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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103760/2022**

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**Open Preliminary Hearing held in Glasgow on 30 November and 1 & 2  
December 2022**

**Employment Judge R Mackay**

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**Miss L Rabbitte**

**Claimant  
Represented by  
Mr M Briggs, Counsel**

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**The Clyde Football Club CIC**

**First Respondent  
Represented by:  
Mr C Maclean, Solicitor**

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**The Clyde FC Community Foundation**

**Second Respondent  
Represented by:  
Mr C Maclean, Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is as follows:

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1. The claimant was engaged by the second respondent.

2. She was engaged at all times as a volunteer.
3. She did not at any time have the status of employee or worker under Section 230 of the Employment Rights Act 1996 (“**ERA**”); nor did she at any time have the status of employee under Section 83 of the Equality Act 2010 (“**EqA**”).
4. The tribunal having no jurisdiction to hear any of the claimant’s claims, they are dismissed.

## REASONS

### 10 Introduction

1. The claimant brings a range of claims against the first and second respondents. For the purposes of this judgment, the first respondent shall also be referred to as “the Club” and the second respondent shall also be referred to as “the Foundation”. The relationship between the claimant and the respondents shall, for the purposes of this part of the judgment, be referred to as “the Engagement”.
2. The claims raised include unfair dismissal under Section 103A of ERA for which the claimant requires the status of “employee”, unlawful deduction from wages for which she requires the status of “worker” (both under ERA), and sex discrimination for which she requires to come within the definition of “employment” under EqA.
3. The claimant’s position is that she was employed by the Club, failing which the Foundation for the duration of the Engagement.
4. In its defence to the claims, the respondents’ position is that the claimant was at all times a volunteer and that she did not have any of the three statuses required in order to bring her claims. The respondents also identified the Foundation as being the party with whom the claimant had a volunteering

arrangement, there being, according to them, no relationship at all with the Club.

5. A case management preliminary hearing took place on 2 September 2022. At that, this preliminary hearing was fixed in order to consider whether the claimant has the status of employee or worker under Section 230 of ERA or employee under Section 83 EqA.

6. At the outset of this hearing, parties confirmed that there remained a dispute as to which of the respondents engaged the claimant (in whatever capacity). It was agreed that that question would be answered following the hearing of evidence.

7. The parties prepared a joint bundle of documents which was placed before the tribunal.

8. The claimant gave evidence on her own behalf. Evidence was also led from Mrs Felicity Rabbitte. Mrs Rabbitte is the claimant's mother and is also the CEO of a marketing company, Effective Consumable Solutions (UK) Limited, which employed the claimant.

9. For the respondents, the tribunal heard from Mr David Caldwell, a trustee of the second respondent, and Mr John Alexander, a trustee of the second respondent who came into post following the termination of the Engagement.

## 20 **Observations on the Evidence**

10. A number of significant conflicts of evidence arose between the claimant and Mr Caldwell. These are identified and resolved in the Findings in Fact section which follows. In all material respects the Tribunal preferred the evidence of Mr Caldwell. The documentary evidence overwhelmingly supported his account.

11. Mr Alexander did not give any evidence about the position of the claimant herself as he commenced in post after she had left. He gave evidence, which

was accepted, that neither the Foundation nor the Club was in a strong financial position.

### Findings in Fact

- 5 12. The Club is a football club currently operating in League One of the SPFL. At all material times it was based at Broadwood Stadium in Cumbernauld. It is set up as a community interest company (CIC) and its sole focus is the operation and management of the men's senior team.
- 10 13. The Foundation is a charitable organisation established as a company limited by guarantee. The Club is the sole member of the Foundation. It is governed by a board of trustees who operate on a voluntary basis.
14. The functions of the Foundation include charitable aims such as the promotion of health & wellbeing by participation in football. It also operates various youth teams and at the time of the claimant's involvement, operated a senior women's team.
- 15 15. The claimant is a former professional footballer having played in the UK and overseas. She retired from playing approximately two and a half years ago. Since then, she has held a variety of voluntary coaching positions including at Rangers and Spartans football clubs. More recently, she has been employed full time as a Sales & Marketing Assistant with Effective Consumable Solutions.
- 20 16. On or around 18 September 2021, the claimant posted a message on Twitter to the effect that she had resigned from her position at Spartans FC and was looking for a new challenge. Mr Caldwell became aware of the message and contacted the claimant. During the course of an exchange between the two, Mr Caldwell described himself as "*Head of Sport for Clyde FC*". They agreed to meet on 20 September 2021.
- 25 17. A meeting took place in a meeting room used by the Club and the Foundation at Broadwood Stadium. It was attended by the claimant and Mr Caldwell. At

some point she was introduced to Mr Tom Elliot, who held the post of Community Officer for the Foundation. This was a paid role and involved the management of boys' progression in football across various age categories. He did not, however, attend the meeting itself.

