THE COUNTY COURT AT CENTRAL LONDON

Claim No D03CL584
Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 20th December 2019

Before:

HIS HONOUR JUDGE SAUNDERS

Between:

JOHN CAWOOD	**Claimant**
- and -	
(1) PAUL SEDGWICK **(2) GEOFFREY VERO** **(sued on behalf of themselves and all other members of the Committee of Sunningdale Golf Club as at 12th May 2015)** **(3) TIMOTHY TRUEMAN** **(4) NICHOLAS STEWART** **(sued on behalf of themselves and all other members of Sunningdale Golf Club except John Cawood)**	**Defendant**

Mr Joshua Crow of Counsel (instructed by **Lee & Thompson, Solicitors)** for the **Claimant**
Mr Thomas Croxford QC, Leading Counsel (instructed by **Mishcon de Reya, Solicitors**) for the **Defendant**

Hearing dates: 13th, 14th and 15th November 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HHJ Saunders:

1. This is a claim brought by Mr John Cawood concerning his membership of a well–known and prestigious golf club, Sunningdale Golf Club (the "**Club**") located in Berkshire.

2. It is Mr Cawood's case that his membership of the Club has been terminated in breach of its rules (the "**Rules**"). He seeks an injunction ordering reinstatement of his membership together with a claim for damages. It should be made clear, at the outset, that his main purpose in bringing these proceedings is to restore his membership of the club - a position which he values.

3. At the hearing before me, which has a long procedural history, the claimant was represented by Mr Joshua Crow of counsel; the defendant by Mr Thomas Croxford QC, leading counsel. I heard oral evidence from a number of witnesses for each side to include the claimant and various past and present members of the Club's committee. I will deal with their evidence later.

Background

4. The Club is an unincorporated association. It has no legal personality. The proceedings have been brought by Mr Cawood against certain individuals as representatives of the entire membership. No point has been raised by the defendants in relation to that matter. The individuals named in the claim form have no special relationship to the claim and are named as acting upon behalf of the Club. The Club is, therefore, in reality, the defendant for the purpose of these proceedings.

5. The claimant says that he still has many close friends amongst the membership, and there is no dispute between Mr Cawood and the clear majority of the Club's members. He says that this dispute has arisen owing to the actions of a small number of individuals on the Club's committee in 2015. There is no wider breakdown in relationship. It is, for this reason, that he maintains that, if successful, there is little in the way of obstacle allowing him to return. The defendants dispute this – apart from the grounds (which are wholly in dispute) they claim it would be untenable if he were allowed to return and so, even if successful, an injunction requiring him to be re–admitted would not be an appropriate remedy.

The dispute

6. Mr Cawood was, between 1997 and 2015, an "*Overseas Member*" of the Club.

7. He claims that he has been, at all material times, permanently resident in Sydney, Australia. Mr Cawood is an Australian citizen and holds an Australian passport. It is said on his behalf that has no right to enter the UK except on recurrent temporary visas, that he has no close family in the UK and does not own property in the UK. In other words, he has no ties with the UK and is permanently resident abroad.

8. The parties accept that the Club's Rules ("the Rules") constitute a binding contract between Mr Cawood and the other members of the Club. They further are agreed that the relevant Rules for the purposes of this claim are those in force during 2015. It is these Rules alone that I will refer to in this judgment.

9. Rule 18 of the Rules provides as follows:

> *OVERSEAS MEMBERS*
>
> *A candidate who in the opinion of the Committee is permanently resident outside the United Kingdom may be elected as an Overseas Member subject to the election procedures described in Rule 9. He shall have the same playing rights as a Member Resident Abroad.*
>
> *An Overseas Member who in the opinion of the Committee ceases to be permanently resident outside the United Kingdom shall cease to be an Overseas Member. He may be proposed and seconded for election to another category of Membership subject to the election procedures described in Rule 9.*

10. Rule 17 sets out the relevant limitations on an Overseas Member's playing rights. It provides:

> *MEMBERS RESIDENT ABROAD*
>
> *A Member who will be absent abroad for the whole of any year commencing 1st January ("a Member Resident Abroad"), shall write to the Secretary giving prior notice of his intention to be so absent. Following receipt of such notice, the Secretary shall write to the Member advising him of the sum which the Committee decides is payable as his annual subscription for that year.*
>
> *A Member Resident Abroad shall have the right to play at the Club for 30 days in any calendar year. If he wishes to play the courses for any additional period he may send a written application to the Committee to play on payment*

of such additional sum as the Committee may decide. The Committee shall have power to deal with each case on its merits.

11. The Rules also provide for other categories of membership, including Full Membership.

12. The significance (in the context of these proceedings) of qualifying for Overseas membership is that Members enjoy all the same rights as Full Members, including their right to vote at general meetings save that they enjoy a considerably reduced yearly membership fee (£975.00 as opposed to £3,245.00 in 2015).

13. The only exception in place is that an Overseas Member's right to use the courses is limited. Overseas Members are limited to just 30 days' play per year. The yearly fee is reduced because of an Overseas Members limited playing rights.

14. I should add, however, that the status of an Overseas Member does not reduce the Club's joining fee as this is the same as that paid by Full Members (which is a sum defined by reference to a multiple of the annual subscription, and is therefore many times larger than the annual subscription). It is, by any standards, a considerable sum. Mr Cawood has already paid the same joining fee as a Full Member.

15. On the 9th May 2015, the Club's committee decided to terminate Mr Cawood's overseas membership pursuant to Rule 18 (the "**Decision**"). Mr Cawood says he was given no warning or notice of the Decision, or of the committee's intention to meet for the purposes of discussing his membership and making a Rule 18 determination. He claims that the first he knew of the Decision was when he received a letter from the Club secretary (at that time, a Mr Toon) informing him that his membership had been terminated several days previously. He says that, when he received the letter, he was in the US about to travel home to Australia (having left England before the end of April 2015).

16. Mr Cawood says that the Decision was made, in breach of contract:

    (1) Unfairly, because he had no notice of the Decision, no chance whatsoever to respond to the relevant allegations, and because the tribunal was biased;

    (2) Irrationally, arbitrarily and capriciously, because no reasonable committee could have reached the conclusion they did; and

(3) In bad faith and for an improper purpose, because it was made pursuant to various committee members' personal dislike for Mr Cawood and his behaviour, and in particular a perception that Mr Cawood was attending the Club too frequently.

17. Moreover, it is the claimant's case that:

(1) He never breached the Rules in respect of his use of the Club (that is that he always abided by the 30 rounds per annum maximum and that the Rules placed no other limitations on the permitted use of the Club's facilities);

(2) The alleged issue about his residency status was never properly raised with him before the decision to terminate his membership in May 2015; and

(3) In any event, he was never permanently resident in the UK and his visits to this country were always temporary in nature, presumably satisfying the "permanently resident outside the United Kingdom" requirement set out in the Rules.

18. The defendants say that this is simply not correct.

19. The claimant ceased to be an Overseas Member after the committee properly determined by a resolution on the 9th May, 2015 that the Claimant was no longer eligible because he was not permanently resident outside the UK, as required by Rule 18.

20. It is claimed that in the eleven months prior to the Decision being made, the Claimant had been physically present at the Golf Club on almost 100 days (94 days). This pattern of attendance strongly suggested to the committee that the claimant was in the UK on a continuous or near continuous basis in the period from June 2014 to May 2015. This is said to be wholly inconsistent with the claimant being permanently resident outside the UK for the purposes of the Club Rules.

