. Viewed in the context of the company's business and risks the employer's explanation for the conduct was accepted and the conduct was not related to race or national origins.

232. In ***UNITE the Union v Nailard*** [2018] IRLR 730 the Tribunal had held that a failure to address a sexual harassment complaint made against elected officials of the union could amount to harassment related to *sex "because of the background of harassment related to sex"*. The Court of Appeal considered that went too far. There had been no findings as to the mental processes of the (employed) officials of the union dealing with the complaint and whether they had been motivated by sex discrimination. The Court of Appeal noted that the previous potential liability for third party harassment under the Equality Act 2010, section 40 had been repealed and there was no automatic liability on the part of the union for harassment by third parties (if that was how the elected officials were to be characterised). The union could be (vicariously) liable for acts of discrimination by its employees but there would need to be a finding that the employees in question were themselves guilty of discrimination. An important point of this case was the reminder that Tribunals should focus on the conduct of the person who carried out the act and determine whether that conduct is related to the protected characteristic

(not whether the conduct of someone else or some other conduct is related to the protected characteristic). If the action (or inaction) is because of illness or incompetence it may not relate to the protected characteristic.

233. At paragraph 7.10 of the Code the breadth of the words *"related to"* is noted and some examples are provided. It gives the example of a female worker who has a relationship with her male manager. On seeing her with another male colleague, the manager suspects she is having an affair. As a result, the manager makes her working life difficult by criticising her work in an offensive manner. The behaviour is not because of the sex of the female worker but because of the suspected affair, which is related to her sex. This could amount to harassment related to sex.

234. At paragraph 7.11 the Code states that in the examples there was *"a connection with the protected characteristic"*.

235. The question of whether the conduct in question *"relates to"* the protected characteristic requires a consideration of the mental processes of the putative harasser (***GMB v Henderson*** 2017 IRLR 340) bearing in mind that there should be an intense focus on the context in which the words or behaviour took place (see ***Bakkali v Greater Manchester*** 2018 IRLR 906). In ***Bakkali*** the question was whether a comment as to whether an individual was said to be still promoting ISIS/Daesh was related to race. The Tribunal found it was not as it related to a previous conversation. The Employment Appeal Tribunal emphasised that context is important and the words used must be seen in context. In considering whether the conduct is related to the protected characteristic there should be an intense focus on the context of the offending words or behaviour. The mental processes of the perpetrator are relevant in assessing the issue.

236. In ***Raj v Capita*** 2019 UKEAT 0074/2019 the Employment Appeal Tribunal upheld a Tribunal which had found that the massage at his desk by a manager was not conduct related to sex. The conduct was misguided encouragement by a manager. It was an isolated incident and the context was key: a standing manager over a sitting team member in a gender neutral part of the bod within

an open plan office. In that case the Tribunal did not expressly consider the burden of proof provisions but had found that the conduct was in no sense whatsoever related to sex.

237. Section 26(4) of the Act provides that:

5 *"(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."

10 238. The terms of the statute are reasonably clear, but guidance was given by the Court of Appeal in ***Pemberton v Inwood*** 2018 IRLR 542 in which the following was stated by Lord Justice Underhill: *"In order to decide whether any conduct falling within sub-paragraph 10 (1)(a) of section 26 Equality Act 2010 has either of the proscribed effects under sub-paragraph (1)(b), a* 15 *tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances* 20 *(subsection 4(b))."*

239. The Code states (at paragraph 7.18) that in deciding whether or not conduct has the relevant effects account must be taken of the claimant's perception and personal circumstances (which includes their mental health and the environment) and whether it is reasonable for conduct to have that effect. In 25 assessing reasonableness an objective test must be applied. Thus, something is not likely to be considered to be reasonable if a claimant is hypersensitive or other people are unlikely to be offended.

240. In relation to the effect of the conduct, intention is not a prerequisite and the effect is to be considered from the perception of the Claimant. The Code (at

paragraph 8.20) gives the example of a club manager at a meeting making derogatory comments and jokes about women to a mixed sex audience. It is not that person's intention to offend or humiliate anyone, however the contact may amount to harassment if the effect of it is to create a humiliating or offensive environment for a man or woman in the audience.

241. Relevant circumstances include the claimant's personal circumstances, cultural norms and previous experience of harassment. The perpetrator being in a position of trust or seniority over the recipient is also a relevant factor.

242. Further as Underhill LJ stated above when deciding whether the conduct has the relevant effects (of violating the claimant's dignity or creating the relevant environment) the claimant's perception and all the circumstances must be taken into account and whether it is reasonable for the conduct to have the effect (***Lindsay v LSE*** 2014 IRLR 218). Elias LJ in ***Land Registry v Grant*** 2011 IRLR 748 focused on the words *"intimidating, hostile, degrading, humiliating and offensive"* and said *"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upset being caught".*

243. Chapter 7 of the Code contains useful guidance in applying the law in this area and we have had regard to that guidance.

Section 111 of the Equality Act 2010

244. Section 111 of the Equality Act 2010 provides that instructing, causing or inducing discrimination shall be unlawful, with a cause of action to the person so instructed, caused or induced to discriminate if they thereby suffer a detriment.

245. In terms of section 111(1) a person must not instruct, cause or induce another to commit what is termed a 'basic contravention', which is anything which contravenes Parts 3, 4, 5, 6 or 7 of the Act or section 112 (aiding a contravention of the Act). The inducement can be direct or indirect (section 111(4)) and section 111 is contravened even if the basic contravention that

the person has been instructed, caused or induced to commit does not in fact take place (section 112(5)).

246. Section 111(7) provides that the prohibition contained in section 111 only applies if the person instructing, causing or inducing the basic contravention (A) has a relationship with the person they are seeking to influence (B) which is such that A could commit a basic contravention against B.

247. A common example is where B is an employee of A, since that would mean that A could commit discrimination against B contrary to section 39, section 111 would apply so A would be acting unlawfully if it were to instruct B to act in a discriminatory way. This ensures that liability for instructing, causing or inducing only applies if the person seeking to influence the other has some kind of relationship with the other from which the influence could stem.

Submissions

248. Both parties produced detailed written submissions and the parties were able to comment upon each other submissions and answer questions from the Tribunal. The Tribunal deals with the parties' submissions as relevant below, but does not repeat them in detail. The parties' full submissions were taken into account in reaching a unanimous decision.

Decision and reasons

249. The Tribunal spent a very substantial amount of time considering the evidence that had been led, both in writing and orally and the full submissions of both parties and was able to reach a unanimous decision on each of the issues. The Tribunal deals with issues arising in turn.

Unlawful victimisation: First protected act

250. The first act was whether the claimant's report on 12 September 2021 to Mr Murray and Mr Agnew of alleged racist abuse on 11 September 2021 was a protected act in terms of section 27(2)(d) Equality Act 2010, specifically an allegation (expressly or by implication) of direct race discrimination. It is important to note that each of the protected acts was relied upon as arising

pursuant to section 27(2)(d) only and individually and they are considered on that basis.

251. Counsel for the claimant submitted that this was *"self-evidently"* a protected act since it included an express assertion by the claimant that he had been racially abused. That was an allegation of direct race discrimination (contrary to section 13) and so a protected act in terms of section 27(2)(d).

252. The respondents' agent argued that this was not a protected act. The evidence was that the allegation made by the claimant was that he had been notified by Mr McCabe he had been the victim of racial abuse (as he himself had not heard the alleged abuse). Following ***Page***, there was no specific allegation made by the claimant that he had been discriminated by the respondent. He had done no more than recount what he had been told by Mr McCabe. There was no suggestion that the respondent was responsible for this act. The person responsible was an unknown spectator who attended the match. If the allegation does not infer a specific allegation against the respondent, then it cannot be said to amount to a protected act.

253. The respondents' agent's alternative position was that this was not an allegation that the respondent had committed an act which would amount to a contravention of the Equality Act. The allegation was that a spectator had directed racial abuse towards the claimant. This was not an act for which the respondent could be liable in law under the Equality Act. There is no strict liability in football. The respondent is not responsible for the actions of a fan under the Equality Act. If the allegation does not amount to an allegation for which the respondent is liable in law then it cannot be said to amount to a protected act and so the report to Mr Murray and Mr Agnew would not amount to a protected act.

Decision in relation to first protected act

254. The facts relied upon in this regard are that the claimant told his employer he had been made aware of an alleged racist remark that a spectator to a football match in which the claimant was playing had been made and directed at the

claimant. The claimant had been carrying out his duties when the remark was alleged to have been made.

255. The claimant relies upon section 27(2)(d) in respect of this act, namely that he made an allegation that the Equality Act had been breached. The claimant reported that he had been racially abused by a third party in the course of his employment. It was not alleged that the person responsible had been someone for whom either respondent was liable. It was believed that the statement came from a spectator.

256. The claimant had by implication made an allegation that he had been subject to racist abuse. In principle that was capable of amounting to a protected act since it was making an allegation that another person had acted unlawfully towards him. Section 27(2) allows the allegation to be that it was A (the person who victimised the claimant) or *"another person"*. The respondents' agent's narrow characterisation of the position and submission that the facts could not amount to a protected act was not right. There was clearly an allegation that someone (ie another person) racially abused the claimant.

257. The present legal position is that if what is alleged would not be unlawful under the Equality Act there cannot be a protected act.

258. In ***Waters v Metropolitan Police Comr*** [1997] IRLR 589, Waite LJ said: *"The allegation relied on need not state explicitly that an act of discrimination has occurred…. All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of [the Act]"*. While the Court of Appeal's judgment was overturned for other reasons (by the then House of Lords) the principle remained. That was in respect of the predecessor to the Equality Act 2010 but there has been no legal authority presented to the Tribunal to support the assertion that the position is different given the mischief is the same and there was no suggestion of a change in how this was to be dealt with. The position set out is consistent with the words of the statute which requires there to be an allegation (whether or not express) that the Act was contravened. Logically

if the Act could not apply (taking the claimant's case at its highest), the act cannot amount to a protected act since the Act cannot be contravened.

259. A spectator at a football match who racially abuses a player in the course of his employment is not facts capable of amounting in law to an act of discrimination by an employer. The claimant has not set out why the employer would be liable for acts of a third party under the law at present. It is not necessary to expressly say the Equality Act has been breached but there must be something capable of amounting to a breach of the Equality Act (for which either respondent is liable) rather than a breach of the law *per se* to found a claim for victimisation.

260. Section 39 of the Equality Act states at section 39(4) an employer must not victimise an employee. A spectator is not an employer. There were no other sections of the Equality Act relied upon in respect of which the actions of a spectator at a football match could give rise to liability. Alleging *"direct discrimination"* does not by itself assist, absent any legal liability.

261. The respondents' agent's submissions have merit. While it is self evident that the alleged remark would be racist, it is not self evident that the act is something amounting to a breach of the Equality Act 2010 in connection with the claimant's employment. There was therefore no assertion of any breach of the Equality Act 2010.

262. On that basis the first protected act does not amount to a protected act in terms of section 27(2)(d) of the Equality Act 2010.

Second protected act

263. The issue here is whether the claimant's tweet on 14 September 2021 was a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination.

264. Counsel for the claimant argued that *"on its face, that is an allegation (expressly or by implication) of direct race discrimination"* and amounted to a protected act within section 27(2)(d).

265. The respondents' agent argued this was not a protected act within the scope of section 27(2)(d). The allegation made by the claimant in his tweet was that he had been subjected to racist abuse by one of the supporters. There was no specific allegation made by the claimant that he had been discriminated by the respondent. The tweet states that he was racially abused by a supporter of the respondent, not the respondent themselves. There was no suggestion that the respondent was responsible.

266. The respondents' secondary position was that this was not an allegation that the respondent had committed an act which would amount to a contravention of the Equality Act. The allegation was that a spectator had directed racial abuse towards the claimant. This is not an act for which the respondent could be liable in law under the Equality Act.

Decision in relation to second protected act

267. The tweet in question states that *"at my football game … I was subjected to racial abuse by one of my own supporters"*. This appears to be an allegation by the claimant that another person had racially abused the claimant. In principle it could amount to a protected act, but the difficulty is that the allegation is not that the person contravened the Equality Act 2010 since the author of the act was a supporter, not an employee or someone for whom either respondent was, in law, responsible. The second act is not therefore a protected act in law.

Third protected act

268. The issue here is whether the claimant's assertions throughout the meeting with the second respondent and others on 5 October 2021 amount to a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination.

269. Counsel for the claimant argued that this act amounted to the claimant repeatedly asserting he had been racially abused which is a protected act.

270. The respondents' agent argued that during the meeting of 5 October 2021, the claimant repeated several times an allegation that he had been racially

abused by one of the respondents' supporters. There was no specific allegation made by the claimant that he had been discriminated by the respondent. During the meeting the claimant stated his belief that he was racially abused by a supporter, not the respondent. There was no suggestion that by the claimant that the respondent was responsible.

Decision in relation to third protected act

271. At the meeting on 5 October 2021 the claimant asserted that a spectator had racially abused him. In principle this was an allegation that another person had discriminated against him. The difficulty with this, as with the foregoing acts, was that it was not an act for which the respondents could, in terms of the Equality Act 2010, be liable. The claimant had not shown where, in terms of the Equality Act 2010, an employer of a footballer is liable for racist abuse from a spectator, over whom the employer had no direct control. There is no such liability in terms of the Equality Act. On that basis the third act is not a protected act.

Fourth protected act

272. The first issue is whether the claimant stated/reiterated during a meeting with Mr Murray and Mr Agnew on 12 October 2021 that he had been racially abused on 11 September 2021and the second issue, if this is established is whether that amounted to a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination.

