Neutral Citation Number: [2024] EWHC 2804 (KB)

Case No.: KB-2023-002565

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5th November 2024

Before:
MR JUSTICE RITCHIE

- -

BETWEEN :

YI SHUAN MOK

Claimant

- and –

FITZMAURICE HOUSE LIMITED
Trading as THE LANSDOWNE CLUB

Defendant

Patrick Heneghan of counsel (instructed by **Spencer West Solicitors**) for the **Claimant**
David Reade KC of counsel (instructed by **Bates Wells & Braithwaite, London LLP**) for the **Defendant**

Hearing dates: 11, 14, 15, 16, 17 October 2024

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APPROVED JUDGMENT

This judgment was handed down remotely at 14.00pm on Friday 25th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Ritchie:

The Parties

1. The Claimant is a graduate in business and finance from Wharton College, Pennsylvania, USA who was brought up in Costa Rica and moved to London in 2008. She was a council member at the Defendant Club in 2021.

2. The Defendant is a private members Club situated in Mayfair, London [the Club] which expelled the Claimant from her position on the Club Council (and from membership) on 30.11.2021.

Bundles

3. For the hearing I was provided with 7 trial bundles: 5 lever arch files and two clip files, two skeleton arguments and some hard copy Rules of the Club.

Summary

4. The Claimant asserts that the Club expelled her "mala fides", in breach of their own Rules and procedures and in breach of the rules of natural justice. The Claimant also asserts that she herself did nothing wrong and breached no Rules of the Club. She seeks a declaration or an injunction to re-instate her to membership.

5. The Club asserts that the Claimant committed two crimes on Club premises by attending a Council meeting on 26.10.2021 and coming back to the Club on 27.10.2021 for another meeting. On both occasions the Claimant had flu/cold symptoms and, according to the Covid Laws and Regulations current at the time, the Claimant should have been self-isolating (in quarantine at home for 10 days, or 5 days after a negative test) because she had just flown back to England from Bulgaria. This behaviour led to a complaint from a Council member, which led to a Council meeting to consider both the complaint and the Claimant's response. The unanimous decision of the Council members was to uphold the complaint and the decision on a second ballot (with two abstentions) was to expel her.

Terminology

6. I shall call the council which guides and runs the Club: the "Council". I shall use initials for Council members and some staff after first setting out their full names. The 8 members of the Council who made the decisions were:
Katherine O'Flynn [KOF], the chairperson of the Council.
Phoebe Topping [PT], the deputy chair of the Council.
Ruth Barry [RB].
Marsha Carey-Elms [MCE].
Doctor Sid Datta [SD].
Jason Dobson [JD].
Fraser Tenant [FT].
Sophie Morrison [SM].

The Issues

7. The Claimant provided a list of 12 key issues in opening. The parties provided a list of 15 agreed issues. In my judgment the issues in this case can be grouped together as follows:

7.1 *What were the facts and what was the law in relation to the issue of whether the Claimant committed crimes on Club premises on 26/27 October 2021?* I will have to make some findings of fact to be able to determine the Claimant's assertions of mala fides and procedural default. In the opening skeleton (para. 24) the Claimant asserted that her enquiries with her GP and the NHS Covid helpline on 27.10.2021 confirmed that she was "entitled to an exemption" from quarantine due to her treatment/pregnancy and she exercised her judgment and attended Club that day. The Defendant asserted (skeleton para. 2) that the Claimant was committing criminal offences when visiting the Club on 26th and 27th.

7.2 *Whether the conduct complained of crossed the threshold to trigger disciplinary action and whether it was rational for the Council: (1) to form the opinion that the Claimant was guilty of the alleged behaviour; and (2) to form the opinion that the Claimant's behaviour was injurious to the character, reputation or interests of the Club or a breach of the Rule.*

7.3 *Whether the Club breached its own Articles, Rules or Processes when dealing with PT's complaint about the Claimant's behaviour on 26/27 October 2021 and if so whether that made the process void or voidable.*

7.4 *Whether the Club breached the rules of natural justice when dealing with PT's complaint about the Claimant's behaviour on 26/27 October 2021. That question involves considering whether: she was given sufficient notice of the offending behaviour; a sufficient opportunity to be heard in her own defence; a properly constituted and unbiased tribunal and whether a right to appeal is required.*

7.5 *Whether the Club breached the duty of good faith owed to the Claimant.*

7.6 *Whether the Club behaved in a way which was arbitrary, irrational or capricious when dealing with PT's complaint about the Claimant's behaviour on 26/27 October 2021.*

7.7 *Whether the staff Whistleblowing Policy or the draft Members' Whistleblowing Policy applied to aid the Claimant.*

7.8 *Whether the punishment by expulsion was disproportionate to the breaches found.*

7.9 *Whether in any event the Club was entitled to terminate the Claimant's membership in June 2022 without providing any reason or explanation and whether it would have done so.*

7.10 *What is the proper relief and quantification of the Claimant's loss if breach and causation are proven?*

The applications

8. At the start of the action the Claimant applied for urgent interim relief to re-instate her to membership. This was dismissed by James Pickering KC sitting as a Deputy High Court Judge on 11.7.2023 with costs against the Claimant of £20,000, which were paid but only after enforcement proceedings. Later, the Claimant applied for disclosure of the legal advice given to the Club by their lawyers at the relevant times and this was dismissed by Deputy Master Fine on 3.7.2024 with costs against the Claimant assessed at £17,500. The Claimant's appeal was dismissed by me on 3.10.2024 with costs against the Claimant assessed at £25,000. The Claimant sought to adjourn the trial in September 2024 but this was dismissed with costs against of £20,000. None of the outstanding £62,500 in costs which the Claimant has been ordered to pay had actually been paid by the Claimant to the Club by the trial date.

9. The Claimant brought a claim before the Employment Tribunal in early 2022 which was heard on 13.1.2023 and struck out. No costs were awarded. After the employment tribunal decision the Claimant abandoned her pleaded claim in this action for statutory protection under the *Employment Rights Act 1996* and the *Public Interest Disclosure Act 1998*. At the end of the trial the Claimant submitted that the whistleblowing issue raised in the pleadings added nothing to the Claimant's case so made no submissions upon it.

Pleadings and chronology of the action

10. The claim form was issued in February 2022 seeking a declaration of unlawful expulsion, reinstatement of membership and damages for deprivation of membership, injury to feelings, distress and damage to reputation. The amended Particulars of Claim (POC) were dated November 2022 replacing the original particulars of claim drafted on the 18th of February 2022. In that pleading the Claimant sought a final declaration that her expulsion was unlawful, a declaration that her membership continued and, in the alternative, an injunction to reinstate her to membership and damages. It was pleaded that the Claimant relied on the Memorandum and Articles of Association of the company which runs the Club, the Rules, the Whistleblowing Policy and the disciplinary procedures. It was pleaded that the Club had a duty to act in good faith and not to act irrationally and to comply with the rules of natural justice, namely: providing notice of charges against the Claimant; the right for the Claimant to be heard and the right for the Claimant to have a fair, impartial hearing with proportionate sanctions and the right to an appeal.

11. The Claimant did not mention the lack of the appeal right at all during submissions and because she herself had been involved in drafting the disciplinary procedure and had not added any right of appeal herself, I have rather taken this part of the case as not vigorously pursued. In any event, for the reasons set out below in the section on the law, there is no requirement in the law of natural justice for appellate rights to be implied into the contact between members in social Clubs and because the Claimant was involved in drafting the policy it seems to me to be rather a stretch for her to succeed in implying a term into the Club Rules or Procedures which she herself did not

wish to include when she was in joint control of the drafting as a member of a committee.

12. The Claimant's pleading lacked the benefit of being concise. She pleaded voluminous facts which may be summarised (and I do not mention all of them) as follows. She asserted that she challenged the Club over: the Premises Committee; the Club finances; the Staff Fund; the management sud-committees'composition and the disciplinary processes. She descended into the details of her challenges. She asserted that many of the challenges involved public interest disclosures about irregularities (now abandoned). She asserted that the distribution of the Staff Fund was unfair, that the Club failed to disclose the compensation paid to senior managers and that the Staff Fund was not going to low paid staff. She asserted that KOF asked her to hold off her challenges whilst the Staff Fund issue was resolved. She asserted that in September 2021 the Staff Fund was on the management agenda but was not discussed and that each year the Club asked members for donations but made misrepresentations about the allocation of the Staff Fund which were not corrected. This challenge rumbled on until she was expelled. In relation to capital expenditure (CAPEX), the Claimant asserted that the budget of £400,000 included mis-named items relating to Zoom booths and rentable offices in July 2021. The Claimant asserted that in fact this sum was for a new business. The Claimant queried the Club's plan to spend £11 million on CAPEX and asserted that KOF lied over the cost of bedroom re-furnishings. The Claimant asserted the Club had overspent on CAPEX and this was one of the reasons why PT made her complaint about the Claimant on the 1st of November 2021 and why KOF and the Council were interested in disciplining the Claimant in November 2021. The Claimant challenged two disciplinary warnings she was given. The first dated 12th of October 2020 came from the Membership Committee and the Claimant asserted she had received no notice of charges; had no opportunity to defend herself; the warning was not from the Council; the warning concerned a public interest disclosure about the remuneration of senior managers discussed at a "public forum" and governance deficits. In relation to the second warning, given to the Claimant on the 13th of November 2020, relating to an e-mail she had sent inviting members to drinks at the Club, the Claimant asserted she was given no notice of the charges; no right to defend herself; no hearing and no appeal rights. The Claimant asserted that Mr K Hollender (KH), who was the chairman in 2020, had sent the Claimant's email invitation to drinks to the Club's lawyers, asking for legal grounds to expel the Claimant. The Claimant asserted that the Membership Committee did not have disciplinary powers. She asserted that she should have been protected from detriment due to her public interest disclosures rather than suffering detriment due to discharging her duties to challenge mismanagement. The Claimant regarded the written warnings as "void" due to procedural irregularity and asserted that KOF admitted to her in March 2021 that she had been "treated poorly". That month the Claimant was invited by KOF to join the Club's Governance Review Committee and helped redraft the Club's Disciplinary Policies. The Claimant asserted that KOF, when voting in November 2021, was interested in removing the Claimant from the Council

for her own benefit because KOF was standing for re-election and the Claimant was a challenging person.

13. In relation to the key events the Claimant pleaded that on the 26th of October 2021 she attended a Council meeting and, after that, sat next to PT at dinner and told PT she had returned from Bulgaria. She was told by PT that: because she was unvaccinated she had to quarantine. The Claimant asserted that she had been unaware on the 26th of October 2021 of the change in the Covid Rules which occurred in early October and had made an honest mistake. *The Claimant pleaded that she called her GP and the NHS 119 helpline and was told she qualified for medical exemption.* The pleading made no mention of the Claimant attending the Club on the 27th of October 2021 but went on to plead an e-mail from PT to the Claimant on the 27th of October 2021 and the Claimant asserted PT *put pressure* on the Claimant to resign. The Claimant then called KOF, who agreed her conduct was a "resignation matter". On the 1st of November 2021 the Claimant's Covid tests returned negative and on the 3rd of November the Claimant told PT this. She said she was "exempt" and her actions were unintentional and caused no harm because her Covid tests were all negative. The Claimant pleaded that PT's complaint dated the 1st of November 2021 made to the Club CEO, namely that she had failed to quarantine and this was a criminal offence, was motivated by the Claimant's challenges to the Club's CAPEX spending. The Claimant asserted that PT cited article 39.1.3 and rule 11.1.2 of the Club Rules and that the charges against her were never revised. The Claimant pleaded that the CEO invited her to meet him with the Governance officer but she refused. The Claimant pleaded the correct procedure for a complaint against a Council member was for it to be handled by the chair: KOF, not the CEO. By the 10th of November 2021 the complaint was being handled by KOF. She pleaded that KOF had a video call with her and raised her 2020 warning letters and her pattern of behaviour and that the Claimant was a complainer and provided her with a deadline to put in her response of the 22nd of November 2021. On that date the Claimant pleaded that she made a complaint to the Club Commissioners that the Club had mishandled the complaints process and asserted that KOF had a conflict of interest and that Article 58 of the Club's Articles of Association required conflicted members to excuse themselves from the disciplinary hearing. The conflicts alleged were: KOF's standing for re-election; her direction of the CEO and of governance and KOF "defaming" the Claimant by saying that she had not put in a response to the complaint.

14. In relation to the key Council meeting on the 30th of November 2021 the Claimant pleaded that the Club failed to put before the Council the full response which she had provided to the Commissioners and the Claimant complained that the Commissioners failed to attend the Council meeting and didn't send her response to the Council. At the Council meeting on the 30th of November the Claimant pleaded that she herself put her written response before the Council about the change in the Covid rules; that she had not been convicted of an arrestable offence and she complained that the CEO and the Governance officer should not have been at the meeting. The Claimant pleaded that *most of the Council were conflicted* and *prejudiced against* her due to the events in

2020 and the warning letters. The Claimant pleaded that KOF and the CEO had pre-determined the Claimant's guilt (I note that the CEO did not vote). The Claimant pleaded that Jason Dobson (JD), a Council member who had been chair of the Membership Committee when one of the 2020 warning letters was written and about whom the Claimant had lodged a complaint, was conflicted. The Claimant asserted that the finance officer, FT, had argued with the Claimant over CAPEX and so was conflicted and should not have sat on the Council and *all of the Council* should have made Article 58 declarations and recused themselves. As to the letter informing her of the Council's decision to expel her, the Claimant pleaded that Rules 11.2 and 11.3 of the Club's Rules had not been on the "charge sheet" and therefore could and should not have been relied on by the Council and this was a breach of natural justice. The Claimant pleaded that both of the previous warning letters were unlawful, unconstitutional, breaches of the duty of good faith and of natural justice. In relation to the decision of Council in November 2021 to expel her the Claimant asserted that the decision was not authorised by the Articles of Association or the Club Rules; the Commissioners failed to resolve her complaint before the Council meeting and this was a lack of due process and she suffered detriment resulting from her PID's (Public Interest Disclosures). The Claimant asserted that the Club had no reasonable grounds for her expulsion. The Claimant asserted the Club took into account irrelevant factors: namely her record of challenging behaviour. The Claimant asserted that PT, who was the complainant, voted on the Council and should not have been permitted to vote. The Claimant asserted that KOF, the chair, voted and she should not have done so because she was conflicted and had pre-determined her vote. The Claimant asserted the Club had failed to identify in advance which Club Rules she was alleged to have breached and the Council found breaches of rules which were not in the charge sheet; exercised incorrect procedure; imposed a disproportionate sanction and allowed no right of appeal. Overall, the Claimant asserted that the Club did not act in good faith but instead expelled her because they disliked that she was challenging over governance.

15. In the amended defence, dated 14th December 2022, the Club pleaded that the particulars of claim were prolix and reserved the right to strike them out. The Club never did. The Defendant's decision to expel the Claimant was in accordance with the Rules and the Articles of Association. The Club pleaded that the Claimant was not entitled to protection under the *Public Interest Disclosure Act 1998* and as I have set out above, this was later conceded by the Claimant. The Club pleaded that it had a whistleblowing policy for staff but not for members. That the Club had discretion to terminate any member's membership annually and the Claimant's membership could have been terminated in the Club's absolute discretion, six months later, in June 2022. They admitted they had no appeal procedure in the disciplinary process. The Club pleaded the Claimant was expelled under Rule 11.3 and Article 39.1.8 for breaching the Covid Rules. The Club relied on Article 58 and the Rules for their full and proper interpretation. In relation to the Club's duties, it denied the pleaded duties and asserted the duties were narrower. The Club asserted it had no duty to operate policies in accordance with the pleaded duties of natural justice pleaded in paragraph 5(c) sub-

paragraphs (4) and (5) but accepted sub-paragraphs (1) to (3) namely: the right to proper notice of the charges; the right to be heard and the right to a fair, impartial hearing. The Club pleaded that challenging behaviour was permitted as part of the role of Council members. The Club pleaded that the Premises Committee was elected by the Council in February 2021. In relation to the Staff Fund the Club denied there had ever been an announcement that staff on lower wages benefited most from the Staff Fund. The Staff Fund was controlled by the staff not by the Council and distribution was weighed in accordance with length of service. However, the Club admitted that a third party advisor had been appointed in 2021 and changes were implemented which came into effect after the Claimant was expelled improving the Staff Fund. In relation to CAPEX, the Club admitted that there was a forecasted figure of £200,000 but two months later £400,000 was approved by the Council. The Zoom room idea eventually died but the conversion of a corridor into rentable offices was proposed and went forward. The Club pleaded that the Claimant repeatedly re-opened matters which had already been decided and the Council had agreed a 5 year budget of £9.4 million. As to the warning letters, the Club pleaded that on the 29th of September 2020, at the AGM, the Claimant had verbally attacked the head chef personally and several members had complained about her. Then on the 7th of October 2020 the Claimant had gone behind the Staff Perspex protection barrier from Covid and made a phone call, which was prohibited. She was prohibited from being in the staff area. As a result, two warnings had been issued. There was no need to give the Claimant an opportunity to be heard because her behaviour at the AGM was recorded on Zoom and in any event it was not treated as an expulsion or suspension issue so it was a Membership Committee matter. On the 29th of October 2020 the Covid Regulations did not permit meetings unless reasonably necessary for business. On that day the Claimant invited 50 to 60 guests to a drinks party at the Club asserting the restrictions did not apply to business meetings and then stating that they could "discuss business" namely "*the 50% off the Friday drink special*". In the event four people turned up on the 30th of October 2020. The Claimant was invited to a zoom meeting on the 10th of November 2020 to explain her invitation to drinks during Covid. On the 13th of November 2020 Mr Place, the then CEO, wrote to the Claimant summarising the meeting and stating that the Claimant's actions were "misguided" and were in direct conflict with the Government guidance and could be interpreted as a serious breach of law, nevertheless Mr Place recommended "no further action" be taken but strongly advised the Claimant to take on board the lessons learned and ensure her conduct was not repeated. The record of that advice would be placed on her file. The Club asserted this was not a formal warning. The Club accepted that months later KOF agreed with the Claimant that the Claimant was not treated with the same "high standards/good practice" the Club expected.

16. As to the expulsion, the Defendant pleaded that the expulsion did not benefit KOF. That PT, being head of International Certification at the Department of Health, had substantial responsibilities including certification for travel relating to Covid. She was familiar with the Covid regulations. She advised the Claimant on the 26th of October 2021 after the Council meeting that, being unvaccinated, she was required to self-isolate

for 10 days and yet the Claimant returned to the Club the very next day, contrary to that advice. The Defendant pleaded that the Claimant was not exempt from vaccination. To get Covid exemption she would have needed to have had a clinical review. Potential exemption was not the same as certified exemption and the Club pleaded that the Claimant had never produced any evidence that she either was qualified to be exempt or was exempt. On the 27th of October 2021 the Claimant offered to resign discreetly and gave no explanation why she went to the Club on the 27th October 2021, despite the advice on the 26th. The Club pleaded the complaint made by PT on the 1st of November 2021 and that the Claimant had broken the law relating to Covid quarantine. The Club denied the Claimant's challenging nature was relevant to the complaint. The Club pointed out that the complaint did not assert that the Claimant had been convicted of an arrestable offence. The Club stated a "stage A" disciplinary meeting with KOF took place on 11.11.2021, during which the Claimant provided no medical evidence to show she was exempt. It was agreed with the Claimant that she had until the 23rd of November to put in her written response with evidence. The Claimant refused to send any written response to the Council. The Claimant instead complained to the Club Commissioners. The complaint was rejected on the 6th of December 2021. The Club denied that KOF was conflicted and pleaded Article 58 did not require any disclosure by KOF. At the Council meeting on the 30th of November the Claimant sent her complaint to the Council by e-mail after her oral presentation and the Council expelled her under Rule 11.3 not 11.2. Overall, the Defendant denied breach of the duty of good faith, or the duty to provide an opportunity to be heard and in the alternative pleaded that there was no injury because the Defendant could have thrown out the Claimant on the 6th of June 2022 in any event.

17. The Claimant served a 98 paragraph Reply in January 2023. This was grossly over wordy. She asserted that PT had "considerable influence" over the Club CEO. It was asserted she did not make the complaint in good faith but instead for an ulterior purpose, which was to remove the Claimant from the Club to prevent difficult questions about the Club's management. The Claimant asserted PT was "using" Club staff to monitor the Claimant's attendance. This, the Claimant asserted, infringed her privacy. (I shall contrast this assertion when considering the Claimant's actions in surreptitiously recording phone calls which she made with other Council members when she herself was a Council member). The Claimant relied on an e-mail dated 4th December 2020 written by PT in which she made derogatory comments about the Claimant arising from events in 2020. The Claimant asserted that the Governance Review Committee approval of the whistleblowing policy was sufficient for it to be in force without Council approval and put the Defendant to proof of whether council approval was necessary for a policy to be put into effect, (this was later abandoned). The Claimant asserted that the staff whistleblowing policy expressly extended itself to members and therefore it did extend to members. The Claimant relied on Article 66, empowering commissioners to speak at meetings, to ensure proper process and impartiality. The Reply contained many denials which were unnecessary in view of the fact that denial is implied. The Claimant asserted that a Mr Hepher was guilty of mismanagement of

the Club's budget up to 2019 (a matter wholly unevidenced at any stage during the trial) and that he was responsible for a £1.2 million write down. The Claimant pleaded that both KOF and PT, the chair and deputy chair of the Club, who were elected to such positions, were voluntary workers and no checks of their background and credentials had been conducted prior to their appointment (no evidence of this was produced at trial). The Claimant asserted that she had a reasonable belief that there had been improper or unethical conduct regarding the appointment of the Premises Committee and the Buildings Committee and other committees managing the Club's funds (no evidence of this was produced at trial). The Claimant asserted that the Club had been involved in a pattern of deliberate concealment of information about wrongdoing (no evidence of this was provided during the trial). The Claimant pleaded that there had been no debate and no separate vote on the appointments of the Buildings Committees. The Claimant complained that the chair of Council had control over "proceedings", and CAPEX proposals were presented "as approved" by committees without sufficient detail to understand the underlying figures and rationales and limited time for discussion and questions. The Claimant pleaded, in relation to the Staff Fund, that KOF's assertion that she did not know the position in relation to it lacked credibility, asserting she had first-hand knowledge. The Claimant asserted that the Club had a duty to provide accurate financial information about the Staff Fund and that the Club had breached the Code of Fundraising Practise and the Charities Act 1992 in failing to make details transparent, (neither the Code nor the Act were produced by the Claimant in the authorities bundle and no evidence of either of these pleaded assertions was ever provided). The Claimant asserted that she had the reasonable belief that the Club or individuals may have been acting in breach of the duties set out above and performing a pattern of "deliberate concealment of wrongdoing", (no such evidence was produced or evidenced by documents). The Claimant asserted that the Club at one stage in April 2021 suggested bedroom refurbishment would be £2000 per bedroom and at a later stage asserted it would be £34,000 per bedroom. In relation to her October 2020 drinks invitation, she asserted that the 4 members who attended her invitation were involved in a "business related" meeting with her to discuss Club business. The Claimant denied that the warning letters were an informal resolution and asserted that they were formal warnings. The Claimant pleaded again that the two warning letters were ultra vires the Club's rules and hence void. In relation to 26/27 October 2021, the Claimant pleaded that she reasonably believed herself to be exempt. The Claimant asserted that the deadline for her response to PT 's complaint namely 23rd November 2021 was "arbitrary". The Claimant pleaded that KOF and PT were biassed against her or in the alternative recusal was not an adversarial matter but was a matter for the conscience of the decision maker.