21. The defendants say that the provision in the Club Rules was not a legalistic test but rather was the opinion of the committee having regard to the apparent purpose of Rule 18, and the drastically reduced membership fees for Overseas Members.

22. It is claimed that the Decision made by resolution of the Club did not, of itself, prevent the Claimant from being a member. The claimant could have applied for Full Membership and

was invited to do so in the letter informing him of the Decision. He did not and has never done so.

23. In this action, the claimant challenges the lawfulness of the Decision and seeks an injunction restoring him as an Overseas Member of the Golf Club. The defendants contend:

(1) the Decision made by resolution of the committee was lawful. The committee's determination was plainly correct and was adopted using an appropriate procedure as set out in the Rules;

(2) in any event, injunctive relief is plainly inappropriate and should be refused by the Court as a discretionary remedy. All parties to this claim accept that the relationship between the claimant and the Club, represented by the committee, has broken down and the Court cannot and should not force the parties to continue a relationship which has broken down.

24. The defendants also argue that Rule 3 is relevant. This Rule places the management of the Club in the hands of the committee.

25. Attention should also be paid to Rule 26. Rule 26 provides for the sanctions against members for breaches of the Rules, the Club's Bye Laws or for conduct related reasons. Rule 26 sets out detailed procedures for charges to be levelled against a member, for them to be answered by the member, for a determination by the Committee and for the member to have the right of appeal in cases of expulsion. It is relevant in relation to the issues as a whole but also in relation to a side issue concerning the claimant's alleged conduct whilst within the Club which may have been a factor (albeit unrelated) in the Decision.

Summary of Issues

26. Accordingly, the principal issues in the case can be distilled down to the following:

(1) Was Mr Cawood permanently resident in the UK on 9 May 2015? This issue requires consideration of how the phrase "*permanently resident outside of the United Kingdom*" in the second paragraph of Rule 18 is to be interpreted on its true construction.

(2) In view of the fact that the Rule requires determination by reference to the opinion of the committee:

(a) Was the committee's decision-making power under the second paragraph of Rule 18 subject to a requirement:

(i) Not to act irrationally, capriciously or arbitrarily?

(ii) Not to act for an improper purpose or in bad faith?

(iii) To act in accordance with the requirements of natural justice (namely, to give the relevant member proper notice of the allegation, to allow him to be heard in response, and to ensure that the decision maker is not biased)?

(b) In forming the opinion that Mr Cawood was no longer permanently resident outside of the United Kingdom on 9th May 2015, did the committee breach any of the implied terms of the Club Rules?

(3) As regards remedy (if the claimant should be successful), the following issues arise:

(a) Is Mr Cawood entitled to an injunction against the members of the Club, requiring them to reinstate his Overseas Membership?

(b) Did the purported committee decision taken on 7th February 2018 have any legal effect and, if so, what?

(c) What is the quantum of damages to which the claimant is entitled?

The basis of the defendants' Decision

27. The Club's concerns about the Claimant's attendance are said to go back to 2010. During that year, the claimant paid the Overseas Membership twice in recognition that he had "overplayed". I am told that this was without the committee's consent and it is suggested that it was paid in order to avoid scrutiny of the extent of his playing at that time. I have to say that I find that hard to determine because it may also be interpreted as a genuine attempt to be fair on the part of the claimant and so little turns on it in my view apart from the recurrent theme – from the defendants – that the claimant consistently overplayed indicative of the fact that he was not permanently resident abroad.

28. It is correct to say that in 2011 the issue was discussed. On 22nd January 2011, at a meeting of the membership committee, it was noted that the Claimant had played in excess of his

allocated 30 rounds as an Overseas Member and had made an additional payment to the Golf Club accordingly. *"The Secretary's recollection was that this had happened two or three times in the past 7 years and the excess number of rounds to be 6 – 12. It was agreed that this situation should be reviewed immediately".*

29. In particular, the defendant relies on cards used to pay for food and drink over the bar – a common practice in most golf clubs – known as swipe cards which were analysed for the previous four years and it was noted that the claimant's attendance at the Club exceeded 30 occasions in the years 2007, 2009 and 2010. In 2010, the Claimant had used his swipe card on 65 occasions.

30. The written evidence then shows that the claimant was then spoken to by one Rodney Gamble (the then Club Captain) on or around 15th February 2011. Mr. Gamble was told that the claimant considered that there was a problem with him becoming a full member *"from a tax point of view".*

31. On the 8th March 2011, the Club Secretary, Stephen Toon (the Mr Toon previously mentioned), wrote to the claimant on 8th March 2011 advising him to apply for full membership of the Club. The claimant responded by letter dated 21st March 2011 in which he stated, "*With my usual length of stay… it would be very restrictive if I could only play 30 rounds*." He accepted that he had often played more than 30 rounds but asked that *"the Committee allow me the entitlement to play extra rounds on whatever basis it considers appropriate…".* This was followed by another letter written on the 27th April in which he sought permission to play *"more than 30 rounds while in the UK this year".*

32. On the 10th May 2011, David Burke (then the Chairman of the membership committee and Vice-Captain of the Club) then spoke to the claimant. The claimant told Mr. Burke that he did not want to apply for full membership because *"he thinks this may imply that he is resident in the UK"* (it is suggested that for the claimant this would have undesired tax consequences although I have not seen evidence of this). His email also suggests a concern that if he terminated his Overseas Membership his conduct might result in him not being able to obtain Full Membership of the Club. Mr. Burke's email record of the conversation records that:

"I said that it is not a requirement of full membership that he be resident in the UK. … I said that the Committee's discretion to allow extra rounds to be paid for was designed to cover the occasional instance of a couple of extra rounds, not a regular overplaying by a considerable margin, so if he was not prepared to apply for full membership, then he would have to honour the limit of 30 rounds this year. I also told him that the 30-round limit is up for discussion as it is very generous by comparison with many clubs."

33. On the 12th June 2011, at a meeting of the membership committee, the records show that the following was noted:

"It was noted that John Cawood routinely plays more than 30 times per year and he has written to say this will happen each year and he has requested to be a permanent exception to Rules 17 and 18 governing playing rights for Overseas Members.

The Chairman has spoken to JC personally and explained that the Committee wished him to re-apply as a Full Member. JC expressed a concern.

It was agreed that the Chairman would speak to JC and explain that he must follow the Rule Book and apply for re-election as a Full Member and that he must decide before next meeting of the General Committee."

34. Further, on the 31st July 2011 at a meeting of the committee, the following was noted:

"John Cawood, an Overseas Member has played more regularly than his permitted 30 days, and has done so over a number of years.
He received a letter from the Secretary about this, on the instruction of the Committee, saying that if he wishes to continue to play more than 30 days in a year, he should become a Full Member.
John Cawood has asked that he be treated as an exception.
It was agreed that the equivalent of a full sub be paid for 2011 and that future requests should be reviewed annually."

35. It appears then that the outcome of the 31st July 2011 committee meeting was then communicated to the Claimant by Mr. Burke.

36. What this documentation shows is that, in 2011, the defendants had become concerned about the regularity of the claimant's visits to the Club and that this had raised some concerns. It also shows that the claimant was aware of the position.

37. Matters then appear to have quietened until in 2014 when the position appears to have been "flagged up" again because a number of members had complained about the claimant's attendance in 2013 as it was described as "so frequent". I refer to the document at ST32.