273. Counsel for the claimant argued that at the meeting the claimant repeated he had been racially abused (by a spectator, which the claimant's counsel submitted was a protected act in terms of section 27(2)(d), specifically an allegation (expressly or by implication) of direct race discrimination).

274. The respondents' agent submitted that the evidence was unclear as to whether or not the claimant did say to Mr Murray or Mr Agnew that he had been racially abused during this meeting. Mr Murray and Mr Agnew contend that their discussion centred around the media statement and the claimant's

desire that it be withdrawn. The claimant's evidence was that he played the recording to Mr Murray and Mr Agnew and raised the issue of withdrawing the statement. Mr Murray and Mr Agnew concede the recording may have been played at this time.

5 275. The respondents' agent submitted that if the recording was played this is not an allegation, it is merely the playing of a recording in which Mr McCabe conveys information to the claimant that he may have been racially abused. There is no allegation being made against the respondent within the recording itself.

10 276. Even if the claimant did state that his belief he was racially abused it does not change the position since there was no specific allegation made by the claimant that he had been discriminated by the respondent. He had stated again his belief that he was racially abused by a spectator. There was no suggestion that the respondent was responsible. Even if there was an 15 allegation against the respondent, this was not an allegation that the respondent had committed an act which would amount to a contravention of the Equality Act. The allegation was that a spectator had directed racial abuse towards the claimant. This is not an act for which the respondent could be liable in law under the Equality Act.

20 *Decision in relation to fourth protected act*

277. For the same reasons as set out in the foregoing acts, while in principle the facts could amount to a protected act, there being an allegation another person discriminated against the claimant, in the absence of any basis for the respondents being liable in terms of the Equality Act 2010 for the spectator's 25 alleged abuse, the fourth act cannot amount to a protected act. Even if the comment had been established, the comments could not, in law, amount to a protected act given the legal principle in this area.

Fifth protected act

278. The first issue is whether during a meeting with Mr Murray and Mr Agnew on 30 12 October 2021 the claimant alleged that he was being threatened with being

dropped from the playing squad *"because of the colour of his skin"*. The second issue if that is established if whether that amounted to a protected act in terms of section 27(2)(d), specifically one or both of an allegation of harassment on grounds of race, contrary to section 26 and an allegation of direct race discrimination.

279. Counsel for the claimant argued that saying he was being threatened with being dropped from the playing squad "because of the colour of his skin" (something that was not specifically challenged by the respondent) was self-evidently a protected act in terms of section 27(2)(d), specifically one or both of an allegation of harassment on grounds of race, contrary to section 26 and an allegation of direct race discrimination.

280. The respondents' agent argued that the evidence was unclear as to whether or not the claimant did say to Mr Murray and Mr Agnew that he would be dropped from the playing squad "because of the colour of his skin". Mr Murray and Mr Agnew contend that their discussion centred on the media statement and the claimant's desire that it be withdrawn. Mr Murray vehemently denied that he used the word "consequences" during any discussion with the claimant. He was clear he was attempting to explain to the claimant why he felt the statement would not be retracted based on his own personal experiences. If the Tribunal concludes that the claimant did not say that he would be dropped for the playing squad because of the colour of his skin then there is no protected act.

281. In the alternative, the respondents' agent submitted there was no specific allegation made by the claimant that he had been discriminated or harassed by the respondent. He had stated again his belief of what might happen not what had happened. There was no allegation to make as the act complained of had not yet happened. All the claimant did was express a view as to what he thought might happen. The allegation must be that the employer had contravened the Equality Act. It does not allow for any allegations that the employer may contravene the Act in the future.

Decision in relation to fifth protected act

282. The Tribunal found that the claimant had not been told that there would be "consequences" in the sense he alleged. Mr Murray had told him that it was unlikely the statement would be retracted as the respondents were keen to move on and focus on football. The Tribunal did not find that the claimant said if he were to be dropped it would be because of the colour of his skin. While that was contained in the claimant's witness statement, it was not something put to either Mr Murray or Mr Agnew. The Tribunal considered on the balance of probabilities that this had not been said and the focus was on the statement and the claimant's unhappiness that it had been issued. The facts underpinning this protected act had not been established. The claimant had not made any allegation that the respondent or another person has contravened the Equality Act 2010.

283. Had the Tribunal found that the claimant had said what was submitted, the Tribunal would have considered the respondents' agent's submissions to be meritorious. The act in question would not have been to allege racial harassment or direct discrimination. The wording of section 27(2)(d) states that the allegation must be that "A or another person has contravened this Act". In other words, the act is that there has been an allegation of a breach of the Act, not of a potential breach. There is no basis to include within the definition the words "has contravened or threatened to contravene" the Act. Had Parliament so intended, it would have said so in the statute (as it has done in other provisions).

284. On the facts of this case the claimant was saying if the employer did not include him in a future game, that would be an act of discrimination. There was no allegation of a breach of the Act but instead a comment that if something happened that could then amount to a breach of the Act. On that basis, the fifth act did not amount to a protected act.

Sixth protected act

285. The issue is whether the text message from AA to Mr Murray on 16 October 2021 amounted to a protected act in terms of section 27(2)(d), specifically one or both an allegation of harassment on grounds of race, contrary to section

26 and an allegation of victimisation, contrary to section 26, associated to the protected act 5 by the claimant, either on the principle of associative victimisation or because the respondent believed that this was done on behalf of any with the acquiescence of the claimant.

5 286. Counsel for the claimant submitted that the text message asserted as fact that the claimant had been racially abused. It asserted he was punished "for being racially abused" by being "suspended for 2 weeks". The phraseology was redolent of detriment. It was considered a complaint that the claimant had been punished for being racially abused, which amounts to a complaint of 10 victimisation. Alternatively, the conduct taken as a whole would amount to harassment related to race. The claimant relied upon the principle of associative victimisation. The first sentence of paragraph 3 of the letter of 20 October 2021 makes clear that the claimant was being treated as associated with this conduct. In any event, the fact that this appears as part of the 15 reasoning for the claimant being placed on enforced leave can only imply that it was considered the claimant was culpable for this, and so it must have occurred on his behalf or with his consent.

287. The respondents' agent argued that the message from AA stated his belief that the claimant was being suspended for raising an allegation of racial 20 abuse. The respondents' agent accepted this could constitute an allegation against the respondent directly and one for which they could be liable. However this was a protected act as the act itself was not carried out by the claimant. There is no concept of associative victimisation under the Equality Act. Section 27 must be given its ordinary meaning. Only the claimant can 25 himself complete a protected act. This act was carried out by AA, not the claimant and therefore the sixth act cannot be a protected act.

Decision in relation to sixth protected act

288. The text message stated that*: "I cant believe what Ive heard off Rico. I respect you for the career you've had big clubs. Surely in your head you know this* 30 *isn't right? A boy you signed has been hung out to dry, been called a liar by a director who is trying to sweep this under the carpet. Rico is "suspended" for*

2 weeks for being racially abused and use (sic) speak about mental health a lot. You have backed the chairman up on this showed no support for Rico or stood up for whats right. I fully get that the directors hire and fire and you need to watch what you say or do. The boy is a victim. I will be taking this further its disgusting."

289. The respondents' agent accepted this could amount to making an allegation that the respondents' breached the Equality Act. While the wording of the Equality Act 2010 suggests a protected act can only be made by a claimant, that does not accord with retained European law and the Equality Act 2010 can be recast to do so, thereby allowing a protected act to be made by a third party, securing protection of the Directive. On the facts this is a protected act.

Seventh protected act

290. The issue here is whether the claimant's solicitor's email of 27 October 2021 at 11:40 amounted to a protected act in terms of section 27(2)(d), specifically an assertion of an intention to bring proceedings under the Equality Act 2010 in relation to direct discrimination (or otherwise).

291. Counsel for the claimant submitted that the second respondent volunteered in his evidence that the reason he did not reply to the second email on that date was that he understood there was to be litigation, which can only be a reference to the terms of this first email. Accordingly, this is an overt protected act. The same principles in relation to associative victimisation or the respondents' belief this was on behalf of the claimant are relied upon. The latter is even clearer, given we are talking about a Solicitor (i.e. someone who can only take steps on behalf of their client with express authority

292. The respondents' agent argued this was not a protected act. The email from the claimant's solicitor sets out there may be a potential legal claim arising from the alleged racist abuse at the match. The email goes on to confirm the alleged abuse is the subject of possible civil litigation. There was no specific allegation made by the claimant that he had been discriminated by the respondent. The email sets out that a potential legal claim might be lodged. It does not set out any specific allegations. If the allegation does not infer a

specific allegation against the respondent, then it cannot be said to amount to a protected act.

293. Further it was argued that the act itself was not carried out by the claimant. The ‘allegation’ was made by the claimant’s solicitor not the claimant. As there is no concept of associative victimisation then this would not amount to a protected act.

Decision in relation to seventh protected act

294. The Tribunal considered this carefully.

295. The email states: *“We represent the above named in connection with a potential legal claim arising from ab alleged racist abuse incident that took place during Airdrie’s away game to Queen’s Park at Firhill Stadium on Saturday 11 September 2021. We understand that the club has placed our client on special leave for a temporary period and we would be very grateful if contact could now be made with him to confirm the arrangements for his early return to work. As the alleged racist abuse incident is now the subject to both a criminal investigation and a potential civil litigation it is kindly requested that the Club refrains from discussing it with our client on his return to work. The alleged racist incident and the aftermath has caused our client considerable distress and his desire on returning to work is to focus entirely on his football. In any event we understand that the club’s investigation into the alleged racist incident has concluded and so in those circumstances we would not anticipate it being necessary for this matter to be discussed with our client. If that is not the case then considering our client’s age and vulnerability surrounding this mater it is kindly requested that any questions are referred to us in the first instance.”*

296. It was submitted by counsel for the claimant that this was “an overt protected act”. It was not specifically stated as to what section was relied upon but the Tribunal considered these in turn.

297. It was not “bringing proceedings” since none had been brought at this stage.

298. The Tribunal then considered whether it was "giving evidence or information in connection with proceedings under the Act". The letter was telling the respondents any communication was to go via the solicitor. The letter makes no mention of any proceedings under the Equality Act 2010. While there is reference to a legal claim, that is said to be a "potential" legal claim. Reference is also made to "potential civil litigation". Given proceedings had not been raised and were being considered and there was no reference to proceedings under the Equality Act 2010 the Tribunal did not consider there to be any explicit or implicit reference to proceedings under the Equality Act 2010. The proceedings could have been in relation to any civil matter. The issue is not what the respondent believed (with the benefit of hindsight) but what the communication did – and whether it satisfied the terms of the Act. Even if there were an implicit reference to proceedings under the Equality Act 2010, the communication was not giving any evidence. It was also not giving any information in connection with ay such proceedings since the email was solely telling the respondents to contact the respondents with regard to the matter and not the claimant.

299. The next question was whether the communication was "doing any other thing for the purposes of or in connection with the Equality Act 2010". The letter made a passing reference to potential civil proceedings and asked the respondents to contact the solicitor rather than the claimant. There was nothing done for the purposes of or in connection with the Equality Act 2010 since the communication was to contact the solicitor and not the claimant, which clearly had no connection with anything in relation to the Equality Act 2010.

300. Finally the Tribunal considered whether the communication was making an allegation (express or otherwise) that A or another person has contravened the Act. While there is reference to potential legal claim and potential civil litigation there is no reference to the Equality Act 2010 expressly or by implication. The potential claim and action relates to an alleged racist abuse incident that took place at a football match. It is not suggested (nor was it the case) that an employee of the respondent was responsible for the alleged

racist abuse. Objectively viewed the communication does not expressly or otherwise make an allegation that someone has breached the Equality Act 2010. A spectator could not breach the Equality Act 2010 for which the respondents could be liable. It was possible, at the stage the email was written, that the potential legal action was under some other legal measure. On balance the communication was not making an allegation expressly or otherwise that someone breached the Equality Act 2010.

301. On that basis the act is not a protected act.

Victimisation: first detriment

302. The acts relied upon was the claimant being dropped from squad for East Fife game on 18 September. The issues were whether this amounted to a detriment and if so, was the claimant subjected to that detriment because of protected acts 1 and/or 2.

303. Counsel for the claimant submitted that a football player dropped from the squad for a game they wish to play in and assert they are fit to play in, would consider this to be a detriment. Both the second respondent and Mr Agnew accepted that the claimant would likely have played the game, but for his tweet. Whilst Mr Murray qualified this as being because the tweet demonstrated the claimant was unfit to play, the others did not. If the Tribunal accepts that the decision was taken by the second respondent (in whole or in part), then the qualification by Mr Murray is of no consequence. In any event, Mr Murray's evidence was not credible. He said that "it was obvious" to him by the Thursday that the Claimant was not fit to play, yet he was unable to explain what made that obvious.

304. Alternatively, the close connection in time to the protected acts; the fact the claimant had played in all other matches he was physically fit for; the evasive evidence about this issue; and the overall weight of conduct are sufficient facts for an inference to be taken. The respondent has failed to discharge the burden of proof upon it to show that the detriment was "in no way" because of the protected acts.

305. The respondents' agent argued that this would not amount to a detriment. There was no contractual right for the claimant to participate in matches. His selection was not guaranteed as admitted by the claimant under cross examination.

5 306. It was submitted it was not related to the protected acts. The Tribunal would need to be satisfied that the evidence was that Mr Murray dropped him because he had made assertions under the Equality Act. Not only was that not the evidence, there is no impression that Mr Murray was personally worried about the Equality Act; he was worried about performance of the team. He was worried about the headspace of his player; he was worried the player said he was not fit to play. Mr Murray was clear the reasons why he did not select him, the issue of the protected acts did not cross his mind, he was focussed on winning football matches.