The Club's Articles, Rules, Code of Conduct, Bye-Laws and Complaints Review Process

18. I set out below the relevant **Articles of Association** of the Club.

"**Definitions**

The Council: The Council for the time being of the Association, the members of which, for the avoidance of doubt, are the company law directors of the Association."

"Disqualification of members of the council

39. The office of a member of the Council shall automatically and immediately be vacated if:- …

39.1.3 He or she is convicted of any arrestable criminal offence (other than an offence under road traffic legislation in the United Kingdom for which a fine or custodial penalty of 14 days or less is imposed). …

39.1.8 He or she is removed from the Council by a resolution of at least 70% of all the other members of the Council."

Proceedings of the Council

"55. The Council may delegate any of their powers to committees consisting of such member or members of the Council or Member or Members of the Association as they think fit, save that at least two-thirds of the members of any committee exercising the powers of the Council in relation to the purchase and supply of intoxicating liquor shall be members of the Council, and any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations imposed on it by the Council. The meetings and proceedings of any such committee shall be governed by the Terms of Reference which shall be set by Council and so far as the same shall not be superseded by any regulations made by the Council."

Management of conflicts of interest and duty

"58. Council member conflicts of interest and conflicts of duty shall be dealt with as follows:

58.1 Unless Article 58.2 applies, a member of Council *must declare* the nature and extent of:

58.1.1 any direct or indirect interest which he or she has in a proposed transaction or arrangement with the Association; and

58.1.2 any duty or any direct or indirect interest which he or she has wh*ich conflicts or may conflict with the interests of the Association or his or her duties to the Association.*

58.2 *There is no need to declare any interest or duty of which the other members of the Council are, or ought reasonably to be, already aware.*

58.3 *If a member of Council's interest or duty cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict of duties with or in respect of the Association,* he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter. Any uncertainty about whether a member of Council's interest or duty is likely to give rise to a conflict shall be determined by a majority decision of the other members of the Council taking part in the decision-making process.

58.4 If a member of Council's interest or duty gives rise (or could reasonably be regarded as likely to give rise) to a conflict of interest or a conflict of duties with or in respect of the Association, he or she may participate in the decision-making process and may be counted in the quorum and vote *unless:*

58.4.1 the decision could result in the member of Council or any person who is Connected with him or her receiving a *financial benefi*t not available to all the other members of the Council;

58.4.2 the decision could result in a Member with whom a member of Council is Connected r*eceiving a benefit* not available to all the other Members within the same category of membership;

58.4.3 the decision relates to a *complaint or disciplinary issue* involving a Member with whom the member of Council *is Connected;* or

58.4.4 a majority of the other members of the Council participating in the decision-making process decide to the contrary;

in which case he or she must comply with Article 58.5.

58.5 If a member of Council with a conflict of interest or conflict of duties is required to comply with this Article 58.5, he or she must:

58.5.1 take part in the decision-making process *only to such extent as in the view of the other members of the Council is necessary to inform the debate;*

58.5.2 not be counted in the quorum for that part of the process; and

58.5.3 withdraw during the vote and have no vote on the matter.

58.6 Where a member of Council or person Connected with him or her has a conflict of interest or conflict of duties and the member of Council has complied with his or her obligations under these Articles in respect of that conflict:

58.6.1 the member of Council shall not be in breach of his or her duties to the Association by withholding confidential information from the Association if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her; and

58.6.2 the member of Council shall not be accountable to the Association for any benefit expressly permitted under these Articles which he or she or any person Connected with him or her derives from any matter or from any office, employment or position."

Commissioners

"66. The Commissioners are entrusted with ensuring the proper governance of the Association by the Council and to that end shall have the following rights and powers:-

66.1 To convene a General Meeting of the Association;

66.2 To circulate papers to Members at the Association's expense;

66.3 To receive all minutes of meetings and accounts of the Council and, on request, any committees of the Council and, on request, any other documents which are necessary in order for the Commissioners to oversee the proper governance of the Association, subject to the Commissioners being bound by the same confidentiality obligations, if any, as Council members;

66.4 To convene and attend any meeting of the Council or any committee of the Council;" (My emphasis in italics).

19. **The Code of Conduct** The Club's code of conduct set out the following:

"The Code of Conduct provides a clear set of standards so that all members have the same opportunity to share their views in a positive and constructive manner.

Personal Responsibility
• We will approach being a Council member with a positive attitude
• *We will promote the Club values and rules*
• *We will work collaboratively together*
• We will come prepared for meetings having read papers and with formulated views and questions
Openness
• All views will be welcomed and valued
• We will positively seek and offer challenge acting with integrity at all times
• We will constructively speak out and address difficult issues
• We will have an open and honest dialogue with all stakeholders, including Commissioners, to improve how we work
• We will strive to ensure that everyone who is on Council or has dealings with Council is dealt with in a respectful manner
Setting Standards
• *We will aim for consensus wherever possible*
• We will deal with each issue or decision thoroughly at the time it is raised to ensure efficiency
• Once decisions are made, we will endeavour to support them
• *We will exercise leadership, enterprise and judgement in acting as Council members to achieve the continued success of the Club and act in the best interests of all our members and staff*
• We will aim to cover all matters of significance throughout the business year so no one project or subject takes over
Confidentiality:
Council Members should treat papers for Club Meetings and other confidential information that may be circulated/discussed as confidential to them and not for circulation outside the Council. Council Members must take responsibility for the safe keeping of such information so that information is not disclosed except with the explicit permission of the Council." (My emphasis).

20. **The Club Rules:** As at 1 July 2021 the following Rules were relevant.

"11. **Suspension and Expulsion.**

11.1 A Member shall automatically and immediately cease to be a Member if:

11.1.1 A receiving order is made against them, or they make any arrangement or composition with their creditors.

11.1.2 They are convicted of any arrestable criminal offence (other than an offence under road traffic legislation in the United Kingdom for which a fine or custodial penalty of 14 days or less is imposed).

11.1.3 However, Council shall have the power, at its discretion, to reinstate them.

11.2 Should a Member behave within or outside of the Club in a manner which, in the opinion of Council, is *injurious to the character, reputation or interests of the Club, or commit any infraction of the Rules of the Club,* Council shall, after an opportunity for explanation has been afforded, have absolute power to caution or suspend the member

or request their resignation and, if the Member does not resign within one week after such a request, Council may forthwith expel them and strike their name off the Register.
11.3 If Council decide that the offence of a Member is sufficient to warrant their immediate expulsion it is empowered to expel them forthwith.
11.4 Any person ceasing to be a Member of the Club in accordance with this Rule shall forfeit their entrance fee and subscription payment and shall not be introduced as a guest."
(My emphasis in italics).

Adherence to the Club's Rules
"14.1 All Members of Council are expected to assist in ensuring that the Rules of the Club are observed. They may, and are entitled to, approach Members, Members' guests and Reciprocal Members who fail to observe the Rules and, reporting the matter to the Duty Manager and/or CEO if thought necessary"

21. **Bye-Laws**
Under bye-law 29, all charges for telephone calls had to be paid for at reception or the porters desk. Under bye-law 38 mobile phones had to be switched to silent on entering the Club. Members were permitted to text and email but not to make calls in any public area of the Club.

The Complaints Procedure and Review Process
22. The website text in 2021 was as follows:

> "{WEBSITE TEXT}
> **Complaints against Members Procedure**
> We listen to your complaints, treat them seriously, and learn from them so that we can continuously improve our community.
> This policy {HYPERLINK} covers complaints about the behaviour of our Members, including Members who are Officers of the Club.
> **How to complain**
> Complaints should normally be made within 12 months of an incident or of the matter coming to your attention.
> *You can make a formal complaint in writing by email or post. You can send an email to secretary@lansdowneClub.com or in writing to the Club CEO & Secretary, The Lansdowne Club,* 9 Fitzmaurice Place, Mayfair, London W1J 5JD. When you get in touch, we'll need to know:
> • some basic information, including your name and membership number
> • what the problem is, and how you want things put right
> • as much clear detail as possible, including events, any documents, and applicable Club Rules

> We shall endeavour to investigate each complaint and will endeavour to resolve the matter promptly.
> **Complaints against Club Employees**
> …." (My emphasis in italics).

23. The Complaint Review Process was as follows:

> "**Lansdowne Club Complaint Review Process - Members**
> 1. The Club shall respond to *complaints about Club members* as follows:
> **2. Stage A**
> 2.1. All formal complaints (from any source) against a member to be referred in the first instance to the CEO.
> 2.2. CEO to investigate any formal complaints of alleged unacceptable behaviour or breach of Club rules.
> 2.3. Details of complaint and any evidence to be shared with the accused member.
> 2.4. CEO to seek to resolve the matter informally between any affected or interested parties.
> 2.5. CEO not to have authority to impose formal sanctions pursuant to Club rules.
> **3. Stage B**
> 3.1. Formal complaints to be referred to Council by the CEO to seek permission to refer the matter to the Membership Committee if and only if either:
> a) the CEO considers that the complaint, behaviour or a pattern of behaviour may warrant formal disciplinary action pursuant to the Club rules; or
> b) a complainant is dissatisfied with the proposed resolution by the CEO and requests Council consider referral to the Membership Committee.
> 3.2. The Membership Committee shall not consider a complaint unless requested to do so by Council pursuant to 3.1.
> 3.3. The Membership Committee to consider any matter referred to it and also to conduct further investigation if it considers this appropriate.
> 3.4. The accused member shall be provided the opportunity to make representations to the Membership Committee in writing or orally.
> 3.5. The Membership Committee to report their findings to Council in a timely manner with any recommendations for action pursuant to the Club rules.
> **4. Stage C**
> 4.1. Council to review the report from the Membership Committee.

4.2. Council may (but is not required to) conduct further investigations.
4.3. Council to decide whether any action is warranted.
4.4. Council's decision to be communicated to the accused member (and any other interested parties at the Council's discretion) by the Council Chair or by another Council member authorised by Council.
5. *The Club shall respond to complaints about Club members who are elected to Council* or appointed to any Committees as follows:
6. Stage A
6.1. All formal complaints (from any source) ***against a member of Council*** *or a member of a Committee shall be referred in the first instance to the Chair of Council.*
6.2. If the Chair of Council is the subject of the complaint, the referral shall be to the Commissioners and the Chair of Council shall be excluded from the process outlined below.
6.3. *If the accused is a member of Council, they shall be excluded from the process outlined below.*
6.4. The Chair of Council to investigate any formal complaints of alleged unacceptable behaviour or breach of Club rules.
6.5. *Details of complaint and any evidence to be shared with the accused member.*
6.6. The Chair of Council to seek to resolve the matter informally between any affected or interested parties.
6.7. The Chair of Council not to have authority to impose formal sanctions pursuant to Club rules.
7. Stage B
7.1. Formal complaints to be referred to Council by the Chair of Council if and only if either:
a) *the Chair of Council considers that the complaint, behaviour or a pattern of behaviour may warrant formal disciplinary action pursuant to the Club rules*; or
b) a complainant is dissatisfied with the proposed resolution by the Chair of Council and requests Council consider the matter.
7.2. The Council shall not consider a complaint unless requested to do so by Chair of Council or the Commissioners pursuant to 7.1
7.3. *Council to consider any matter referred to it and also to conduct further investigation if it considers this appropriate*.
7.4. *The accused member shall be provided the opportunity to make representations to the Council in writing or orally*.
7.5. Council will conclude their findings in a timely manner and decide whether any action is warranted.
7.6. Council's decision to be communicated to the accused member (and any other interested parties at the Council's discretion) by the Council Chair or by another Council member authorised by Council.

> ….." (The emphasis in italics and one emboldening was added by me).

24. I discern from the Club's website that the Complaints Procedure did not at the start distinguish between members and Council members and required all complaints against members to be made to the CEO. I discern from the Complaints Review Process that if the complaint concerned a member who was on the Council then the complaint was to be *referred* to the Chair. Thus, because the website required all complaints to be made to the CEO, it would be the CEO who would be required to refer the complaint to the Chair. The accused would then be excluded from the review process however, details of the complaint and any evidence were to be shared with the accused member (I note the term "member" is used here at Rule 6.5 in the Procedure governing complaints against Council members). At Stage A the Chair was required to seek to resolve the complaint informally with the accused. If the Chair considered that the complaint, behaviour or a pattern of behaviour may warrant formal disciplinary action pursuant to the Club Rules then the Chair was empowered to refer it to Council. The Council was empowered to carry out further investigations and the accused was not included within that process because he/she was excluded from it. Then the accused was to be given the opportunity to make representations to the Council in writing or orally. These were expressed as alternatives. Thereafter, the Council was required to conclude their findings in a timely manner and decide whether any action is warranted. It is apparent from these Rules that there was no requirement for an oral hearing or for the accused to be permitted to give evidence at any Council meeting. The accused's evidence could be only in writing.

The relevant Law

25. I remind myself that this claim is not an appeal nor a judicial review. It is a claim in contract for breach of the Club Rules, Articles of Association or approved and published Procedures and for breach of the rules of natural justice which may lead to implied terms. The Club is a company limited by Guarantee regulated by the *Companies Act 2006*. The Parties agree that the relationship between the Club and the Claimant was governed by the Articles of Association, the Rules, Bye-laws and Club Procedures and Processes. The parties also agree that the usual rules of construction of contracts applies to the interpretation of the Articles of Association, Rules, Procedures and Processes of the Club.

Disciplinary Threshold

26. The power to expel members is expressly set out in Rule 11. Part of the power in that Rule is automatic and part is granted to the Council as an absolute power. According to the editors of *Ashton & Read* on Clubs, 3rd edition, at para 7.11, a common and proper rule is one which states that a Club shall have power to expel a member if his/her conduct, whether in the Club premises or elsewhere, is injurious to the good name of the Club or is such that in the opinion of the Council renders him/her unfit to be a member, citing *Dawkins v Antrobus* (1871) 17 ChD 615 at 616. The editors advise at

para. 7.12 that it is a matter for the Court to decide whether the misconduct relied on has passed the threshold test to justify expulsion. So, for example, in *Wiles v Bothwell Castle GC* [2006] SCLR 108, a decision of the Outer House by Lord Glennie, members were expelled for objecting to planning applications to relocate the Club premises after a fire on the basis that their behaviour "appears to the committee to endanger the character interests or good order of the Club or were in breach of the decision of the Club in general meeting". The expelled members wished the new Clubhouse to be built on the old site. At an EGM the Club had voted in favour of relocation instead. Planning applications were then prepared. The expelled members were given neighbour notifications and objected on what the parties agreed were reasonable grounds. Planning was granted with conditions, some of which arose from the expelled members' objections. The Club then disciplined and expelled the objectors. The Court overturned the expulsion on judicial review proceedings (the jurisdiction for which was different in Scotland) because the members' objections were not irrational or vindictive, they were interested in the planning proposal as neighbours and opposed it. At para. 20 Lord Glennie ruled as follows:

> "[20] If the relationships between members are regulated by contract, and the powers of the committee, acting on behalf of the members as a whole, are limited by the terms of that contract, it follows that any member of the club who feels aggrieved by the actions of the committee, at least insofar as they concern him, may have recourse to the courts. His complaint would be that the members, through the committee, were in breach of contract; or, that the committee was exceeding the powers conferred upon it by the membership; or, possibly, that the committee was acting in breach of express or implied terms of the contract under which it was given its powers. … "

Lord Glennie went on to rule later in the same paragraph that:

> "I would also prefer to regard the procedural requirements imposed upon the decision making process in the interests of fairness as being based, in the absence of clear rules agreed by the members, upon implied terms of the contract between the members rather than as being imposed by the common law. In this way, so it seems to me, the requirement for "fairness", and the level at which the procedural requirements necessary to ensure that fairness are pitched, can more readily be attuned to the precise relationship between the members, which may well differ from club to club and according to the particular facts of any given situation."

Further at para. 21:

> "As Lord Reed points out, because judicial review in England is appropriate only for matters of public law, a dispute of this type in England would come before the courts there by way of ordinary action. While this has no practical consequence in terms of the

applicable principles, it does perhaps tend to reinforce the essentially contractual nature of the issues with which the court is concerned."

On the threshold test for disciplinary proceedings Lord Glennie ruled thus:

"[23] The jurisdiction or power of the committee in disciplinary matters is derived from the contract entered into between the members inter se on terms of the constitution and rules of the club. Rule 9 of the club's constitution and rules is, on its face, exceptionally wide ranging. There are two distinct circumstances in which the committee may exercise the power to discipline a member. The first concerns a member's conduct. If that conduct "appears to (the committee) to endanger the character, interests or good order of the club", the committee may vote to suspend or expel. Once relevant conduct is identified, that is to say conduct which is within the intended scope of the rule, then the question of whether it does or does not have this effect is for the committee. The court will not interfere with such an assessment except on grounds such as mala fides or manifest absurdity: see *Dawkins v Antrobus* at pp 629, 630 and 634; *Lee v Showmen's Guild of Great Britain* at (1952) 2 QB, pp 338-339, 343 and 350. But the question of whether the conduct is relevant conduct at all is a jurisdictional or threshold question and is one for the court; because if it is not relevant conduct the committee has no business considering it at all in this context. The second circumstance in which the committee is entitled to exercise its disciplinary powers is where a member acts "in breach of the Constitution, Bye-laws or Rules of the club or decision of the club in General Meeting". This again raises a jurisdictional or threshold question. If the member acts in breach, the committee has power to suspend or expel him. If he does not act in breach, the committee has no such power. Whether the particular action is or is not a breach within the terms of the rule is a matter ultimately for the court."

Finally on the facts Lord Glennie found as follows:

"In the present case the petitioners were behaving properly and within their rights under the planning system. They objected to the proposal. They had a legitimate interest in doing so. There was nothing vindictive or irrational about their opposition. It was not done to spite the club. It was done with the aim not of impeding the club's development but of protecting their own rights and interests. In other words, as is conceded, the conduct and acts of the petitioners were in themselves entirely unobjectionable. They only became the focus of objection from the committee because the proposal to which the petitioners took exception itself came from the club. But that is not enough, in my opinion, to render the

> petitioners' conduct and acts susceptible to the disciplinary jurisdiction of the committee.
> [26] This conclusion is sufficient to justify reduction of the decision of the committee to expel the petitioners. But I should deal briefly with the other matters raised in case they should become relevant in the future."

27. I glean from this decision that the jurisdictional threshold which the Court must consider is whether the complaint against the accused (if proven) is properly described as reasonably capable of being serious enough to come within the scope of the behavioural contraventions which the disciplinary code sets out.

Compliance with the Club Rules and Procedures

28. It is common ground that the Club Articles of Association and Rules amount to a contract between the members. In *Dawkins v Antrobus* (1881) 17 Ch D 615, Sir George Jessel MR ruled as follows:

> "I think it is my duty to construe the rules fairly and in the same way as I should any other contract and I have no right to give the words other than their ordinary meaning, or to construe the rules otherwise than in their ordinary sense."

29. When considering whether a failure to comply with the provisions of the Rules invalidates a decision of Council Megarry V-C gave guidance in *Re GKN Bolts & Nuts Ltd* [1982] 1 WLR 774, thus:

> "As is common in club cases, there are many obscurities and uncertainties, and some difficulty in the law. In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints."

30. The editors of *Ashton & Reid* advise at 7.14 that the procedure in a club's rules must be "strictly followed" otherwise the expulsion will be declared void, relying on *Speechley v Abbott* [2014] EWCA Civ. 230 for this proposition. I am not convinced that the editors' assertion is wholly correct. The position is more flexible in my judgment. In the Court of Appeal in *Speechley* Lewison LJ was concerned with an AGM and whether

officers were validly elected; whether officers should account for payments received; whether members could inspect the books and whether expulsions before the meeting were valid. The Judge had found the elections were held by a show of hands, not by ballot, as required by the rules, but were nevertheless valid and found that the expulsions of some members were void for failure to follow the rules. Lewison LJ ruled as follows:

> "28. There are, in my judgment, two separate questions:
> i) What do the rules require?
> ii) What is the effect of non-compliance with those requirements?
> 29. The answer to the first of these questions is a question of interpretation of the rules. In answering that question, the rules are to be interpreted in the same way as any other contract, making due allowance for the fact that the rules are intended to be operated by non-lawyers. In our case, with one possible exception (to which I will return) there is no real doubt about what the rules mean. The answer to the second question involves a rather different inquiry. The point was well-made by Sir Stanley Burnton in *Newbold v The Coal Board* [2013] EWCA Civ 584, which concerned the validity of notices of subsidence damage. He said at [70]:
>
> > "In all cases, one must first construe the statutory or contractual requirement in question. It may require strict compliance with a requirement as a condition of its validity. In *Mannai* at 776B Lord Hoffmann gave the example of the lease requiring notice to be given on blue paper: a notice given on pink paper would be ineffective. Against that, on its true construction a statutory requirement may be satisfied by what is referred to as adequate compliance. Finally, it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of that statute or contract, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties. We assume that Parliament in the case of legislation, and the parties in the case of a contractual requirement, would have intended a sensible, and in the case of a contract, commercial result."
>
> 30. In my judgment the observations of Megarry V-C in R*e GKN Bolts & Nuts* are, on analysis, directed to the second question."