5 18. A discussion took place about a potential role for the claimant. A dispute arose in the evidence as to what the outcome of the meeting was. The claimant's evidence was that the meeting concluded with her being offered a full-time employment position with the Club to have responsibility for the development of the women's team. She stated that it was left for her to  
10 choose a job title for the role.

19. In terms of the detail of the role, the claimant gave evidence that this was not discussed but that Mr Caldwell had alluded to certain things. Although the claimant initially gave evidence that no mention was made of the Foundation, she later stated that Mr Caldwell may have mentioned it.

15 20. Mr Caldwell's evidence was that he made clear at the meeting that any role would be with the Foundation. He accepted that his reference to "Clyde FC" could be misleading but said that it was common to use that title as a shorthand for both organisations.

20 21. In terms of the potential role, Mr Caldwell's evidence was that the claimant was keen for an employed position but that he responded to the effect that that would be difficult and that the role would at least initially require to be a voluntary one.

22. The two individuals met again on 30 September 2021 and again a conflict arose as to what took place at that meeting. The format and location were  
25 the same as before.

23. The claimant's evidence was that her role and salary were agreed at that meeting. In terms of the role, she was to be "Head of Women & Girls" and have a secondary role in marketing and business development. The salary

she said was agreed was £32,000 plus 20% of commission on any sponsorship deals generated by her. Her evidence was that reference was made to an application to fund her role from an external organisation. According to her evidence, however, it was agreed with Mr Caldwell that she would be paid regardless of the outcome of the funding application. The position, according to the claimant, was to be full time.

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24. It was agreed by both that during the course of this meeting, Mr Caldwell drew three columns on a flipchart and listed the duties of himself, the claimant and Mr Tom Elliot (Mr Caldwell and Mr Elliot being engaged solely by the Foundation).

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25. Mr Caldwell accepted that there was some discussion around a potential salary but said that it was discussed in general terms, and it made was clear that a salary would only be payable in the event that a paid role were to become possible and that that would depend on funding being obtained. Initially, according to his evidence, the claimant would require to operate as a volunteer.

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26. Having regard to the subsequent events, as outlined in the further findings in fact which follow, the tribunal preferred the evidence of Mr Caldwell as to the essentials of the meetings and the terms on which the claimant was offered a position. Moreover, Mr Caldwell had no role with the Club at all and was not in a position to enter into any agreement on its behalf. So far as the Foundation is concerned, he had no authority to offer any paid position without the approval of the board of trustees.

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27. By email of 3 October 2021, the claimant wrote to Mr Caldwell. In it, she stated that after much consideration regarding potential titles, she believed that the best title would be "*Head of Women's and Girls' Football*". She went on to say that this meant that, as they had discussed, "*she would oversee the female side of the club*". She went on to refer to her "*other role*" which she listed as involving "*... raising funds for the club, bringing in sponsors,*

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overseeing the development of programmes with [Mr Caldwell] and assisting with the regional centres etc". She suggested a title such as "Head of Business Development", or "Head of Club Development" for that. The claimant's evidence was that she awaited written confirmation following the meeting.

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28. By email of 5 October 2021, Mr Caldwell sent an email to the other trustees of the Foundation. In the email, he set out some views as to the development of the Foundation. He made specific reference to the claimant. He stated that he proposed to bring her in to "... be responsible for delivering an aligned cultural girls and women's football pathway ...". He referred to the claimant's work as a coach at Rangers FC and her "**daytime** (emphasis added) job as a sales & marketing executive". He stated that she was keen to identify sponsorship activities as part of an extended role discussion. He referred to the prospect of an application for funding for the claimant's role and two to three other positions, in total amounting to £50,000.