Decision in relation to first detriment

307. While the first and second protected acts had not been established, the Tribunal, for completeness, considered the submissions the parties made given the evidence led and facts found, applying the legal tests. Had it been necessary to determine this issue, the Tribunal would have found that being dropped from the squad for the East Fife game on 18 September was a detriment. It was clearly conduct the claimant did not like and reasonably placed him at a disadvantage.

308. The Tribunal would also have found that the reason why the claimant was not selected to play was in no sense whatsoever because of what was said to be protected acts 1 and 2. Having assessed the evidence the Tribunal was able to make a direct finding of fact in relation to this matter, without the need to apply the burden of proof provisions. The Tribunal did consider counsel for the claimant's submissions in this regard and would have found that the respondent had discharged the burden having been able to show the reason for the treatment on the facts.

309. The Tribunal would have been satisfied that the only reason why the claimant was not selected was the desire to put the best possible team on the pitch on

the day in question. The acts relied upon as protected acts (the first 2 protected acts) would have been found to have been in no sense whatsoever a reason for the decision not to play the claimant that day.

Second detriment

5 310. The acts relied upon was the first and second respondent's refusal on 23 September 2021 to permit the claimant to participate in an interview on racism in football. The first issue is whether this amounted to a detriment and if so, was the claimant subjected to that detriment because of any or all of protected acts 1 and/or 2.

10 311. Counsel for the claimant argued that a black player in an industry which, objectively, has ongoing issues with racism and who had recently perceived himself to have been the victim of racism would consider being declined permission to participate in such media coverage to be a detriment. That is particularly so where the individual in question "strongly believed in" the
15 subject matter.

312. The unprecedented nature of the refusal; the heavy-handed reply; the intervention of the second respondent to put pressure on the claimant via his agent; and the suggestion that the claimant might "incriminate himself" all point to an ulterior motive behind the refusal. The reference to the ongoing
20 investigation implicitly links this to the protected acts 1 and 2. At the same time, that is not an objectively justifiable, severable reason for the refusal.

313. It was submitted that even if that were not upheld, it was argued that the facts are sufficient to shift the burden of proof to the respondents. The respondents have failed to discharge the burden upon them. They presented no
25 explanation for refusing permission which could be said to be "in no way" connected with the protected acts. On their own account, the fact the claimant had made these allegations was the only reason he was refused permission. They themselves appeared to infer that the reason he was being selected for this was to be asked about the incident.

314. It was the respondents' agent's position that this would not amount to a detriment. There was no contractual right for the claimant to participate in media interviews. His contract was explicit that he needed to seek permission to participate in such appearances. It is not a detriment not to be allowed to participate in these interviews.

315. This was not related to the protected acts. To make this finding the Tribunal would need to be satisfied that the evidence was that Mr Hetherington did not allow him to participate in these interviews because he had made assertions under the Equality Act. Not only was that not the evidence, there is no impression that Mr Hetherington was personally worried about the Equality Act; he was worried about what he perceived as misinformation that had already been presented in the media. He considered the claimant had done so when his tweet detailed he had heard the abuse when he had told the club he had not. He was also concerned that the Mr Bartley interview detailed inaccuracies, it had suggested a perpetrator had been identified when they had not. He considered that media interviews would hinder the club in pursuit of identifying the perpetrator which was its stated aim at the time. It was submitted that it is properly severable – it was not the act of the tweet itself it was the way the tweet had portrayed the situation

Decision in relation to second detriment

316. While the protected acts had not been established, the Tribunal considered the submissions the parties made and the facts as found from the evidence applying the legal principles. The Tribunal would have been satisfied the refusal to participate in the documentary was a detriment. The claimant wanted to speak about the issues and was unhappy that the respondents had declined to give him permission to do so.

317. The Tribunal would also have found that the reason for the respondents' decision was in no sense whatsoever related to the alleged protected acts 1 and 2. The sole reason for the decision not to allow the claimant to participate in the interview was the desire to protect the investigation and the reputation of the parties. It was not necessary rely upon the burden of proof provisions

since the Tribunal was able to make a direct finding of fact on this point. The second respondent was concerned that any public discussion could result (even inadvertently) in discussion of matters that could adversely affect the ongoing investigation. The acts relied upon as the first 2 protected acts were in no way connected to the reason for the respondents' decision. Even if the burden of proof had shifted, the respondent had discharged it from the facts found as the protected act was in no sense whatsoever a reason for the treatment.

Third detriment

318. The act relied upon was the second respondent's threat to the claimant's agent on 4 October 2021 to terminate the claimant's contract "because of tweet". The first issue is whether this amounted to a detriment and if so, was the claimant subjected to that detriment because of protected act 2.

319. Counsel for the claimant invited the Tribunal to prefer AA's account. A reasonable person in the claimant's position would consider an implied threat from the owner and de facto Managing Director of the club employing them to be a serious matter, and one which was a detriment. The fact it was never implemented is nothing to the point: the threat itself is an act calculated to coerce the claimant to "toe the line". If the Tribunal accepts that it should be interpreted as a threat, then it is a detriment.

320. If the Tribunal accepts AA's account of the discussion, there is no need to go beyond and consider a shifting burden of proof. That evidence is sufficient to allow a positive finding in fact given the express basis of which the threat was articulated.

321. The respondents' agent said that it was not accepted that Mr Hetherington made these comments to AA. AA did not recall a specific threat being made to him, he recalled that breach of contract had been discussed. This is consistent with text messages between Mr Hetherington and AA. Mr Hetherington was clear in his evidence this is not language he would use.

322. The respondents' agent argued that even if this conversation took place it would not amount to a detriment. The comments were directed to the claimant's agent not the claimant personally. They cannot be said to have impacted the claimant.

5 323. Finally it was submitted that this was not related to the protected acts. Mr Hetherington made these comments as he considered that the claimant needed to allow the respondent 14 days to investigate the concerns before making any statements based on his interpretation of the contract. He was concerned about the misinformation and his belief he had 14 days to
10 investigate.

Decision in relation to third detriment

324. Although the Tribunal did not find the protected acts to have been established, the Tribunal considered the parties' submissions and applied the law to the facts as found.

15 325. The Tribunal first considered the facts. The Tribunal found the claimant's agent had a discussion with the second respondent, who was concerned about the impact publicity could have upon the first respondent's reputation, particularly where it was suggested that an act of discrimination had taken place, when the investigation suggested it had not. The Tribunal was not
20 satisfied on the balance of probabilities that the second respondent threatened to "rip up" the claimant's contract because of the tweet. The facts forming the basis of this claim had not been established.

326. If the Tribunal was wrong in that conclusion, the Tribunal would have found that the comments to the agent did amount to a detriment. While the
25 comments were not to the claimant directly, given the claimant's agent represented the claimant, the purpose in telling the agent was so the agent can pass that information to the claimant which was reasonably considered adverse to the claimant. The comments amounted to a detriment.

327. The Tribunal would have found that the second protected act was in no sense
30 whatsoever a reason for the treatment. The reason why the second

respondent said what he said was because he wished to protect the first respondent's reputation (and that of the claimant). He was concerned the claimant had been mistaken and alleging racism was unfair for the fans. The acts relied upon as the second protected act were entirely unconnected to the decision in this regard.

Fourth detriment

328. The act relied upon is Mr Murray pressuring the claimant to agree to the first respondent's third media statement on 11 October 2021 and the first issue is whether this amounted to a detriment and if so whether the claimant was subjected to that detriment because of protected act 3.

329. Counsel for the claimant argued that it was a matter of record that the claimant refused to agree to the proposed statement put to him on 5 October 2021 and repeatedly thereafter. A football player in the position of the claimant being hounded to agree a statement by the person in charge of team selection, doing so on behalf of the owner of the club, would consider this to be a detriment. It was conduct calculated to coerce him to take a particular position, against his repeated, stated wishes.

330. This was because of protected acts 1, 2 and 3. The claimant was repeatedly maintaining his position he was racially abused, whereas the respondents wished to issue a statement to the contrary. The only reason to approach the claimant and seek to pressure him was because of his position, and in particular his stated position on 5 October that he was unwilling to accept he was not racially abused (protected act 3). There is no need to look to the shifting burden of proof because there is sufficient evidence from which the Tribunal can make a positive finding.

331. Even if the facts are sufficient to allow an inference to be taken, the respondent has failed to discharge the burden upon them. No non-discriminatory reason has been advanced for this conduct.

332. The respondents' agent denied that Mr Murray pressured to agree the statement as alleged. The meeting had been left that the claimant would

prepare his own statement and work collaboratively with the respondent to agree a joint position. The claimant was not happy with statements the respondents provided and sought input to agree a statement. It was not the specific statement that they sought to the claimant to agree, they were presenting options to him.

333. In any event the respondents' agent's position that this would not amount to a detriment. There is no detriment to the claimant that could be argued here, as he maintained his position that he did not wish to agree the statement. There were no negative consequences to the claimant in him adopting that position.

334. Finally, it was argued that this was not related to the protected acts. There was no impression that Mr Murray was "personally worried" about the Equality Act; he was trying to seek the claimant's input in a statement as it was felt it was in both parties mutual interest to agree a statement. It was not because of a protected act. It was properly severable as it was not the claimant's allegation at the meeting of 5 October it was the separate discussion around trying to agree a media statement.

Decision in relation to fourth detriment

335. While the protected acts had not been established, the Tribunal considered the parties' submissions given the facts found by the Tribunal applying the legal tests. The claimant had not made it clear at the meeting on 5 October that he would not work with the respondents to agree a joint statement. Their belief was that such an approach was beneficial and possible. Their attempts to seek to agree a joint statement was not unreasonable. The Tribunal did not consider the respondents' actions to amount to "pressurising the claimant to agree a statement" having considered the evidence carefully and counsel for the claimant's submissions.

336. The Tribunal was not satisfied that the respondents' conduct amounted to a detriment. The claimant did not wish to agree a statement. The respondents were keen to issue a joint statement. A detriment is something an individual could reasonably consider changes their position for the worse or puts them

at a disadvantage. As the Code notes (at paragraph 9.9) an unjustified sense of grievance alone is not sufficient. In this case the attempts to secure the claimant's agreement to a joint statement did not amount to a detriment. It was a reasonable attempt (in the midst of an emotive situation for each party) to seek consensus on wording to bring an end to this matter and to allow the focus to return to football. The claimant disagreed and ultimately no joint statement was issued.

337. If the Tribunal was wrong in its conclusion, the Tribunal considered what the reason or reasons for the treatment were. The protected act relied upon was in no sense whatsoever a reason for the treatment. The Tribunal was able to make a positive finding that the only reason why the claimant was asked about the statement, from the evidence, was to seek consensus and move the focus back to playing football. It is not necessary to consider the burden of proof as the Tribunal was able to make a positive finding of fact as to the reason for the treatment. In any event the Tribunal was satisfied that fourth protected act relied upon was in no sense whatsoever a reason for the treatment.

Fifth detriment

338. The issue here was whether Mr Murray alleged threats to the claimant "with consequences" at meetings on 12 October 2021.

339. Counsel for the claimant argued that Mr Murray accepted that he was seeking to convey in these discussions to the claimant that it was not in his interests to seek to have the statements withdrawn. They were calculated to discourage him from doing something he otherwise intended to do. The power imbalance between the claimant and Mr Murray and between the claimant and the second respondent adds to the perception of this as a detriment.

340. Counsel submitted that these detriments were meted out because of protected acts 4 and 5. If the claimant's account of those protected acts is accepted, these detriments occurred in response to those protected acts in the sense they were replies that followed the claimant's statements.

341. The respondents' agent denied that Mr Murray threatened the claimant with consequences as alleged. Mr Murray did not threaten consequences to the claimant, he sought to explain his position that he did not think the statement would be retracted and why that was the case based on his experience in football and with football clubs.

342. The respondents' position was this would not amount to a detriment. The 'consequences' referred to by Mr Murray was reference to the potential damage to the claimant's reputation if it was portrayed, he had made a false allegation of racist abuse if the media statement was withdrawn. It is therefore denied that the claimant was subjected to any detriment as alleged.

343. It was submitted this was not related to the protected acts. To make this finding the Tribunal would need to be satisfied that the evidence was that Mr Murray issued these threats based on the protected acts made by the claimant. That was not the evidence. The claimant approached Mr Murray asking to retract the statements, the conversation was about the statements itself and why these would not be retracted. It was not within Mr Murray's mind that the claimant had re-iterated a belief he had been racially abused. The context was the discussion on the media statements themselves. It was properly severable – it was not the claimant's allegation during these two meetings that he was racially abused, it was due to his request that the media statements be withdrawn.

Decision in relation to fifth detriment

344. While the Tribunal had not found protected acts to have been established, given the parties' submission the Tribunal considered the position in light of the facts found applying the law in this area. The Tribunal had not found as a fact that the claimant had been threatened that there would be "consequences". The claimant had been told that it was unlikely that the respondents would change their position even although the claimant wanted the respondents to retract the statement.

345. The Tribunal then considered the reason why the respondents acted in the way they did. The reason why the claimant had been told that was in no sense

whatsoever connected to the acts relied upon. It was solely to explain the respondents' position, that they wished to focus on football and move on. It was not because of the alleged protected acts. The Tribunal is satisfied that the reason for the treatment was entirely unconnected to the acts relied upon (protected acts 4 and 5). The Tribunal would have been able to make a direct finding in relation to that matter, without resort to the burden of proof from the evidence led.

Sixth detriment

346. The sixth detriment was the dropping of the claimant from the playing squad and placing him on enforced leave for 2 weeks on 16 October 2021.