31. In *Evangelou v McNichol* [2016] EWCA Civ. 817, Beatson LJ gave the following ruling on the approach to applying the rules of unincorporated Clubs in disciplinary procedures:

> "19. The nature of the relationship between an unincorporated association and its individual members is governed by the law of contract:—
> (a) The contract is found in the rules to which each member adheres when he or she joins the association: see *Choudhry v Tresiman* [2003] EWHC 1203 (Comm) at [38] per Stanley Burnton J.
> (b) A person who joins an unincorporated association thus does so on the basis that he or she will be bound by its constitution and rules, if accessible, whether or not he or she has seen them and irrespective of whether he or she is actually aware of particular provisions: *John v Rees* [1970] 1 Ch 345 at 388D – E; *Raggett v Musgrave* (1827) 2 C & P 556 at 557.
> (c) The constitution and rules of an unincorporated association can only be altered in accordance with the constitution and rules themselves: *Dawkins v Antrobus* (1881) 17 Ch D 615 at 621, *Harington v Sendall* [1903] 1 Ch 921 at 926 and *Re Tobacco Trade Benevolent Society (Sinclair v Finlay)* [1958] 3 All ER 353 at 355B – C.
> 20. Because the nature of the relationship between an unincorporated association and its individual members is governed by the law of contract the proper approach to the interpretation of the constitution and rules is governed by the legal principles as to the interpretation of contracts, and is a matter of law for the court. The approach is thus that set out in cases such as *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101 at [14], *Arnold v Britton* [2015] UKSC 36, [2015] AC 1619 at [15] and [18], and *Marks and Spencer PLC v BNP Paribas Security Serdeputys Trust Co (Jersey) Ltd* [2015] UKSC 72, [2015] 3 WLR 1843. The intentions of the parties to a contract will be ascertained by reference to what a reasonable person having all the background which would have been available to the parties would have understood the language in the contract to mean, and it does so by focusing on the meaning of the words in the contract in their documentary and factual context."

Evidence

32. The civil burden of proof applied to the determinations of the Council in the Claimant's disciplinary proceedings as it does to any findings of fact I make below.

Good faith and natural justice

33. The parties agree that a duty of good faith applied to the decisions made by the Council of the Club so that where, as in this case, the contractual terms gave one party to the contract the absolute power to exercise a discretion/form an opinion as to relevant facts,

it is not for this Court to remake that decision for them, but where the decision will affect the rights and obligations of both parties and there is a conflict of interest, the Court will seek to ensure that the power is not abused by implying a term in appropriate cases that the power should be exercised not only in good faith but also without being arbitrary, capricious or irrational in the sense in which that term is used when reviewing the decisions of public authorities. Thus, such a decision can be impugned, not only where it was one that no reasonable decision-maker could have reached, but also where the decision-making process had failed to exclude extraneous considerations or to take account of all obviously relevant ones. In *Braganza v BP Shipping* [2015] 1 WLR 1661, Baroness Hale (with whom two other members agreed) summarised it thus at paras. 29 - 30:

> "If it is part of a rational decision-making process exclude to extraneous considerations, it is in my view also part of a rational decision making process to take into account those considerations which are obviously relevant to the decision in question. It is of the essence of "*Wednesbury reasonableness*" … review to consider the rationality of the decision-making process rather than to concentrate on the outcome. Concentrating on the outcome runs the risk that the court will substitute its own decision for that of the primary decision-maker.
>
> 30 It is clear, however, that unless the court can imply a term that the outcome be objectively reasonable-for example, a reasonable price or a reasonable term, the court will only imply a term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose. For my part, I would include both limbs of the *Wednesbury* formulation in the rationality test."

34. This is not a case in which in my judgment a broader *Braganza* term imposing a duty of pure reasonableness needs to be implied. The circumstances and the terms of the contract in the Articles and the Rules do not require the implication of a broad reasonableness term into the absolute power in Rules 11.2/11.3. Freedman J explained in *Horlick v Cavaco* [2022] EWHC 2935 at para. 175, the necessary propositions for such an implication and I do not consider that they are fulfilled for the implication of any such broad reasonableness term in the Club's decisions making under Rules 11.2 and 11.3. The Defendant made this submission and the Claimant did not demur. However, *Wednesbury unreasonableness* does apply to the decision as do the rules of natural justice.

35. The rules of natural justice have been considered in a wide range of fields and, as early as 1915, in *Local Government Board v Arlidge* [1915] AC 130, Hamilton LJ, in the

Court of Appeal, suggested that the phrase "lacked precision". The House of Lords left matter flexible. Viscount Haldane L.C. ruled thus at p 132:

> "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. *But it does not follow that the procedure of every such tribunal must be the same.* In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal." (My emphasis).

36. In relation to the opportunity to be heard requirement, in *Ridge v Baldwin* [1964] AC 40, the House of Lords was dealing with dismissal of a police constable who was not allowed to defend himself before the decision was taken, having already given evidence in a criminal trial (he had been acquitted but two colleagues were convicted), Lord Reid explained the flexibility of the principle of natural justice as follows at p65:

> "It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable."

And at p 80, on the right of the accused to be heard, he ruled thus:

> "Then there was considerable argument whether in the result the watch committee's decision is void or merely voidable. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void, and that was expressly decided in *Wood v. Woad.* I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case."

Lord Evershed considered decisions made in breach of natural justice differently at p 96:

> "At this stage I venture to make two points. First, since there is no question here of bias or any suggestion that the watch committee acted otherwise than entirely in good faith, the only principle of natural justice here involved is that enshrined in the Latin phrase

> "audi alteram partem." Second, I for my part conclude that if the principles of natural justice can properly be invoked in this case and if it should be held that such principles were not observed, then the decision of the watch committee was *not void but voidable only*. Upon this second question (whether the decision afterwards impugned can be said to be void or voidable only) the cases provide, as I think, no certain answer; nor have I found one in the textbooks. Indeed, in the vast majority of circumstances, it does not in the end matter whether the decision challenged is void or only voidable; for if the court does decide to quash a decision or otherwise set it aside, then the effect is in general the same whether such decision be considered as void or only voidable. For my part, however, I have come to the conclusion that in a case where a body is acting within its jurisdiction but of which the court will say that it has failed properly to act in accordance with the principles of natural justice, then the decision is only voidable and cannot properly be described as a nullity."

Lord Morris of Borth-y-Gest ruled as follows at p 124:

> "It is to be remembered also that in the case of the appellant his summary dismissal involved the loss of valuable pension rights. Property rights were at stake in *Local Government Board v. Arlidge*. Lord Haldane there expressed his approval of the view indicated by Lord Loreburn in *Board of Education v. Rice* that an administrative body to which the decision of a question in dispute between parties has been entrusted must act in good faith and listen fairly to both sides. Lord Parmoor said that whether in that case the order of the Local Government Board was to be regarded as of an administrative or of a quasi-judicial character if the order affected the rights and property of the respondent he was entitled to have the matter determined "in a judicial spirit, in accordance with "the principles of substantial justice." A right to be heard before property rights were affected was upheld in the circumstances applying in *Cooper v. Wandsworth Board of Works*, in *Hopkins v. Smethwick Local Board*, and in *Urban Housing Co. Ltd. v. Oxford Corporation*. Similarly, a right to be heard in regard to removal from an office was recognised in *Osgood v. Nelson*, in *Ex parte Ramshay* and in *Rex v. Gaskin*. So also it has been recognised that expulsion from a Club must not take place in disregard either of the rules of the Club or of the rules of natural justice. (The cases of *Fisher v. Keane* and *Dawkins v. Antrobus* may be mentioned as typical examples.) Being of the view that, even if there had been no applicable regulations, a decision to dismiss the appellant for neglect of duty ought only to have been taken in the exercise of a quasi-judicial function which

> demanded an observance of the rules of natural justice—I entertain no doubt that such rules were not observed."

At p 312 Lord Hodson summarised his ruling on natural justice thus:

> "No one, I think, disputes that three features of natural justice stand out—(1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges."

37. The application of the rules of natural justice to clubs and associations was more recently summarised by Popplewell J in *Dymocks v Association for Dance* [2019] EWHC 94, between paras. 54 and 66. I will not set those out here in full. Suffice to say that Popplewell J ruled that it was appropriate to imply a term in the contract between the defendant (a limited company operating a dance association) and the claimant, a member, that the defendant would treat the claimant fairly in relation to termination of membership and that she would be informed of complaints against her or concerns in sufficient detail to enable her to respond and would be given a reasonable opportunity to respond. He also ruled (in relation to *Braganza)* that:

> "59. … Baroness Hale, whilst recognising that the content of the decision maker's duty must depend upon the terms and context of the particular contract involved (see [18], and [31, 32]), observed at [28] that there are signs that the contractual implied term is drawing closer and closer to the principles applicable in judicial review; Lord Neuberger too, although dissenting in the outcome, agreed that the applicable principles should be the same as the approach of domestic courts to the decisions of the executive: see [103]. The judgments make clear that in a contractual context the inquiry includes whether the decision-making process was lawful and rational: Baroness Hale at [23] - [30], Lord Hodge at [53], [57], Lord Neuberger at [104].
> 60. Of course, generally an implied term must not be inconsistent with any express term. The duty to act fairly in relation to decisions to terminate membership of a company must be consistent with the articles of association and with the fiduciary duties of the directors. However, I see no difficulty in the content of the duty of fairness in any given circumstance being fashioned to ensure such consistency.
> …
> 63. *It is also right to observe that what procedural fairness requires in practice may differ from body to body.* A small voluntary organisation may not be expected to employ the more formal and elaborate procedures which are required of a larger and better resourced organisation." (My emphasis).

38. By the end of submissions the parties had pretty much reached agreement on the law in relation to the duty of good faith and natural justice. The Claimant conceded that there was no general requirement of "reasonableness" imposed in the decision making process, accepting instead the *Wednesbury unreasonableness* test in place of the Claimant's original submissions on the law. Thus, in my judgment, the Defendant Club were subject to implied terms in the Rules and Articles of association which put the Club under duties:

(1) to act in a bona fides way when dealing with the complaints against the Claimant;
(2) to inform the Claimant of the content of any complaints of any real significance made against her;
(3) to enable the Claimant to have a reasonable opportunity to respond to any such complaints;
(4) to have the determination of the complaints decided by a properly constituted tribunal, acting in good faith, rationally, taking into account relevant matters and excluding irrelevant matters;

In addition of course, the Club was required to act in accordance with the Articles of Association, Rules and adopted Procedures as properly interpreted.

39. The parties disagreed over whether the requirements of natural justice are flexible, the Claimant submitting that they are rigid and applied equally to all organisations big and small, the Defendant submitting that they are flexible and depend on the type of organisation, the size and the financial consequences to the member of expulsion. It is apparent to me from my review of the case law, that the Defendant's submission is correct. In addition, in my judgment, flexibility is inherent in the concept of natural justice. What is fair and what is not fair depends to a large extent on the circumstances, the relevant Rules and Procedures, on what is possible and less possible, on what is reasonably achievable and less achievable for this Club, depends on the factual matrix and all of the circumstances. Not all procedures for all tribunals or Councils for determining complaints are the same. Not all need to be the same. Some will be better than others. Many, if not the vast majority, will be quite different from the Civil Procedure Rules or Criminal Procedure Rules, but that in itself does not mean the particular procedure adopted is in breach of natural justice. As Scrutton LJ stated in *Young v Ladies Imperial Club* [1920] 2 KB 523 at p 535:

> "In view of the very common practice of including rules by which the committee may expel members in the rules of Clubs, I think it is desirable that it should be clearly understood that this Court is not a Court of Appeal from the decisions of committees of Clubs, provided the committees are properly constituted and properly summoned, and deal with the matter in a way not contrary to the principles of natural justice. And I say that because counsel for the plaintiff has said that she has brought this action to clear her character. We know nothing about the lady's character, and have no intention to clear or to express any opinion about it. All we know is,

> that she has made a charge against a fellow member which turns out to be groundless. Except for that we know nothing about the lady, or whether her character is clear or not. The only point that comes before us is, Was the committee properly constituted, properly summoned, and is there anything contrary to the principles of natural justice in the proceedings?"

I also take into account the words of Denning LJ in *Lee v The Showmen's Guild* [1952] 2 QB 329 at p 343:

> "The question in this case is: to what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the Club cases. In the case of social Clubs, the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the Club; and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules; but they will not otherwise interfere: see *Labouchere v. Earl of Wharncliffe* and *Dawkins v. Antrobus.* It is very different with domestic tribunals which sit in judgment on the members of a trade or profession. They wield powers as great as, if not greater than, any exercised by the courts of law. They can deprive a man of his livelihood. They can ban him from the trade in which he has spent his life".

40. Finally, I take account of the decision of Choudhury J in *Haque v Faradhi* [2023] EWHC 1135, at para. 131:

> "*Applicable Law*
> 131. Lord Mustill summarised the components of natural justice in *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531 at 560D-560G:
>
> > "What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which

> is fair in all the circumstances . (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

He added at 560H-561A:

> "[I]t is not enough for [the party claiming unfairness] to persuade the court that some procedure other than the one adopted by the decision-maker would be better or more fair. Rather they must show that the procedure is actually unfair."

132. *Nelson v Evans* [2021] EWHC 1909 (QB) concerned member disciplinary proceedings conducted by the Labour Party, which is an unincorporated association. Part of the claim was that the process breached natural justice. Butcher J held at [11]:

> "… where a power or discretion is conferred upon the [unincorporated association], that power or discretion must be exercised in good faith, and the Party must not act arbitrarily, capriciously or irrationally"

Bias and apparent bias

41. The common law and the rules of natural justice require that an accused is provided with an unbiased tribunal to determine the complaint. Bias has been defined as an "operative prejudice, whether conscious or unconscious" by Lord O'Brien CJ in *R v Queen's County Justices* [1908] 1 I.R. 285 at 294. In *Flaherty v National Greyhound Racing* [2005] EWCA Civ. 1117, Scott-Baker LJ gave guidance on bias and ruled at paras. 26 onwards that:

"26. There is no dispute about the law relating to this issue. The test is expressed by Lord Hope of Craighead in *Porter v Magill* [2002] 2 AC 357, 494 at para 103:

> "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

This test, involving a slight adjustment to the test previously propounded in *R v Gough* [1993] AC 646, brings the law into harmony with the Strasbourg interpretation of the application of Article 6 of the *European Convention on Human Rights*, most Commonwealth Countries and Scotland.

27. The test for apparent bias involves a two stage process. First the Court must ascertain all the circumstances which have a bearing on the suggestion that the tribunal was biased. Secondly it must ask itself whether those circumstances would lead a fair minded and informed observer to conclude that there "Was a real possibility that the tribunal was biased": see Lord Phillips of Worth Matravers MR in *Re Medicaments and Related Classes Goods (No.2)* [2001] 1 WLR 700, 726 para 83. An allegation of apparent bias must be decided on the facts and circumstances of the individual case including the nature of the issue to be decided: see *Locabail (UK) Limited v Bayfield Properties Limited* [2000] 2 QB 451, 480 para 25. The relevant circumstances are those apparent to the court upon investigation; they are not restricted to the circumstances available to the hypothetical observer at the original hearing. Lord Phillips in *Medicaments* at paragraph 83 stated the principles as follows:

> "(1) If a judge is shown to have been influenced by actual bias, his decision must be set aside... (2) Where actual bias has not been established the personal impartiality of the judge is to be presumed. (3) The court then has to decide whether, on an objective appraisal, the material facts give rise to a legitimate fear that the judge might not have been impartial. If they do the decision of the judge must be set aside. (4) The material facts are not limited to those which were apparent to the applicant. They are those which are ascertained upon investigation by the court. (5) An important consideration in making an objective appraisal of the facts is the desirability that the public should remain confident in the administration of justice."

28. Bias means a predisposition or prejudice against one party's case or evidence on an issue for reasons unconnected with the merits of the issue. In *R v Inner West London Coroner ex parte Dallaglio* [1994] 4 All ER 139, 151, Simon Brown LJ, as he then was, said:

> "Injustice will have occurred as a result of bias if 'the decision maker unfairly regarded with disfavour the case of a party to the issue under consideration by him'. I take 'unfairly regarded with disfavour' to mean 'was pre-disposed or prejudiced against' one party's case for reasons unconnected with the merits of the issue."

29. The proceedings under consideration by the court in the present case are tribunal proceedings and not judicial proceedings. The context is critical. In *Modahl* para 128, Mance LJ said:

> "The principles of natural justice or fairness must adapt to their context and can be approached with a measure of realism and good sense. Appendix B para (B7) of the defendant's rules makes clear that the disciplinary committee "will 'consist of members of the federation drug advisory committee, or its nominees". It was both natural and appropriate that the disciplinary' committee should have among its members someone with experience of doping control and its procedures. Mr Guy was chosen for this reason, and because he spoke English and came from a different national athletic federation. There is no reason to think that he held or would hold any fixed or predetermined ideas on any of the issues being raised by the claimant in her challenge to the Portuguese results."

30. The tribunal in the present case was exercising a domestic jurisdiction that involved a contractual relationship between the respondent and the NGRC. There were therefore special features that the hypothetical observer would have in mind. These include:

i) the nature, function and 'composition of the tribunal

ii) the particular character of the tribunal's proceedings;

iii) the rules under which the proceedings are regulated;

iv) the nature of the inquiry; and

v) the particular subject matter with which the decision is concerned."

42. Dyson LJ considered the law in relation to apparent bias and tribunals in *AMEC v Whitefriars* [2004] EWCA Civ. 1418. At para. 16 he ruled thus:

> "…The test for apparent bias is not in doubt. It is whether a fair-minded and informed observer, having considered all the circumstances which have a bearing on the suggestion that the decision-maker was biased, would conclude that there was a real possibility that he was biased: *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357 para 103.

17. …As the Court of Appeal said in *In re Medicaments and Related Classes of Goods* (No 2) [2001] 1 WLR 701 para 37:

> "Bias is an attitude of mind which prevents the judge from making an objective determination of the issues that he has to resolve. A judge may be biased because he has reason to prefer one outcome of the case to another. He may be biased because he has reason to favour one party rather than another. He may be biased not in favour of one outcome of the dispute but because of a prejudice in favour of or against a particular witness which prevents an impartial assessment of the evidence of that witness. Bias can come in many forms. It may consist of irrational prejudice or it may arise from particular circumstances which, for logical reasons, predispose a judge towards a particular view of the evidence or issues before him."

18. The circumstances giving rise to a real possibility of bias are many. In *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at para 25, the Court of Appeal made some observations about the factors which may or may not give rise to a real danger of bias, emphasising that everything would depend on the facts. It is true that the court was considering bias in the context of the test of "real danger of bias" which had been propounded by the House of Lords in *R v Gough* [1993] AC 646, rather than the later fair-minded and informed observer test approved in *Porter v Magill*. But the later test was described by Lord Hope in *Porter* as no more than a "modest adjustment" of the test in *Gough*. Moreover, in *Locabail* (para 17) the court said that in the overwhelming majority of cases the application of the real danger or possibility test and the reasonable suspicion or apprehension test (effectively that approved in *Porter)* would yield the same result. It seems to me, therefore, that the value of the guidance given in *Locabail* remains undimmed. It is important to emphasise, however, that it should be treated as no more than guidance: it should not be treated as if it were a statute. The court said:

> "25. It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or

history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit local Law Society or chambers (see *K.F.T.C.J.C. v Jcori Estero S.p.A.* (Court of Appeal of Paris, 28 June 1991, International Arbitration Report, vol. 6, 8/9 I)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of an individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakauta v Kelly* (1989) 167 CLR 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised,

> the weaker (other things being equal) the objection will be.""

I glean from these authorities that the Court determines whether there is bias and the appearance of bias on the facts found by the Court, not just the facts before the tribunal on the decision day. Also, the bias issues are determined in the context of the circumstances and the type of tribunal. Bias and the appearance of bias is not the same in all circumstances, it depends upon the circumstances. In a large Union with tens of thousands of members, where disciplinary decisions will affect income and work, the factors and circumstances will be quite different from a social club where the members all know each other and in particular where the council of the club is small and the members all know each other well.

The 3 stages

43. I glean from this case law that in relation to bias this Court should proceed in three stages. Firstly, to determine the relevant facts at the time of trial. Secondly, to consider whether actual bias is proven on the balance of probabilities. Then, thirdly, to consider whether apparent bias is proven on the balance of probabilities taking into account the Court's findings of fact, not just the facts as they were known to the tribunal.

The factors when considering whether apparent bias is proven

44. The following matters need to be considered:

44.1 whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility (or a legitimate fear) that the tribunal (member) was biased against the Claimant, in relation to the relevant issue, in the circumstances.

44.2 The circumstances which the fair minded observer will take into account include the 7 following ones: (a) the nature of the organisation; (b) the nature, function and composition of the tribunal; (c) the particular character of the tribunal's proceedings; (d) the rules under which the proceedings are regulated; (e) the nature of the complaint; (f) the issue/s to be decided within the complaint; (g) the potential effects of the available disciplinary powers on the accused (are they financial or merely social?).

44.3 Whether, in the light of the need for the public to retain confidence in the administration of justice, the tribunal was a public one or a private one.

44.4 The real possibility of bias by the tribunal members must be real in the sense of operative prejudice (whether conscious or unconscious) on a relevant issue.

44.5 The bias must be a predisposition or prejudice against one party's case or evidence on a relevant issue for reasons unconnected with the merits of the issue.