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29. He sought swift approval for the making of the application for the three to four paid roles of up to £50,000 stressing that they might lose the claimant to another club. He concluded, in relation to the claimant, by saying "[the claimant's] role is to simply develop and promote the girls and woman's [sic] game across the Foundation (voluntary position)".

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30. No written documentation was ever ultimately provided. The claimant nonetheless commenced the Engagement in the week beginning 11 October 2021. The claimant did not receive any salary or other payment from either the Club or the Foundation in respect of the Engagement. She did not claim reimbursement for any expenses.

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31. Throughout the period of the Engagement, the claimant remained employed by Effective Consumable Solutions. Prior to the Engagement, she received a gross salary of just over £4,000 per month. Her salary did not reduce after she commenced the Engagement. Notwithstanding that, the claimant and

Mrs Rabbitte gave evidence that the claimant reduced her hours with Effective Consumable Solutions. There was a conflict in the evidence between the claimant and Mrs Rabbitte as to the basis of the reduction. The claimant's evidence was that her commitment was reduced to eight hours per week (from a full-time position). The evidence of Mrs Rabbitte was that there was no fixed reduction in hours but that she would work as and when required. Neither gave a clear account as to any specific way in which the role changed.

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32. The tribunal's attention was drawn to emails from the claimant on 9 November and 3 December 2021. The emails concerned the claimant's attendance at training. In the first, the claimant indicated that she was unable to attend as she was "*away for work*". In the second, the claimant asked for a later time in order for her "*to travel over after work*". Whilst the claimant contended that the references to "*work*" were to work as part of the Engagement, the tribunal did not accept her evidence. The clear inference from her own words is that she was giving priority to work elsewhere. That is consistent with the arrangement the claimant had as a volunteer with Spartans FC for whom she acted as a volunteer whilst maintaining her substantive role. It is also consistent with Mr Caldwell's reference to the claimant's "*daytime*" job.

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33. The claimant produced a one-page document which listed the hours she said she worked under the Engagement each week. The hours averaged approximately 30 hours per week. Her evidence was that those hours related only to work she carried out at home. She also attended training sessions and other meetings from time to time. She did not any time share the document with Mr Caldwell or anyone else within the respondents.

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34. The claimant did not produce any vouching for the hours worked, nor was there any specification as to the detail of the activities she was purportedly carrying out. The evidence of the respondent's witnesses was that they themselves as volunteers worked approximately 10 hours per week and that those hours would typically fall outwith an individual's substantive role. Mr



Caldwell's evidence was that he did not ask the claimant to perform any tasks and that it was left to her to make the most of the position.

35. It was put to the claimant that the only evidence of activities being carried out by her for the Engagement related to three attempts to obtain sponsorship and the preparation of two handouts. She accepted that but stated that she did a lot of "*phoning, research and dealing with players*".
36. The tribunal had considerable difficulty in reconciling the claimant's account having regard both to the continuation of payment for a full-time position elsewhere and the distinct lack of clarity of the activities purportedly undertaken as part of the Engagement. It had particular difficulty with the suggestion that requests to delay meetings due to "*work*" could mean anything other than an alternative workplace.
37. Whatever she actually did, there was no evidence of the claimant at any time being instructed to do any work at all. There was no evidence of Mr Caldwell or anyone else from the Club or the Foundation exercising any supervision or control over what the claimant did, how she did it or when she did it. The tribunal accepted Mr Caldwell's evidence that it was for the claimant to make of the role what she could, that principle applying also to him in his capacity as a volunteer.
38. By email of 16 October 2021, Mr Caldwell emailed the claimant attaching what was described "*the funding request for your role*". It was noted as having a salary of £22,000 per year. The funding request also made reference to two other roles, a digital marketing role valued at £10,000 per annum and a development officer role, taking the total funding application to £50,000.
39. Mr Caldwell's evidence was that the only role relevant to the claimant was the position of Head of Women's & Girls' Sport, stipulated to be full time with a salary of £22,000 per annum. The claimant's evidence was that the digital marketing role was designed for her secondary role. In the application it was designated as 20 hours per week at a salary of £10,000 per annum. The

claimant's evidence was that these two roles taken together gave rise to the figure of £32,000 per annum which she said was agreed with Mr Caldwell.