38. On the 12th February 2014, Charles Harrison (the then Club Captain) noted in an email that he had spoken to the Claimant and explained that there were concerns that the Claimant had 'over-played' in 2013. Mr Harrison felt that the Claimant should send to *"the Club a cheque covering the difference between an Overseas and Full subscription in respect of 2013 (being £,2020)."* In that email, Mr. Harrison warned the Claimant that *"we would expect him to take steps to apply for Full membership if he was going to repeat his 2013 attendance record"*. I accept that the note makes clear that the Claimant in fact said he would do both. The claimant did not proceed with either.

39. Later in 2014 the Claimant was the subject of disciplinary proceedings. On 27th July 2014, the claimant had attended the Club's premises shortly before closing when he was refused service (due to the imminent closure of the Club's premises). The claimant was offensive using sexual language. When a female member of the Club's staff refused him alcohol, he is alleged to have said "*are you not serving us drinks because you are shagging Mr Toon, is he your father, why don't you serve us drinks"*: The claimant was then asked for his recollection on the phone by Geoffrey Vero (a Trustee and Chairman of the compliance committee) on 31st July 2014 in which the claimant said that he had been "*gone*" after a long day at the Waterside Inn and the following day could not even remember where he had been. He attended an investigatory meeting with him on 1st August 2014. Crucially, during the course of that meeting, the claimant's status as an Overseas Member was also discussed. The following exchange is said to have occurred:

"GV – Some members live overseas but come over here to play in say the R&A autumn meeting for say 3 weeks, those who come here regularly throughout the year are full members.

JC – For 4/5 months a year I am in the UK.

GV – Then you should apply to be a full member."

40. In respect of this issue, the claimant was invited to a disciplinary meeting, the outcome of which was that the claimant was suspended for two months from his membership. The claimant's status as an Overseas Member was not dealt with.

41. The defendant says that the claimant's attendance at the Club in 2014 and 2015 remained an issue and continued to attract complaints from members who paid the full membership fee. This was one of the subjects of a discussion in November 2014 in which the claimant was belatedly challenging a bar bill and outstanding membership fees and whether he should be allowed to remain as an overseas member. As can be seen from correspondence at this time, this misconduct allegation (with the associated suspension) had worried the claimant such that he – and as is apparent from his oral evidence – remained fearful that he might not succeed in an application for full membership.

42. On the 8th December 2014, Mr Jermine (the Club Vice Captain at that time) wrote to the claimant placing him on notice as to the imminence of a decision as to whether he could continue as an Overseas Member given the frequency of his attendance at the Club and the consequences of such a decision and had the opportunity to respond **[See B/114/414]**. The claimant did not respond again on the issue of whether his attendances indicated that he was not permanently resident overseas.

43. However, he did address the permanent residence issue, showing he was on notice as to this issue, in a letter of 30th January 2015 in which he challenged his obligation to pay his debts. This was then partially written off at an F&GP Meeting of 14th February 2015.

44. On 27th February 2015, Mr Jermine met with the claimant and told him that *"the General Committee did not consider him to be permanently resident outside the UK and that the regularity of his attendance at the Clubhouse was attracting the attention of other Members."* Mr. Jermine also noted that the claimant's partner had attended the clubhouse on more than the permitted 6 guest visits *"and should not return"*.

45. Matters came to a head by April 2015. From the swipe card record, it was revealed that the claimant had attended the Club on 94 occasions for the period from the 21st June 2014 to the

18th April 2015. I accept that these figures become more striking because for 2 months of this period, the Claimant was suspended from membership of the Club and could not attend its premises. On any interpretation, they represent a high level of attendance at that time.

46. On the 9th May 2015, a meeting of the committee was held at which the Claimant's membership was considered: Please see **ST 47-48** and **JJ 34-36**.

47. The minutes of the committee meeting record found at **[B/134/458]** read as follows:

"The Chairman… summarised concerns surrounding compliance with Rule 18 by the Overseas Member, John Cawood, and in particular that he had used his swipe card on 99 days between 22 June 2014 and 8 May 2015…

"Following discussion, the Secretary was instructed to send a letter to John Cawood to say that, in the opinion of the Committee, he is not permanently resident outside the UK and that the terms of Rule 18 apply."

48. A letter was sent to the claimant setting out the outcome of the meeting on the 12th May 2015: **[B/136/460]**. The claimant was naturally upset by this decision. He sent emails **[B/144/473 and subsequent documents]** and text messages **[B/155/489]**, in which, inter alia, he made allegations of *"bias"* and *"malice"* – matters which he maintains in these proceedings.

49. The documents demonstrate that the Club responded to the claimant's concerns by inviting him to put forward any evidence which he had suggesting that he was permanently resident overseas and therefore relevant to the terms of Rule 18. The claimant did not do so.

50. The claimant has never applied for Full Membership.

<u>Permanent residence outside the United Kingdom</u>

51. It is correct to say from an examination of Rule 18 that it confers a power on the Club's committee to terminate an Overseas Membership if it forms the opinion that the relevant

member "*ceases to be permanently resident outside the United Kingdom*". This is within its powers under Rule 3.

52. The claimant says that "*permanently resident*" in the context of Rule 18 should be given a plain, common-sense meaning. A person's permanent residence is their 'real home'. The true question to determine this point is to decide whether Mr Cawood's 'real home' was in the UK on 9 May 2015.

53. I have been taken, by Mr Crow, to the definition of the word 'permanent' contained in the Oxford Dictionaries online resource which defines 'permanent' to mean "*lasting or intended to last or remain unchanged indefinitely*". In other words, he says, permanence in this context requires *intention*. Therefore, in order to cease to reside permanently in a country outside of the UK, a person must instead intend to reside indefinitely in the UK. Put simply, a person would need to make the UK their real home.

54. He refers me to some guidance from the courts. In particular, he has directed me to cases which give guidance on the meaning of "residence" or "permanent residence".

    (1) As regards the concept of 'residence', in *Levene v Commissioners of Inland Revenue* [1928] AC 217, Viscount Cave LC commented as follows (emphasis added):

> *In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure… Similarly, a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here*… (Mr Crow's underlining)

    (2) As such, temporary visits to the UK will not make a person even resident here. However, 'permanent residence' is a narrower concept still than ordinary 'residence':

        (a) Permanent residence is a reference to a person's "*real home*": *R. v Barnet LBC Ex p. Shah* [1983] 2 A.C. 309 at 345A per Lord Scarman. A person's permanent residence or 'real home' is their permanent base adopted for general, rather than specific, purposes: *Shah* at 345A. A person has only one permanent residence at any time: *Shah* at 345B.

(b) Determining whether a person has established a permanent residence requires an analysis of "*intention or expectation for the future which is implicit in the idea of permanence*": *Shah* at 345F-G.

(c) By contrast, a person can have more than one ordinary 'residence': *Levene* at 223. Assessment of plain 'residence' is less subjective and less dependent on a person's intentions. In other words, 'residence' is a broader concept than *permanent* residence: *Shah* at 348G per Lord Scarman.

(d) It follows that a person can reside somewhere without making that place their 'real home' or permanent residence.

55. Mr Croxford, on the other hand, whilst not wishing to depart from the authorities cited by Mr Crow above, says that it is more important to construe the Rule in its proper context. He says that it is one of the Rules of a Private Golf Club. From consideration of the various categories of membership and the fee differentials between those categories, it can be seen that those who are "permanently resident abroad" whether for a single year (as set out in Rule 17) or for all time (as set out in Rule 18) become entitled to a considerable reduction in their membership fees. In his view, the determination of whether someone is permanently resident abroad is self-evidently not intended to depend on whether or not someone is either permanently resident in the UK for tax and immigration purposes or permanently resident abroad for such purposes.