Covid Regulations in October 2021

45. The parties agreed that the *Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations* 2921/582 which were in the Defendant's

authorities bundle, applied. There is no need for me to set them out in full. Suffice to say that the Claimant was required to quarantine for 10 days after arrival into the UK from Bulgaria unless, on day 5, she had a negative test result, after which she could have ceased quarantine. The only way of avoiding the quarantine requirement for her, which is relevant, would have been to satisfy 3 conditions before avoiding quarantine: (a) obtain advice from a medical practitioner that she should not take the vaccine; (b) prove that advice to the NHS by obtaining a Covid Pass; and (c) declaring that Pass on the passenger locator form she had to fill in online when re-entering England. Failure to comply could lead either to a fixed penalty or prosecution in the Magistrates Court (Regs. 20-21). In particular I set out the "Eligible Travellers" UK clinical exemptions here:

> "**3F. Eligible travellers: UK clinical exemption conditions**
> P meets the conditions of this regulation if P—
> (a) has been advised by a registered medical practitioner that for clinical reasons P should not be vaccinated with an authorised vaccine;
> (b) is able to provide proof of that advice through the NHS COVID pass if required by an immigration officer or the operator of the relevant service on which P travels to England; and
> (c) has declared on the Passenger Locator Form that P meets the COVID-19 vaccination eligibility criteria."

The lay witness evidence

46. I heard evidence from the following witnesses:
    46.1 The Claimant.
    46.2 Phoebe Topping.
    46.3 Jason Lewis (JL).
    46.4 David Herbert (DH).

Expert evidence

47. There was no expert witness evidence called. In the absence of any medical evidence on Covid and in particular in relation to these issues: (1) whether having covid once provided protection against a further later covid infection; and (2) whether having covid once allowed a member of the public to be exempt from quarantine in late October 2021; (3) whether being pregnant permitted a member of the public to be exempt from quarantine in late October 2021; (4) what the blood test the Claimant undertook in Bulgaria meant; (5) whether an adult could be infected with flu and Covid at the same time. I am not in a well-informed position to pass judgment on these matters on the evidence before me, but the real issue is what evidence was put before the Council to support the Claimant's defence to the complaint.

Documentary evidence - bundles

48. Before I set out the witness' evidence it will assist understanding if I set out the relevant documentary evidence and the relevant correspondence, which was mainly emails. This was not arranged in chronological order in the bundles and was duplicated and spread in different parts in a chaotic manner. This made giving evidence and arranging the documents more difficult. In *Innovate v University of Portsmouth* [2023] EWHC 2394, Constable J, at para 12, gave guidance that such bundles should be chronological. I add that this is vitally important where long runs of emails are referred to. It is unhelpful for these to be copied out of date and time order and with multiple copies of each email spread throughout the various bundles. The arrangement of the bundles in this case impeded counsel in their tasks and has made giving judgment a long process.

Findings of fact

49. I make the following findings of fact on the documentary evidence and on the witness evidence for the key period in 2021.

October – December 2021 – the expulsion

50. On 3.10.2021 the Claimant flew to Bulgaria and on 19.10.2021 the Claimant had fertility treatment there. Her translated medical document shows she was advised to do a pregnancy test 14 days after, so on 2.11.2021 and again two days later, so on 4.11.2021. She was advised not to have the Covid Vaccine so as not to endanger the process. On 24.10.2024 she had a blood test which was translated and showed: hCG + Beta >0.100 mIU/ml. The Claimant informed me that the nurse told her that this meant that she was pregnant. I have no medical evidence to support that conclusion, it was not mentioned in her witness statement and I make no finding upon it. The Claimant also stated in her evidence that she never did the pregnancy test on 2.11.2021 or indeed on 4.11.2021. I find that evidence troubling in the light of the Claimant's assertion in evidence that she was pregnant on 26/27.10.2021 and hence was exempt from needing vaccination against Covid. In evidence, but not in her witness statement, the Claimant said that she suffered a miscarriage after her expulsion and at another part of her evidence she said this occurred around 6.11.2021 after the Winter Ball at the Club. The Claimant provided no evidence to support those assertions either.

51. The Claimant returned to England on 24.10.2021. On 25.10.2021 she had a phone chat with KOF. She recorded it on her phone but never asked permission from KOF to do so. The Claimant's explanation in evidence for recording this and other conversations was unsatisfactory in my judgment. She asserted that she had been trialling a new "app" which recorded her conversations with a view to ensuring certain conversations with builders about property related building disputes would be recorded. She asserted that the app recorded at "random" and also that she kept turning the app on and off. The Claimant asserted that she only stumbled across these recordings much later after the action had been commenced and so disclosed them in the course of the action. Whilst I was not addressed on whether it was lawful to record private conversations without asking for permission and make no finding on that, I note that the Claimant has made loud complaints about breaches of her privacy against KOF and the CEO of the Club

concerning disclosure of warning letters and her complaints to Council members, yet makes no apology for this surreptitious recording. That conversation makes clear to me that KOF was warm and caring towards the Claimant about her trip to Bulgaria. It also makes clear that the Claimant was very grateful to KOF for the thoroughness of the documentation for the forthcoming Council meeting relating to CAPEX. They discussed the Staff Fund and KOF explained how tax implications would arise if the Council determined the distribution of the fund. They shared the same concerns about the current method of distribution but changes would need to be affected by the Trunk Master (staff) not Council. KOF promised not to seek contributions from members until the distribution was resolved by the staff. The Claimant appeared to understand how it was important for Council not to get involved in discussion for tax reasons. They discussed their shared views on the standing down of JD from the membership committee and on FT as treasurer and other matters. This call gives no support to the Claimant's assertion that KOF was mala fides to her.

52. **On 26.10.2021** the Council met at the Club. The Claimant attended. There had been pre-meeting correspondence about two members of Council who were high risk and worried about Covid. After the meeting the Council had dinner. PT sat beside the Claimant and a discussion took place about the Claimant's trip to Bulgaria. PT advised the Claimant that she should have been in quarantine for 10 days after her return and was breaching the laws on Covid whilst at the Club.

53. **On 27.10.2021** PT emailed the Claimant at 3.23 pm and provided the link to the Government Covid travel guidance and rules requiring quarantine for 10 days on return from Bulgaria for unvaccinated adults. She pointed out that the Passenger Locator Form which all inbound passengers had to complete set out the rules. PT pointed out the two high risk members of the Council (including RB). She stated:

> "I mentioned this while we were speaking, but I was very troubled to learn of your circumstances and subsequent presentation at the Club. You should not have attended the Council meeting in person yesterday. Especially given there was a Zoom option. … Not only were you technically breaking the law by not self-isolating upon your return to England on the basis of your Covid-19 status, but much worse than that, you potentially put the health of other Council members at risk, as you represent a higher risk of transmission on the basis of your status. In addition, you have very recently returned from travelling, which is a higher risk activity for transmission. You also appeared to have some cold-like symptoms, and implied that you hadn't yet taken a test. … At the very minimum I think it was disrespectful to other Council members, staff and other members in the Club, and also showed a disregard for the health and wellbeing of others. I don't feel how you behaved was in keeping with our code of conduct. Before I decide what to do next, I would like you

> to reassure me that there won't be a repeat performance of this in future i.e. that you would follow the rules set out in government guidance and not attend a Council meeting should one fall in a period during which you are meant to be self-isolating. I cannot overstate how important it is that we all take this seriously, especially as we enter flu season and what is likely to be another difficult period for the NHS."

54. This email does not mention or suggest resignation. I accept PT's evidence that at that time PT was unaware that the Claimant had again visited the Club on 27.10.2021, perhaps at the very time that the email was being sent. The emails sent by KOF and DH that day evidence that staff registered that the Claimant had visited the Club that day and the Claimant admitted doing so later that very day.

55. At 17.17 on 27.10.2021 the Claimant replied to PT stating that she accepted that the rules had changed whilst she was abroad because she had checked "last night" and she "*would rather resign discreetly"* (I infer she meant from the Council, not as a member). She wrote:

> "I know that pleading carelessness is a poor excuse because as a Council Member I should be held to a higher standard. I am sorry for making you uncomfortable and putting you in a tough situation as I was caught unaware and did not know what to say. Most importantly I am sorry to have disappointed you because I like you and respect you very much. *I am ashamed. I have thought about it and am happy to report myself and would rather resign discreetly and voluntarily rather than being found publicly in breach of the Code as I find that shameful*. I just don't want to create a big fuss or alarm anyone unnecessarily. Yes of course I will get the Day 2 and Day 5 Test to Release and the Day 8 tests and let you know of the results. You do whatever you feel most comfortable doing and I will support what you decide. I am sorry to have fallen below standards and I take full responsibility. It is not going to happen again. Thank you for your note - I appreciate your integrity." (My italics).

What the Claimant did not say in that email was that she had again gone to the Club that very afternoon (27.10.2021) despite checking overnight that she should have been in quarantine and despite PT informing her that she should have been in quarantine.

56. At 6.46 pm PT responded to the Claimant's email offering resignation. She wrote:

> "Thank you for getting back to me so quickly, I'm glad you understand the gravity of the situation and really appreciate the tone and manner in which you have responded. *I agree that this is a*

> *resignation matter, but I'm also confident that it can be handled discretely.* The process is that you write to the Chair to tender your resignation which would then take effect immediately. You could say it was for personal reasons or we could collectively agree (you, me and Katherine) to not disclose your reasons if you chose to state them in your email to her. Let me know what you decide. I feel that this isn't a very pleasant end to a Wednesday for either of us, and I hope that you are alright." (My emphasis).

57. At 18.53 hours that day the Claimant recorded a phone conversation with RB (a Council member) without informing her it was being recorded. The Claimant informed RB that PT had told her she should resign. That was not true. She did not state that she, the Claimant, had decided that she would resign and had informed PT of that decision in the last hour. She asserted that she had not known the Covid Rules had changed when she went to the Council meeting on 26.10.2021. She did not inform RB that she had gone to the Club again on 27.10.2021. RB was very sympathetic. The Claimant said: *"I am not a murderer, I am not a thief, but Phoebe for some reason thinks I should resign. And I said fine I'm going to speak to Katherine. And she says I should say it's for personal reasons. I'm not gonna say its for personal reasons. I'm gonna just tell her honestly I'm not announcing to the whole world, it's really not a big deal. I'm taking the test and making sure I'm COVID-free obviously obeying the rules obviously, now that she's told me and I am going to speak to Katherine, because if she thinks I should resign. I will resign…"* (My italics). RB said she personally did not think the Claimant should resign. But then RB did not know that the Claimant had returned to the Club the very next day. This exchange then took place:

> "Ruth Barry:
> And, and I also think you have to be open. Gina, Just out of respect for any other council member, you have to be open. Because if you put people's lives at risk because we were for 2 hours in the Sun Room.
> Gina Mok:
> That is absolutely fine. I am going to be honest"

RB advised her to call the Club Commissioners.

58. Later that same evening the Claimant called KOF. She recorded that conversation without asking for permission first. The opening sequences are instructive. KOF is friendly but informs the Claimant that she has a high risk for clots on her lungs and reminded the Claimant that the Claimant was coughing on 26.10.2021 at the Council meeting. The Claimant said she was embarrassed and ashamed, she did not know of the Covid rules change and that she was supposed to be quarantining and whatever people decided to do with her was "fine". She did not inform KOF that she had told PT that she would resign. KOF reminded the Claimant that this was not the first time she had breached Covid rules at the Club referring back to October 2020 when the

Claimant had invited members to drinks and the Chair "went mental" about potential breach of covid rules and stated this more recent behaviour was "quite serious", a failure to quarantine which put members at risk and some Council members (MCE) were high risk. KOF advised as follows:

> "And my instinct is, and I'm very sorry to say it but I think I think it probably is the right thing to do because knowing Phoebe the way I do and I don't know her that well. Like if she's saying you should resign and you don't. She's probably going to make a complaint"

The Claimant responded:

> "I'm not going to… look I am not saying. Either way, look, I broke the rules and not trying to evade responsibility at all. I just want to be really honest about."

Later KOF said:

> "This is your decision, this is not, I cannot make this for you. And neither can Phoebe so you need to decide what you want. If you're asking my opinion, my advice, and I haven't had a huge amount of time to think about this. And also this is not my area of expertise. But Phoebe works with the Department of Health. And she writes policy on this. So this is absolutely her own expertise. And my instinct is that coming to the Club, exposing people to this is really serious breach of code of conduct. To be perfectly frank, I don't even think even think this is just about a Council thing. Theoretically, and I'm not saying that they should happen or will happen. Theoretically, if somebody wanted to throw the book at you, they should suggest for example as a member that you shouldn't even be a member for doing this."

Then later in the conversation the Claimant was asked:

> "KOF: I mean, are you obviously since you spoke to Phoebe last night and she said to you that you needed to isolate. I presume since you got home last night you haven't left the house. You've been at home the whole time.
> Gina Mok:
> Well I've had to go out and things anyways
> Katherine O'Flynn:
> Have you been out, have you been to the Club? today?
> Gina Mok:
> I may have kind of stopped by
> Katherine O'Flynn:
> Oh no Gina that's really bad. So after Phoebe said to you last night, you need to go home and isolate for 10 days you came back to the Club. That's really bad Gina? Oh my God why don't you have an appointment or something?
> Gina Mok:

Yeah, I didn't want to cancel this last minute. I didn't really want to we agreed in advance

Katherine O'Flynn:

Really Gina? it just gets really bad. It just gets worse and worse. Well, I to say that, you've been to Bulgaria a quite few times and the rules have just been changed, that on its own, maybe you can convince everyone."

Near the end of the conversation this exchange took place:

"Gina Mok:

Ok fine. Let me think about it. I am pretty laid back about the whole thing. And I also wanted to make it clear that also, I was just thinking that we made so much progress. And pretty much everything that I wanted to see has been has happened.

Katherine O'Flynn:

Yeah. Yeah.

Gina Mok:

Even if I even really like at peace, because I saw the budget, I saw the capex, I can understand why the Club spends the money and get the answers I wanted

Katherine O'Flynn:

Well I feel that you've achieved a lot, in particular with all the governance stuff which was really effective and essential, especially on how that Complaints Process was unfair in the way that it was written in the past, without your contribution. I think we just got something that I'm not sure it is perfect, but I think it's a lot further than it used to be.

Gina Mok:

Yea I am pretty happy, I just thinking that if yesterday was my last council meeting, I would have been good. I just thought, okay, I get a lot of answers that I didn't understand when I was a Club member. And to be honest I have been..it's a lot of work and I am busy and I did make time and maybe a little bit over zealous, in trying to attend the meetings, every single one. And being able to meet the members. Overzealous about it to extend the carelessness,"

Later KOF stated:

"Katherine O'Flynn:

I didn't disapprove of you Gina, but I do feel that you've made quote a serious a mistake. And my instinct is, I'm saying this to you as a friend. If, for example, Phoebe makes a complaint, and if I have to sit in a council meeting, and discuss it with other counsellors, and it goes through, I don't think it will be a favourable outcome for you. Marsha is high risk. And know nervous about COVID. Phoebe, clearly, because of her professional responsibility, it has to take a hardline, Jason is high risk, he's emailed me before today, I'm high

> risk. And I'm quite nervous about all of this. I don't know about Fraser's status, Sid is a GP, and he'd be likely to take a very dim view of this for not following the rules, which are designed to keep people safe. So I think if it came to a vote, I don't think it'd be a favourable outcome for you."

I do not get the impression from that conversation of mala fides from KOF to the Claimant. Quite the opposite, namely that KOF and the Claimant both thought that they had worked together since the Claimant joined Council to improve matters at the Club considerably.

59. **On 28.10.2021** the Claimant called the NHS 119 hotline. She provided late evidence of 6 calls made between 08.18 and 08.43. She got through and recorded some of them. At 08.18 the call discloses that the Claimant asked for an exemption from vaccination and was advised that she would be sent a form to fill in and give to her GP for medical certification. Examples of medical reasons were given: end of life care; medical contra-indications; allergy; and for some pregnant women. She was asked for her NHS number but did not have it. Then the system went down. She called again at 08.42 and was given the same information. The Claimant informed the call handler that she had not been to her GP, had information from a foreign doctor and was advised to talk to her UK GP, and she gave her NHS number and was sent the form which she was to take to her GP.

60. **On 1.11.2021** PT made her formal complaint addressed to the CEO (as I have found above, addressing the complaint to the CEO was the correct procedure for complaints against all members including a Council member). The complaint was as follows:

> "Dear David,
> I am writing to make a formal complaint to you in relation to Gina's attendance at the Club on Tuesday and Wednesday last week. I have read the process on our website here:
> https://indd.adobe.com/view/42e5adb1-fe41-4a7d-8017-653b890d0851
> Over dinner in the Courtyard after our last Council meeting (26th) Gina disclosed to me that she is both unvaccinated and had returned from travelling to Bulgaria the previous day (25th). These two facts are significant because taken together they mean she was legally obliged to self-isolate for 10 days upon her return to England under the UK border regulations. This applies to all unvaccinated people returning from any country not on the red list. Gina should under no circumstances have been outside her home as she presents an elevated risk to herself and others of contracting and passing on coronavirus. *By attending Council on the 26th and the Club the*

> *following day she broke the law and put other Council members, Club Members and Club employees at risk.*
> I feel this behaviour is unacceptable under any circumstance, but more so from an elected Council member and also given that we have a number of vulnerable members who were due to attend Council that evening.
> Furthermore, a long email chain about the risks of Covid had been circulating amongst Council members that day, which Gina received.
> Since I explained the rules to Gina at dinner (26th) and advised her that she needed to self-isolate until at least day 5, *I was further disappointed to learn that she disregarded this information and returned to the Club the following day to meet another member in the courtyard. This to me is inexcusable, as her claim of ignorance falls away to reveal a blatant disregard for the law, as well as the health and wellbeing of others* This situation puts me in a really difficult position, as someone who works for the Government on this policy area and accompanying regulations. I don't really feel I have a choice but to make an official complaint about it. I don't think *law breaking amongst Council members* should be taken any less seriously because it is related to Coronavirus, in fact I consider it even *more serious because the consequences in this case are the potential endangering of other people's health.* I think her decisions were *morally wrong and not in keeping with our code of conduct for Council members, or furthermore the Club's Articles of Association (39.1.3) and rules (11.1.2)* which set out a clear expectation that Council / Club members are not law breakers.
> Whilst I appreciate that Gina has not been caught breaking the law, we as a Club are now aware that the law has been knowingly broken by her and the Club must now carefully consider what action to take.
> I look forward to hearing from you in relation to next steps." (My italics).

61. Thus, the Claimant was faced with a complaint that she had broken the law twice, on 26th and then 27th October 2021, the second time knowingly; put members at health risk from Covid; had acted in a way which was morally wrong, in breach of the Code of Conduct or the Club Articles and Rules. The complainant realised expressly that the Claimant had not been caught, in the sense of arrested and convicted, she asked the Club to consider what action to take in the absence of such a conviction. Initially the CEO tried to have a meeting with the Claimant but she refused on various grounds and eventually 7 days later the CEO referred the complaint to the Chair (KOF), as he was obliged to do under the Club's Complaints Review Process. KOF took up the review and asked the Claimant to attend a Stage A meeting in accordance with the Complaints

Review Process. This took place on 11.11.2021 after the Claimant had been sent the complaint from PT on 8.11.2021.

62. **The first explanation, 3.11.2021.** In the meantime the Claimant had written to PT on 3.11.2021 giving her an "update" and withdrawing her resignation offer. She asserted that she had taken Covid tests in Bulgaria, before she flew home and on day 2 (which would have been 26th October 2021). She asserted all were negative. No adequate evidence of the day two test was provided to this Court. A test from 29.10.2021 was produced by the Claimant which had clearly been emailed to the Club on 29.10.2021. This would have been the day 5 test. After this DH wrote to the Claimant say she was entitled to return to the Club at will. Mid way through cross-examination the Claimant provided a Bulgarian Covid test which I accept. However, this was never shown to the Club. An undated screenshot of a day 2 result extract is at TB page 906. She also asserted that she had completed a day 5 test (that would be 30th October 2021) but no evidence of that test has been produced. The Claimant wrote to PT as follows:

> "When we caught up last week, I was not aware of the recent rules changes. Once you kindly informed me, I arranged the further tests and did my research by calling my GP and the NHS Helpline. I found out that I *am Exempt on account of the Treatments that I have been undergoing*. While my medical history is a private and personal matter, all you need to know is that *I qualify for a Covid Pass. My GP also explained that if I have a cold or flu, I could not have Covid because the disease pathology is that either one virus or the other would take over, not both*. So people with a Cold are protected from Covid. This explains why statistics for flu infections have dropped. I understand your concerns since you work for the government. But for the future, please keep an open mind before jumping into judgement *without the full picture*. Having had time to think things through, it was an *unintentional oversight. All the appropriate steps were taken and no harm was done.* I do not feel that the matter warrants resignation from Council. I will share the details of my treatment with the relevant people and consider the matter closed between us." (My italics).

63. There are some considerable errors in this email. Firstly, the Claimant asserted that she qualified for a Covid Pass. In the event, the Claimant did apply to her GP for a Covid Pass on 5.11.2021 (the email was produced half-way through cross-examination) and was not granted one. She applied on two grounds: (1) of pregnancy and (2) having had Covid in August 2021. She sent the translation of the Bulgarian doctor's report to her GP but she never obtained a Covid Pass and by the time of trial had no UK doctor's letter stating that she was entitled to a Covid Pass in October 2021. Nor did the Claimant produce any medical evidence from Bulgaria until half-way through cross examination, after I indicated that over the weekend she would be allowed to gather

written evidence to support the assertions which she had made in the witness box. The Claimant did so and provided a translation of a Medical Report from Dr Anton Baev of the Aphrodite Medical Centre (no address given) dated 21.10.2021 setting out fertility treatment on 19.10.2021, advice to do a pregnancy test at day 14 and day 16, and advising against taking the Covid Vaccine. I accept that letter as genuine, despite the late disclosure, but of course note that the Club were never given it in 2021. No pregnancy test results were produced to the Club and in evidence at one point the Claimant asserted that she suffered a miscarriage on 6.11.2021 (at day 18). So even at trial there was no evidence that the Claimant ever had a Covid Pass and the evidence that she was potentially entitled to one was disclosed very late. But none of this is to point. The Club were given no evidence, only mere assertion. Secondly, as to the assertion that because the Claimant had flu when she attended the Club on 26.10.2021 she could not have had Covid, this was not supported by any medical evidence or medical letter sent either to PT, to the Club or produced at trial. In evidence the Club witnesses recalled Dr Datta, a Council member, advising Council on 30.11.21 that this assertion was medically incorrect. Thirdly, the assertion that the Claimant had made an unintentional oversight could only have applied to 26.10.2021, because by 27.10.2021 PT had informed the Claimant of the Covid Rules and she knew very well she should be in quarantine but chose to go to the Club despite PT's advice. That was not arguably unintentional on any grounds. I note that in an email commenting on this explanation PT described it as "nonsense".