40. The tribunal accepted Mr Caldwell's evidence on this for a number of reasons. First, his email to the claimant referred to a singular role. Second, the claimant in her own evidence stated that she was not qualified to do a digital marketing role, that being an IT based position for which she was not qualified. Third, the two roles together would give rise to a commitment of 57½ hours per week which is wholly at odds with the norm for positions at this level and, had it been agreed, would need to have formed part of the initial discussions. Finally, taking advice from a consultant engaged to assist in the application, the application was ultimately restricted to the Head of Women's & Girls' Football role – by then at a proposed salary of £25,000.

41. A conflict also arose as to the entity seeking to benefit from the application. Mr Caldwell gave evidence that the application was made on behalf of the Foundation and that only the Foundation would be eligible to apply for such funding. The claimant, in seeking to support her primary position that her role was with the Club, suggested that the application was being made by the Foundation as a device to obtain funding for the Club for which would not otherwise be eligible. The tribunal rejected that suggestion. There was no basis whatsoever to suggest any wrongdoing on the part of the Foundation or the Club and, in fairness, that allegation was not put to Mr Caldwell. The tribunal was satisfied that any funding for a paid role would be available only to the Foundation given its charitable status. The claimant did not question the role of the Foundation at the time and that is consistent with Mr Caldwell's evidence that the Engagement was always intended to be with the Foundation.

42. In the context of updating other Foundation trustees by email of 24 October 2021, Mr Caldwell made reference to the potentially funded roles. In doing so, he referred to the claimant as being "...currently a volunteer, this is with

*a view to receiving funding for her to go full time, process to take around three months.”*

43. By email of 31 January 2022, the respondents were advised that the application had been unsuccessful. Reasons were given as to why the application did not fully meet the criteria applied by the awarding trust.
44. By email of the same day, Mr Caldwell forwarded the email to the claimant.
45. The claimant contacted the trust directly in order to gain further feedback as to the reasons for the refusal. The reasons she gave in evidence differed from those set out in the email from the trust. It was clear, however, that there was no prospect of the decision being reversed at that time. On being asked in evidence whether the claimant considered that she would still be paid in light of the refusal of the funding, her response was *“I hoped to be paid”*.
46. Mr Caldwell continued to communicate with the claimant in the days thereafter. By email of 1 February 2022, he suggested the setting up of a steering group to support women’s football.
47. By email of 7 February 2022 from Mr Caldwell to the claimant, Mr Caldwell amongst other things, expressed disappointment about the failure to gain funding. He stated that he understood the claimant’s ambitions but that there were only so many paid posts. He stated in conclusion that *“... the reality is the operational management and finances of the Women’s team will sit under the foundation and there is a need to still plan how this will work.”*
48. Around the same time, the claimant had raised concerns about the women’s team to a representative of the Scottish Women’s Football Association. The issues related to the team and did not address questions of the claimant’s status. By email of 9 February 2022 to that representative, Mr Caldwell made a number of comments about the position of the claimant. In the email he stated:

5 “Its [sic] my understanding the situation has arisen due to the negative feedback on the [trust] application for a full time position. [The claimant] has always said this was a full time ambition but we were clear to state it was our first application for a post of this type and it was by no means a certain outcome.”

49. He went on: [The trust] said it would be around a three-month successful application notice period, the claimant agrees [sic] to volunteer until this came to fruition, when declined [the claimant] took it upon herself to call and ask the [trust] as to why it was declined, the feedback was it was not filled out correctly and if they had known her plan, it would have been successful. At 10 this point, [the claimant] told me it was impossible to justify her involvement at the [Foundation] as a volunteer and could only provide us with week [sic] to sort something out.

50. Mr Caldwell emailed the claimant on the same date. In the opening 15 paragraph he stated: “I am really not sure why you have decided to stop communicating directly with myself on [Foundation] matters. I understand you were disappointed over the funding situation, while providing an ultimatum to resolve quickly to justify your involvement at the foundation.”

51. He went on to state: “You did say at the time “You could only wait a week.” 20 until having to make your decision, but this was our last conversation, while I was unable to speak at the end of last week for personal reasons I did try via messaging, calls and emails to contact you but to date, no reply. My expectation was you had made your decision and left due to non-communication.”