347. Counsel for the claimant submitted that any person in the claimant's shoes would consider that to be an obvious detriment. He was suspended from his job without legal right nor justification. He was essentially placed in a state of suspended animation for 2 weeks. He was barred from training with the first team and he was not available for selection for the first team. In short, he was prevented from doing the job he loved during that period. The letter of 20 August involved a "scatter gun of various other allegations". The claimant's tweet was explicitly mentioned. Paragraph 3 includes reference to "people associated" which we know includes AA. To the extent it refers to Jai Quitongo's tweet of 12 October, that tweet directly related to the claimant's originating allegations of racial abuse. The whole tenor of the letter, looked at as a whole, is "related to" the claimant's protected acts.

348. Counsel submitted those were sufficient circumstances to shift the burden of proof and it would be impossible for the respondent to discharge that burden once shifted. They could not establish that the conduct was in no way because of the protected acts because the letter explicitly refers to protected acts (as well as implicitly referring to others). In any event, objectively, it cannot seriously be suggested that the reasons within that letter that do not relate to protected acts would ever be sufficiently substantial to justify this.

349. The respondents' agent argued that the act does not amount to a detriment. There was no contractual right for the claimant to participate in matches, nor

for him to train as part of the first team squad. Even if it did, it was not related to the protected acts. To make this finding the Tribunal would need to be satisfied that the evidence was that Mr Murray and Mr Hetherington did not select him and placed him on a cooling off period because of the protected acts. Not only was that not the evidence, there is no impression that Mr Murray or Mr Hetherington were "personally worried about the Equality Act".

350. The situation the respondents found themself in was unique and the circumstances were exceptional, including a family member of the claimant's turning up at stadium and the claimant refusing communications with manager and his assistant. In the club's view things had got totally out of hand and a cooling off period was implemented to try and allow things to calm down. The measures taken by the respondent were to allow cool heads to prevail in the short term and find solutions in the longer term.

351. By the claimant's own evidence and the documentary evidence including text messages, the claimant was in line to be selected as late as 12.40 on the Friday having been informed this is the case by a colleague. Following this a family member of the claimant's attended the stadium and the claimant refuses to take or return calls from the management. This was what led to the decision to remove the claimant from the playing squad and place him on a cooling off period.

Decision in relation to sixth detriment

352. The protected act relied upon in relation to this detriment had not been established in terms of the evidence, but the Tribunal considered the parties' submissions and the evidence, applying the legal principles in the event the Tribunal had erred.

353. Firstly, the Tribunal considered the facts. The Tribunal was satisfied that the enforced cooling off period did amount to a detriment. While there was no contractual right to be played, the treatment was reasonably considered by the claimant as putting him in a worse position given he was treated adversely from how he would otherwise have been treated.

354. The Tribunal considered the reason for the treatment. Having considered the evidence, the Tribunal is satisfied the reason for the treatment was entirely unconnected to the protected act relied upon. The letter issued referred to the context in which the decision was made. The respondents were concerned about the impact events had upon the claimant and wished to pause matters with a view to facilitating a return to focus on football.

355. The Tribunal considered whether the claimant had brought forth sufficient facts from which an inference could be drawn that the treatment was unlawful. The Tribunal considered that the clamant had done so. As counsel for the claimant pointed out the letter made reference to the protected acts relied upon. The Tribunal considered the terms of the letter and the evidence it heard. The Tribunal was satisfied that the reason for the treatment was in no sense whatsoever to any of the 5 protected acts relied upon and the respondent had discharged the onus of showing that the reason for the treatment was in no sense whatsoever any of the protected acts.

356. The letter of 20 October 2021 makes it clear that the respondent considered the terms of the radio interview to be inaccurate and misleading which had followed the claimant's public statement which the respondents believed was a breach of his contract (as the claimant had been told not to make any public statement during the investigation as the respondents were concerned it could impede the investigation, whether by making it less likely potential witnesses would come forward or otherwise). The letter also refers to aspersions having been cast against the club and a member of the claimant's family attending at the stadium. The letter concluded that *"events have clearly spiralled out of control and the club have referred the entire case and all information gathered to the police. With that in mind the board and football management team felt it best you had 2 weeks paid leave to allow the police investigation to progress and we will reassess the position at the end of 2 weeks or when the police investigation is concluded".*

357. The Tribunal was satisfied that none of the acts relied upon as protected acts 1 to 5 was in any way connected to the reason for the cooling off period. The decision was taken to take heat out of the situation given the respondents'

belief that matters had become out of control. While the statement the claimant had made was background information, it had in part contributed to the claimant's agitation but the statement was not a reason for the decision. The Tribunal analysed each of the 5 acts said to amount to a protected act and was satisfied none of these was in any sense a reason for the treatment.

Seventh detriment

358. The act relied upon was the first respondent's refusal to communicate with the claimant's agent from 16 October 2021. The first issue is whether this amounted to a detriment and if so, was the claimant subjected to that detriment because of protected act 6.

359. Counsel for the claimant argued that Mr Murray accepted that it was standard for a player's agent to have a line of communication to the club manager directly and the effect of the decision communication was to completely cut off the player's agent from the club. It was self-evident doing so would be detrimental to the claimant and would be perceived as a detriment as it would cut off an essential line of communication.

360. Counsel submitted that this was because of the message. The second respondent said it was because of both the message and the tweet, but that distinction is immaterial as there content was substantially the same and it is not necessary for the protected act to the sole reason for the detriment.

361. The respondents' agent argued that this would not amount to a detriment. There was no requirement for the club to communicate to a player's agent, there is no contractual right. The claimant had alternative representation (via the PFA), he was not without advice or representation.

362. It was submitted this was not related to the protected acts. There was no impression that the respondent were "worried about" the Equality Act; they were worried about what they perceived as misinformation in a tweet by AA in which the he had suggested the club had more than one witness to the racist incident.

363. It was in any event properly severable from his text message – it was not the text or the content within the text message it was his tweet and the misinformation contained within.

Decision in relation to seventh detriment

364. The Tribunal considered the parties' submissions and the facts. The protected act relied upon had been established. The Tribunal concluded that the decision to ban communication with the claimant's agent was a detriment. It was adverse to the claimant who reasonably considered it to be so. The claimant wished to have a line of communication with the respondent via his agent and this had been taken away from him. It was a detriment and reasonably believed to be adverse to the claimant.

365. The next issue is whether the act (the removing the line of communication with the agent) was because of the protected act (in the sense of being an effective and substantial cause, even if not the principal cause). The Tribunal carefully considered the reason why the respondents made the decision. The Tribunal was satisfied the protected act relied upon was in no sense whatsoever a reason for the decision as it was able to make a positive finding as to the sole reason for the treatment from the evidence heard. It was not therefore necessary to rely upon the burden of proof provisions. In any event having considered counsel for the claimant's submissions and applied the rules, the Tribunal was satisfied that the respondent had discharged the burden of proof and had shown, on the evidence, that the reason for the treatment was in no sense whatsoever the protected act, applying the legal principles.

366. The club manager had already had a falling out with the agent and relations had become tense. The second respondent was concerned about how the agent had conducted themselves in discussions with the club and had decided that they could not work with the agent. They were upset at what they perceived to be misinformation that the agent had communicated and AA's inability to see matters from the respondents' perspective. The protected act (the text message from AA to Mr Murray on 16 October 2021) was entirely

unrelated to the reason for the decision. The reason why the respondent cut off contact was because they believed the agent was responsible for misinformation and communicating (publicly) mistruths about them. The second respondent was upset as to how the agent had acted and that AA had stated matters had been "swept under the carpet".

367. The second respondent was unhappy that the agent was publicly suggesting the way matters had been handled was wrong. The protected act, the assertion that the Equality Act had been contravened was in no sense a reason for the decision to cease communication as it was solely the second respondent's belief that the agent was issuing mistruths about how the investigation had been conducted. The assertion that the Equality Act had been breached was not an effective or substantial cause for the decision. The reason was the assertion (in both the tweet and message) that the respondents had "brushed things under the carpet", when, in the second respondent's belief, matters had been fully and properly investigated. The Tribunal accepted the second respondent's evidence that it was the misinformation that was the reason and not the assertion that the Equality Act was breached that was the only reason for ceasing contact with the agent. The Tribunal upheld the respondents' agent's submissions in this regard and found that it was not the text or the content of the protected act that was a reason for the decision but the misinformation and suggestion the respondent had not properly investigated matters. The issue as to misinformation was properly severable from the protected act.

368. The Tribunal carefully considered all the facts (and the claimant's counsel's submissions) and was satisfied from analysing the evidence that the protected act was in no sense whatsoever connected to the detriment. It was not because of the protected act to any extent on the evidence.

Eighth detriment

369. The eighth act of victimisation was the continuation of claimant's enforced leave. The protected act relied upon in relation to this detriment had been established. The Tribunal considered whether the treatment relied upon was

a detriment and whether the claimant was subjected to it because of the protected act.

370. It was alleged that the evidence of the second respondent and Mr Thomson was so mutually contradictory that the claimant's primary position is that the Tribunal should decline to make any finding that the first respondent received a report of criminality on the part of the claimant. Even if they did, the second respondent's evidence was clear that – from the outset – there was no reliable evidence of that and it was unsubstantiated. In any event, that was clear at least by the point the claimant's enforced leave was continued.

371. Enforced leave because you have been accused of being concerned in the supply of drugs it axiomatically a detriment and on Mr Hetherington's own account, he only raised this issue with Ms Gribbon because she was pushing for Mr Quitongo's return to work. In other words, the new enforced leave only came about because of the email which was a protected act. The second respondent did not think the allegations were credible; the respondents did not investigate the allegations at all (which could be the only reasonable purpose behind effectively suspending the claimant), and so the enforced leave was without purpose; the timing of the allegations implies a desire to use these to "get at" the claimant – or at least to stall his return to work (bearing in mind there were ongoing protected acts and ongoing conduct suggestive that the claimant remained unhappy with what had occurred and maintained that he had been racially abused); and the evasive and entirely inconsistent evidence of the second respondent and Mr Thomson are more than sufficient to found a *prima facie* inference.

372. Upon the burden shifting, counsel submitted that the respondent has failed to establish in evidence any credible, non-discriminatory reason for this conduct. It is not implausible and incredulous to suggest that the motivation was concern about the allegations and their seriousness but to then do absolutely nothing about it. The effect of carrying out no investigation was that they were in the same position as at the point the claimant was suspended by this issue: there was either enough to justify further steps or there was not.

373. The respondents' agent argued that this did not amount to a detriment for the reasons articulated above in relation to act of victimisation 7. Even if it did, the reason for the treatment was not related to the protected acts. To make this finding the Tribunal would need to be satisfied that the evidence was that Mr Hetherington extended the cooling off period because of a protected act specifically protected act 7. Not only was that not the evidence, there is no impression that Mr Hetherington was personally worried about the Equality Act; he was worried about the allegations of criminality which had come to light. He needed time to properly consider these and work out his next steps in relation to them. This was another unprecedented situation. The respondent had never dealt with such allegations previously and needed time to properly consider them. These were only disclosed to the claimant's solicitor at her insistence that Mr Hetherington do so. There is no evidence to suggest Mr Hetherington was motivated by any other reason apart from the one given.

Decision in relation to eighth detriment

374. The Tribunal considered the parties' submissions and the evidence carefully. The decision to continue enforced leave was a detriment. It was adverse to the claimant and prevented him from being selected for the first team. It was reasonable for the claimant to consider the treatment to be adverse.

375. The Tribunal then considered what the reason for the treatment was. The Tribunal considered all the evidence and was satisfied that the only reason why the leave was continued was to provide the respondents with time to consider how best to progress a situation with which they were unfamiliar. The second respondent wanted to take time to consider what to do and reflect. The Tribunal was satisfied that was what he did. His evidence was clear and cogent in this regard and the Tribunal accepted it. Ultimately, he decided to take no action but that was only after he had taken time to consider what to do given the unique circumstances facing him and the claimant.

376. The Tribunal considered whether the claimant had brought forth sufficient evidence to establish a *prima facie* case. While the evidence of the second

respondent was in parts unsatisfactory in places the Tribunal accepted the second respondent's evidence as to why he extended the enforced leave and his approach to the alleged criminality, considering the contemporaneous documents and evidence led. The Tribunal considered the second respondent's evidence carefully together with the full factual matrix and decided that the claimant had not brought forth sufficient facts to suggest that the protected act could be a reason for the treatment. The surrounding facts and evidence were clear.

377. The Tribunal found no evidence to support the assertion that a reason why the enforced leave was being continued was (or could be) because of the solicitor's communication from its assessment of the evidence.

378. Even if the burden had shifted to the respondent, the Tribunal was satisfied that the reasons for the treatment were entirely unrelated to the protected act which was in no sense whatsoever a reason for the treatment and the respondent had discharged the burden from the facts. The claimant's solicitor's email was in no sense whatsoever connected to the reason why the leave was continued. The sole reason why leave was continued was the second respondent's wish to consider what he had learned and determine how best to proceed. The protected act was in no sense related to the detriment.

Ninth detriment

379. The final act of victimisation relied upon was the first and second respondent's handling of allegations against the claimant, including their failure to put the allegations to the claimant; their failure to disclose to the claimant to evidence supporting the allegations; and their failure to meaningfully investigate the allegations at all.

380. Counsel for the claimant submitted that this is an obvious detriment. Having put the allegations to the claimant indirectly, it was obvious he would be concerned by them. The failure to take any steps to establish their truth (and thus to clear his name); the failure to equip him with the information to do so himself; and the failure to even give him basic information to understand

exactly what he was accused of is an egregious abuse of a position of trust. Any person in the claimant's position would consider that a detriment. It was argued that for essentially the same reasons as the ninth act of victimisation, this can readily be concluded to be because of the protected acts.