56. It is claimed that it is a qualitative judgment on the part of the committee as to whether a person has a sufficiently ephemeral presence in the United Kingdom – such that they should be entitled to a considerable discount on their annual membership fees.

57. I agree that the Rule must be construed literally but that it is important that is considered in context. If one looks at Rule 17 that contemplates a "Member Resident Abroad" – that is someone who is "absent abroad for the whole of any year". It does not use the word "permanent". This, in my view, sets up a distinction – periods of 12 months or longer do not set up "permanent residence". It, therefore, follows, as Mr Crow sets out, that Rule 18 requires an intention to reside <u>indefinitely</u>.

58. It follows that ordinary residence is not enough – nor is some ephemeral presence in the UK. The House of Lords authorities establish this. In practical terms, an overseas member

has to have the ability to visit the UK and reside there on a temporary basis so that they could use the club facilities and/or play golf. The 30-day rule is, I agree, quite generous and, by implication allows an overseas member to attend on at least that number of days a year.

59. I accept therefore, that, on any interpretation, it follows that Rule 18 should be interpreted upon the basis that it refers to someone's real home, the place where they intend to reside permanently and indefinitely. In my view, it does not refer to a person who was at any time resident in the UK which would automatically result in their ceasing to be permanently resident abroad. The word "permanent" is important and defines it separately from, for example, Rule 17.

Is the claimant permanently resident abroad?

60. It is therefore central to this case to determine whether the claimant is permanently resident abroad as set out in Rule 18.

61. Mr Cawood's case is that he is an Australian national and has no desire to change his permanent residence (his "real home" by virtue of the definition above) from that country. In his Witness Statement, he describes his connection to Australia thus:

> *"I have always been (and remain) permanently resident in Australia which is my home and where my family live. I have no intention or desire to change that. Australia is my real home for all the obvious reasons. Much as I like the US and love the UK, my emotional and historic ties are to Australia. Moreover, it is the only place where I am entitled to permanent residency. I have deep family connections in Australia – 5 of my 6 children (*one is in Vietnam*) plus all 9 grandchildren plus many friends are there (and I have had my membership of the Australian Golf Club in Sydney for over 30 years). At heart I am Australian."*

62. In short, he claims that, in addition to the above, he has no family, business, or other connections to the UK and had never leased or owned property here. Moreover, he does not have any residency rights in the UK and, as an Australian citizen, he could not obtain those rights. This is a position which, subject to certain amendments with which I shall deal with later, Mr Cawood maintained during his oral evidence. It is supported by Ms Geiberger, his partner, who gave largely uncontroversial and supportive evidence to this effect.

63. Mr Croxford says that this evidence is negated somewhat by the manner and nature of evidence given by both witnesses. I am asked to consider a number of aspects of the evidence that came out in cross-examination. By 2012, the claimant had sold

all his commercial property in Australia. In 2008, he had sold his residential property there and then leased it back until 2012. Thereafter, he placed his Australian belongings in storage where they remain. He does not have a house there preferring to live with his daughter.

64. In addition to this evidence, it was revealed that since 2013, he lived in and resided in a property in Sunningdale in a property that he leased on an informal basis near to the Club. Previously, he had stayed with friends.

65. In the UK, it is said that his interests had increased. He stored belongings at the Sunningdale address. He owned a white Mercedes convertible which was registered in his name at the Sunningdale address. His partner, Ms Geiberger, was a British citizen and had retained her British passport. Although she is the ex-wife of a PGA tour professional, who is a US citizen, she had not taken out American citizenship or residency.

66. In addition to this, there were two other aspects of the claimant's evidence which require greater scrutiny. First, evidence was adduced that in August 2014, the claimant had incorporated a company in England and Wales with a name linked to a Hong Kong business owned by the claimant – the registered office and correspondence address are the Sunningdale property rented by the claimant and Ms Geiberger.

67. Secondly, there is the question of his immigration status. In particular, as it was discovered, that in May 2014, the claimant applied for entry clearance to the UK and a partner's visa. The defendants claim that this significant evidence showing an intention to reside permanently in the UK with his partner who had settled status here. I was shown a blank application form of the type the claimant would have used – although I have not seen the original – and I find that there would be a declaration indicating that intent on the claimant's application.

68. I find that he must have been aware of the outcome of that application because his passport was returned to him indicating such – as shown by his passport – in August 2014. Ms Geiberger was his sponsor.

69. However, despite the defendants' protestations, I do not find the immigration application to be conclusive evidence that his intention was to settle permanently in the UK. Mr Cawood's detailed explanation spoke (as confirmed by Ms Geiberger in her evidence) of his having experienced an extremely lengthy wait on a previous visit (which involved his brief detention) and his having been advised (perhaps wrongly) by an immigration officer at that time that, as his partner is British, he could circumvent future difficulties by applying for a partner's visa. This is a plausible explanation.

70. The fact of the matter is that he does not have settled status. Applying immigration law, such an application is defined as a "route to settlement". From an immigration

perspective, the intention to settle permanently is regarded as a future state of affairs – it is a limited leave to remain. It does not confer permanent residence.

71. Mr Cawood had the means to seek such status and, in my opinion, little turns on it. In fact, more can be gleaned by what happened after his application was successful – the visa duly expired and he returned to applying for a succession of temporary entry visas as before.

72. In so far as the company set up is concerned, the value of that evidence in support of the defendants' case is somewhat limited. This appears to be a set-up of a shell company (admittedly not off the shelf) and I accept that Mr Cawood and Ms Geiberger have given their habitual residence (which is a different concept to permanent residence) as the UK. However, apart from this, there is no evidence of trading or the setting up of any business operating from the UK. Indeed, the company does not appear to have ever traded. This evidence of an intention to reside permanently is not particularly compelling or determinative particularly against the background of their peripatetic lifestyle. I will return to that later.

73. The other point seized on by the defendants was the reduction in status of the claimant's membership of the Australian Golf Club in Sydney. This is based upon the fact that – by reference to a membership booklet handed up during the course of the hearing – the claimant had reduced his membership to a limited membership status due to his having reduced his connections with Australia. He became a non–playing member in 2015 because playing 4 times a year was said to be sufficient – which was the right given to such a member. The defendants naturally have pointed to the fact that this contrasts starkly with the evidence that he played 30 times (or more) at Sunningdale and it is claimed this is evidence that he no longer had a home or business in Australia. The membership booklet shows that he provided a US phone number.

74. That change is, in my view, simply a lifestyle choice and very little turns on it. I consider that it is more likely than not caused by events in the Cawood family between 2013 – 2015 as I will now proceed to explain. Mr Cawood is now restricted to visiting the UK on a 6-month visa. He has no right to stay permanently in the UK. Even on the 33-month visa, for reasons set out above, he did not acquire any permanent residency rights. I accept that his visits have always been of a temporary nature.

75. The defendants have submitted, quite understandably, that between 2013 and 2015, the claimant spent an inordinate length of time in the UK confirmed by both anecdotal evidence from members who complained about his frequency of visit to the Club and from the swipe card records.