25 52. Mr Caldwell spoke to the claimant on 10 February 2022 and followed up by email of the same date. In the email he stated: “Further to our conversation I think it’s appropriate for you to come and discuss your issues with members of the [Foundation] board in attendance. I will arrange some dates for you to do this at a mutually suitable time, in the meantime since you have clarified

*you were happy to continue in your volunteering role, we can discuss matters further during the proposed meeting.”*

53. The claimant replied by email later the same day. After discussing certain issues in relation to the women’s team, she concluded by saying that she  
5 looked forward to meeting with the Foundation board. She did not respond to the reference to her having agreed to continue as a volunteer.

54. Further email exchanges took place on 11 February 2022. The claimant chased Mr Caldwell on 17 February 2022 to ask when the meeting would take place.

10 55. By email of 3 March 2022, the claimant intimated her resignation. The email was addressed to Gordon Thomson of the Club. It was copied to a number of individuals including Mr Caldwell. The claimant headed the email “Breach of Contract”. She made a claim that she had never been paid wages promised by the “club”. She also made allegations of detrimental treatment  
15 as a result of raising concerns and allegations of discrimination. She concluded by stating that she had taken legal advice and considered herself to have been constructively dismissed by the “club”. Direct communications between the parties thereafter ceased.

56. The claimant gave evidence that during the course of the Engagement, she  
20 “constantly” asked Mr Caldwell for a contract and for details of when she would be paid. She also enquired about who in HR she could speak to about these matters. Mr Caldwell disputed this account and said that the first reference to wages was in the letter of resignation. On being questioned as to why there was nothing in writing, the claimant stated that she did not wish  
25 to appear aggressive. The tribunal was not persuaded by the claimant’s account. Had there been an undertaking to pay her a salary, the refusal of the funding from the Trust would not have assumed the importance it did. The claimant had also shown herself to be willing to express concerns in writing including to senior people outwith the Foundation. Significantly, she

did not challenge the reference in the email of 10 February that she agreed to continue as a volunteer following the refusal of funding.

57. The written account is not supportive of her position as to status and clearly accords with the account of the relationship presented by Mr Caldwell. The same is true of the party with whom the claimant engaged. She did not at any time question or seek to correct Mr Caldwell's references to her position in the Foundation.

### Relevant Law and Submissions

58. An employee is defined as:

10 *"an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment" (section 230(1), ERA).*

59. A contract of employment means:

15 *"a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing" (section 230(2), ERA).*

60. A worker is defined as: *"an individual who has entered into or works under (or, where the employment has ceased, worked under) either of the following:*

- *A contract of employment.*
- *Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."*

25 **(Section 230(3), ERA).**

61. Individuals in "employment" are protected from discrimination in the workplace under Part 5 of the EqA. The definition of "employment" includes: "*employment under a contract of employment, a contract of apprenticeship or a contract personally to do work*" (**section 83(2), EqA**).
- 5 62. This encompasses both employees and workers and a potentially wider category of individuals who are genuinely self-employed but provide services personally.
63. To establish protection under any of the three categories (employee, worker or "in employment" status), an individual must establish that they have a  
10 contract with an organisation.
64. A contract is formed by offer and acceptance. The offer is a proposal from one party which is: sufficiently definite in its terms to form a contract, capable of acceptance and made with the intention of being bound by acceptance. Acceptance is a statement (in writing or verbal) or conduct by an offeree  
15 indicating assent to the offer. The assent must be unqualified.
65. To form a contract there must be: agreement on essential terms, intention to create legal relations and certainty of terms. In general, the essential terms are: the parties to the agreement, the subject-matter of the contract, and the price or the mechanism for pricing arrangements. There must be an intention  
20 by the parties to create a legally binding arrangement. Where no such intention can be attributed to the parties, there is no contract.
66. The absence of a contract between an individual and an organisation will be fatal to a claim under ERA or EqA.
67. Where there is a dispute as to status, case law has developed a number of  
25 tests which may be applied. The leading authority in this context remains the case of ***Ready Mixed Concrete (South East) Ltd v The Minister of Pensions & National Insurance*** [1968] 2 QB 497. The core elements of a contract of employment include: (1) an agreement to provide the individual's

own work or skill in the performance of service for the employer in return for a wage or remuneration; (2) in the performance of that service, the employer has a sufficient degree of control over the employee; and (3) the other provisions are consistent with a contract of employment.