64. **The second explanation, 8.11.202**1**.** After receiving the PT complaint the Claimant provided a second explanation for her behaviour. This was on 8.11.2021 in an email sent to the CEO, DH at around 1 pm. She asserted that her visit on 26.10.2021 was a genuine mistake. This assertion ignored the guidance she would have received on completing the online Passenger Locator Form when she filled it in. The Claimant asserted that she had taken a day 2 test *before the 26.10.2021 visit*. The Claimant attached an undated screenshot of this day 2 test in the 8.11.2021 email which she asserted gave confusing advice that she did not need to quarantine. The only proper test result the Claimant provided to the Club was a day 5 test on 29.10.2021. The Claimant explained as follows:

> "I called the NHS Hotline and told them that I made a mistake when I did not quarantine because the rules had changed and I was unaware. I also explained that the Day 2 Test instructions from the Test Provider was confusing and *that was the reason why I went out on Wednesday. The NHS's reaction was very supportive and they accepted it was a mistake did not judge me in any way*.
> I further had a conversation with my GP about the medical reasons why I have not been able to take the vaccine and I do qualify for a Covid Pass. If neither my GP nor the NHS is not judging me, then I do not feel that it is Miss Topping or the Club's position to pass judgement on me especially without knowing the full picture." (My emphasis).

65. In my judgment the contents of this part of the email were not accurate. The Claimant has provided no evidence, despite recording other phone calls, that the NHS Covid Helpline ever provided any such acceptance of her mistake. Nor is there any evidence of a conversation with her GP on 26th or 27th October 2021 or at any time. Her GP was in the Soho Square Practice and was the person to whom she sent her application for a Covid pass on 5.11.2021, but who never granted the pass. The application itself does not mention this earlier conversation. No GP note of any such telephone appointment has been provided or was given to the Club. Furthermore, the Claimant complained to the GP practice in late November 2021 that they had done nothing about her application for weeks and had refused to process it.

66. In the same email, the Claimant launched into a complaint about the CEO for a "violation of her personal privacy" by inviting the Club's Governance officer to the proposed chat which he had asked for about the complaint. She asserted that the CEO was not entitled to share the complaint with anyone else. This rather undermined her later assertion that it should have been referred to the Chair and is in stark contrast to her covert recording of private conversations with other Council members.

67. **Third Explanation, 8.11.2021.** At 22.55 on 8.11.2021 the Claimant gave a third explanation, this time to KOF. She wrote:

> "When I initially spoke with Phoebe it is true that I wasn't aware of the rule changes. But I called my GP and NHS and it turns out that *I was listed as exempt* and do qualify for the Covid Pass and that I *just needed to ask for my records to be updated.*" (My emphasis).

This was a quite different explanation from her explanation earlier in the day to DH. The Claimant never produced any evidence to KOF or the Club to support the assertion that either her GP or the NHS had ever "*listed*" her as exempt and that she just needed her records "updated". I regret to say that I consider, on balance, that both of these assertions were untrue.

The Claimant then launched into complaints against the CEO's handling of PT's complaint asserting that she had no idea the meeting he asked her to come to with him was about the complaint and was only informed the day before and complaining that someone else was going to be present.

68. The CEO then referred the PT complaint to KOF who started correspondence with the Claimant about it on 8.11.2021. She arranged a Stage A meeting with the Claimant on 11.11.2021. The meeting took place by Zoom. It is summarised in KOF's email to the Claimant of 15.11.2021. KOF noted:

> "As discussed, the matter will now be referred to Council. We agreed on our call that you will send a written statement to me by

> the 23rd which will be submitted to Council for their discussion along with the complaint. I also advised that you can make a verbal statement to Council as well if you wish."

In addition, KOF wrote on 3.12.2021 about the contents of this Stage A meeting:

> "20. Gina's complaint summarizes the call we had on November 11th, and that summary is incorrect. She states that I accepted she "had not breached any rules." I made it clear on the call that I thought Gina had broken the Covid rules. We did discuss Club rules and I acknowledged that there were no specific Club rules about Covid but that all members were expected to follow the national laws/guidance on Covid."

I accept that as an accurate summary of the matters asserted in the note. After the meeting the Claimant confirmed the agreement to refer the complaint to Council and asked for the Commissioners to be present at the meeting.

69. Before the papers were sent out to the Council KOF gave the Claimant a final opportunity to put in her written response and advised her that writing to the Commissioners to complain was not responding to the Council and urging her to do so. The Claimant refused to do so. On 22.11.2021 instead of sending her response to the Council the Claimant made a complaint about KOF to the Commissioners. This was made in two parts. The first part contained her complaints about procedure. She sought an apology from the CEO and Chair for alleged "infractions" of the Club Rules, she sought an explanation from each *under Rule 11.2* and she asked for the complaint against herself by PT to be dismissed. This shows the Claimant was well aware of Rule 11.2 and I interpret it was a counter-attack under the same rule in the Claimant's thinking. The Claimant asked for both her complaint and the PT complaint to be handled together and she asserted that the complaint by PT was initiated incorrectly and the entire process had been "compromised". The Claimant mixed her defence to the PT complaint with her allegations of breaches in procedure. She asserted that after she met PT on 26.10.2021 she checked the Covid Regulations and agreed that PT was right. However, she asserted that "*I was exempted from quarantining on account of medical treatment and therefore had not broken any regulations.*" The Claimant wrote as follows:

> "4. The next day I called 119 the NHS Covid-19 Helpline and my GP to check my records and confirm my status. *The NHS confirmed that I qualified for a Covid Pass on account of a Medical exemption. However, for a technical reason the records had not been linked to the NHS App which is managed by a separate team and therefore the Covid Pass was not yet accessible*.

> 5. On the same day, I received the Day 2 Test results which were negative. *I exercised my judgement and went about my day as previously planned, including a stop at the Club, given that, as above, I was exempt from quarantining*."

70. On the evidence before me I do not accept that either of the assertions in the Claimant's para. 4 was true. Nor was the Claimant exempt from the requirement to quarantine. She was potentially exemptable if she had applied and passed through the correct steps. A GP would have had to have provided a certificate. The Claimant also provided a separate document responding to and setting out the issues in the PT complaint and answering them. The first issue (breaking the law on 26.10.2021) was answered by asserting that she was "medical exempt" and as evidence of that she again asserted that: *"The next day I called the NHS Helpline and my GP to clarify this point, and they confirmed that I was already exempt"*. I have already found that these assertions were not true. As for the 27.10.2021 visit, the Claimant asserted that due to a "technical issue" with the app which "did not yet link to her medical records" her Covid Pass was not "immediately accessible." I consider that assertion to have been factually untrue. The Claimant had not yet even applied for an exemption on 27.10.2021. On what the Claimant called "issue 2" she asserted that she had not put Council members at risk because she had taken 3 covid tests, two in Bulgaria and a day 2 test and all were negative. She also asserted that:

> "I had a cold and took extra precaution by announcing that I had a cold and sitting away from vulnerable Council Members and not shaking hands because I did not want to even pass a cold. *My GP has informed me that it is not possible to both have a cold and suffer from Covid because the disease pathology is such that one virus or the other takes over the body but not both*."

The Claimant never put in any medical evidence before the Club or the Court to support that assertion and the Defendant denied that it was correct. PT gave evidence that Doctor Datta (a GP) advised the Council that it was incorrect. On what the Claimant called "issue 3": the Club Rules, the Claimant denied breaching Art 39.1.3 or Rule 11.1.2 both of which required conviction of a criminal offence. However, she also considered the Code of Conduct of the Club and could not identify how she had breached it. She did not address, but instead ignored, the Rule 11.2 *injurious to reputation.*

71. In her complaint, the breaches by the Club which the Claimant alleged were: (1) that the Club had surreptitiously altered the complaints procedure on the Club's website in November 2011; (2) the CEO arranged a meeting with her and a Governance officer as a witness on 9.11.2021, outside the Complaints Process, at short notice with no allowance for the Claimant to bring an advocate; (3) at the zoom meeting with KOF on 10.11.2021, KOF informed her that the PT complaint may warrant formal disciplinary

action and mentioned the previous warning letters even though the letters were issued in breach of Governance and "it was accepted that I had not breached any rules"; (4) that PT's complaint should have been "raised" initially with the Chair not the CEO; (5) that PT's complaint should have been investigated before it was sent to the Claimant; (6) that KOF should have sought informally to resolve it and failed to do so.

72. The Council meeting occurred on 30.11.2021. Other matters were dealt with first then the Claimant was asked to join the Council members. The Governance officer, Hayley Foster made a note of the Claimant's presentation to the Council. The Claimant read out her written statement made to the Commissioners (which I have summarised above). She provided copies to Council. She repeated her assertion that she had called the NHS Covid Line on 27.10.2021 and they "confirmed" she was "exempt" but due to "technical issues" she could not access the results immediately. She complained about the procedural defects in the Club's handling of the complaint. She asserted that she had taken legal advice and her written response to the commissioners had been "reviewed by 3 lawyers" who advised that the Club's disciplinary rules had been breached. She also asserted that because she had had a cold she could not have had Covid on 26/27.10.21. Thereafter, the Claimant left the room and KOF made a slide presentation and PT spoke as did other Council members. Then there was some discussion which was not minuted. There was then a unanimous decision by first secret ballot that the Claimant had behaved as alleged in the complaint. I assume that there was further discussion and then the second secret ballot was held on sanction and expulsion was the result.

73. In the decision letter the Club wrote the following:

> "During the Council meeting of November 30th you were provided the opportunity to make a verbal response to the complaint. Council members listened carefully and were also able to ask you questions which you kindly responded to. Following this you left the meeting whilst Council discussed and voted on the matter. Whilst those discussions were ongoing you also supplied, via email to Council members, your late written response to the complaint. Council has considered the complaint and what you have said about it and concluded that you did not comply with the rules for travellers from Bulgaria entering the UK in October. Council understand that you arrived in the UK on October 25th (day 0) and that you visited the Club on October 26th and 27th (day 1 and day 2.). It is Council's understanding that on these two dates you should have been quarantining and that you were not exempt from that requirement. In an email exchange with David Herbert on November 8th you stated that you commenced the process of applying for exemption status after Phoebe pointed out that you were not complying with the Covid rules. "After I spoke to Miss Topping, I called the NHS

> Hotline and my GP" and later in the same email "I further had a conversation with my GP about the medical reasons why I have not been able to take the vaccine and I do qualify for a Covid Pass." During a subsequent telephone conversation with Katherine, you stated that you had only just learnt you could be exempt and were going through the process of applying for exemption status.
> *You have told Council that you have now been granted exemption status although you have not provided evidence of this. Council have concluded that as you were not exempt on October 26th and 27th when visiting the Club, you did break the Covid rules that were in effect at that time.* It is also of note that the government advice in October, and still in place now, is that regardless of an exemption, anyone with symptoms of Covid-19 should self-isolate. On the day of the meeting on October 29th you attended the Club with what you have described yourself as a cold, which other Councillors observed included a cough, a known feature of Covid-19. Given your recent travel and symptoms it should have been clear to you that you presented a heightened risk to others.
> Therefore, this emails informs you that following Council discussion and votes on the matter the complaint against you has been upheld and the Council has decided to expel you from membership of the Club under Rule 11.2 of the Club's Rules. That decision was taken on the basis that you have behaved in a manner that is injurious to the character, reputation and/or interests of the Club and that the offence is sufficient to warrant your immediate expulsion. In reaching its decision the Council took account of your position as a member of Council and the responsibilities to the Club that such a position entails."

74. On 6.12.2021 the Commissioners dismissed the Claimant's complaints about KOF. The complaint about the CEO was not within their remit. They determined that the Complaints Review Process was not initially followed correctly concluding that PT should not have sent the complaint to the CEO. As I have set out above I consider that they were partly mistaken about that. They have ignored the website advice. However, they dismissed the Claimant's complaint because the delay was 8 hours between the Claimant being told of the contents of PT's complaint and the compliant being referred to KOF. The Claimant's website change complaint was not supported by the Club website engineers and was dismissed and the rest of the complaint against KOF was dismissed.

The Claimant's evidence

75. It is only with the findings of fact so set out that I can summarise the evidence from the Claimant in context. It was overly detailed and much was a confusing distraction from the key facts. The Claimant served two very similar witness statements. The first was

sworn on 20.2.2022 and the fourth was sworn on 24.9.2024. The Claimant was brought up in Costa Rica, of Chinese immigrant parents, and went to university at Wharton in Pennsylvania and graduated in business and finance. She worked in New York City in securities. She passed the chartered financial analyst exams and took an MBA at Columbia. She asserted that she is an expert in uncovering operational and accounting irregularities. She asserted that she sets high professional and ethical standards and that these are ingrained in her. After moving to London in 2008 she started up what she calls a portfolio career and then joined the Lansdowne Club in 2015. She asserted that the Club had no transparency or accountability, so she ran for the Council, on a ticket to improve both, and was elected in September 2020. She set out, in a substantial number of paragraphs in her witness statement, events from September 2020 through to September 2021, involving clashes with the then chair, Keith Hollander and her open verbal criticism at an AGM on the 30th of September 2020 about various matters, for which she later apologised. She criticises KH for appointing a new Building Projects Committee with members from the old, in her view discredited, Premises Committee and described further conflict with KH over that. She accepted that she took a 5 minute call in the reception of the Club on her mobile phone on 7.10. 2020 and was given a warning in a letter that the phone call was in breach of the Club Rules. The letter also informed her that she had been the subject to various complaints for her open criticisms of the head chef at the previous AGM. She was given a warning by JD, who was chair of the membership committee at that time. In response she complained and reported JD for acting outside his powers, because she asserted the Membership Committee had no power to give warnings. On the 29.10.2020 the Claimant sent out an invitation to members to have drinks at the Club the next day under the auspices that they were to "discuss business" but did so tongue in cheek describing the business to be discussed as the half price drinks. She was issued with another letter of warning, this time from the CEO on behalf of the Club Council in November 2020. He described her e-mail invitation as "misguided" and was worried that it could have led to serious consequences, being a breach of the Covid Regulations. In December 2020 the Claimant responded to both warnings apologising for naming the head chef for redundancy during the AGM but explaining that the food and beverage department was underperforming and explaining that in relation to the mobile phone call she had made in Club reception: that she received a call whilst leaning over the staff desk and asserted there was no rule against using mobile phones in the reception area. As for the invitation to drinks that she had sent out, she complained that the CEO should not have copied members of the Council with the accusation against her and that the CEO had been intimidating to her. The Claimant considered she was being discriminated against. Subsequently, KH resigned. I do not have full details about that. KOF was elected to be the new chair of the Council and PT was elected deputy chair. The Claimant asserted that PT had written an e-mail in early December 2020 calling her a troublemaker amongst other things. The Club was closed between October 2020 and April 2021 due to Covid which was a difficult time. KOF appointed the Claimant to the Governance Committee because the Club lacked proper disciplinary processes. The Claimant drafted the new complaints and disciplinary policies. She asserted that in February 2021

KOF disclosed to her that KH had instructed staff to monitor the Claimant's movements and to find reasons to expel her. She said the Club reopened in July 2021 and around that time the Claimant complained that unnamed members, A and B, had been treated unfairly and expelled. The Claimant also complained about the appointment of the Buildings and Property Committee and about CAPEX, the budget for which had increased from an estimate of £200,000 to an approved sum of £400,000 in April of 2021. The Claimant complained about various items under the column "business as usual", which were not business as usual. She complained about a proposed project to convert the 1st floor corridor into rental offices and she had strong exchanges with the treasurer over that. The Claimant asserted that the tenant for the proposed rental offices was to be JD. Further, the Claimant challenged the Club's five year business plan. She complained about a difference in the renovation costs for various bedrooms in the Club and about £11,000,000 of CAPEX over the next five years. She complained about the operation of the staff fund which she asserted was to be dismantled under a September 2020 announcement, but later that year KH had asked for donations to it. She made challenges about the staff fund in the June 2021 meeting on the basis that it was distributed inequitably. She accepted the KOF had invited her not to talk about the staff fund in Council because Council had no control over it

76. Turning to the events in October 2021, the Claimant accepted that she attended a Council meeting on the 26th and at dinner afterwards she said she told PT she had been to Bulgaria for fertility treatment and PT told her that she was breaking the law due to being unvaccinated and failing to quarantine. The Claimant accepted she was unaware of the changes in the Covid Regulations. Later, she researched the rules and accepted that these confirmed PT was correct but she asserts that also she asserted that on the 27th of October she called her GP and NHS 119 and discovered she was "exempt" due to her medical status. Therefore, the Claimant asserted she had not broken any rules because she was in the early stages of pregnancy. She told the Club that she was exempt. She received her day 2 test result, which was negative, so she went to the Club for a 2:00 PM meeting on 27.19.2021. At 3.23 pm the Claimant received an e-mail from PT setting out PT's concerns about her attendance in breach of the Covid rules and asserted in her witness statement that PT later emailed to say it was a resignation matter and could be done discreetly. She called KOF that evening who agreed with PT. She made no reference in her witness statement to her own e-mail offering to resign. She complained that the CEO contacted her for a meeting and on the 8th of November informed her of the complaint made by PT and sent to link to the website showing the wrong complaints process. She responded with her full response and attached her Covid test results. The CEO required a witness at their meeting on the 9th of November, but the Claimant refused because it was supposed to be informal. The Claimant made a formal complaint about the CEO to KOF on the 8th of November, who then took over the process. She had a meeting with KOF which she asserted was on the 10th of November 2021. This was for informal resolution and the Claimant sent her defence to PT's complaint to KOF before that meeting. She stated that KOF criticised her for being aggressive and demanding a private meeting with a new governance officer and the

staff were afraid to meet her because the Claimant had a history of raising complaints. She asserted that KOF refused to look at her medical exemption document and instead said she would refer the Claimant to the Council for her "pattern of behaviour", including the 1st and 2nd warnings from 2020. KOF gave the Claimant a deadline for her formal response of the 22nd of November 2021. The Claimant gave evidence that she sent a written complaint against KOF to the Commissioners on the 22nd of November. She asserted that KOF had belatedly changed the website to publish the correct complaints procedure. She asserted that KOF had manipulated PT and the complaints process. In the witness statement the Claimant asserted that KOF should have recused herself from the disciplinary hearing at the end of November 2021. She started Article 58 applied to KOF.

77. As for the 30th of November 2021 meeting the Claimant complained that the CEO and the Governance officer were present. She said she provided copies of her written response to the Council and asserted KOF was conflicted due to the Claimant's complaint against KOF. She spoke for 20 minutes and answered a few questions then she left the room. The Claimant asserted that four out of the 8 Council members were conflicted, but no one recused themselves. She asserted KOF was conflicted because she supported the CEOs mishandling of the complaint against the Claimant. She asserted PT was conflicted because she disapproved of the Claimant and made the complaint. She asserted that the treasurer, FT, had argued with her over CAPEX and so was conflicted. She asserted JD had issued the inappropriate warning in 2020 and was conflicted over the Claimant's complaints about the first floor corridor project. She complained that the CEO was the subject of a Complaint by her and the governance officer had been instructed to treat the Claimant differently. She relied on the Club's whistleblowing policies and on the commissioners finding that the Club had failed to follow the complaints procedure initially during the process. Overall, she asserted there was a pattern of harassing her.

78. In cross examination the Claimant accepted she was a member of the Royal Overseas Club at the relevant time. In relation to the recording of calls, without informing the recipient of the call that she was doing so, she asserted that the software was useful for a building business she was running and she was testing it, but she turned it on and off and asserted it didn't work well. She said it was not illegal to record conversations without telling the other party to the conversation. She asserted that the software worked "randomly" and she did not find out that it had recorded some vital calls until 2023. She accepted that she had never had a Covid pass recording that she was exempt from vaccination. She had tried to obtain a pass. She had submitted her doctor's records from Bulgaria, but her GP did not provide a pass in early November 2021. She accepted she had no Covid pass when she went to the Club on the 26th and 27th of October 2021. She thought the Covid pass was "red tape". She stated that her GP at the Soho Square practice would not provide the pass and she wrote a letter of complaint to the practice, but it was all too late. She accepted in cross examination that PT was correct to say that she had to quarantine for 10 days but asserted that she was only "technically correct".

She accepted she distributed her response paper to the Council during the expulsion meeting. She accepted she had not provided documents to Council before. She accepted she showed the Council no medical documents to justify her alleged exemption but she explained this by saying that MCE had said she did not have to show them. She said her pregnancy/IVF was sensitive. She said that she miscarried after the expulsion. She said that at that time she only had online confirmation of her pregnancy. It was put to her that she appreciated that she might lose her seat on the Council and be expelled at that meeting. She disseminated in answer to that question. She went into a long explanation of how, after she received PT's e-mail on the 27th of October, she called RB and KOF and she wanted to handle it informally. They discussed it being a resignation matter. The Claimant asserted she did not think it was a resignation matter and later, when she discussed matters with KOF, the latter raised the warning letters. The Claimant thought that they had been "expunged". The Claimant accepted she changed her mind about resignation and asserted she had not put anyone at risk. She accepted that when she spoke to RB on the 27th of October she did not tell her that she had entered the Club for a second time that very day. She agreed that she did not tell RB, PT or KOF that she was pregnant on the 27th of October 2021. She accepted that the first time she gave evidence about the detail of her pregnancy was in her first witness statement. She accepted that on the 27th of October, in phone calls to RB and KOF, she did not mention that she believed she was medically exempt. She accepted that on the 26th of October 2021 she knew there were high risk people on the Council and that she attended before she had the result of her day two Covid test. She accepted she could have attended the Council by video on that day but chose not to.