381. The respondents' agent disputed that this was a detriment. There was no detriment to the claimant, they did not suspend him, they did not discipline the claimant for these allegations. They attempted to treat the issue as sensitively as possible. Once the allegations came to their attention the first respondent considered carefully what to do with the information and how to conduct further investigation. Once conducting further initial enquiries it was decided they would be unable to substantiate these allegations and thus stopped their investigation. The claimant was then allowed to return to training. It is therefore denied that this was a detriment as alleged.

382. The respondents' agent submitted that the act was not related to the protected acts. To make this finding the Tribunal would need to be satisfied that the evidence was that Mr Hetherington did not put these to the claimant because he had made assertions under the Equality Act. Not only was that not the evidence, there is no impression that Mr Hetherington was "personally worried" about the Equality Act; he was worried about the allegation themselves and sought to verify them. He considered these amounted to no more than hearsay and couldn't properly put them to the claimant nor seek to action against the claimant for the same. If Mr Hetherington had sought to formally interview the claimant on these allegations it is probable that a claim would have been raised as a detriment instead. He wished no ill will to the claimant and did not see it as his place to address these hearsay allegations, nor did he consider it appropriate to report to the Police as it was only hearsay. There is no suggestion anywhere Mr Hetherington was motivated by any protected act.

Decision in relation to ninth detriment

383. While only one of the protected acts relied upon had been established (protected act 6), the Tribunal carefully considered the facts and the parties'

submissions. The Tribunal considered the facts carefully. The Tribunal was not satisfied from the evidence that the acts relied upon amounted to a detriment. The respondents had received an allegation of potential criminality involving the claimant. Rather than proceed to a disciplinary investigation the respondents wished to consider the position and reflect upon their next steps. They ultimately chose not to take matters forward. They did not express any view on the veracity of the allegations and chose not to present them to the claimant in any formal sense. The respondents considered the allegations that had come to their attention and took time to decide what, if anything, to do about them. The acts did not amount to a detriment. No decision was taken in relation to the allegations and the respondents decided not to pursue them. That was not something the claimant could reasonably say, on the facts, amounted to a detriment. He was not treated adversely or in a way that he could reasonably say caused him to be disadvantaged in any meaningful way. The respondents considered the allegations and decided not to progress them in any way. The acts relied upon did not amount to a detriment.

384. Even if the acts did amount to a detriment, the Tribunal considered whether the claimant had brought forth sufficient evidence to establish a *prima facie* case to shift the burden of proof to the respondents. The Tribunal concluded that he had not done so. There was no basis from the evidence the Tribunal heard to support the assertion that any of the 7 protected acts could be a reason for the way the respondents handled the allegation in the way they did. There was no suggestion that any of the protected acts could be a reason for the decision, in the sense of an effective or substantial reason (even if not the principal reason). The clear and cogent evidence of the second respondent, which the Tribunal accepted, was that that the second respondent wished to take time to reflect upon what, if any action, to take. He chose not to take any action following that consideration (which was the only reason why he did what he did). The Tribunal did not accept the assertion that there was any facts which could support an inference that any of the protected acts could be a reason for the treatment.

385. The Tribunal was entirely satisfied the sixth protected act was in no sense whatsoever a reason for the treatment. It was entirely unconnected to the treatment.

386. Even if the burden had shifted to the respondent, the Tribunal would have been satisfied from the evidence it heard that none of the protected acts was in in any way a reason for the treatment relied upon and the respondent had discharged the burden from the facts. The Tribunal accepted the evidence of the second respondent that the sole reason for the way in which the matter was handled was due to his inexperience of the situation and that he wanted time to reflect and consider how to manage the issue. This was a situation that had not occurred before and he wished to proceed carefully. He considered matters and ultimately chose not to take any action. All of the facts relied upon as protected acts were entirely unconnected to the reason for the treatment.

Unlawful racial harassment

387. The Tribunal then turned to each of the harassment claims. It first considered whether the conduct was unwanted and then considered whether the conduct was related to race, bearing in mind the expansive interpretation placed upon that term by the authorities. This was not always an easy issue to determine and the Tribunal determined the issue from its assessment of the facts found following the evidence it heard in light of the context of the conduct in question, applying the wide interpretation set out within the authorities. The Tribunal then, where relevant, considered the purpose and effect of the conduct and applied the statutory wording. It is important to note that the acts of harassment were relied upon individually and were considered on that basis.

Unlawful racial harassment: First act

388. The first act of alleged harassment was Mr Thompson's conduct towards the claimant on 21 September 2021. If this occurred, the next issue is whether this was unwanted conduct and if so did it relate to race? Finally, if so, did the conduct have the purpose or effect of violating the claimant's dignity or

creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

389. Counsel for the claimant argued that the Tribunal should have no hesitation in concluding this conduct occurred. As well as the claimant's account, the text message exchange corroborated that saying "how dare he call me a liar". Counsel submitted that being called a "fanny" and a "liar" particularly about something sensitive and important, such as an allegation of racism is self-evidently unwanted. It was submitted that the incident could only be about the claimant's race given the context of and reasons for that conduct were his allegation of racist abuse. It was overtly offensive and humiliating and the fact this was shared openly in the dressing room with an unconnected player demonstrated this effect concerned the claimant's work environment.

390. The respondents' agent argued that Mr Thomson did not call the claimant a "fanny" as alleged. He was clear in his evidence that he did not discuss the events with anyone let alone Mr Easton. It is also submitted that Mr Thomson would have limited opportunity to make a remark to Mr Easton if alone in the changing room with a player. Mr Thomson was rarely alone with players, he met them in corridor or similar. When he was at the club, he was outside setting up equipment or in kit room, not in changing room where the alleged comment took place. Furthermore, Mr Easton travelled with other players he would rarely be alone in the changing room, he would arrive and change with them. Mr Thomson gave evidence. Mr Easton did not and his account cannot be challenged. In this case the respondents' evidence should be preferred.

391. If the Tribunal found that the act occurred, the respondents' agent conceded that it would amount to unwanted conduct but did not relate to race. The claimant's race is not mentioned. The conduct complained of is not related to race. It is because of the claimant's perceived reaction to the incident.

392. It was also denied that the conduct had the purpose or effect of violating the claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment but the claimant was himself not the direct recipient

of the comment it was relayed to him. It was argued that it would not be objectively reasonable for the conduct to have the effect complained of.

Decision in relation to first act of harassment

393. The Tribunal considered the facts found carefully having assessed the evidence led in this case. The Tribunal was not satisfied on the balance of probability that Mr Thomson called the claimant a "fanny" and a "liar". The Tribunal found that it was more likely than not that Mr Thomson strongly argued the incident had not occurred, as was his firm belief. Mr Easton regarded that as implicitly calling him a liar (and reported it accordingly). The facts giving rise to this allegation had not been established in evidence. If Mr Thomson had used the word "fanny" (and we were not satisfied that he had) we note that this was a term the claimant had used in a non-derogatory way (when during the meeting on 5 October he said "I'm being a fanny about it. So, I've kept my mouth shout because I wanted back in the team"). In other words that term in the context of the environment was not used in a derogatory or offensive way but a colourful or descriptive term. Nevertheless, the Tribunal was entirely satisfied Mr Thomson did not call the claimant a "liar", which would have been a derogatory and offensive term.

394. The Tribunal considered whether or not the conduct would have been related to race had it been established, if we were wrong in our initial conclusion. While the conduct was clearly unwanted (as the claimant strongly believed the incident had occurred) the Tribunal was not satisfied that the conduct related to race, even if it had been established. Mr Thomson was emphatic the relevant incident had not occurred and the claimant was mistaken. There was no evidence the "liar" comment, if it had been made, was in any sense connected to race. It was related to his belief that the comment was untrue and unconnected with race. The conduct was not related to race.

395. Had it been necessary to consider the purpose and/or effect of the conduct, the Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor create an intimidating, hostile, degrading, humiliating or offensive environment. Had the conduct occurred, the Tribunal

would have been satisfied it did have the effect upon the claimant given the nature of the words.

396. The Tribunal would have been satisfied it would not have been reasonable for the conduct to be considered to have had such an effect given the context. Objectively viewed it was not reasonable, given the issue here was Mr Thomson's belief that it had not occurred (with which the claimant took issue) rather than the incident itself. While the claimant disagreed with Mr Thomson's view, that was Mr Thomson's view, to which he was entitled. Within the context of the discussion and the heated emotions the Tribunal would have concluded that it would not have been reasonable on the facts and in light of the evidence for the claimant reasonably to have regarded the conduct to have violated his dignity or created an intimidating, hostile, degrading, humiliating or offensive environment.

Second act of harassment

397. The second act of harassment was the first and second respondent's threat of "material breach of contract" if the claimant participated in a documentary.

398. Counsel for the claimant argued that the conduct is set out in a text message and so its occurrence cannot be disputed. It was submitted that the "bizarre suggestion" from Mr Murray that he made this assertion off his own back, speaking on behalf of the board of directors for whom he had no authority, is entirely at odds with the second respondent's position. The only relevancy was whether the conduct was on behalf of the first respondent or also by the second respondent as an individual. If the Tribunal accepts this was an instruction by the second respondent, it is conduct by both respondents. It was submitted that a threat of breach of contract is clearly unwanted conduct.

399. It was argued that it explicitly related to the claimant's race in the context made: it was a direct response to the claimant's request to participate in an interview about racism, and the apparent motive was because of a concern that the claimant might be asked about an incident where he alleged he was racially abused.

400. Finally, it was argued that such conduct had the prescribed effect. The power imbalance is significant. Such a threat would create an intimidating and hostile environment, particularly when viewed in the context of ongoing issues in relation to the racist incident.

5 401. The respondents' agent argued that this was not unwanted conduct. There was no contractual right for the claimant to participate in media interviews. He must seek permission from the club to participate. The respondent exercised its contractual right not to permit him to participate, as Mr Murray explained in his evidence it was a common occurrence that media requests were refused.
10 The claimant should have been aware that his request might not be granted. The statement it is a material breach of contract is merely stating fact if the claimant participated in the interview it is the next logical step.

402. It was denied that this was an act related to race. The context is that the claimant sought permission and was refused. The communication of that is
15 not related to race it was related to the contractual reality of the situation. Race is only brought into events because the interview was to discuss racism in football. The respondent was concerned about misinformation and did not want the claimant to participate in any interviews at that time.

403. There was no suggestion that in using those words Mr Murray or Mr
20 Hetherington were motivated by race. They were merely stating their view that to participate would be a material breach of contract. The view was contractual nothing to do with the claimant's race. The respondents' actions and correspondence were entirely appropriate and cannot amount to harassment.

25 404. Finally, it was denied that the conduct had the purpose or effect of violating the claimant's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment, but the words were not unreasonable in the context of what was a response to a request for the media interview,
30 something for which he needed contractual permission.

Decision in relation to second act of harassment

405. The refusal of consent to participate in the interview was unwanted conduct. The assertion that it amounted to a material breach of contract was also unwanted conduct.

406. The Tribunal carefully considered the conduct and the context and was satisfied the conduct was not related to race. The conduct was, when viewed in context, the genuine belief of the consequence of the claimant failing to follow the instruction that was given. It was not related to race – explicitly or implicitly. While it was in the context of an interview about racism, the conduct was not related to race in the sense necessary to amount to unlawful harassment. The respondents' agent's submissions have merit. The Tribunal assessed the facts objectively and found that there was no material connection with race, taking account of the intention of the respondents and the view of the claimant. The Tribunal intensely analysed the context and concluded that the conduct was not related to race.

407. In the event the Tribunal was wrong in its conclusion that the conduct was not related to race, the Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor to create an intimidating, hostile, degrading, humiliating or offensive environment. The purpose was to explain the consequences of the actions as understood by the second respondent.

408. While finely balanced, given the claimant made little of the words used, the Tribunal would have found that the effect was to violate the claimant's dignity or create an intimidating, offensive, humiliating, degrading or intimidating environment for him.

409. However, while the claimant believed it to create an intimidating, hostile, degrading or offensive environment, when viewed within the context, on an objective basis, it would not have been reasonable to so regard it. The respondents were entitled to take the view that they wished no publicity around the incident when it was under investigation. While others may disagree with their approach, it was not an unreasonable approach to take. It would not have been reasonable for the conduct to be regarded as creating an intimidating, hostile, degrading, offensive or humiliating environment,

taking account of the claimant's views, the intention of the respondents and the full context.

Third act of harassment

410. The act relied upon was the second respondent's assertion to the claimant's agent that the claimant was using the racist incident for publicity.

411. Counsel for the claimant argued that given AA's acceptance that AA shared the sentiment, there would be no reason for him to misrepresent the position. There would also be no scope for misunderstanding (as he would already know AA's own view). AA's clear evidence that this occurred should be accepted. Thus, the conduct was clearly unwanted and clearly related to the claimant's race as that was the explicit context. Finally, it was argued that it was such a repugnant and self-evidently offensive statement that it would easily have the prescribed effect. It would and should be objectively viewed that way, as well as being subjectively viewed that way.

412. The respondents' agent did not accept that Mr Hetherington made these comments to AA. AA part could not recall who brought the issue up. AA conceded that AA's own view was that the claimant was seeking publicity from the racist incident. How can it be said to be unwanted conduct where the claimant's own agent held a similar view and was openly discussing the issue with Mr Hetherington.

413. It was not accepted this would amount to unwanted conduct. The discussions were instigated by AA not the respondent in this instance.