5 68. ***X v Mid Sussex Citizens Advice Bureau & another*** [2012] UKSC 59 [2013] IRLR 146 considered the question (amongst others) of whether volunteer arrangements with the CAB amounted to "employment" under EqA. The Supreme Court held that the volunteer was not in "employment", as there was no legally binding contract between her and the CAB. It reinforced the principle that EqA and the Equal Treatment Directive did not confer protection on volunteers.

10 69. On behalf of the claimant, Mr Briggs focused his submissions on the question as to whether a contract was created at the meeting between the claimant and Mr Caldwell on 30 September 2021. He invited the tribunal to prefer the account of the claimant over that of Mr Caldwell. He referred to a number of authorities on the creation of contracts under Scots law and invited the tribunal to find that the type of contract created was one of employment as defined in section 230(1) ERA. In doing so, he invited the tribunal to accept the claimant's evidence that the conversations between her and Mr Caldwell resulted in an offer of a paid employment position with a salary of £32,000 per annum with the potential for further commission payments. He submitted that the evidence of the claimant was more reliable than that of Mr Caldwell and that the actions of the parties after the meeting evidenced the creation of a contract of employment.

25 70. His position was that if a contract was formed it was clearly one of employment and that the claimant accordingly had the status in order to pursue all of her claims.

71. In terms of the entity with which the contract was made, Mr Briggs submitted that the primary position was that she was employed by the Club, failing which



the Foundation. He made submissions on authority to bind both the Foundation and the Club, submitting that Mr Caldwell clearly had authority to bind the Foundation given the nature of his position and the way in which he expressed himself. In relation to the Club, he made reference to authorities on the question of apparent authority and submitted that Mr Caldwell had by his conduct created the impression that he was authorised on behalf of the Club and that the claimant had acted in reliance upon those representations. He submitted that it was not necessary to enter into the sort of detailed analysis of the relationship as envisaged by **Ready Mixed Concrete** and other similar cases.

72. On behalf of the respondents, Mr Maclean submitted that the claimant was engaged as a volunteer and that she was engaged by the Foundation. On that basis, he submitted that the tribunal had no jurisdiction.

73. In support of his position that the claimant was engaged by the Foundation, he made reference to the range of emails sent by Mr Caldwell to the claimant which identified him as a trustee of the Foundation and the request for funding for a role for the claimant which was made on behalf of the Foundation. He invited the tribunal to accept the evidence of Mr Caldwell that the Club was involved solely with the operation of the senior men's team.

74. He pointed to other items of evidence where references were made to the women's team being the responsibility of the Foundation.

75. In relation to the question of status, Mr Maclean submitted that the basis on which the claimant and Mr Caldwell had discussed matters was that the claimant would be engaged as a volunteer and that any paid employment position was contingent upon funding. He submitted, accordingly, that no contract existed.

76. He went on to consider the tests for employment status and argued that no mutuality of obligation existed. There was no expectation of work and no

requirement to perform any hours of work. He pointed to the maintenance by the claimant of full-time payment for her substantive role.

5 77. In relation to control, he pointed to the complete absence of any instructions as to where to work, what to do, or what hours to work. He invited the tribunal to accept Mr Caldwell's evidence that the claimant's activities were purely down to self-motivation.

78. The tribunal asked parties if this was a case where they wished to make submissions on the position of volunteers under EqA. Neither sought to do so.

10 **Decision**

79. The tribunal agreed with Mr Briggs' submission that the essence of this case is whether a contract was formed between the claimant and Mr Caldwell on behalf of either respondent and if so what the nature of that contract was.

15 80. The claim is predicated on there having been a contract agreed at the meeting between the claimant and Mr Caldwell on 30 September 2021. It is also clear that the accounts of the claimant and Mr Caldwell about that meeting are different and it is for the tribunal to assess which account is preferred.

20 81. The resolution of that question by the tribunal flows from the Findings in Fact set out above and the manner in which conflicts of evidence were resolved as well as the analysis of the relationship.

25 82. As is clear, the claimant's account was, in material respects, not preferred. The resolution of conflicts in evidence could typically be resolved by reference to agreed facts and documentary evidence produced during the course of the Engagement.

83. On a number of occasions, the claimant is referred to as a volunteer, both in internal communications and in a communication with a third party. Although

it is accepted that the claimant did not have an opportunity to comment on those particular items of correspondence, the tribunal was not satisfied that Mr Caldwell had any reason to mischaracterise the nature of the relationship or mislead others.