79. Cross examination was interrupted on the Friday because the working day ended. I gave the Claimant the opportunity over the weekend to gather any additional documents that would support her assertions of potential medical exemptions through pregnancy. On the second day of the trial, Monday morning, she provided a bundle which included test results, some medical evidence from Bulgaria and other documentation. In continued cross examination the Claimant stated that by 9.25 pm on the 27th of October 2021 she was not asserting that: she had received her day 2 tests; she had spoken to her GP nor that she had spoken to NHS119 nor that she had been advised that she was exempt. She accepted that she would have mentioned it in the phone calls that night if she had been so advised but asserted she mentioned it in later days. On the evening of the 27th of October in conversation is KOF, when KOF said going back to the Club on the 27th was "really bad", the Claimant said "yes I know". The Claimant maintained in the witness box that she did nothing wrong but said that her confidence had been knocked during those conversations. When counsel asked for copies of any conversation she asserted she had had with her GP or NHS 119 on the 26th of October, none was produced. When it was put to the Claimant that all the calls she recorded were on the 28th of October 2021, she said that the recording software app on her phone was being switched on and off and she had no records of any calls on the 26th of October. She said that she had changed her phone provider and counsel put to her that this was just after she had been asked to disclose her phone records. The Claimant said that she

regretted changing her phone provider. When asked about the phone calls with NHS119 on the 28th of October she accepted the operative did not advise her that she was medically exempt but told her to get a United Kingdom GP's certificate. She said that she had not spoken to an English GP before then. But she also asserted that at some unknown time she had called her GP about whether she could have a Covid as well as a cold at the same time and was told that she could not. She accepted she had no recording of that call. She accepted that the first evidence she could produce of contacting a GP was on the 5th of November 2021 when she went in person, having received the Covid exemption application form from NHS 119, and she handed it in to the practice at Soho Square, but was told by her GP that they did not do those forms at the practice. She later made a complaint. Looking at the form dated 29.10.2021, the Claimant accepted she did not state on the form that her GP had told her that she was "medically exempt". She was asked why her complaints to the Commissioners included an assertion that she had called her GP and 119 NHS before going to the Club on 27.10.2021 and NHS 119 had confirmed that her records *were not linked* and therefore her Covid pass was not accessible. The Claimant maintained that this assertion was true but provided no evidence to support it.

80. Stopping there I should say that I do not accept this last part of the Claimant's evidence was accurate or true. There was no evidence that she had been given advice by her GP or by NHS 119 at any time before entering the Club on the 27th of October 2021 that she was exempt from the Covid vaccination requirements or from the need to quarantine. She would not accept that she had not been told by NHS 119 that it was confirmed that she qualified for exemption. However, she accepted that she couldn't point to any evidence of a call to her GP or NHS 119 before the 27th of October 2021. She asserted that she was medically exempt and in any event she had had Covid in early August 2021 so she qualified either through pregnancy or through previous infection. She asked the practice to update her records and she wrote a complaint later in November 2021.

81. In relation to the explanation the Claimant had given to the Club on the 8th of November 2021, she accepted that the first time she mentioned her day two test was on the 8th of November 2021. She said she had exercised her "discretion" to go to the Club on the 27th of October because she had had Covid before and she was "within the letter of the law" which she had researched. She said that nobody wanted to bother with her and she believed she was entitled to exemption due to her early pregnancy. She was cross examined on paragraph 104 of her 4th witness statement and the assertion that she called her GP and NHS 119 to confirm her status before the 27th October visit to the Club. She accepted that she did not call them "to confirm her status", she called NHS 119 to get the form to be able to apply to her GP for exemption. Then she admitted to telling an untruth at paragraph 104 of her witness statement.

82. In relation to the zoom meeting on the 10th or 11th of November 2021, the Claimant accepted that KOF had told the Claimant that members might see KOF as biassed in

her favour and so the complaint would be better decided by the Council. In relation to the Claimant's allegation that the website has been changed once she had pointed out that the wrong Complaint Review process had been relied on, defence counsel took the Claimant through the emails from the website developers which showed that they had advised the Club that no such change had occurred since May of 2021. The Claimant would not accept this evidence was correct. In relation to the AGM on the 29th of September 2020, it was put to the Claimant that making criticisms of specific staff and suggesting they should be made redundant at an AGM might lead to that information getting back to the staff. The Claimant accepted that in hindsight it was not the right thing to say and pointed out that she had apologised the next day. In relation to the phone call made in reception on the 7th or 8th of October 2020, it was put to the Claimant that she made it from behind the staff screen. The Claimant was unable to explain why the staff members who reported her would want to lie about it. However, she denied that she made the call behind the screen and she asserted the call was only made for 1.48 minutes to a USA mortgage broker. In October 2020 she perceived KOF as neutral to her. In relation to the drinks e-mail the Claimant sent in late October 2020 and the reference to discussing business namely: the 50% off Friday drinks, she accepted this was "tongue in cheek" and also that it was obvious that the Covid authorities would not have liked her wording. The Claimant agreed that she had been involved in drafting the Club Complaints Review Process. The Claimant agreed that as at August 2021 KOF was still neutral to her and cared about governance. In relation to the Premises Committee the Claimant accepted that the Club invited people to join the the replacement Buildings and Property Committee and she accepted she voted in favour of the appointed committee. She accepted that only the Council could authorise spending and so her concerns about the Buildings and Property Committee's spending were moderated by that. She asserted that she had evidence of unauthorised spending but it was not in the trial bundle. She provided a long list of alleged unauthorised spending in 2021 including: the roof project and a planning permission application but accepted that there was no documentary evidence before the court to prove these allegations. She accepted that in relation to CAPEX she made no allegations of financial irregularities in 2021 in her witness statement. She maintained her assertion that the increase in a proposed short term maintenance spending from £200,000 to £400,000 was "buried" on page 18 of a report to Council. In relation to the first floor corridor and the rental offices built therein, she accepted that she did not speak up against them at the Council meetings. She raised her concerns months after the decision had been made and received an explanation that certain spending was in the wrong column. Although she asked to meet Buildings and Property committee members, she never did see that through. The Claimant accepted that she voted in favour of the roof works and the first floor corridor development in September 2021. The Claimant agreed that KOF provided all the details she sought on CAPEX for the October 2021 meeting. The Claimant accepted that when she asked questions and sought information generally the information was provided by KOF and the Club. She accepted she had not identified any financial irregularities. The Claimant agreed that in the evening of the 27th of October 2021 she had told KOF with that she was happy with the progress that had

been made on many areas she had raised re governance of the Club. In relation to the staff fund she was asked not to discuss it until it was sorted out by the staff and she accepted that was reasonable. The Claimant accepted that the call with KOF on the 25th of October 2021 did not show mala fides by KOF in relation to the Claimant over CAPEX, the staff fund or the 1st floor corridor redevelopment.

83. In re-examination the Claimant was taken through the new documents which the Claimant had provided during cross examination, including the previous Covid infection in early August 2021; the Bulgarian medical report; her complaint letter to the Soho Square practice and the figures on the hormone test in Bulgaria which the Claimant said she was told indicated she was pregnant. She then asserted, contradicting her earlier evidence, that she suffered her miscarriage on the 6th of November 2021 after the winter ball.

The Defendant's evidence

84. **Miss Topping** provided her evidence in chief in her witness statement dated the 21st of August 2024. She is the Head of European and Humanitarian Resources at the Department of Health and Social Care. She has been a Club member since 2011 and was on the Council between June 2019 and October 2022. She gave evidence about the Council meeting on the 26th of October 2021 and the conversation with the Claimant over dinner and asserted that the Claimant told her she had been to Bulgaria for "acupuncture" for scars on her stomach. At the time PT was the Head of the Department of Health Covid Passes for Travel section and helped draft the policy instructing border forces and she had an in depth knowledge of the rules. She knew the Claimant was un-vaccinated and she told the Claimant that she should have been isolating. The Claimant responded that she did not realise. PT was unconvinced. This is because the Claimant would have filled in a Passenger Locator Form online which would have told her of the rules. PT chose to send an e-mail to the Claimant the next day at 3:23 pm to explain that there were vulnerable Council members and to send a link to a website setting out the guidance. She also raised the fact that the Claimant had cold like symptoms the night before. She reminded the Claimant of the concerns raised by other vulnerable Council members before the Council meeting. Soon after sending the e-mail PT was told that the Claimant was again in the Club again on the 27th. She thought the Claimant was persisting in breaking the law. In an e-mail received by PT at about 5:00 pm that day the Claimant apologised to PT but wholly omitted to mention that she had been in the Club a second time that very day. The Claimant said she would self-report and resign and would support any action that PT took.

85. These offers by the Claimant to PT never were performed. The Claimant changed her mind and did not resign. PT was concerned that the Claimant would bring the Club into disrepute and that there might be potential legal actions and therefore had no choice but to make an official complaint because she believed the Claimant had acted in a way which was morally wrong and a breach of the Code of Conduct and Rule 11.2 and had knowingly broken the law on Club premises. PT's focus was on the crimes and she felt

strongly about it. In her witness statement PT denied that she had any conflict of interest through her contact with the CEO or her membership of the Nomination and Remuneration committee.

86. PT gave evidence in the statement about the Council meeting on the 30th of November 2021. The Claimant had been given the opportunity to speak and was then asked to leave and the Council then discussed matters. PT explained why she made the complaint, why the Claimant should have isolated and how she had put other members at risk. PT explained the asserted medical exemption and the process and documents needed to apply for a Covid pass. PT asserted that it was her view that the Claimant had chosen to ignore the rules. Votes took place and the Council chose to expel the Claimant. PT explained that it was the Claimant's duty to uphold the national Covid Regulations and as a Council member to set an example and that the Council decided to expel the Claimant in relation to the Claimant's actions and for no other reason.

87. In cross examination PT gave further explanations about the Passenger Locator Form. The BBC article produced by the Claimant was not in any way a proper or full summary but PT did not claim epidemiological expertise. She was concerned in October 2021 about an increase in infection rates and hospital admissions, as was the Government. She explained that, to obtain a Covid pass, an applicant had to make arrangements to get medically certified and then obtain a change in the pass on the NHS app. As to the Claimant's assertion that her GP was unable to process the Claimant's application for a Covid pass, she did not consider it was "disappointing", she considered it was a difficult assertion to believe, based on her understanding of the process. Midway through her evidence the Defendants clarified which Club Rules applied in 2020 and which Rules applied in 2021. In relation to events in 2020 Miss Topping accepted that the Membership Committee's terms of reference did not provide a disciplinary function but the Membership Disciplinary Process did refer to the Membership Committee as having a disciplinary function. She understood that the Membership Committee could make a recommendation but could not make a disciplinary decision. In the past they may have had the power to make a decision but a governance review had changed this. In her opinion, Non-Executive Directors were there on Council to set the strategy of the Club, not to get involved in the day-to-day executive handling, generally. She was not involved in the provision of the first warning letter to the Claimant on the 12th of October 2020 and was not present at the AGM where the Claimant had raised specific redundancy comments about a member of staff, but did hear that the AGM had "not gone well". In relation to the second warning letter about the drinks evening, PT tried to explain the rules in relation to where business meetings were permitted in the Club and where they were not, however her evidence about the Club's own circular sent out a few days before the Claimant's invitation and whether that complied with the Club's own Rules about business meetings was muddled. That Club notice may well not have complied. However, PT had no part in sending the second warning letter to the Claimant in 2020. She accepted that Greg Place's e-mail sent out before the Claimant's drinks invitation e-mail, may have been in breach of the Club Rules itself. PT was asked

about the Claimant's complaint arising from the two warning letters and her reaction to that set out in an e-mail to KH dated 4.12.2020. She asserted that she did find reading the Claimant's complaint e-mail "painful". She did not doubt that the Club followed what it believed was the correct procedure in response to the Claimant's breach of the Covid rules in 2020. She expressed concern about the Claimant's "trouble making". She accepted that she could have phrased the e-mail better but asserted there were instances of difficult behaviour by the Claimant and that email contained her opinion at the time when, PT stressed, there was a national state of emergency and they were all just trying to keep the Club going, despite the fact that it was closed. The Claimant, by raising these complaints was, she asserted, unhelpful. The Claimant had raised multiple issues and aggravated members of the Club and staff and PT considered that the Club's responses had been proportionate. PT did not consider that the Claimant was a "team player". PT explained that, for instance, there had been calls made from the Club's phones to China and a staff member had implicated the Claimant is making those calls because she was in the relevant room at the relevant time. They were long distance calls at a high cost. Staff saw the Claimant make calls and the log matched the timing of the Claimant making the calls. Nobody made an official complaint about the Claimant but PT accepted the staff member's evidence of the correlation between the calls and the Claimant's presence in the room making calls at the time. PT did find the Claimant to be "difficult" in meetings at the time, when the Claimant had only been on the committee for two to three months. PT explained some correspondence from KH who resigned as Chair in early 2021 and who clearly found the Claimant's behaviour to be particularly aggravating. PT accepted that she had spoken to KOF and they had put themselves forward for Chair and Deputy-chair and they were then elected. PT did not accept that various allegations made by KH's wife in an e-mail dated February 2021 were in any way justifiable or supportable.

88. As for 2021, PT asserted KOF fielded many queries from the Claimant about management. Although KOF occasionally expressed frustration, PT did not accept there was any bias from KOF against the Claimant. As for the Claimant's attendance at the Council meeting on the 26th of October, PT raised the general Government advice that if an adult had cold like symptoms she should stay at home. Overnight PT had re-checked the letter of the law and then she wrote her e-mail to the Claimant the next afternoon. She accepted that she had not "sent" the Claimant home on the evening of the 26th of October 2021. She did not accept that Covid cases were reducing or were relatively low in Bulgaria at that time. PT and Government were concerned about variants that could be vaccine evasive. She asserted that the World Health Organisation said that Omicron as a variant of concern. When it was pointed out to her that Omicron was not named until the 26th of November 2021, so later on, her evidence was that she back referred to Omicron. PT explained that her concern at the time was of emerging new variants. The Department had received a presentation from an expert in Covid on the 20th of October 2020 about cases going up and although they did not know the name of the variant, the concern was growing. After the Council meeting she spoke to KOF expressing general concerns. PT summarised the e-mail response from the

Claimant offering to resign. By that stage PT had become aware that the Claimant had been in the Club again on the 27th of October as well. She did not accept that in October 2020 she was biassed against the Claimant and explained the difference between getting on with someone professionally and liking someone. When she was again taken to her comments dated 4.12.2020 about the Claimant's complaint e-mail of 3.12.2020 and then her comments after the Claimant changed her mind about resigning in 2021, she maintained the position that the Claimant's explanation for changing her mind was "nonsense". It was not correct that flu and Covid were mutually exclusive. She backed this up by giving evidence that the GP who sat on Council, Doctor Datta, informed Council that you can suffer both at the same time. In relation to her complaint to the Club PT agreed that if the Claimant had resigned from Council she might have taken a different approach to the Claimant's membership overall.

89. In relation to the meeting on the 30th of November 2021, PT was present during the whole meeting. She confirmed that Doctor Datta advised that the Claimant was wrong about asserting that if she had flu she could not have Covid. In relation to producing medical documentation, PT recalled that Marsha Carey-Elms (MCE) said that the Claimant did not have to disclose private medical information, but the Council did need any medical certificate saying she was medically exempt. So, for instance, if she had a Covid pass she should present it. However, the Claimant did not offer any documents in support and made no mention of medical exemption earlier on. Nor did the Claimant pursue any assertion that her previous Covid infection provided her with exemption. PT denied that Mrs Carey-Elms told the Claimant she did not have to provide medical evidence. Overall PT confirmed that she had seen no evidence by the time of the Council meeting that the Claimant was entitled to any medical exemption. The Rules were clear and the Passenger Locator Form that would have been filled in by the Claimant would have reminded the Claimant of the Rules. After the Claimant left the room some slides prepared by KOF were shown to the Council. The Covid Regulations were shown and the Club Rules were shown. PT did not recall the previous warning letters being shown on screen. Then the Council voted by secret ballot. PT rejected the assertion that it was unfair to proceed in the Claimant's absence. She raised the point that it might have been difficult to proceed in her presence in the giving of the evidence about the rules relating to Covid in the Club. PT stated that the Claimant was aware of the substance of the complaint. PT asserted the Claimant was entitled to present whatever document she wanted, but she chose not to present any document to the Council before the meeting. PT noted that a month had elapsed since the complaint and the Claimant had had plenty of time to put in whatever she wanted before the council. PT denied that she wanted to expel the Claimant and was not interested in what the Claimant had to say. She had no plan. She made her complaint and the Council decided. PT explained that she put the facts across to the Council but did not seek to influence the decision made by the members of Council. Her opinion was not sought. She did not consider that a decision to expel was draconian in view of the fact that the Claimant knowingly broken the law which was a crime and put members at risk. She denied working with KOF to engineer the Claimant's expulsion.

90. In re-examination PT explained that the Covid Regulations/Rules that were put on screen where the same rules that were set out in her complaint e-mail accessed by the link in the e-mail.

91. **Jason Lewis** gave evidence in chief through his witness statement dated 21st August 2024. He was a Club commissioner and a professional solicitor at the time and his role was to ensure good governance. He dealt with the complaint made by the Claimant against KOF and the CEO in late 2021. He was asked to attend the Council meeting on the 30th of November but could not. Although he had been asked by the Claimant to handle the complaint made to him before the Council handled the complaint about her, the commissioners did not have a time to do so. The Commissioners investigated and then reached their decision on the 6th of December 2020. They decided that the complaint against the CEO was not within their remit. The complaint against the complainant made by PT was not within their remit either, that was within the Council's remit. As for the complaint against KOF they considered that initially proper process was not followed because it was made to the CEO not the chair, but 8 hours after it had been released to the Claimant, it was referred to the Chair and therefore the procedural breach was not serious. As for the allegation that the complaints process had been changed on the website in November 2011, the data handlers had advised him that this was not so. Later the commissioners also dealt with the whistleblowers complaint and concluded that the Act did not apply because the Claimant was not a worker covered by the Act. In cross examination Mr. Lewis set out that the commissioners took legal advice and then reached their decisions.

92. **David Herbert** gave evidence in chief his witness statement sworn on the 21st of August 2024. He was the CEO and Club secretary who started in those positions in March 2021. He has the day-to-day management responsibility for the Club. He was aware of the two warnings given in 2020 but not being present at the Club gave no first hand evidence on them. He gave evidence that for the meeting on the 26th of October 2021 there were decisions taken to have the windows open and to allow attendance by video and there were two high risk members on the Council. On the 27th of October 2021 KOF emailed him to inform him that the Claimant was in the Club and that staff at reception had confirmed this, despite the fact that she had being given information that the night before by PT that she should be self-isolating. He wrote to the Claimant saying she should isolate for 10 days after her arrival into the UK and the Claimant responded by providing him with various test results which were all negative. He received the written complaint from PT about the Claimant dated the 1st of November and invited the Claimant for a meeting on the 9th of November along with a governance manager. The Claimant gave the explanations I have summarised above in emails before 9.11.2021. The meeting did not go ahead and the complaint was passed to KOF who did hold the meeting with the Claimant. The Claimant then complained about KOF He attended the Council meeting on the 30th of November and was entitled to speak at it but not to vote. He gave evidence that he heard the Claimant speak at the meeting and

that she said that the NHS had confirmed that she had "exempt status". The Claimant also said that she had technical issues with the app for accessing her Covid pass. The Claimant produced no medical evidence to support the alleged exemption and he noted she had still not done so three years later. She said she had never been convicted of any offence had not broken Club Rules and was "medically exempt". He passed no comment but after the Claimant left the room he conducted both secret ballots. He was present when KOF explained, in three parts, firstly the complaint, secondly the Claimant's status as a member and thirdly the Claimant's status on Council. KOF explained that the Claimant had not put in a written response to Council before the hearing. Then PT explained why she had made the complaint and the Council discussed the Claimant's medical status and her alleged exemption. The Council noted the Claimant had attended on two days and on the second attended after being told that she should self-isolate. He recalled that the Council expressed a general view that the Claimant had shown an undesirable attitude: to compliance with the Rules; in relation to the health of other members and staff; in relation to the Club's reputation and that the Claimant showed no remorse and provided no apology. There was a vote which was unanimous to uphold the complaint. The Council then discussed the Rules of the Club and KOF put the Rules on screen and in particular rule 11.2 (injurious behaviour and infraction of the rules) and set out the Council's absolute power to either caution, suspend or request resignation under that rule. Then KOF set out rule 11.3 and explained that if the offence was sufficient to warrant expulsion the Council was empowered to expel. There was then a secret ballot with two abstentions and the Claimant was expelled by the Council. In relation to the Claimant's allegation that Council members were conflicted or prejudiced against the Claimant, he expressed the belief that nothing he saw indicated that they were.

93. On the 1st of December the Claimant was informed and told that she failed to self-isolate in breach of the Covid Rules and failed to provide evidence of exemption and had stated she only started the Covid application afterwards and in any event because she was suffering Covid like symptoms she should have self-isolated. He accepted that the e-mail of the 1st of December incorrectly referred to Rule 11.2 which was wrong, the Claimant was dismissed under Rule 11.3. As for the whistleblowing policy, he explained that in relation to members it was in draft and the Claimant had helped to draft it, but it had not been adopted by Council. He explained that the Claimant had brought an employment tribunal claim in April 2022 but this had been struck out in January 2023 because she was not an employee, she was a volunteer and a non-executive director. Overall, he asserted that, from what he had seen, the decision to expel was taken in good faith. He also explained that the Club had the right to terminate any member's membership and in relation to the Claimant this arose in June 2022 and this was an absolute right.

94. Mr Herbert gave short verbal evidence in chief. He stated that he did not recall any objection to the appointment of the Buildings and Property Committee by members of Council when they were elected. In relation to the first floor corridor development Mr

Herbert gave evidence that Mister Dobson (JD) was not "behind it" and was not a potential tenant and never been a tenant once it was completed. It was disused storage space and had become a revenue raiser for members after it was converted and let two members. JD had expressed no interest in renting it and did not propose the redevelopment.