76. However, I accept that this was an unusual period for the claimant and Ms Geiberger. He gave clear evidence (which I accept) that they remained in the UK for far longer than expected particularly between the summer of 2014 and 28th

April 2015. The reason for this was due to his partner's elderly mother's health (she eventually died), a friend's wedding but also by the unfortunate timing of the Coachella music festival in California – Ms Geiberger's evidence was helpful here. Ms Geiberger's mother fell ill in 2013. This music festival prevented them renting a house there for reasons of availability and cost and so delayed their departure to the US until the 28th April 2015. Between January and April 2015, it is consistent that they were staying as guests with friends as it informs the decision to delay their departure. The decision letter terminating his membership was received whilst Mr Cawood was in the US.

77. The defendants, through Mr Croxford, have sought to challenge the quality of Mr Cawood's evidence. In particular, this has concerned, amongst other matters, "making up evidence as he was going along", a reluctance to accept the records of rounds of golf played in his evidence, and a failure to appreciate the significance of his misconduct and the disciplinary proceedings leading to his suspension. He is accused of shameless cynicism by expressing himself from time to time to the Club with regret but later explaining it as a palliative.

78. I consider that criticism to be somewhat unfair. Mr Cawood struck me as an intelligent and adept businessman who appreciates that an apology is important in certain circumstances to resolve problems. I accept that he did not know much about the incident with the member of the bar staff as by his own admission, he was seriously drunk. His criticisms of various committee members are more likely than not motivated by his sense of injustice in losing his membership – something so important to him it seems that he would issue these proceedings with the inevitable risk on costs and personal reputation in a public forum. That is all consistent with his case.

79. Indeed, I found his oral evidence was credible and given in a straightforward manner. He withstood detailed cross–examination from Mr Croxford and maintained his account to a considerable extent. He was prepared to concede points where put but the central element of his case regarding residency and use of the Club I found to be unwavering. Although her evidence is less extensive, and I must take account of the fact that she is not wholly independent, I found Ms Geiberger's oral evidence supportive.

80. I then should consider whether the evidence establishes that the claimant is permanently resident outside the UK so as to fall within Rule 18 or not.

81. I have mentioned the word peripatetic before. In many ways, and in my view, this neatly summarises Mr Cawood and Ms Geiberger's position in this case. They divide time between the US, UK and Australia – not always equally. I find that the time they spend in one country will often depend on their personal circumstances at any particular time. An example of this is shown by Ms Geiberger's mother's illness where they stayed for a longer period in the UK but I cannot ignore the ties

to the US (where the claimant has a phone number) and Australia which is the land of his birth and where his large family are situated.

82. I am, therefore, satisfied, on the balance of probabilities, and upon the evidence, that the claimant is not permanently resident in the United Kingdom. The lengthy period of stay here between 2013 and 2015 was, in my view, determined by a number of outside factors. On balance, I do not believe that the claimant has any intention of setting up home here. It is significant that, after Ms Geibeger's mother died, there was no need to stay – and they duly left for the US (subject to the accommodation problems caused by Coachella). Although unusual, Mr Cawood's informal accommodation arrangements in the UK are indicative that matters were in a state of flux. The fact that he used the Club whilst he was in the UK is just a natural consequence of his lifestyle at that time.

83. It is also important to note (and it is supportive of this finding) that he and Ms Geiberger left the country for the US on the 28th April 2015 and have hardly returned. There is little in the way of evidence to show that their subsequent visits to the UK have been so frequent or so lengthy to show that they intended to reside here permanently. Mr Cawood has returned to entering the country on a temporary visa.

84. The claimant is Australian. He is an Australian national and has citizenship. He does not have the right of citizenship anywhere else. His intention is, in my view, that he wishes to remain Australian. He was quite clear about this in his oral evidence. His family all remain in Australia (apart from one of his children in Vietnam). He has considerable ties to that country. He has belongings there. He previously owned property and business there. He retains his membership of the Australian Golf Club albeit as a non–playing member. He lives with his daughter when he lives there. These are all indicators to his being permanently resident there applying the House of Lords authorities that I have set out above.

85. In short, I accept that he regards Australia as his home - his "real home" - albeit that he and Ms Geiberger do live a somewhat peripatetic lifestyle. That lifestyle is not inconsistent with a finding that the claimant has a permanent residence abroad – in this case, in Australia. In fact, it supports it as he does not have permanent residence in the UK.

86. For these reasons, I find, on balance, that the claimant is permanently resident abroad and fulfils the requirements of Rule 18 of the Rules.

87. Having established that the claimant was permanently resident abroad and that, on the face of it, the committee's decision was wrong, the matter does not end there. I then have to consider the implied restrictions on the committee's powers under Rule 18.

88. It is worth re-stating the Rule again and. In particular, the second paragraph of Rule 18 which states as follows:

> *An Overseas Member who in the opinion of the Committee ceases to be permanently resident outside the United Kingdom shall cease to be an Overseas Member. He may be proposed and seconded for election to another category of Membership subject to the election procedures described in Rule 9* (my underlining)

89. The parties agree that the Rules act as a contract between each member and the other members of the Club – this is set out in both the Particulars of Claim and the Defence.

90. They are therefore subject to implied terms in which the ordinary and general rules of contract law apply.

91. Mr Crow has taken me to Lewison on the Interpretation of Contracts which states in its sixth edition:

> *Where a contract confers a discretion on one party, and the exercise of that discretion may adversely affect the interests of the other party, it will usually be implicit that the discretion must be exercised honestly and rationally and for the purpose for which it was conferred. An exercise of contractual discretion may be challenged on the same grounds that apply to a challenge to an administrative decision in public law.*

92. In particular, he relies upon the Supreme Court case of Braganza v BP Shipping Ltd [2015] 1 WLR 1661. In this case, the Supreme Court considered a provision in an employment contract which gave an employer the right to form "an opinion". It was decided that the contractual right to form the opinion was subject to an implied requirement that the decision–maker had to act rationally, in good faith and consistently with the contractual purpose. I refer to the speech of Lady Hale in that decision.

93. In her judgment, Lady Hale approved the remarks of Lord Sumption in British Telecommunications plc v Telefonica 02 UK Ltd [2014] Bus LR 765. He said:

> *"…it is well established that in the absence of very clear language to the contrary, a contractual discretion must be exercised in good faith and not arbitrarily or capriciously […] This will normally mean that it must be exercised consistently with its contractual purpose…"*

94. I am then referred to the position regarding unincorporated associations (such as the Club). I have been referred to Lawlor v Union of Post Office Workers [1965] 1 Ch 712. This case is authority for saying that the power to make decisions affecting the rights of members is subject to a requirement to act fairly. Ungoed – Thomas J held that the power to make decisions was compatible with the rules of natural justice. In that case, and it is relevant to the claimant's allegations here, the

judge found that there was an implied requirement to be given notice of any allegations and an opportunity to be heard in relation to them: 727G.

95. This was also considered by Popplewell J in Dymoke v Association for Dance Movement Psychotherapy UK Ltd [2019] EWHC 94 (QB) – here, a contractual decision-making power contained in Articles of Association was subject to an implied restriction that it must be exercised fairly. At paragraphs 56 -59, he said:

> *[The House of Lords] has identified the three principle features of the requirement of natural justice as being the right to an unbiased decision maker, notice of the charges and a right to be heard in answer to the charges. […]*
>
> *Further guidance may be found in the line of cases considering the exercise of a discretion conferred by one party to a contract on the other. It is well established that such discretion must be exercised in good faith and not arbitrarily, capriciously or unreasonably in the public law sense of Wednesbury unreasonableness i.e. irrationality […]*

96. Applying these principles, the claimant says that the following must apply:

    (a) The decision must be rational (or *Wednesbury* reasonable);

    (b) It must consider all the relevant factors and exclude extraneous matters;

    (c) The decision must have been made for proper purpose – and be made in good faith;

    (d) It must not be arbitrary or capricious; and

    (e) There must be a fair process, requiring notice of the allegation to be given, a relevant opportunity for the party to be heard and it must be unbiased.