5 84. Moreover, in the one communication from Mr Caldwell to the claimant where he refers to the claimant having agreed to continue in a volunteering role, the claimant did not dispute that characterisation or seek to correct it.

85. The actings of the claimant herself also point to her having agreed to operate as a volunteer with a view to becoming an employee if funding were achieved  
10 for a paid role. She retained her substantive employed position and for the reasons outlined, the tribunal was not satisfied that there was a material reduction in her working hours. She continued to be paid for full time hours. There was inconsistency between the claimant and Mrs Rabbitte as to nature of any reduction and the claimant's references to rescheduling appointments  
15 to accommodate "work" commitments point to a distinction (including in her own mind) between her paid employment position and her role with the respondents.

86. Had the position been different and there had been agreement over a paid employment position, the tribunal would have expected the claimant to raise  
20 concerns about payment at an early stage. It was not satisfied that she did; nor was it satisfied by her explanations in this regard.

87. In terms of the party with whom the claimant was dealing (to use a neutral term), the tribunal had no hesitation in finding that Mr Caldwell was at all times operating on behalf of the Foundation. That is the only entity with which he  
25 had any authority and despite his initial somewhat misleading reference to "Clyde FC" all significant interactions with the claimant were clearly made with reference to the Foundation including the funding application for a paid position. The tribunal had particular difficulty with the claimant's attempt to

explain this away by making an accusation of wrongdoing which had no foundation.

5 88. Even if the tribunal had been satisfied that the meeting on 30 September 2021 was intended to create an employment relationship, it would have had considerable difficulty in identifying with sufficient particularity the terms said to have been offered and accepted. Even taking the claimant's account at its highest, there was a distinct lack of certainty as to the terms. This includes the parties to the arrangement itself. The claimant maintained the position that the Club was the relevant party in circumstances where the evidence 10 pointed to the contrary. In terms of the subject matter of the contract, there was no specification as to what the claimant's role was to involve, how she would work, where she would work, to whom she would report and what her day-to-day activities would be. There was no certainty as to payment, hours or other commitments to the role. The claimant sought to extrapolate figures 15 from the funding application to support her case about agreed salary, but the figures did not add up or make sense alongside the claimant's narrative.

20 89. Even if the claimant had interpreted Mr Caldwell as intending to create a legally binding arrangement with her, it was clear from the evidence of Mr Caldwell that that was not his intention and the absence of any intention to create a legally binding arrangement – whether a contract of employment or otherwise – means there was no contract. Even if the tribunal had, therefore, accepted the claimant's account fully, it would not have been satisfied that the elements discussed at the meeting were sufficient to form a contract. For these reasons, the tribunal would not, in any event, have been satisfied that 25 a contract of employment was formed.

30 90. Although not strictly necessary, the tribunal did consider the nature of the relationship as it operated in practice with a view to considering whether notwithstanding the label of "volunteer" the relationship in fact evolved into any of the other statuses required for the claimant to bring any of her claims. In this context, the tribunal accepted the submissions of Mr Maclean. There

5 was no obligation on the claimant to perform any work whatsoever. What she  
did, she did of her own volition. She did not receive, and had no entitlement  
to, any wage or remuneration. There was no obligation on her to perform any  
tasks requested of her. Nor was there any obligation on the part of the  
Foundation to provide her with any work. In performing the functions she did,  
there was no control whatsoever. There was no supervision and no  
monitoring of what the claimant did. All of these factors point overwhelmingly  
to the absence of any employment relationship. The absence of any  
obligation to perform any work at all is fatal to the wider status of “worker”  
10 (ERA) and “employment” (EqA).

91. Although there was no express submission on behalf of the claimant that if  
she were a volunteer she might still meet the status of employment under  
EqA, the tribunal nonetheless considered this question. Having regard to *Mid  
Sussex Citizens Advice Bureau & Another*, and the absence of any  
15 contract, it saw no basis on which she could do so.

92. For those reasons, the claimant having not established the requisite status in  
order to pursue any of her claims, all of the claims fall to be dismissed.

20 **Employment Judge: R Mackay**  
**Date of Judgment: 23 January 2023**  
**Entered in register: 25 January 2023**  
25 **and copied to parties**