95. I should mention that on the application of the Claimant I excluded part of one paragraph in Mr Herbert's witness statement that cross referred to evidence from KH set out in his witness statement. KH was not called and his witness statement was not relied on by the Defendant.

96. In cross examination, in relation to the complaint by PT, after it was sent to him he had intended to discuss it with the Claimant and he sent it to her on around the 8th of November 2021. Then KOF took over the review process, he having referred it to her. In relation to the Council meeting on the 30th of November 2021, he confirmed Hayley Foster's note and that the Claimant produced her response document to the Council in the meeting. He did not recall MCE saying that the Claimant did not need to produce medical evidence in support of her alleged exemption. On the country the Council expected the Claimant to provide evidence in support of her asserted exemption. After the Claimant left he listened to the discussion of the Council and recalled Rules 11.2 and 11.3 being shown on screen. He did not believe that the prior warnings were shown on screen. He saw no evidence of conflict of interest. On the contrary he said in cross examination he believed the Council acted in good faith. He did not know what other things were in their minds but from what they said he saw a conversation which was fair and showed they understood the complaint and applied it to the Claimant as a member and applied a higher bar for behaviour because she was a member of the Council. No protected characteristics were mentioned. He saw nothing untoward about the conduct of the Council and had no concerns about the conversations held. He gave further evidence about the whistleblowing policy not having been adopted for members and he denied that any Club members nefariously changed the website or that that was possible, because they would have to have approached the website subcontractors who would have come back through him for authority.

Assessment of lay witnesses

97. I found Miss Topping to be an impressive, carefully measured, intelligent and professional witness trying her best to assist the Court. She appeared to me to give fair evidence of her recollections. I found Mr Herbert and Mr Lewis to be similarly, fair, helpful and balanced in their approach to their evidence.

98. The Claimant's evidence was undermined by cross examination to a substantial extent. She admitted that parts of para. 104 of her 4th witness statement were not true. Her assertions about when she gained advice from her GP were contradictory with the transcripts and documentary evidence. Her evidence about when she gained NHS 119 advice were likewise inconsistent and undermined by the phone transcripts. Worse

though were her assertions as to the substance of the advice she was given by her GP and NHS 119. I do not accept that the Claimant received advice from any UK GP that she was medically exempt at any time. There was no documentary evidence to support that occurring on the evening of 26.10.2021 or the morning of 27.10.2021 or later. Nor do I accept that the Claimant obtained any "advice" or "confirmation of her exempt status" at any time from the NHS 119 operatives. Firstly, because she did not call them on 26th or 27th October 2021 and secondly because when she did call them on 28.10.2021 they made it plain that they only took details and sent out forms, they did not give medical advice. It is very unlikely that they were medically trained. So, I find that the Claimant's assertions to the Club/ PT/the CEO/KOF that, when she returned to the Club at 2pm on 27.10.2021, she thought that she was exempt because her GP or NHS 119 had advised her so, were untrue. Nor do I consider that any rational adult would make the resignation offer which the Claimant did to PT in the email of 17.17 hours on 27.10.2021 if in fact she believed, with good foundation based on advice from a GP, that she was "medical exempt" and yet wholly fail to mention that advice to PT in that email. In cross examination, the Claimant tended to disseminate into wide ranging conspiracy theories when the questions did not suit her. At the end of the Claimant's case she as much as conceded that none of her pleaded allegations of gross financial mismanagement and top level cover ups were made out. For instance, the apparent unfairness in the distribution of the Staff Fund was being handled carefully by KOF; the first floor corridor turned out to be a financial success and JD was not a shadowy self-interested manipulator of the project, he had no part in it; the old Premises Committee were never proven to have mis-handled anything, albeit the evidence in relation to the £1-2 million write down in 2019-2020 remained obscure to me; the appointment of the new Building and Property Committee was voted on by Council, including the Claimant, and authorised; the budget for 5 years forwards was approved and by the end of October 2021 with the Claimant was thanking KOF for the way she had provided documentation in response to the Claimant's many challenging requests. I conclude that, where the Claimant's evidence is not corroborated by contemporaneous documentation, I do not consider it sufficiently credible to make findings of fact upon it. Where the Claimant's evidence is contradicted by Ms Topping, Mr Herbert or Mr Lewis, I prefer the evidence of the latter 3 witnesses over that of the Claimant.

Pleading points

99. I should deal here with some specific points in the Claimant's pleading. At para. 59 of the Amended Particulars of Claim (POC) the Claimant pleaded that she called her GP and 119 NHS Helpline and researched Government guidelines after dinner on 26.10.2021 and "*it transpired that she qualified for a medical exemption*". I reject that assertion as factually incorrect in relation to the GP and NHS 119 calls both in relation to 26th and 27th October 2021. At para. 60 the Claimant asserted that PT sent the Claimant an email in which she expressed knowledge of the Claimant being at the Club that day. I find that the email of 27.10.2021 from PT to the Claimant did not express that knowledge, it related only to the Claimant's visit on 26.10.2021. At para. 61 the Claimant asserted that PT put significant pressure on her to resign. I reject that

assertion. I find that the Claimant offered to resign in her email timed at 17.17 on 27.10.2021 and she was under no pressure from PT to do so nor had PT previously suggested resignation before the Claimant offered it. After the offer to resign PT responded at 6.46 pm agreeing that it was a resignation matter. In the same paragraph and at paragraph 64 of the POC the Claimant pleaded that PT was prejudiced against the Claimant and that this was proven by the email dated 4.12.2020. I reject that assertion on the evidence before me. I shall set out the reasoning below.

Applying the law to the facts

The Facts: what were the facts and what was the law in relation to the issue of whether the Claimant committed crimes on Club premises on 26/27 October 2021?

100. Findings of fact by the Council on this issue were central to the decision of the Council to expel and I consider I must address the evidence because it will affect other questions I must determine below. The Claimant asserted that all that is needed is for me to ask was whether the Council's decision by secret ballot that the Claimant had committed breaches of the Covid Rules on 26th and 27th October 2021 at the Club was rational, *Wednesbury reasonable* and made bona fides (I shall deal with these below). The Defendant submitted that I needed to determine the facts. I consider that the Defendant's submission is right. There was and is no dispute as to the Covid Regulations in place at the time or what they meant. There was and is no dispute about the Claimant's attendance at the Club on the two days and that she was not self-isolating. There was and is no dispute that the Claimant entered England on 24.10.2021 and did not have a Covid Pass and did not produce any evidence to the Council of a Covid Pass or any medical evidence of a medical condition which would justify applying for one. Thus, despite the Claimant's assertion in her written response given to the Council at the meeting, that she was "already exempt", that assertion was unjustified, bound to fail and I find that it was and is wholly without merit. The only way in law and in practice, at the time, to avoid the duty to quarantine was to prove exemption under the Regulations (as an "Eligible Traveller", see Health Protection Regulations, at Reg. 3F) by: (1) getting a medical certificate and (2) providing that to the NHS so as to be granted the Covid pass and (3) filling in the Passenger Locator Form. It was not in dispute that the Claimant had no Covid pass so did not come within Reg. 3F. I find that the Claimant should have been self-isolating on 26th and 27th October 2021 and knew very well on 27th October 2021, when she entered the Club, that she should have been doing so. I find, on the balance of probabilities, that the Claimant broke the law when she went to the Club on 26th and 27th October 2021 and on 27th October 2021 she did so intentionally in the knowledge that she should be in quarantine.

The Conduct: whether it was rational for the Council: (1) to find that the Claimant was guilty of the alleged behaviour; and (2) to form the opinion that the Claimant's behaviour was injurious to the character, reputation or interests of the Club or a breach of the Rules and whether the conduct complained of crossed the threshold to trigger disciplinary action.

101. In my judgment the Council had overwhelming evidence in support of their determination on the first secret ballot that the conduct complained about took place. In my judgment the finding set out in their decision letter was not even arguably irrational and was not made in breach of any implied terms in the Rules as to rationality. I do not find that the Council took into account matters which were not relevant or omitted matters which were relevant. I consider that the reputational consequences of such matters are greatly affected by the circumstances at the time. In October 2021, when Covid infection rates and hospitalisation rates were a cause for huge concern nationwide, the first lockdown had ended but a second was feared, if the media had been aware of Council Members at the Club intentionally breaking the Covid Rules and putting members at risk, in my judgment that had the potential to damage the character, reputation or interests of the Club and the Council of the Club. I also consider that committing crimes on Club premises, whether or not the accused is arrested and convicted, is a serious matter and a reasonable objective justification for the Council to trigger analysis of the conduct under Rules 11.2 and 11.3. I consider that the threshold for disciplinary action and conduct review was crossed by the Claimant's conduct.

Whether the Club breached its own Articles, Rules, Procedures or Processes when dealing with PT's complaint about the Claimant's behaviour on 26/27 October 2021 and if so whether that makes the process void or voidable.

102. The authority to discipline a member came from the Rules and Procedures of the Club. It was set out inter alia in Rule 11. Despite the findings of the Commissioners on 6.12.2021 I do not consider that the Club breached its Complaints Procedure by the CEO accepting the complaint from PT. The website required that: *"You can make a formal complaint in writing by email or post. You can send an email to secretary@lansdowneClub.com or in writing to the Club CEO & Secretary, The Lansdowne Club, 9 Fitzmaurice Place, Mayfair, London W1J 5JD."* However, because the Claimant was a member of Council the CEO did not have authority to *review* the complaint himself and he did fall into error by asking the Claimant to come in for a discussion. That discussion never took place because the Claimant refused to attend, so no harm was done. Para. 6.1 of the Complaints Review Process (the Process) required the complaint to be referred to the Chair. This occurred on 8.11.2021, 7 days after the complaint was made and 8 hours after the CEO shared the complaint to the Claimant. I find no reason to question the Commissioner's decision that the delay of 8 hours between the Claimant "sharing" the complaint and the referral to KOF the same day was insubstantial. I do not consider that the Club breached its Complaints Review Process by the CEO delaying referring the complaint to KOF by 7 days. No time limit for the referral was set out in the Process. The delay made no difference to the Process or the outcome or the Claimant's ability to defend herself. The Claimant had a month in which to prepare her defence. The Claimant went through Stage A with KOF and then had 12 days to make written representations to the Council. I consider that no breach of natural justice occurred as a result and the minor breach of the Complaints Review Process and I find that it was insignificant and insubstantial. I consider that it did not make the process void or voidable. Nor do I consider that the Claimant had

any right to require the Commissioners to complete their investigation, started by her complaint to them on 22.11.2021, within 8 days. This demand was unreasonable. I consider that the Claimant's complaint to the Commissioners itself was little more than a rather clumsy effort to derail the Process of the Club reviewing the complaint against the Claimant. In addition, the Claimant's complaint that the Commissioners should have attended the Council meeting is without merit in my judgment. It was not within her rights under the Club Rules to demand who sat in Council meetings at what time.

Whether the Club breached the Rules of natural justice when dealing with PT's complaint about the Claimant's behaviour on 26/27 October 2021. That question involves considering whether (1) she was given sufficient notice of the offending behaviour; (2) a sufficient opportunity to be heard in her own defence and (3) a properly constituted, unbiased tribunal and (4) whether an appeal right was required.

103. *Notice of the offending behaviour* Para. 6.5 of the Complaints Review Process requires that the Club is to share with the accused "*details of complaint and any evidence*". That is the way that the Club has chosen to construct a fair Process to comply with the rules of natural justice. That clause was drafted by the Claimant jointly as a member of the Governance Committee on which she sat. The Claimant was provided with a copy of PT's complaint on 8.11.2021. PT's complaint letter set out:

(1) the criticised conduct on both 26th and 27th October 2021, including PT's warning the Claimant on 26.10.2021 about the quarantine Regulations;

(2) a link to the Covid Regulations and need to self-isolate;

(3) the existence of the health risk to others, including those who were vulnerable and had expressed health concerns before the Council meeting;

(4) the assertion that the criticised behaviour was breaking the criminal law;

(5) the allegation that this was unacceptable behaviour for a Council member;

(6) the allegation that the Claimant had disregarded PT's advice by her behaviour on the 27th October;

(7) the fact the PT worked for the Government in a department which constructed Covid Policy;

(8) the allegation that the Claimant's actions were morally wrong;

(9) the allegation that the Claimant's actions were in breach of the Code of Conduct for the Council;

(10) the allegation that the Claimant's actions were equivalent to a breach of the Articles (39.1.3) and Rules (11.1.2) which set out a clear expectation that Club members are not to be law breakers;

(11) a request that the Council should consider what action to take.

The Claimant complains that this was not sufficient in natural justice because the complaint did not refer to any asserted breach of Rules 11.2 or 11.3 and so she was unaware that those rules might be engaged. I reject that submission for the following reasons. The Complaints Review Process does not require every power available to the Council to be set out in the para. 6.5 sharing. Nor does para. 6.5 require the Council's powers to be set out. This was not a criminal charge sheet. In my judgment "details of complaint" means what it says: details of the behaviour complained about. "Any

evidence" means any evidence relied on. The evidence which PT provided included the Covid Rules, PT's eye-witness evidence, some factual assertions and the risks to Council members. The fact that PT made reference to convictions for crimes as set out in Art. 39.1.3 and Rule 11.1.2 as an analogy, not an assertion by PT that the Claimant had herself been convicted of any crime, was obvious. It was plain that PT knew very well that the Claimant had not been reported to the Police or convicted of any crime, so those references to the Articles and Rules were clearly not "charges" in any legal sense, they were used by her as a comparison. What PT wrote was: *"Whilst I appreciate that Gina has not been caught breaking the law, we as a Club are now aware that the law has been knowingly broken by her and the Club must now carefully consider what action to take."* Thus, it was made plain and clear that the Council was asked to consider any and all of its powers set out for disciplining members in Rule 11. In my judgment, the Claimant is taken to have known the Rules and indeed I consider that the Claimant did know the Rules very well, probably better than most members did. She knew perfectly well that PT and KOF considered that the complaints against her, if proven, were "resignation matters". KOF had told her the conduct was serious in the Stage A meeting. She had sought confirmation of seriousness herself from KOF in her telephone conversation on 27.10.2021. Such matters fall four square within the test set out in Rule 11.2. The layout of Rule 11 is clear and straightforward. Rule 11.1 sets out the triggers for automatic termination of membership (including as a result of criminal convictions). Rules 11.2 and 11.3 set out the triggers for a decision of Council on whether the conduct occurred and on what punishment to impose (if any) inter alia covering suspension, forced (invited) resignation or expulsion. The threshold for the use of such powers is the phrase: "behaves within or outside of the Club in a manner which, in the opinion of Council, is *injurious to the character, reputation or interests of the Club, or commit any infraction of the Rules of the Club,"* The Claimant submits that because the Council's powers in Rules 11.2 and 11.3 were not set out in the information given to her in PT's complaint she was in some way deceived or misled into believing that the Council would not exercise the powers to discipline under those Rules. That assertion is wilful Nelsonian blindness in my judgment. It is not evidence of being misled. At Stage A, it is only if the Chair considers that the complaint "warrants formal disciplinary action" pursuant to the Club Rules that it is referred to Stage B. The Claimant was present when KOF decided to refer the complaint to Council, thus, she knew full well that formal disciplinary action was being contemplated. In my judgment the Claimant was given proper and fair notice of the complaints against her and the evidence in support of the complaints. The Claimant relied on *Stewart on Unincorporated Associations* and for this part relied on para. 6.22. The editors therein advised that the notice should warn the accused of the possible consequences of the process, for example expulsion. The authority relied upon was *Innes v Wylie* (1844) 1 C&K 257. That case was not in the authorities bundle or referred to in argument. I make no ruling upon it, because the point was not fully argued, save to say that I consider that, if this requirement does exist, it was satisfied by the Stage A discussion between KOF and the Claimant about the seriousness of the conduct complained of (if proven) in the context of the previous telephone calls from

the Claimant to KOF in which she was told that this was a resignation matter (a Rule 11.2 phrase).

Sufficient opportunity to be heard.

104. The Complaints Review Process allowed as follows: "7.4. *The accused member shall be provided the opportunity to make representations to the Council in writing or orally*." In the Claimant's case she was offered both routes which is more than the Process entitled her to. She had until 23.11.2021 to put in her written representations but she decided not to do so. She insisted in the action that the Commissioners should have sent her response to the Council having refused to do so herself. She was reminded to do so by KOF on 22.11.2021 but ignored that advice. This was odd and truculent behaviour. Eventually, at the Council meeting, the Claimant circulated copies but there were not enough sets, so she sent the document by email after she left the room. The only factual issue in relation to this head of natural justice is the Claimant's assertion that she was told by MCE not to produce her medical evidence to the Council if it was personal. I do not accept the Claimant's evidence on this and prefer the evidence of PT and DH. In addition, I take into account that the Claimant has not proven to my satisfaction, on the balance of probabilities, that she had any Covid Pass or had any evidence in her possession at the meeting of relating to her pregnancy (which had by then ended on her own evidence) or in relation to her previous infection (which would not have been at all sensitive). I have no doubt in finding that the Claimant was given a fair opportunity to make written representations and she herself failed to do so until the meeting. She was also allowed a fair opportunity to make representations verbally to Council and took that opportunity and makes no complaint about the length of time given to her. Thus, I do not consider that the claim is made out on the grounds of failure to be given the opportunity to be heard.

The order of proceedings at the Council meeting.

105. The Claimant complains that she was not present when KOF and PT gave their presentations to Council and submits that this failure was a breach of natural justice. In so far as this is an assertion that para. 6.5 was broken by the order in which matters were discussed, I consider that it was not. I take into account that the Complaints Review Process states at para. 6.3 that *the accused shall be excluded from the process outlined below.* Thus, the parties agreed that the Claimant should be excluded from the Council meeting other than when she was giving her defence statement and evidence. What occurred was in accordance with the contractually agreed process. The matters which were put before Council after the Claimant left the room were: (1) KOF explained the Covid Regulations. This was not evidence of which the Claimant was unaware. The Claimant had already been given the Rules by the link in PT's complaint. (2) KOF explained the Club Rules. This was not evidence of which the Claimant was unaware. The Claimant already knew the Rules and in particular the Complaints Review Process and the Club's disciplinary powers. (3) A discussion took place about the Claimant's medical status defence and Doctor Datta said that her defence of Covid and a cold infection being mutually exclusive was medically unsound. In my judgment

para. 6.5 does not impinge on the discussions had by the Council, it relates to prior notice of the complaint and the evidence in support. There is no Rule that the Council's discussions must be done openly before the accused. Nor would I consider such a rule to be sensible or practical. It would fetter open discussion. It was the Claimant's choice to fail to provide any letter from any doctor in support of her assertion that it was medically impossible to have Covid and flu at the same time. She knew Doctor Datta was on the Council. (4) PT addressed the Council to explain why she made her complaint. The Claimant already had notice of the written complaint and the details of the concerns in the complaint email. In my judgment, PT's reasoning behind it was part of the discussion any tribunal might have over the evidence. In particular, all knew that PT worked for Government in a department dealing with the Covid Rules.

106. The Claimant also submitted that it was a breach of natural justice for the "prosecution evidence" to be heard by the Council after the Defence case and absent the Defendant. Certainly, in a criminal case this would be the procedure: prosecution first then defence. However, the Complaints Review Process of the Club is not the High Court of Justice. The Claimant was involved in drafting the Process. There was no Rule governing how the Council should run their meeting other than the Rule about sharing the complaint and the evidence and the Rule about the "opportunity to be heard". I note that Rule 6.3 excluded the Claimant from all of the rest of the process. I do not consider that there is any rule of natural justice which determines the order in which a tribunal of a members Club should run their disciplinary review process. So, in my judgment, no implied term arising from natural justice was not broken by the order in which the Council ran the meeting and the express rules which governed the process and were followed.

The lack of a right to appeal

107. Although this was pleaded and complained about in the Claimant's witness statement, counsel did not make any submissions upon it. Because it was not abandoned I must address it. The Complaints Review Process, which the Claimant drafted or was involved in drafting, did not create any right to appeal. So, when the Club were creating their new, fairer process, with the Claimant involved, the Governance Committee clearly did not decide to grant members a right to appeal in the process. The Claimant only raised this issue when she herself had been expelled. This appears to be a classic case of "one rule for other people" and "a different rule for me", thinking. I have carefully considered the authorities put before me and the Claimant's submissions. It was not submitted that the rules of natural justice required the insertion of an implied term covering right to appeal. Thus, in my judgment, whilst the right to appeal is granted in criminal and civil procedure, and would be a fairer procedure, the absence of the right was part of the process chosen by the Club and the Claimant signed up to that process. I do not consider that the absence of a right to appeal was a breach of natural justice in this case.

Unbiased Tribunal and whether the Club breached the duty of good faith owed to the Claimant.

108. I am going to deal with the allegations of apparent or actual bias together with the duty of good faith. At the root of this issue are the allegations of mala fides and bias made by the Claimant against: (1) KOF, the Club Chair and (2) PT, the Club Deputy-chair, inter alia in paragraphs 86 (a) and (c) of the POC. This is so because, by the end of the evidence, there was nothing of any substance evidentially to support any assertion of mala fides, bias or apparent bias against any of the other Council members: RB, JD, FT, MCE, Doctor Datta or SM. At the most all the Claimant could point to in her evidence were past challenges which she had raised to various organisational matters in the Club. The Clubs approach to all of these was that Council members were encouraged to challenge and question matters. This was welcomed. No specific allegations of bias were made against MCE, RB, Doctor Datta or SM despite the unfairly broad pleading including them. Allegations of bias were made against JD and FT, but on the evidence before me I consider that there was absolutely no foundation for a fair minded, informed, independent observer, knowing all of the facts and circumstances, to consider that there was any real possibility of bias by any of them.