97. I agree that these principles are relevant but it also has to be looked at in the context of a golf club – albeit a prestigious one with a significant number of members (I was told approximately 1,100). To that extent, I agree with Mr Croxford. That terms may be implied into contracts is trite law but (a) only according to a strict test of necessity and (b) where they have not been excluded by the parties – please see Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2016] AC742, paragraphs 15,16 – 21 and Reda v Flag Limited [2002] IRLR 747.

98. Moreover, and relevant to this case as it deals with social clubs, there are no contractual restraints on declining membership. In Nagle v Fielden [1966] 2 WLR 1027 where Lord Denning said:

> *"if a man applies to join a social club and is black – balled, he has no cause of action: because the members have made no contact with him. They can do as they like. They can admit or refuse him, as they please"*

99. In Lee v Showmen's Guild of Great Britain [1952] 1 All ER 1175, to which I was taken by Mr Croxford, it can be seen that the courts are loath to interfere with regard to procedure in social clubs apart from ensuring that the minimum basic standards are adhered to. This passage of his judgment is relevant:

> *"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 will not otherwise interfere…".* (Mr Croxford's underlining)

100. It, therefore, follows in my view that the strictest rules of natural justice cannot apply to such situations – this being a club situation. However, it is important to assess whether there is fair play, that the person liable to sanction has notice of the charge and that he has a reasonable opportunity to be heard. In particular, it is important to see that the committee observe the procedure laid down by the Rules.

101. It is informative to make a comparison between Rule 18 and Rule 26 in this respect. Rule 26 deals with the expulsion of a member and sets out certain procedural safeguards. It provides for the consideration of breaches of the Rules, Bye-Laws or other conduct "such as might endanger the reputation, character, interest or good order of the Club, or might offend its other Members". It is a disciplinary procedure providing for a range of sanctions up to and including expulsion. Accordingly, and generously, it provides for procedural steps including: (i) the preparation of a written statement of facts; (ii) the convening of a special meeting of the Committee; (iii) a range of sanctions from caution to expulsion; and (iv) the right of appeal in cases of expulsion.

102. Rule 18 – which is what I am concerned with here – provides for the consideration about whether a person continues to be eligible for a particular type of membership, overseas membership. I agree with Mr Croxford that it is akin to a decision whether to admit a person to a particular form of membership. It is not an expulsion decision – because the person concerned (in this case Mr Cawood) has the right to apply for Full Membership. It is not a disciplinary decision - it is all about eligibility but it does place his membership generally at considerable risk. I accept the point that the draughtsman of this Rule did not intend the same strict

level of procedure with regard to Rule 18 (as opposed to Rule 26 for example) but the overall effect is the same – in Mr Cawood's case – he will lose his membership and if he were to apply for Full Membership there was no guarantee that he would succeed.

103. This still leaves, in my view, various matters open for determination. It cannot be right that a club's decision in these circumstances cannot be challenged (as it remains a contractual arrangement between the parties) – and I refer to Lord Denning's judgment above in *Showman's Guild* which provides that there must be at least some basic level of fairness in accordance with natural justice and the principles set out in the authorities set out by Mr Crow.

104. As I have set out above, the Supreme Court has observed that "*in the absence of very clear language to the contrary*", contractual discretions will be subject to a number of implied limitations, including the requirements of rationality, proper purpose, good faith and lack of arbitrariness and capriciousness. This is particularly so where there is an imbalance of power between the parties - *Braganza.*

105. As such, unless the Club can demonstrate "*very clear language to the contrary*", the relevant terms will be implied. I cannot find anything to dissuade me from finding that these implied terms must apply – particularly against the background that I have found that the decision was incorrect.

106. In so far as natural justice is concerned, reminding myself of the authorities supporting a club's ability to regulate its membership, I also find that this must be an implied term. In *Lawlor* the facts contemplated an enquiry, and it is correct to say that in this case, it could be argued that an enquiry was necessary to establish whether he intends to reside in the UK indefinitely.

107. It is, therefore, necessary for me to decide whether these implied terms have been breached.

108. In this respect, I heard evidence from both Mr Cawood and several past and present members of the Club's committee. Specifically, the latter gave evidence in relation to their dealings with Mr Cawood, their knowledge of the allegations regarding his alleged overplaying and his status as an overseas member – to include the decision to terminate his overseas membership on the 9th May 2015.

109. The defendants' witnesses consisted of Mr Robert Seward (who was a member of the committee from 2010 to 2013 and is the 'Chairman of the Green'), Mr Stephen Toon

(Secretary of the Club since July 2004 until recently when he was pointed Secretary at St Andrews), Mr Paul Sedgwick (who is currently Vice Captain of the Club and a committee member at the time of the 9th May 2015 meeting), Mr Charles Harrison (who was Captain of the Club between March 2013 and March 2014) and Mr John Jermine (who was Vice Captain in March 2014 and Captain the following year – he, therefore, was instrumental in the decision to terminate Mr Cawood's membership.

110. In simple terms, Mr Cawood's case is that the decision to terminate his membership was as a result of dislike (leading to bias) and that the club failed to adopt a fair procedure such that the decision to terminate his membership was fundamentally flawed.

111. In view of my earlier findings, I consider the decision was incorrect in accordance with the Rules but – provided that the process was dealt with fairly – even against that incorrect decision, then the defendants can avoid liability if they can show that the decision reached was such that it met the requirements set out in the above case law – recognising the relative freedom allowed to clubs in general to regulate their affairs. This would mean that that the defendants have not breached the implied terms of the contract that I consider apply.

112. In relation to the witnesses, as a general impression, I found that they were accomplished, intelligent individuals who were well-prepared in terms of their evidence – and, in the defendant's case, adhered to the defendants' position that Mr Cawood had been given every opportunity to counter the allegations, that the decision was justified and that, either directly or indirectly, they were aware of concerns about the claimant's membership since 2010. There were one or two aspects of that evidence which I will return to later.

113. In such cases, the best evidence is often found within the documentation – and I have been provided with a considerable number of internal emails and minutes of meetings which are of assistance. The defendants claim that the claimant was repeatedly informed of the committee's concerns about his membership status – initially in 2011 and then substantially between 2014 and 2015 particularly in the period leading up to the decision.

114. On the 1st August 2014, the claimant discussed his membership status with Mr Vero (a witness who did not give evidence as he has since sadly passed away) but who, at that time, was the Chairman of the Compliance Committee and a Trustee of the Club. He records that Mr Cawood was squarely told that given his residence (although it is since known that this was only perceived) he should apply to be a Full Member.

115. The claimant accepts this but expressed concern (repeated in his oral evidence) that there was no automatic transfer of the category of membership and fearing unpopularity that he would be black–balled in any such application.

116. On the 27th February 2015, the claimant attended a meeting with Mr Jermine. In that meeting, Mr Jermine told him that he did not consider him to be permanently resident outside the UK. The note of the meeting does not record the claimant disputing this but, with respect to the defendants, I do not consider Mr Cawood's silence connotes acceptance of that position.

117. The claimant's suggestion – in his Particulars of Claim – that the use of the swipe card in the 11-month period to May 2015 as being irrelevant is said to be lacking credulity. It is claimed that this is clear evidence that the committee considered this in terminating the claimant's membership. It is said this was a reasonable decision to make when (a) there had been a history of overplaying and (b) problems had been flagged up concerning Mr Cawood's continual presence at the club since 2011.