414. The context was that the comment was not related to race it was enquiring whether or not the claimant was seeking publicity. There is no suggestion it was motivated by race or racism, the discussion was in the context of seeking to discuss a way forward and one of the discussion points was whether or not the claimant sought publicity. This is plainly not related to race itself. The respondents' actions were entirely appropriate and cannot amount to harassment.

415. It was denied that the conduct had the purpose or effect of violating the claimant's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment, but this is not a position that came across strongly in his evidence he was more aggrieved at not being able to participate in the interview. Further in AA's evidence AA agreed with the proposition, why was it inappropriate for the respondent then to express the same view. It was relayed to him second hand. It was argued that it was not objectively reasonable for the conduct to have the effect complained of.

Decision in relation to third act of harassment

416. The Tribunal found that the belief of the claimant's agent and second respondent that the claimant had used the alleged racist incident for publicity was unwanted conduct. He clearly did not like what was said or viewed. In the Tribunal's view. It did not matter that this was raised by the claimant's agent as it was a matter on which the second respondent gave his view. The Tribunal was of the view that the unwanted conduct was related to race. It related to the claimant's desire to use the fact he believed he had been racially abused to boost his publicity. To that extent it was conduct related to race.

417. The Tribunal is of the view that the purpose of the conduct was not to violate the claimant's dignity, nor to create an intimidating, hostile, degrading, humiliating or offensive environment. The sole purpose of the comment was the belief that the claimant had been using this issue to boost his position, increasing the notoriety of the claimant within the industry.

418. While the claimant believed that the conduct created an offensive degrading and humiliating environment, the Tribunal did not consider it to be reasonable for him to so believe given the context. The claimant's agent believed that the claimant had used the incident to boost his publicity. AA was supporting the claimant and representing him. Others within the dressing room had raised the same issue. It was not unreasonable for such a belief to be held and it was not reasonable to conclude that having that belief and expressing it (to the claimant's agent) created the relevant effects.

419. The Tribunal took care to analyse the context of the discussion and look at the conduct objectively. The second respondent's comments were comments during a discussion with the claimant's agent and the comments in question were comments and sentiments with which the claimant's agent (who had first raised the issue) agreed. The claimant's agent would put the claimant's position forward and challenge the respondents when issues arose about which the claimant was unhappy or which required a robust response. The fact the claimant's agent agreed with the comment the second respondent made, a sentiment that had been made within the dressing room, supported the position that when viewed in context, objectively and taking account of the claimant's views and the intention of the respondent, that it was not reasonable to regard the conduct as violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It was part of a discussion (during which the claimant was not present) about a view that was reasonably held (even if not shared by the claimant).

Fourth act of harassment

420. The act relied upon was the second respondent's conduct towards the claimant at meeting on 5 October 2021.

421. Counsel for the claimant submitted that the Tribunal, with the benefit of the recording and the transcript, should note the general purpose of the meeting was to draw a line under the incident in a manner which satisfied the club and could be viewed as a "vindication" of the supporters. Within minutes of the meeting starting, it was apparent that the claimant was not in agreement with the investigatory conclusions and maintained he was racially abused. He was subjected to pressure and manipulation to try to get him to agree. The fact that much of the discussion was not overtly threatening or challenging is not material. The overall context is a young black footballer facing 3 white men who were his senior in both age and club status, being challenged on his position repeatedly and being pushed to change that. It was submitted that in those circumstances the incident is unwanted. It was self-evidently because of the claimant's race. It also had the prescribed effect. What greater example

of a violation of dignity in relation to an allegation of racist abuse can there be than being repeatedly told, in the face of your clear assertions it happened, that it did not. That conduct was humiliating and objectively offensive.

422. The respondents' agent argued that this claim is very wide in scope as it relates to Mr Hetherington's conduct at the entirety of the meeting on 5 October. It was denied that the claimant was harassed as alleged or at all. Mr Hetherington confirmed to the claimant the outcome of the investigation which had concluded there was no corroborating evidence that he had received racial abuse and that they could not conclude that it had occurred on the basis of a single witness. It was submitted that the respondents' actions in this meeting were entirely appropriate and cannot amount to harassment.

423. Mr Hetherington's comment that he did not believe the incident happened was him expressing a personal view, seeking to explain the reasons why given the uncorroborated account of a single witness. That witness was unreliable as they could not identify the individual and could not state the age or gender of the individual. Whilst the person's view has now crystallised that it was a man who was responsible, they were not clear at the time they gave a statement. They were sufficiently unclear that the respondent might doubt the reliability of their evidence. The second respondent did not state that the person had lied. He suggested they may have misheard.

424. It was denied that this was an act related to race. The context was that a meeting was had to discuss the outcome of the investigation and to agree a way forward including a possible joint statement. There is nothing to suggest that the conduct was related to race other than the discussion related to a racist incident.

425. It was argued that there needs to be a finding that Mr Hetherington was motivated by race discrimination. There is no suggestion that he was motivated by race. He was merely stating his view at that meeting as to whether or not the event happened when faced by questions from the claimant. There is no evidence that he was motivated by the claimant's race.

426. It was also denied that the conduct had the purpose or effect of violating the claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment, but the words are not unreasonable in the context of the discussion. If not, then the logical conclusion is that anyone who did not conclude as the claimant did is guilty of harassment. The event was insufficiently serious to create an intimidating, hostile environment as has been alleged. The Tribunal heard the recording of the meeting, the tone was supportive, Mr Hetherington did not seek to convince the claimant otherwise. He accepted they needed to agree to disagree. He was seeking to move forward. Dignity is not violated by things which are trivial particularly if clear no offence was intended. The conduct falls significantly short of what would constitute a violation of the claimant's dignity. The comments are trivial and amount to no more than a disagreement as whether the racial abuse took place, which claimant himself admits he did not hear.

Decision in relation to fourth act of harassment

427. The Tribunal considered the meeting carefully and examined what was said and considered the parties' submissions. The Tribunal is satisfied that the conduct at the meeting was unwanted. The claimant believed what he had been told had occurred and was not prepared to accept that it had not happened, despite the absence of any evidence supporting what had been said and despite the limited nature of the report itself.

428. The Tribunal considered the conduct very carefully taking account of the context, what the claimant believed and the intention of the second respondent. The Tribunal considered the entirety of the meeting in light of the recording and transcript and assessed the comments that were made objectively. Having done so, the Tribunal concluded that the conduct in question (the comments made during the meeting when viewed in context) did not relate to race (applying the wide definition from the authorities above). The conduct in question was the second respondent's belief, having carried out an investigation and reached his own view, that the alleged racist incident

was unlikely to have taken place given the full evidence that had been obtained (even taking account of the claimant's firm belief).

429. The Tribunal did not accept that there was pressure placed upon the claimant to agree with the position. The second respondent set out what had been discovered and what the facts the respondents had obtained were. The second respondent did not say that the fans were "vindicated". He set out the conclusion of the investigation and the material the respondent had obtained. He said it was a vindication for everyone to allow the claimant to return to football, giving the claimant the opportunity to issue a joint statement. The second respondent said he did not want the club tarnished because of one person saying a racist remark and wanted to find a way for everyone to move on giving the claimant time to think about it. The conduct was not "related to race" when fairly and objectively viewed given the context.

430. The claimant believed the person who had disclosed the incident was correct in what she believed she had heard (and was not prepared to accept anything else, irrespective of whatever evidence had been obtained or that the witness herself could not say what the age or gender of the perpetrator was). The claimant was not prepared to accept the individual may have been mistaken as he had a firm and deeply rooted belief that what had been reported had occurred. He was entitled to take that view. The second respondent was equally entitled to take the view from the information collated, the incident had not occurred.

431. The unwanted conduct, the way the meeting was conducted and the second respondent's conclusions and suggestions as to a way forward were not "self evidently related to race". The conduct was about seeking a resolution to the matter that had been raised. The Tribunal carefully assessed the context and considered the full facts with regard to the meeting, in terms of what was said but also how it was said and how the meeting was conducted by the respondents. Objectively viewed, the conduct was not related to race, expressly or implicitly. The second respondent was making it clear that from the material obtained there was no basis to uphold the allegation and it was more likely than not that the person who made the allegation had been

mistaken. While that was his view, he wished to find a solution that allowed the focus to return to football given the outcome of the investigation. He wished to move matters on.

432. In reaching this decision the Tribunal carefully assessed what was said and the context of the discussion (with the benefit of the recording and the oral evidence of those present), looking at the matter objectively and taking into account the intention of the second respondent and the views of the claimant. The meeting was, on occasion, heated, but this related to the claimant's agitation or annoyance at the respondents' decision not to accept that the incident had occurred. He was not prepared to accept anything less than total acceptance the comment had been made, despite the context. That in turn made it difficult for the respondents to move matters forward given the conclusion of their investigation and their desire to move matters on and return the focus to football. On balance and in light of all the facts, the conduct was not related to race.

433. If the Tribunal was mistaken in its assessment of the conduct, the Tribunal considered the purpose and effect of the conduct. The Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor to create an intimidating, hostile, degrading, humiliating or offensive environment. The sole purpose was to advise the claimant as to the outcome of the investigation, which was that no one was able to support what the witness believed had been heard (the witness themself being unable to confirm whether the perpetrator was a man, woman, girl or boy, old or young) and that on balance the witness was likely to have been mistaken, no other person having seen or heard anything that supported what the witness believed had been said and wished to agree a joint statement and move on.

434. The Tribunal would have found that the conduct did have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The claimant was meeting with the senior officers of the club. He was singularly focussed in his belief the comment had been made and he was not prepared to accept, at all, the fact the statement may not have been made and as a consequence he felt the

conduct violated his dignity and create an offensive and intimidating environment for him.

435. However, when viewed in context, the Tribunal would have found that it would not have been reasonable for the conduct to have that effect given the context. The investigation had not disclosed sufficient evidence to support a decision that the incident had occurred. It was more likely than not, from the information produced, that the person who had heard the remark was in fact mistaken. Had the remark been said it was more likely than not that the person who heard it would have been clearer as to what was heard and by whom and that others would have heard it too. From the information before the respondent the approach taken during the meeting in light of the information before them was reasonable. They sought to support the claimant but he was unable to accept their conclusion and believed that the individual had properly heard what was said and as a consequence he was not prepared to accept the resolution the respondents proposed. That was a position he was entitled to take but on the evidence it was not reasonable for the claimant conclude the conduct violated his dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for him given the context.

436. The respondents had offered to work with the claimant and agree a joint statement and they wished consensus to allow the focus to return to football. The claimant was not, however, prepared to move his position, albeit he did not advise the respondents that he was not prepared to look at a joint statement during the meeting. Objectively viewed and when carefully assessing what was said, how and the context, the Tribunal would have found that it was not reasonable for the conduct to have violated the claimant's dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Fifth act of harassment

437. The act relied upon was Mr Murray (allegedly) pressuring the claimant to agree to the first respondent’s third media statement on 11 October 2021.

438. Counsel for the claimant argued the conduct was unwanted; the claimant had made it clear he had no desire to issue a media statement. Even if that was specific to the proposed media statement as at 5 October, by 6 October he had made it clear he wished no involvement in connection with any statement. This related to the claimant's race as the statement was about an allegation of racist abuse towards the claimant.

439. The conduct was a course of conduct which, taken together, had the prescribed effect. Such repetitious conduct in the face of a steadfast position – particularly where the claimant was being faced with "diminishing returns" in the sense of progressively more negative statements – created a hostile and intimidating environment. The fact the conduct was calculated to persuade the claimant to do something he did not wish to do makes that clear. The power imbalance between the claimant and his manager supports the overall effect.

440. The respondents' agent denied that Mr Murray pressured the claimant to agree the statement as alleged. The meeting had been left that the claimant would prepare his own statement and work collaboratively with the respondent to agree a joint position. The respondent was clear the claimant was not happy with statements they had provided and sought input to agree a statement. It was not the specific statement that they sought to the claimant to agree, they were presenting options to him.

441. The respondents' agent argued that the conduct was not unwanted conduct. The claimant had suggested in the previous meeting that he would prepare his own statement. He did not. He therefore would have expected Mr Murray to approach him in relation to the statement.

442. The respondents' agent argued that the conduct did not relate to race. The claimant's race is not mentioned in the comment allegedly made. The context is that Mr Murray was seeking the claimant's input in relation to the statement, there is no explicit or implicit mention of race. The subject matter was the joint statement, which was not related to race.

443. There was no impression that Mr Murray brought the matter up because of the claimant's race; he raised it to seek the claimant's input in a statement as it was felt it was in both parties' mutual interest to agree a statement if possible. It was not because of race.

5 444. Subjectively, the claimant says it did create such an environment but this had to be balanced with the general circumstances, looking at the words used in context. As such it was argued that the words were not unreasonable in the context of what was a discussion about the media statement, and Mr Murray following up to ensure in his view that the claimant had a fair chance to 10 contribute to that process. This would seem to be a trivial matter not meeting threshold that it violated the claimant's dignity, he was asked to contribute to a statement, he was not forced to agree the club's statement

Decision in relation to fifth act of harassment

445. The Tribunal concluded that asking the claimant about the proposed 15 statement was unwanted conduct. The claimant had decided that he did not want to proceed in the manner the respondents suggested. It was unwanted conduct, even although the claimant had not made it clear to the respondents that he had no intention of working up his own statement. The respondents left the meeting believing the claimant was going to consider the position and 20 had believed the claimant would provide a joint statement (given the conclusion of the investigation). In fact (and unknown to the respondents at that time) the claimant had decided that he would not work with the respondent to issue a joint statement.