The allegations of bias against KOF

109. As for the Claimant's assertions made against KOF, I consider them to be scurrilous and wholly unsupported by the evidence. Contrary to the Claimant's accusations, the contemporary emails and phone transcripts prove to my satisfaction that KOF was being utterly professional and fair in her dealings with the Claimant on the many matters which the Claimant had in the past raised or complained about, month after month. The Claimant wrote many emails, sometimes late into the night, yet KOF answered them all faithfully and studiously, despite also needing to do her "day job" work outside her voluntary role as Club chair. I consider that the recorded conversation on 25.10.2021 was a clear example of KOF's balance and fairness. I do not consider that the conversation instigated by the Claimant with KOF on 27.10.2021 can be prayed in aid of the accusations of mala fides either. KOF merely did as requested and responded to the Claimant's questions about whether her conduct was a resignation matter. After that conversation and the Stage A conversation it was wholly unrealistic for the Claimant to submit, as she did to me: (1) that she had no idea that the Council would consider her conduct against the Rule 11.2/11.3 test; and (2) that KOF was apparently biased against her. In my judgment, an informed independent observer would not consider that there was any real possibility of bias against the Claimant from KOF. Furthermore, I also take into account that Art. 58 required conflicts of interest/duties to be declared if the Council member had any direct or indirect interest in the transaction in conflict with the Club's interests. I consider that there was no evidence that KOF had such and that the allegation that she was interested in expelling the Claimant to gain another open place on Council was wholly scurrilous. I note from Art. 58.2 that there was no duty to disclose matters of which other members of the Council were already aware. That could be said to apply to the many challenges which the Claimant had made to the management of the Club via KOF, all of which she had dealt with carefully and professionally. I note that Art. 58.3 states: "*If a member of Council's interest or duty cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict*

of duties with or in respect of the Association, he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter." The Claimant does not assert that KOF's interests conflicted with the Club's interests. She asserts that KOF's interests conflicted with the Claimant's interests but could not explain how or justify her explanations with credible evidence. Rule 58.4 makes it clear that where a conflict with the Club's interests exists KOF may still participate unless a financial benefit will go to KOF only or a connected member (or other matters which are not relevant). On a plain reading of this Article none of the factors required KOF to declare any conflict of interest or to recuse herself. It is also highly relevant that the Complaints Review Process did not require the Chair to withdraw from Stage B just because she had been involved in Stage A. The Claimant clearly considered the Complaints Review Process fair when she was involved in drafting it and I consider that it, alongside Art. 58, governed the need for recusals. Neither required KOF to recuse herself.

The allegation of bias/apparent bias against PT

110. The situation with PT was more nuanced. The POC assert at para. 94(6) that allowing the complainant (PT) to vote despite her "conflict of interest" and "pre-determination" was a breach of the duty of good faith and natural justice and the *Braganza* duty. I have already decided that no *Braganza* duty arises in this case. The alleged conflict of interest was not identified by the Claimant. There was no evidence that PT has a conflict of interest with the Club. In relation to mala fides, the Claimant relied on the email sent on 4.12.2021 by PT to KH as evidence of mala fides by PT towards the Claimant in the Council meeting, 11 months later, on 30.11.2021. That email was sent after the Claimant sent a long email of complaints dated 3.12.2020 against the then interim CEO (Greg Place) and the then Chair KH. Both resigned in early 2021, some 10 months before the relevant meeting. Re-reading the Claimant's 3.12.2020 complaints, which were sent to the CEO, the Chair, the Council members and the Governance Officers, one sees that the Claimant asserted that since she had joined the Council (3 months earlier) there had been a "*campaign*" to undermine her standing in the Club. The Claimant asserted that the AGM (at which she made some poorly judged comments about the head chef) was not a "Public Forum", however she apologised for the way she had expressed herself about the head chef in the AGM. She denied being "angry" and defined the word "angry" to assist in the understanding of its use by the Club in one of the 2020 warning letters. The Claimant called one warning letter: "*an Unnecessary and Unjustified escalation of hostility"* by the Club (the capitals were included by the Claimant). The Claimant explained how she came to make the criticised mobile phone call at reception and rejected being "behind" the Covid screen protecting reception desk when she made it. She asserted that she did not know she could not make calls in the reception area (which is not how I read the Bye-laws about mobile phone use at the Club). The Claimant complained about the CEO's handling of the Club's concern about her drinks email thus: "*I object to both the manner and the action taken by the Interim CEO. The manner in which he approached me was accusatory and intimidating*." She alleged discrimination and asked for the "*persecution"* to stop. PT

had received that email and the next day, in her email dated 4.12.221, said that it was "painful" to read and pointed out how, in her opinion, the Claimant was "trouble making" by interfering in the redundancies of staff; causing many members to raise complaints against her a result of what she said at the AGM; upsetting staff; upsetting members; running up the phone bill with calls to China and making the process of being a board director "difficult, uncomfortable, longer and more drawn out". Even if PT's email had been written in the month before the Council meeting of 30.11.2021 I still do not consider the Claimant's assertion of mala fides would have gained any evidence of bias from it. It contained PT's exasperation with the Claimant's time consuming and wide ranging, conspiracy theory fuelled complaints at the time, in December 2020. It must be taken in the light of subsequent events. PT worked with the Claimant on the Council for the next 11 months. Nothing of substance in those months is raised by the Claimant as further evidence of mala fides or prejudice. So, for instance, the Claimant was asked to join the Governance Committee in early 2021 and did so. The Claimant's challenging inquiries, month by month, were satisfied by KOF, PT and others and the Council functioned and made progress together with PT as deputy chair. Therefore, put in its proper context, the 4.12.2021 email was just a piece of history about how PT felt about the Claimant's 3.12.2020 complaints at the time. Not all Council members will have liked each other but they had to work together, as PT said in evidence. In any event, dislike is not a recusal matter under Art. 58 nor does it amount to mala fides, without more. In evidence, PT stood by the words which she wrote as showing how she felt at the time. The complaint about the Claimant attending the Club in breach of the Covid Regulations in October 2021 was a separate matter. I found PT's evidence credible and compelling. I take into account PT's evidence that if the Claimant had resigned from Council, quietly accepting her errors made on 26th and 27th October, PT might well have taken a different view on expulsion from membership. If the Claimant had apologised and taken responsibility for her mistakes the Council might all have taken a different decision on the sanction. But the Claimant was unrepentant and complained vociferously about everyone involved in the process. In my judgment there is no credible evidence to support a finding that PT was other than bona fides in her concerns about the Claimant's conduct in October 2021 and an independent observer would not have considered that there was as real possibility that PT was biased against the Claimant based on the 4.12.2020 email.

111. The next question is whether it is inherently biased or apparently biased and hence a breach of the implied terms raised by natural justice, for an accuser to sit in judgment on the accused and whether an implied term to that effect should be (was) inserted into the Club rules. The first point to consider is that the duty of good faith imposed on the Council as the tribunal was to act in the best interests of the Club not any particular member or faction of members. There is no suggestion by the Claimant that PT was acting in any way other than in the best interests of the Club.

112. The Claimant relied upon *Ashton & Reid on Clubs*, at para. 7.21, which covers issues of bias and stated:

> "7.21 **Bias** Bias is an attitude or point of view that colours one's judgment. It is a predisposition to see things or people in a certain way and it often entails prejudice. The question arises whether those members who comprise the tribunal are disqualified from sitting on the case.44 The sitting test now favoured by the courts is whether 'the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias'.45 In Clubs a member of the Committee might well be acquainted with the accused person. Thus the member who is a close friend of the accused should not think it proper to sit if a quorum can be formed without him.46 On the other hand, it may be the size of the Club or its administrative structure is such that it is inevitable that the composition of the tribunal gives an appearance of bias. If this be the case, necessity constitutes an exception to the rule against bias. 47"
>
> Footnotes 46 and 47 are:
> 46 *De Smith's (8th edn, 2018) Judicial Review at 10-46.*
> 47 Ibid, at 10-70-10-75.

113. I have read *De Smith Principles of Judicial Review* 2nd edition 2022, paras. 10-01 to 10-100, which cover the case law on bias. I have summarised the relevant key principles above under the heading "the law". In a private members Club, like the Defendant Club, where the members elect each other to the governing committee and the whole point of the Club is socialising together, playing sport together and dining together, it is inevitable that the Council members will not only know each other, but will have interacted together socially and on Council business in the past, perhaps over many years. These past interactions will likely have involved conflicts, challenges, dislikes and maybe arguments, but also friendships, team building, the creation of like-minded movements, opposing movements and many other positive and negative historical issues. I take into account that this is not a *for-profit company*, it is a *for-enjoyment social Club*. I take into account that the Council members give their time for free, without payment (other than a dinner after meetings and some minor other benefits). I take into account that there are less than 10 Council members, so a small group. Thus, it seems to me that it is inevitable that there will be an appearance of bias raisable against many Council member relating to most issues put before Council. For instance: A likes B and B is proposing X so A is likely to vote in favour of X; or A argued with B over CAPEX thus is likely to oppose B's proposals on CAPEX; or A plays squash regularly with B, so will vote with B. I consider that I must take into account the real world and the real circumstances of such Clubs when considering what terms were implied by the Club and its members to fulfil the duty of good faith and the duties inherent in natural justice, including the appearance of bias.

114. The Claimant also relied on para. 6.14 of *Stewart on Unincorporated Associations* (edition unclear) and submitted that because PT was her accuser she should not have been allowed to sit on the tribunal because of apparent bias. The editors of *Stewart* wrote as follows:

> "6.14 A member of the tribunal must be unbiased and impartial, *Law v Chartered Institute of Patent Agents [1919] 2 Ch 276 289 Eve. J.* so cannot be an accuser, either directly or indirectly or as part of a body which made the accusation, which would be a disqualification from membership of that tribunal.22 Determining whether a member is biased is question of fact. The member must be shown to be actually biased. Suspicion is not enough.23"
>
> Footnote 22 to this text cited the following cases: *Allinson v General Council* [1894] 1 QB 750*; Leeson v General Council* [1890] 43 Ch D 366, per Cotton LJ, "Of course, the rule is very plain that no man can be plaintiff, or prosecutor, in any action, and at the same time sit in judgment to decide that particular case – either in his own case, or in any case where he brings forward the accusation or complaint on which the order is made." *Taylor v NUS* was also cited.

I regret that I do not agree with the way this paragraph is written. Firstly, apparent bias is ignored. Secondly, the law is not quite so black and white about accusers sitting on tribunals. It is more nuanced and flexible as I have set out above in the "law" section. Thirdly, the scope of the category "accusers" is not clearly defined in this paragraph. The Claimant did not provide the case reports for *Law; Leeson* or *Allison* in the bundle of authorities, but did rely upon *Taylor v NUS,* [1967] 1 WLR 532. In that case C, a union official, was dismissed by the Union General Secretary for insubordination. He appealed. The General Secretary chaired the appeal challenging his own actions in dismissing C. After the C gave his statement he withdrew and the General Secretary made a long statement relating to matters outside the charges which were prejudicial to C, who had no opportunity to answer those. Ungoed-Thomas J decided that a tribunal's decision to expel a Union official was made in breach of natural justice because: (1) the general secretary was part of the decision making tribunal and also the accuser and (2) because the General Secretary gave the Tribunal new, prejudicial, evidence after the Claimant had left which was outside the charges laid against the Claimant and which the Claimant had no opportunity to answer. The Union conceded that if the rules of natural justice applied they had been broken. Ungoed-Thomas J at p 547 C ruled thus:

> "Was the general secretary the person who "brings forward the accusation or complaint," not in any formal or technical sense, but when we look to substance, substance and not technicality being the very foundation of natural justice? The complaint against the

> plaintiff was exactly what Mr. Scott did bring forward, both through the minutes of the October 20 meeting and by the course which he pursued throughout the December 15 meeting. In form and in fact his role included that of presenting the case against the plaintiff; and in fact his role was of pressing the case against the plaintiff at that meeting and, apparently, not considering the case in any judicial sense at all."

115. Having seen PT give evidence and carefully examined the documents, I find as a fact that PT was not biased against the Claimant. As for apparent bias, it is clear that PT was the initial complainant and she provided the evidence of the conduct complained about in relation to 26.10.2021. However, every Council member saw the Claimant in the Council meeting for themselves that day anyway. PT did not witness the Claimant in the Club on 27.10.2021, so she had no eye-witness evidence to give about that day but she set out her complaint about it: that the Claimant may have been breaking the law intentionally. In my judgment, PT was not the prosecutor. The "review" function fell to KOF and it was her function to investigate and "refer" the matter to Council, if she considered the conduct or pattern of behaviour "may warrant formal disciplinary action". So, if there was any quasi-prosecutor (referrer) it was KOF not PT. True it is that PT spoke at the Council meeting when it was in discussion to explain why she had brought the complaint but that is no more than any Council member was permitted to do in discussion about what they all saw on 26.10.2021 at the Council meeting: the Claimant in the Club and not in quarantine. She may also have spoken about what was admitted on 27.10.2021: that the Claimant returned to the Club despite being told of the quarantine Rules. I take into account that PT did not make the complaint for her own benefit, for any financial reward for herself or for a connected person to her. She did so on behalf of the good governance of the Club. She was "the complainer" but on behalf of the reputation of the Club not herself. I also take into account that PT was the Club expert on the Covid Regulations for obvious reasons. I take into account that PT did not call for expulsion in her complaint letter, she called for consideration of what to do. This is important, because it undermines the Claimant's assertion that PT had pre-determined the sanction. I take into account that in the complaint PT did not call for expulsion, she asked the Council to decide what to do. This does not smack of pre-determination, instead is is the raising of the question for determination.

116. Nor do I consider that any implied term about conflicts of interest or duty could or should be allowed which would override the express terms agreed by the parties. In this Club the members have created an express term to govern conflict situations. Art. 58 expressly deals with the circumstances in which Council members have to recuse themselves and it did not require PT to recuse herself in these circumstances, because PT was acting in the "interests of the Club", not her own interests or the interests of a person connected with her. So, running through Art. 58, the first line states that conflicts of interests and duties *shall* be dealt with under the article. It is mandatory. I consider that the apparent bias inherent in the complaint being made by PT and then

PT sitting in judgment on the complaint is that PT could be seen as having already prejudged that the Claimant had acted against the Club's best interests by committing the alleged crimes in the Club. That could be viewed as giving rise to a possibility that she had pre-decided the issue which was in conflict with her "judicial duty" to enter the Council disciplinary hearing with an open mind. So, it could be a conflict of duty issue. As such, it was caught directly by the scope of Art. 58 and PT's actions were to be determined by Art. 58. Indeed, the Claimant asserted that PT should have recused herself under Art. 58. The duty to declare in Art 58.1 related to any interests or duties of PT which conflicted with the interests of the Club or her duties to the Club and of which other Council members were unaware. Those triggers did not apply in the circumstances of this complaint. The Council members were aware that PT was the complainant and PT's interests and duties did not conflict with the Club's nor were they likely to give rise to a conflict with the Club's interests. Art. 58.3 expressly provided that PT was entitled to participate in the decision making process and to vote.

117. Furthermore, I note that despite asserting in these proceedings that PT was conflicted and should have recused herself under Art. 58, the Claimant did not so assert at the Council meeting on 30.11.2021, when she had ample opportunity to do so. Hayley Foster's note makes no such record and the Claimant's response statement to the complaint (in issues 1-3 which she identified), did not so assert. Nor did she so assert in her complaint to the Commissioners, despite may other complaints. Had she raised this issue then, the Council could have voted upon it under Art. 58.3 (second paragraph) but she did not and so they did not. Additionally, Art. 58.4 expressly stated that PT could take part in the Council meeting despite having a conflict of duty or interest with the interests of the Club unless: (1) she would be in line for a financial benefit not available to other Council members (which did not apply); (2) a connected person might receive such a benefit (this did not apply); (3) the decision related to a complaint against someone connected with PT (which did not apply) or (4) the majority of the Council decided she should not take part, (which did not apply). I have therefore come to the conclusion that PT was not required by the Articles of Association of the Club to recuse herself from the Council despite being the complainant. The law of natural justice and the law relating to the need for implied term in contracts do not permit the implication of terms which contradict the express terms agreed between the parties. In my judgment the express terms govern this issue.

118. For this members' social Club, in which the income and work of the members is not affected by a membership expulsion decision or process, and in the light of the undisputed nature of all the facts in the complaint except (a) the Claimant's alleged "medical exemption" and (b) one medical issue over Covid and flu co-infection, I must determine whether there was apparent bias on the issues to be determined. There is no evidence before me that PT had "bias", meaning a predisposition or prejudice against the Claimant's case or evidence, over the medical exemption issues for reasons unconnected with the merits of the issue. In all of the circumstances which I have determined above, I do not consider that a fair minded and properly informed but

independent observer would have considered that there was a real possibility that PT would have been biased against the Claimant when considering the factual issue of the existence or non-existence of a Covid Pass in the Claimant's possession or whether the Claimant was "medically exempt" or when considering flu/Covid co-infection or when determining sanction. In my judgment, under the rules of natural justice, the argument for the implication of a term that PT should have recused herself because she was the accuser, the prosecutor or was being a judge in her own cause does not stand up. This was a social Club not State Run tribunal, a business or Trade Union; the circumstances of the complaint were that all of the facts were agreed, the only issue was the Claimant's defence of being medically exempt; the Complaints Review Process did not require her to Recuse herself; Art. 58 did not require her to recuse herself; PT was the most expert person on the Council on the Covid Rules; the Claimant did not ask PT to recuse herself and PT had shown no mala fides towards the Claimant in her contemporaneous emails correspondence. Taking all of the circumstances into account, in my judgment a fair minded observer would not consider that there was a real risk of bias or pre-determination by PT, because all she did was raise the complaint and ask the Council to consider what to do with it. She was not prosecuting, she was not pressing for any particular result and, most importantly nearly all of the facts were undisputed.

Whether the Club behaved in a way which was arbitrary, irrational or capricious when dealing with PT's complaint about the Claimant's behaviour on 26/27 October 2021.

119. On the findings as set out above I consider that the complaint made by PT was within her sphere of expertise, bona fides and well evidenced. I find that the Club, through KOF, followed its Complaints Review Process faithfully, save for one irrelevant error just after the start. I consider that the Council was properly constituted and assembled and dealt with the complaint under the Articles of Association, the Rules and the Complaints Review Process. I consider that there was no dispute over the main facts. The only real issues were: (a) the Claimant's defence of "entitlement" to exemption, which was wholly unsupported by evidence and the Council were rational in rejecting it; and (b) a factual issue about whether the level of risk of infection because the Claimant raised a medical issue asserting she had a cold/Flu and so could not have had co-existent Covid. I can find no irrationality in the Club accepting Doctor Datta's advice on that. In any event the Club were entitled to find that the Claimant should not have come in with cold/flu like symptoms, let alone in breach of the Covid Regulations. I have carefully looked at all the pleaded allegations and the Claimant's long witness statement and read all of the chaotically arranged emails and have found nothing which supports the assertion of irrationality or capricious behaviour by Council members. I reject the Claimant's unfounded assertions of conspiracies, coverups and of discrimination, I have seen no adequate evidence of any of those allegations being true. I do not consider that the Council were driven by the events of 2020 when making their decision, although I do consider that they were peripherally relevant and thus could properly have been taken into account. As DH and PT explained, the Council's decisions were driven by the events of October 2021.

Whether the Staff Whistleblowing Policy or the draft Members Whistleblowing Policy applied to aid the Claimant.

120. The Claimant accepted in submissions that this added nothing to the points made above and below.

Whether the punishment of expulsion was disproportionate to the breaches found.

121. The Claimant submitted that her breaches were unintentional and that no one was injured or put at risk. However, the Club found that on 27.10.2021 she intentionally breached the Covid Regulations in the knowledge that she should have been isolating and I have made the same factual finding. The Club also found on undisputed evidence that the Claimant had Flu/Covid symptoms when she visited. In addition, in my judgment, the Claimant made the process of dealing with her conduct painful for the Club and for those in the Council. She refused to send her written response to the Council. She failed to provide evidence in support of her assertions at the meeting or before and at the meeting. She showed no remorse, provided no apology and raised medical matters with no medical evidence in support. The Claimant also wrongfully denied putting other members at risk of infection. This behaviour could have been compared with her apology and her offer to resign made to PT at 17.17 on 27.10.2021 (which she withdrew 2-3 days later). All of those behaviours were potentially relevant to the sanction and the decision letter makes it clear that the Council considered the Claimant's lack of remorse in particular. I should also make clear that, in my judgment, the Claimant's previous Covid related behaviours were not wholly irrelevant, so if it be the case that the Council were informed of the 2020 warning letters in KOF's slide presentation I would consider those to be matters which were peripherally relevant to the decision, albeit of low weight and hence it would not have been irrational for Council members to take them into account. Committing crimes on Club premises is, in my judgment, a matter of high seriousness, particularly Covid related crime at a time when the whole country was worried and it was not disproportionate for the Council to consider its power to request resignation or to determine that expulsion was the correct sanction.

Whether in any event the Club was entitled to terminate the Claimant's membership in June 2022 without providing any reason or explanation and whether it would have done so.

122. In the light of the decisions above I do not need to determine this issue. However, the Rules appear to be quite clear. Membership could have been terminated by the Club deciding not to renew it. I consider that mala fides and good faith would be relevant to that decision however, if I had determined that the Club's Process for review had been seriously breached or that the decision of the Council was void or should be avoided for breach of an implied term relating to bona fides or natural justice, or quashed, I would have found that the Club were entitled to decide that members who commit crimes in the Club could be terminated bona fides at the next annual review. I also find that the Club would have been likely to have decided to terminate her membership in June 2022.

What is the proper relief and quantification of the Claimant's loss if breach and causation are proven?

123. Had I found for the Claimant and that the Council decision was made in breach of the implied terms created by the rules of natural justice, I would not have been minded to quash the decision of the Council. I would probably have found the decision voidable but invited argument on the issue of void or voidable (this was not fully argued at trial) and on what to do because I do not consider, in the light of my findings that the Claimant committed crimes on Club premises, that it would be right in equity or justice to restore her membership of the Club. Had I been persuaded to award damages I would have awarded a refund of the membership fee from 1.12.2021 to June 2022. I would have allowed for damages for loss of use of the Club at £1,000 for the 7 months to June 2022 on the basis that the Claimant had use of another central London Club of high standing. I would not have awarded damages for injury to feelings. I would not have declared that the Claimant was entitled to be re-instated the Claimant to membership, because of my findings of the Claimant having committed crimes on Club premises. I would not have exercised the equitable remedy of granting an injunction to permit re-entry to the Club.

Conclusions

124. For the reasons set out at paragraphs 97-119 above I dismiss the claim.

END