118. The defendants say that they went over and above the requirements of natural justice in investigating the matter. Even after the decision was made, they invited the claimant to participate in an appeals process but he failed to engage. They considered his Particulars of Claim again and upheld their original decision – some time later in 2018.

119. These decisions must be viewed through the prism that they were founded on what I have determined to be a wrong conclusion. To the contrary, Mr Cawood was permanently resident abroad.

120. It is striking that Mr Cawood was never given any notice of the meeting on the 9th May 2015. I would have expected that. He was a longstanding member and he deserved better. He was, therefore, deprived of giving any opportunity to put his case or make representations in the meeting. That is, to any neutral observer, let alone myself somewhat concerning.

121. I accept that Mr Cawood's use of the Club was raised on several occasions between 2011 and 2015 – the evidence from each party confirms this. However, there is a difficulty with this. The discussions (according to the witness evidence and documentary evidence) centred around the claimant's use of the facilities – that is his "constant" presence at the Club estimated to be within the top 10% of members within the period concerned.

122. Restrictions on use of the Club as an overseas member apply to the limit of playing golf at the Club for a period of 30 days – they do not relate to use of the facilities. That is something separate.

123. Interestingly, the Rules provide that an overseas member can play additional days if a written application is made to the committee and, presumably, permission is given. Accordingly, the use of the facilities at the Club is not connected to an overseas members permanently resident status. If it was not mentioned, and it was not until in the period up to the decision, then I cannot see how Mr Cawood could have realised that his membership was in play. All the earlier correspondence deals with overplaying and use of the facilities – not residency. There is some relevance to the swipe cards but that, of itself, only addresses frequency of visits to the Club. I understand it raised concerns but it was not the whole of the question or questions that the committee should have been asking.

124. It is also of importance in my view that the evidence does not reveal any warning form the committee that they were considering terminating his membership on the grounds that he had changed his permanent residence to the UK. The complaints from members, whilst I can understand their existence, are irrelevant – the crucial issue was one of residence.

125. The claimant has claimed that this decision was motivated by personal dislike and that it was a "stitch up". It was suggested that Mr Toon had, by pre- preparing minutes, set up a decision in advance and this was endemic of the committee making decisions in advance where the outcome was a foregone conclusion. Having observed Mr Toon in the witness box, I did not form the view that the minutes had been deliberately falsified in some way – but it was unusual for him to give evidence that he wanted to distance himself from the decision-making process and then taken to a number of examples of his becoming actively involved. Examples include the preparation of the minutes in what I accept was a standardised format in advance of the meeting and his presence at the meeting on the 9th May 2015.

126. The claimant's allegation that the decision was motivated by dislike and/or malice is a significant allegation. The Club's witnesses were very careful to say throughout that they had no real dislike of Mr Cawood and that their view was entirely neutral – in the case of Mr Sedgwick (who I found to be a very honest witness) he admitted he was caught in a dilemma

- as he was friends with Mr Cawood on the one hand and yet had a duty to the Club on the other. I accept that was very difficult for him.

127. I have to say – founded on the disciplinary incident (where it was a member of Mr Toon's staff who was insulted) and the murmurings within the Club about overplaying for some years and noise in the club – complaints from senior members about use of the patio area – that it is very difficult not to accept that there was some strong element of dislike and a view that Mr Cawood was not the kind of person that the Club wishes to have as a member.

128. The problem, I consider, is that these issues became conflated. The residency issue was a convenient method of terminating his membership. There are numerous examples of the committee's ill feeling towards the claimant. Examples include:

(a) There are a series of emails which discuss Mr Cawood's alleged misconduct in 2014. Mr Vero notified Mr Jermine of Mr Cawood's alleged disciplinary incident. Mr Jermine responded "*Perhaps the opportunity for which we have been waiting"*.

(b) An email dated 2nd July 2014 from Mr Jermine to Mr Peter Hay in which Mr Jermine discusses a candidate which Mr Cawood had proposed for membership. Mr Jermine, commenting on the position adopted by others on the committee, noted "*dislike of Cawood and Buckley seem to be the main reasons for rejecting him"*.

(c) In a further chain of emails discussing Mr Cawood's alleged misconduct, Mr Jermine sent to Mr Vero an email dated 3 August 2014, which suggests that, in response to Mr Cawood's alleged misconduct, the committee could "*Apply the Overseas Rule and, perhaps, hold the other issue in abeyance pending the F&GP and General Committee approval?*" This is a clear reference to Rule 18 being used to terminate Mr Cawood's membership.

(d) Further, there is an email from Mr Jermine to Mr Vero and others on the 11th August 2014 where Mr Jermine made the comment that Mr Cawood "*is continuing to use the club as his country club with no apparent remorse*".

(e) In two emails post-dating the decision, Mr Jermine asked committee members to "*refuse any attempt by members to debate the issue and, if necessary refer them to me or to the Secretariat*" and "*not to discuss the matter with [the claimant].*"

129. It is perhaps most telling of Mr Jermine's view of the claimant that I refer to what I loosely call the "pity" letter. In 2015, before leaving the UK on 28 April 2015, Mr Cawood cleared his bar tab at the Club. Mr Toon emailed Mr Jermine on 27th April 2015 to note that Mr Cawood had cleared his bar tab. Mr Jermine's response was: "*Pity!!*"

130. At trial, Mr Jermine sought to explain that remark by suggesting that the possible sanction in the email referred to the possible cancellation of Mr Cawood's card rather than a reference to his membership. That cannot be correct.

131. The full text of the email is as follows:

"*Pity!! I was wondering if he had heard of the possible sanction and was seeking to build an unpaid bill we would never have collected.*"

132. This requires some examination:

(a) It cannot refer to the cancellation of Mr Cawood's card. Mr Jermine's reference to the 'possible sanction' in the email was made less than 14 hours after he had suggested cancelling Mr Cawood's card. I find, therefore, that Mr Jermine's reference to the 'hearing of the possible sanction' could only have been a reference to the possible sanction of terminating Mr Cawood's membership as suggested on 18th April 2015.

(b) Mr Cawood could not have 'heard of' the suggested cancellation nor sought to 'build up' the card balance in the several hours between when Mr Jermine suggested the cancellation of the card and when Mr Cawood paid off the tab (necessarily, less than 14 hours later). In fact, even if Mr Cawood did hear of the possible cancellation of his card, he did not seek to 'build up' a balance but did the opposite, immediately paid off the balance.

(c) Further still, Mr Jermine's reference to 'never collecting' the tab can only be consistent with the 'possible sanction' being a reference to the termination of Mr Cawood's membership under Rule 18.

133. I find, therefore, that he was referring to the termination of Mr Cawood's membership – not cancelling the card. It is a significant piece of evidence, in my view, because it shows, more than any other piece of evidence, Mr Jermine's underlying dislike (and the general dislike) of Mr Cawood and the intent to be rid of him.

134. Such evidence does not just flow from Mr Jermine. In a draft letter to several Club members, Mr Leslie McNeile, then the Captain, made a thinly veiled threat of disciplinary proceedings against those members should they invite Mr Cawood to attend the Club as a visitor [**B/147/476**]. It is not clear whether the letter was sent but the fact that it was mentioned in a draft is indicative of the attitude of those on the committee that they would consider threatening disciplinary proceedings against members just for inviting Mr Cawood as a guest.