446. The Tribunal carefully considered the evidence and context objectively, taking 25 account of the second respondent's intention and the views of the claimant. The Tribunal would have found that the conduct was not related to race. The conduct related to the issuing of a statement about moving on. It was not related to race. The Tribunal was careful to consider the context and evidence in assessing this issue looking at the issue objectively. While the statement 30 itself referred to race discrimination, the context was that the respondent wished to agree upon a joint position which it considered protected each of

the parties. The position is similar to that in **Raj**, where the massage was a misguided encouragement by a manager (which was not related to sex). In this case the conduct was a desire to protect the claimant and respondents and seek to return the focus to football. The conduct was not related to race.

5 447. The Tribunal took the time to look at the comments and context objectively in reaching its view. The comments were about agreeing a joint statement, which the respondents believed was something the claimant was prepared to do. The claimant had not initially advised the respondents that he was not prepared to agree a joint statement. The respondents reasonably wished to 10 progress matters and reach consensus to ensure a public statement was issued that brought the public up to date given the previous statements and position that had been reached internally.

448. If the Tribunal was wrong in that conclusion, the Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor 15 to create an intimidating, hostile, degrading, humiliating or offensive environment. The sole purpose was to bring the matter to an agreed conclusion, with the investigation having concluded and the parties agreeing a joint statement, thereby publicly drawing a line under matters and allowing the focus to return to football.

20 449. The Tribunal carefully assessed the effect of the conduct. This was finely balanced but the Tribunal would have found that the claimant believed the conduct violated his dignity or created an intimidating, offensive or humiliating environment for him. He was not prepared to agree a joint statement and wished the respondents to change their position entirely.

25 450. The Tribunal then assessed the context of the conduct. The Tribunal would not have been satisfied that it was reasonable for the conduct to be considered given the context. While the claimant believed the effect was to create an intimidating, offensive and humiliating environment for him, it was not reasonable for him to conclude that given the respondents were seeking 30 an update from the claimant on a matter they believed was to happen. The respondents understood the claimant would work on his own statement and

they were asking for this. The respondents reasonably wished to agree a joint statement and gave the claimant the opportunity to do so. Objectively viewed it was not reasonable for the claimant to believe the conduct violated his dignity or created an intimidating, offensive or humiliating environment for him when viewed in the context of the facts found by the Tribunal.

Sixth and seventh acts of harassment

451. This related to Mr Murray's alleged threats to the claimant with "consequences" at 2 meetings on 12 October 2021.

452. Counsel for the claimant argued the conduct was unwanted. It related to the claimant's race because the statement he was seeking to be taken down was about whether the claimant had been racially abused or not. The conduct had the prescribed effect. It required to be looked at in the broader context of the associated conduct of a similar nature. Objectively, such conduct would be perceived as threats (Mr Murray clearly identified them as meaning the claimant might not be selected, and clearly identified that as a risk if he did not draw a line under things). Such conduct would be intimidating and hostile. It was argued that the power imbalance was material

453. The respondents' agent denied that Mr Murray threatened the claimant with consequences as alleged. Mr Murray did not threaten consequences. He sought to explain his position that he did not think the statement would be retracted and why that was the case based on his experience in football and with football clubs.

454. It is not accepted this would amount to unwanted conduct. The claimant had brought up to Mr Murray and Mr Agnew that he wanted the media statement to be withdrawn. It must have been understood that a discussion surrounding the contents of this would follow.

455. It was also argued that the conduct does not relate to race. The claimant's race is not mentioned. The context is that Mr Murray was seeking to explain to the claimant why he thought the statement would not be withdrawn and the practical consequences of the same. There was no evidence Mr Murray

brought the matter up because of the claimant's race; he was responding to the claimant's own request that the statement be withdrawn. The comments were in the context of that discussion and not related to race.

456. It was denied that the conduct had the purpose or effect of violating the claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment. The claimant was more aggrieved by the content of the statement itself and the fact it would not be taken down as opposed to the explanation given by Mr Murray.

457. The context was important and the words were not unreasonable in the context of what was a discussion about the media statement and its potential withdrawal. Mr Murray explaining his view from his experience that he did not think it would be withdrawn and potential consequences arising from the same do not violate one's dignity or create a hostile environment. This would seem to be a trivial matter not meeting threshold that it violated the claimant's dignity, it was explained to claimant why his request was unlikely there was no suggestion that he would be ill-treated or threatened as a result.

Decision in relation to sixth and seventh act of harassment

458. The Tribunal did not find that Mr Murray had said there would be "consequences" in the manner alleged by the claimant. The claimant had asked that the statement be retracted and Mr Murray advised the claimant that in his view it was unlikely that the respondent would agree to that and he wished the focus to return to playing football. The conduct relied upon by the claimant in this regard had not been established in evidence.

459. If the Tribunal is wrong in that conclusion the Tribunal considered the conduct and its effect. It was clearly unwanted as the claimant wished the statement retracted. Had the conduct been established, the Tribunal considered whether the conduct was related to race. The Tribunal looked objectively at the statements, the intention of Mr Murray and the claimant's view. The conduct was related to the respondents' reasons for not removing the statement. The

Tribunal found no connection with race given the context in light of the facts found. It was not conduct related to race.

460. The Tribunal would also have been satisfied that the purpose of the conduct was not to violate the claimant's dignity, nor create an intimidating, hostile, degrading, humiliating or offensive environment. The purpose was to explain to the claimant that the respondents were unlikely to agree to remove the statement and their position was fixed. The purpose was in no way to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

461. Had the conduct been established, the Tribunal then considered whether the effect of the conduct was to create the relevant effects. Had the conduct been established the Tribunal would have been satisfied that the claimant felt the relevant effects given the nature of the words said to have been used and their context.

462. The Tribunal considered whether it would have been reasonable for the claimant to have found the conduct to have the relevant effects. The Tribunal would have found that it would have been reasonable for the conduct to be considered to have had such an effect given the context of the conduct. If the claimant had essentially been threatened by Mr Murray and told that there would be consequences (in the sense of adverse treatment) if the claimant did not "toe the line" it would have been reasonable for the claimant to have considered his dignity to have been violated and/or for there to have been an offensive, degrading, intimidating or humiliating environment created. On the facts, however, this had not been established.

Eighth act of harassment

463. This relates to the first respondent's letter to the claimant on 20 October 2021.

464. Counsel for the claimant argued that the terms of the letter, distinct from the imposition of enforced leave, was harassment. It was unwanted conduct. It related to the claimant's race given the letter referred to various issues which were expressly about the claimant's race.

465. The letter had the prescribed effect, as it created an intimating, hostile and degrading environment. The letter contained reference to comments by the broadcaster being "deliberate misinformation". The second respondent confirmed, in drafting the letter, he had in his mind that the claimant had deliberately given misinformation to him. The letter includes a litany of allegations and complaints against the claimant. It is calculated to intimidate him, given the inclusion in it of various allegations that had not been in Mr Murray's mind on 16 October. The suggestion that the situation would be "reassessed" (implying that he could be on leave indefinitely and was at the mercy of the first respondent to return) is particularly significant, as is the fact it was signed by the whole board rather than an office bearer or manager. The fact that it is suggested that this decision is taken on behalf of the board and the football management team implies that various senior individuals are against him. The whole tenor of and context to the letter is intimidating. The claimant found it as such.

466. The respondents' agent did not accept this was unwanted conduct. The claimant specifically requested a letter setting out the reasons for his cooling off period in a text to Mr Murray. He explicitly asked that the reasons were given and as such the conduct cannot be unwanted.

467. It was also submitted that the conduct was not related to race. The claimant's race was not mentioned in the letter sent to him. The context is that the claimant had sought written reasons behind the cooling off period. The letter confirms the reasons. The reasons offered detail the chronology of events including Mr Bartley's radio show, social media comments made by those connected to the claimant and a family member of the claimant's attending the stadium and him not returning calls from the manager. The letter was sent in the context of a request for reasons and not in any way because of the related to the claimant's race.

468. It was denied that the conduct had the purpose or effect of violating the claimant's dignity; or created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment but that needed to be balanced with the

context including the fact the claimant was himself not the direct recipient of the comment it was relayed to him second hand at a time where he had already been informed of this by his solicitor. Accordingly, it would not be objectively be reasonable for the conduct to have the effect complained of.

469. It was also denied that the conduct had the purpose or effect of violating the claimant's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant was frustrated at being placed on a cooling off period itself, there is no suggestion he was upset by the contents of this letter. This is a letter he himself asked Mr Murray for, several of the reasons had already been articulated to him in the conversation with Mr Murray on the Saturday 16 October, these should have not come as a surprise to the claimant.

470. Looking at the general circumstances, including the fact the claimant requested the letter and was aware of the reasons contained within it. The respondents were asked by the claimant and did so, it is not reasonable for the claimant to say he was harassed by the letter because he did not like the contents of the same. These were the reasons held by the respondent, if they did not articulate full reasons this would also have been criticised. The respondents' actions and correspondence were entirely appropriate and cannot amount to harassment.

Decision in relation to eighth act of harassment

471. The first issue is whether the conduct was unwanted or not. The Tribunal considered the context and facts. The Tribunal concluded that the conduct was not unwanted conduct. The claimant had been told verbally what the reasons for the cooling off period were. He asked for this in writing and the respondent provided the reasons in writing. It is not logical to say the reasons he asked for were unwanted, even if he did not like the reasons he was given. Even if the claimant did not like what the reasons were, those were the reasons the respondents had. It was not unwanted conduct to have given the claimant an answer to his request in writing, such written answer having been requested by the claimant.

472. What was unwanted was the being told he was to take a period of enforced leave. The claimant had already been told that verbally and wished the written reasons, for the record, having been told verbally the position. Being given a written record of what he was told verbally was not unwanted, in the Tribunal's view.

473. If the Tribunal was wrong in that conclusion, the Tribunal carefully assessed whether or not the conduct was related to race. In considering this question the Tribunal looked at the conduct objectively within context, taking account of what the intention of the second respondent was in sending the letter and the claimant's views upon receipt of it. The conduct was not related to race. The sole purpose of the letter was to explain the reasons for placing the claimant on a cooling off period. It was in no sense whatsoever related to race. The respondents were concerned about the misinformation that had been communicated. The letter refers to the claimant's communication and explains their belief about the misinformation, a family member of the claimant's attendance at the club and the claimant's failure to take calls from the manager. The letter also refers to events "spiralling out of control" and the matter being passed to the police (which relates to the fact the focus had moved away from football and to the claimant wanting the respondents to change their position).

474. Viewed in context, objectively, the letter is not related to race. It is the respondents' concern about how matters had progressed and the inability to reach consensus about how to deal with the race allegation. The Tribunal did not consider that fact alone resulted in the letter being conduct "related to race". The intention of the author was to communicate the reasons why the claimant was to take a break, the concern being matters were no longer about football but about how the respondent had handled matters. The claimant did not consider the letter to relate to race. He was unhappy at being on enforced leave. Viewed in context, while some may regard the approach as unfair, the conduct, the letter and its contents, were not, when viewed objectively in context, related to race.

475. If the Tribunal was wrong in its conclusion that the conduct was not related to race the Tribunal considered the purpose and effect of the conduct. The Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The sole purpose of the letter was to explain why the respondents wished the claimant to take a step back and refocus upon football. They were concerned the focus on the incident had resulted in the claimant not being focused on his football and they wished to give the claimant an enforced period to regroup. While that may be regarded by some as unfair, that was the only reason they wished the claimant to be placed on enforced leave and the letter set out their reasoning.

476. The Tribunal considered whether the letter had the effect of violating the claimant's dignity or of creating an intimidating, humiliating, offensive, degrading, intimidating or hostile environment for him. The Tribunal was not satisfied that the issuing of the letter did in fact do so. The claimant knew he had been placed on enforced leave and knew the reasons. Receiving a written record did not violate the claimant's dignity. Nor did receiving the letter (and reading its contents) create an offensive, intimidating, hostile, degrading environment for the claimant. The Tribunal was satisfied that it would not have been reasonable for the conduct to be considered to have had such an effect given the terms of the letter and the context in which it was written.

Ninth act of harassment

477. The act relied upon is the second respondent's allegations to the claimant's solicitor of the claimant being concerned in the supply of drugs.

478. Counsel for the claimant argued this was unwanted conduct. It related to the claimant's race. Firstly, it was being put forward as an extension of a "cooling off period" (rather than a distinct suspension) which had been bound up with the racist abuse issues. Secondly, the allegation that two young black men were concerned in the supply of drugs is "an unfortunate and pejorative but, regrettably, all-too-common trope". The unsatisfactory evidence as to how the allegations came to the second respondent's attention, from whom and what

was done about them invites a clear inference as to the reason for the conduct being nothing to do with a genuine concern about them. The failure to investigate was fatal to that purported motivation.

479. The conduct had the requisite effect. It was overtly offensive, particularly when conveyed without any formal process and in circumstances whereby the second respondent had already reached the view it was unsubstantiated (or alternatively at least knew there was no credible evidence to support it).

480. The respondents' agent argued that this was not unwanted conduct. The claimant's solicitor specifically asked for the reasons why the cooling off period was to be extended. Mr Hetherington simply confirmed the reasons for that, namely the allegations of criminality he had received.

481. It does not relate to race. The claimant's race is not mentioned in the file note made by the claimant's solicitor recording the call. The context is that Mr Hetherington was asked to confirm the reasons for the continued cooling off period. Mr Hetherington simply disclosed those reason with no reference to race, he did not for example refer that the claimant would be involved in criminality because of his race.

482. There was no evidence that Mr Hetherington disclosed this information because of the claimant's race; he was responding to the request from the claimant's solicitor that he provide details for the extension of the cooling off period.

483. The comments were in the context of that discussion and not related to race. The second respondent was trying to resolve an ongoing and difficult situation involving the claimant. The allegations of criminality were brought to him, he did not seek these out. He repeated them at the behest of the claimant's solicitor, not because he was motivated by race.

484. It was denied that the conduct had the purpose or effect of violating the claimant's dignity; or created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment but the claimant was himself not the direct

recipient of the comment it was relayed to him second hand at a time where he had already been informed of this by his solicitor. It would not be objectively be reasonable for the conduct to have the effect complained of. The context is important. The claimant's solicitor requested the information it was then provided to her by Mr Hetherington, it was appropriate for him to relay that to her and for her to relay that to him in a sensitive manner.

Decision in relation to ninth act of harassment

485. The Tribunal found that this was unwanted conduct. The claimant did not wish to be implicated in criminality nor to be told this from his employer.

486. The Tribunal carefully considered the conduct and its context in assessing whether or not the conduct was related to race. The Tribunal found that the conduct was not related to race. The second respondent considered the information he had received. He had no experience of dealing with this type of issue. There was no basis for him at that stage to check the veracity of the allegations given the information he had. He wished to consider matters and continued the claimant's cooling off period. He explained the position to the claimant's solicitor. The conduct was not related to race but to the reasoning for extending the cooling off period and of the desire to keep the claimant appraised as to what the respondent had been told. The second respondent had a genuine desire to protect the claimant given the issues arising. The Tribunal did not consider there to be stereotypical assumptions or tropes in the mind of the second respondent or Mr Murray.

487. The fact the allegations of criminality were the reason for extending the "cooling off period" did not mean the conduct was related to race. The cooling off period was an attempt by the respondents to bring the focus back to football issues. It was not related to race. There was no evidence of the respondents applying any stereotypes and they considered the evidence they had. There was no suggestion (or evidence) they would have treated others with different racial origins or nationality any differently or that race was in any way related to the decision to extend the cooling off period, which was solely because allegations of criminality had been discovered.

488. The Tribunal considered the evidence as to how the allegations came to the second respondent's attention, from whom and what was done about them. The Tribunal did not accept that this leads to invites a "clear inference as to the reason for the conduct being nothing to do with a genuine concern about them" or that the failure to investigate was fatal to that purported motivation. The second respondent was inexperienced in these matters and wanted to get as much information as he could. He sought to limit the impact upon the claimant's reputation. He chose not to investigate the matter given the lack of detail and instead concluded that the information did not provide him with enough information to take matters forward. In context the conduct was not related to race.

489. If the Tribunal was mistaken with that conclusion it considered the purpose of the conduct relied upon. The Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor to create an intimidating, hostile, degrading, humiliating or offensive environment. The sole purpose was to seek to deal with the matter in a sensitive way (as understood by the second respondent).

490. The Tribunal considered whether the effect of the conduct was to violate the claimant's dignity, or to create an intimidating, hostile, degrading, humiliating or offensive environment. The claimant was upset about the allegations and being told about them. The Tribunal would not have found that the effect of the conduct relied upon, the extension of his enforced leave violated the claimant's dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for him. He was upset about the allegations and not returning to play but no more.

491. It would not have been reasonable for the conduct to be considered to have had such an effect given the context and facts. The respondents received information that suggested the claimant had been involved in criminality. They considered the information and ultimately decided to take no action but wished to provide a space to allow them to consider how best to manage matters, given their inexperience. It would not have been reasonable for the

claimant to conclude the conduct violated his claimant's dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for him.

Tenth act of harassment

492. This related to Mr Murray's conduct towards the claimant's brother at the first respondent's stadium on 29 December 2021.

493. Counsel for the claimant pointed out that this was directed to the claimant's brother. The context to this was the overall difficulties between the claimant and the respondents since the alleged racist incident. Albeit not directly to the claimant, the test from the claimant's perspective requires to be considered against that background, and also taking account that this occurred at the respondents' stadium (the claimant's place of work); was directed to his brother; was done in public; and was explicitly about a tweet that concerned the claimant alleging racist abuse.

494. The conduct was unwanted. The claimant clearly would not wish animosity (directly or indirectly) with his manager. It related to the claimant's race. It was because of the tweet, which was explicitly about (and linked to an article about) the claimant's experience/allegation of racist abuse. This created an intimidating, hostile and/or offensive environment. The fact this conduct was from the claimant's manager directed to his brother is significant. An obvious inference can be taken from the fact the claimant permanently left that work environment around two weeks later.

495. The respondents' agent conceded that this took place and that this would amount to unwanted conduct. It was denied that this was an act related to race. The context is that the comment was shouted into the dressing room following a football match. Emotions run high after matches. Mr Murray was emotional after an important in an ill-tempered and important match. He did not reference the claimant's race he referred to a tweet. Mr Murray does not have twitter although he did see a tweet from his brother, he also expressed annoyance at other tweets sent by Queens Park.

496. It was submitted that there needed to be a finding that Mr Murray was motivated by race discrimination. There is no suggestion that Mr Murray were motivated by race. He was merely shouting into a dressing room following a football match. There is no evidence before this Tribunal that Mr Murray was motivated by the claimant's race.

497. It was denied that the conduct had the purpose or effect of violate the claimant's dignity; or created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Subjectively, the claimant says it did create such an environment, but his evidence was that he was looking out for his brother and accompanied him to the Mr Murray's office. His brother contended he had heard another slur that 'he was a black junkie'. His brother was upset.

498. This had to be balanced the general circumstances, including the fact the claimant was himself not the direct recipient of the comment. It was relayed to him second hand by his brother following the match he did not witness it. Accordingly, it would not be objectively be reasonable for the conduct to have the effect complained of. The context is important, this was following a football match, there was ill feeling between the two teams after an important match, emotions run high, shouting at the opposition before, during and after the match is common place in football. The only difference in this case was that the recipient was the claimant's brother.

Decision in relation to tenth act of harassment

499. The Tribunal was satisfied the conduct was unwanted conduct. The claimant did not want his manager speaking in that manner.

500. The Tribunal then considered whether the conduct was related to race. The Tribunal carefully considered the comments and context, taking account of Mr Murray's intention and the view of the claimant, considering the matter objectively. The comment was about the victory the first respondent had secured. The game had been challenging and Mr Murray was delighted with the victory which he wished the claimant's brother to tweet. It was a tongue in cheek remark, during highly charged emotional circumstances, against the

background that the claimant's brother had a propensity to tweet about things. The fact the claimant's brother had previously tweeted about his dissatisfaction as to how the respondents had dealt with the allegation of race discrimination did not thereby mean the conduct was related to race. It was important to consider the context and objectively assess whether the conduct related to race (as widely interpreted).

501. The conduct was not related to race. The context was about the claimant's brother having issued other tweets about his view as to the way in which the respondents investigated matters, and his dissatisfaction with their approach. Mr Murray's conduct was not related to race. It was a comment about the victory the first respondent had achieved in challenging circumstances. In making the comment Mr Murray was not in any way commenting upon race or indirectly referring to race (and the comment in context was in no way related to race). It was related to his knowledge that Twitter was a means used to issue comment and Mr Murray wanted his team's victory to be similarly communicated. It may well have been ill judged given the context but objectively viewed the conduct was not related to race.

502. If the Tribunal was wrong in that conclusion, the Tribunal considered the purpose and effect of the conduct. The Tribunal would have found that the purpose of the conduct was not to violate the claimant's dignity, nor to create an intimidating, hostile, degrading, humiliating or offensive environment for him. The only purpose of the conduct was to tell the claimant's brother to tweet about the hard-fought victory, in the knowledge that his brother used Twitter to communicate matters that were relevant to him and those who followed him. The purpose was not to violate the claimant's dignity or create the relevant effects.

503. The Tribunal also considered whether the conduct had the effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. The claimant was upset about the comment and wished to support his brother. The Tribunal would not have found that the effect of the comment was to violate the claimant's dignity nor to create an intimidating, hostile, degrading, humiliating or offensive

environment. The claimant was upset about the comment because it related to his brother.

504. The Tribunal would have been satisfied that it was not reasonable for the claimant to conclude the conduct violated his dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for him. This was a comment to the claimant's brother following a highly charged football match during which emotions were high. It was an ill judged comment asking the claimant's brother to tweet the victory the fist respondent secured using language that is not uncommon in that context.

Section 111 of the Equality Act 2010

505. The first issue is whether Mr Miller alleged that that claimant had been concerned in the supply of drugs. If so, did that conduct by Mr Miller amount to harassment, contrary to section 26 and if so, did the first respondent and/or the second respondent instruct, cause or induce Mr Miller to behave in this manner. If so did that amount to a contravention of section 111 by the first and/or second respondent.

506. Counsel for the claimant contended that in a call with AA, Mr Miller further alleged that the claimant had been concerned in the supply of drugs. The Tribunal was invited to prefer the evidence of AA as to (i) who initiated that call and (ii) the fact Mr Miller explicitly made that allegation. He was a far more credible witness in general terms. The second respondent's reluctant evidence of what Mr Russell told him corroborated AA's account. The absence of evidence from Mr Russell invited an obvious inference against Mr Miller's account.

507. The conduct was harassment. It was unwanted conduct; it related to the claimant's race for the same reasons as act 9 (and can only be reasonably inferred as having occurred to influence the claimant's conduct about the racial abuse issues). It was, for the same reasons as act 9, conduct which had the prescribed effect.

508. It was alleged that in the second respondent's evidence, Mr Russell had induced Mr Miller to do so.

509. The respondents' agent noted that section 111 makes it unlawful for a person to instruct, cause or induce someone to discriminate, harass or victimise another person on any of the grounds covered by the Act, regardless of whether the person so instructed, etc, actually does so. There must be a relationship in respect of which discrimination, harassment or victimisation is itself prohibited. The respondents' position was that the conversation did not happen. When asked to compare the accounts of Mr Miller and AA the tribunal should prefer the account of Mr Miller. Mr Miller was extremely clear as to his evidence compared to AA, who was unsure of details throughout his evidence. AA's position is Mr Miller told him on 28 October, why then would AA take 2 days (via text) to let the claimant know about a potentially damaging allegation, AA would not. Mr Miller's account is more reliable that it was discussed between then on 30 October after AA had been notified of the allegations. AA seeking Mr Miller's advice on how to deal with the situation.

510. Further for this to be harassment and something which the respondent is liable for the usual test are required to be satisfied. It was denied this is unwanted conduct it happened in the context of AA bringing up the allegation not Mr Miller. Further if it was brought up by Mr Miller, it did not relate to race. The context here is a discussion between them trying to offer advice on how best to resolve a difficult situation. This was not related to race it related to serious allegations of potential criminality. It was not motivated by race. He was trying to offer advice and help to resolve a difficult situation between the claimant and the respondent. Mr Miller's actions were entirely appropriate and cannot amount to harassment.

511. It is denied that the conduct had the purpose or effect of violate the claimant's dignity; or create an intimidating, hostile, degrading, humiliating or offensive environment. Subjectively, the claimant says it did create such an environment but the claimant was not the direct recipient of the comment it was relayed to him second hand at a time where he had already been

informed of this by his solicitor. It would not be objectively be reasonable for the conduct to have the effect complained of.

512. The act had to have been induced, instructed or caused by the respondent. At that time Mr Miller was not working for the respondent, having left in acrimonious circumstances. He was not acting on the instructions of the respondent.

Decision in relation to section 111 claim

513. The Tribunal carefully considered the evidence. The Tribunal was satisfied that the conduct relied upon in support of this claim had not been established on the facts. Mr Miller had not alleged that the claimant had been involved in drugs. The Tribunal found Mr Miller to be credible and reliable with regard to this issue and the Tribunal had no hesitation in accepting his evidence that the allegations were raised by AA and not himself. Mr Miller had a clear recollection about this and was candid and cogent. AA was unable, in places, to recall what had been said (and by whom). The Tribunal found Mr Miller's evidence to be more credible in relation to this issue and the Tribunal accepted Mr Miller's position.

514. The Tribunal carefully considered the evidence led, including what the second respondent said and the fact Mr Russell did not give evidence. The Tribunal analysed the evidence carefully. Having done so, the Tribunal found Mr Miller's evidence to be more likely than not to represent what happened. The Tribunal found Mr Miller's evidence entirely credible and accepted his clear position on this issue. The facts supporting this claim had not been established in evidence.

515. If the Tribunal had been incorrect in that decision, the Tribunal considered the parties' submissions. The Tribunal would have found the respondents' agent's submissions to have merit. The conduct in question would not have amounted to unlawful harassment such as to engage section 111. In other words, even if Mr Miller had initiated the discussion (via a director), the Tribunal would not have found that the conduct was unlawful. It would have been a discussion with the claimant's agent about a matter affecting the claimant, about which

both individuals were concerned. AA regularly sought guidance and support from Mr Miller who assisted AA. The discussion was more likely than not to have been about how to protect the claimant's position and deal with the unusual situation that had arisen. It was not related to race nor would the conduct have amounted to unlawful harassment (and it would not have been reasonable for the conduct to have been so regarded). This claim had not been established. It is ill founded.

Reference to authority

516. Finally, in this Judgment the Tribunal has referred to authorities not referred to by the parties, and which they have not had an opportunity to comment on, albeit such authorities develop the principles set out by the parties in their submissions (and provide up to date context in respect of the key issues the Tribunal is required to determine). The Tribunal considered reference to the authorities was in accordance with the overriding objective, but if either party considers that they have suffered any prejudice from my doing so, they can seek reconsideration of the Judgment under the terms of Rules 70 to 73.

Summary

517. The Tribunal considered each of the claims and decided that they are ill founded. It was not therefore necessary to consider apportionment of liability or remedy.

Employment Judge: D Hoey
Date of Judgment: 22 November 2022
Entered in register: 23 November 2022
and copied to parties