135. There is also some evidence that members of the 2015 committee – including Mr McNeile and Mr Vero – were preparing a file on Mr Cawood following the termination of his membership. By email dated 31st January 2017, Mr Vero was emailing Mr McNeile to report some rumours he had heard about Mr Cawood's business dealings in the Far East. He suggested putting the rumours "*on his file*".

136. There were complaints made about Mr Cawood's alleged trespass after his membership was terminated – even though he had been invited as a guest.

137. Mr Jermine failed to pass on to the committee the reasons for Mr Cawood being in the UK during late 2014 and early 2015. He informed both Mr Jermine and Mr Sedgwick of the reasons – at trial Mr Sedgwick said he did not honestly recall that and I believe him – but I would have expected Mr Jermine to pass that information on as it was material to the discussions on the 9th May 2015. The fact that he did not indicates likely dislike. There is no doubt Mr Jermine had this information – Mr Cawood sent an email on the 30th November 2014 which is found in the bundle of documents.

138. In my view, this evidence undermines the witnesses' collective evidence (particularly that of Mr Jermine) that they were neutral or disinterested in Mr Cawood and simply seeking to apply the Rules. I do not, with respect to them, find that plausible.

139. I find, therefore, that the process was fundamentally flawed. There was no account taken of his intent – essential to an understanding of whether the claimant was permanently resident abroad. He was not given any notice of the meeting and it must follow that, as his intention was necessary so as to form that view or not – then any decision failing to take into account any evidence from Mr Cawood was irrational. In any event, for the reasons I have set out above, it was wrong.

140. The Club allowed themselves to concentrate wrongly on the days that he spent in the Club by reference to his swipe cards. Whilst I accept that this may be some evidence upon which to reach the decision that they did, it was insufficient to determine permanent residence in the UK. This is again irrational.

141. I am also concerned that, at least within some of the members of the committee, there was a strong feeling of dislike motivated by their view that the claimant was taking advantage of his overseas membership and a previous disciplinary incident (which was dealt with separately). I refer to the evidence that I have referred to above.

142. Having found – on the evidence before me that the claimant was permanently resident abroad – I find that the decision that the Club made was one no reasonable decision maker could have made. The minute of the 9th May 2015 records only one piece of evidence – the swipe cards. That is not, in my view, sufficient. There was no consideration of Mr Cawood's intentions. This is a further example of irrationality.

143. Lee v The Showmen's Guild (as above) is authority for saying that if the committee misinterpreted their Rules then it follows that the decision is irrational. Here, there was a flawed misunderstanding of the Rules for reasons I have set out above.

144. The decision was, therefore, irrational.

145. The proper purpose of Rule 18 was to limit the category of overseas membership to those who were permanently resident outside of the UK.

146. For reasons set out above, the Club concentrated (wrongly) on the perceived misuse of Club facilities. Interestingly, in his witness statement, Mr Toon says that "Mr Cawood's

attendance …. continued to be wholly inconsistent with the profile of an Overseas Member". He misdirects himself. This was not a breach of the Rules.

147. In my view, the fundamental mistake that the Club have made (if they were unhappy with the situation with Mr Cawood and the perceived taking advantage of his membership and that it was unpopular with members) then the remedy would be simply to change the Rules. They have not done so.

148. The above is sufficient evidence in my view to make a finding that the committee (particularly Mr Jermine) acted for an improper purpose and in bad faith in reaching the decision. The defendants argue that this must be "the true and dominant" purpose and that any bad faith – by failing to disclose conversations – is irrelevant if the rest of the committee acted for proper purposes. I disagree. De Smith's Judicial Review 8th Edition 2018 says this should be judged by whether the improper purpose had a material effect on the outcome. The implied restriction in the Rules is intended to protect the members from unlawful and unfair interference with their rights of membership. Mr Jermine was Captain and chairman of the committee and his views must have had a material effect on any decision made. In the alternative, therefore, I make this finding.

149. The claimant, therefore, succeeds.

150. I turn to the question of remedy. The claimant principally seeks an injunction. I am reminded that injunctive relief is a discretionary remedy and that the Court should consider all relevant factors before making a decision – Lawrence v Fen Tigers Limited [2014] AC 822 and Dyson v Pellery [2016] ICR 688 (at paragraph 18).

151. There are examples of where the Court will not grant injunctive relief – for example, where it would force parties to work together in a relationship of trust and confidence – Warren v Mendy [1989] 1 WLR 853 or where they would have to work together where the relationship has broken down – Nothman v London Borough of Barnet [1980] IRLR 65.

152. Other examples include where an expulsion decision was correctly decided (Glynn v Keele University [1971] 1 WLR 487 and where delay would make it unjust – Legends Live Limited v Harrison [2017] IRLR 59.

153. Against this, I must accept that it is trite law that an injunction will usually be granted where damages are inadequate. Chitty on Contacts (33rd Edition, 2018) defines the test as "just, in all the circumstances, that a [claimant] should be confined to his remedy in damages?".

154. Chitty also says "Damages are considered to be an adequate remedy where the claimant can readily get the equivalent of what he contracted for from another source". [27 -020]

155. The main thrust of the claimant's claim is for an injunction. Damages are negligible and not the claimant's main purpose which is to retrieve his membership of a prestigious club – and it is interesting to note that these proceedings were originally allocated to the small claims track based on value – it is because of the injunction application (and the complexity of issues) that it was transferred to the multi-track.

156. This is an emotive type of case. Membership of any sports club – particularly where one is a longstanding member and where sport is a love of one's life, is extremely important. To certain people, where golf is concerned, such a membership is more than simply playing golf – to many it is a lifestyle choice and with a significant social element. Mr Cawood is a longstanding member, enjoys playing golf and having use of the facilities. Sunningdale Golf Club is a top prestigious Club and if he were, for example, to seek membership at another Club then it would be very difficult for him to find an equivalent alternative – if at all. He has many of his closest friends there.

157. It is my view that, unless the law says otherwise, any damages that I could award would be inadequate. The Club is unique in many ways.

158. The Court will grant an injunction to protect a member's property rights. – I refer to Snell's Equity (33rd Edition, 2014) "*An injunction may be granted to restrain the wrongful expulsion or exclusion of a member from a members' club; the court interferes to protect the member's proprietary interest in the assets of the club.*" This is also demonstrated in Baird v Wells 91890) 44 Ch.

159. The definitive position is set out in Lee v The Showmen's Guild referred to previously. At Page 342, Lord Denning sets out a summary of the position:

> *"…the power of this court to intervene is founded on its jurisdiction to protect rights of contract. If a member is expelled by a committee in breach of contract, this court will grant a declaration that their action is ultra vires. It will also grant an injunction to prevent his expulsion if that is necessary to protect a proprietary right of his; or to protect him in his right to earn his livelihood … but it will not grant an injunction to give a member the right to enter a social club, unless there are proprietary rights attached to it, because it is too personal to be specifically enforced … That is, I think, the only relevance of rights of property in this connexion. It goes to the form of remedy, not to the right."*
> (My underlining)

160. The key passage is the exception underlined above. It follows that, in Club cases, the Court will grant an injunction where there are proprietary rights to be protected.

161. Indeed, there is an argument here for this right being extended to situations where there are no proprietary rights. In Young v Ladies Imperial Club Limited [1920] 2 KB 523 the Court of Appeal held that an expelled member of a Club who had no rights in the property of the club was entitled to succeed in her claim for an injunction.

162. However, in this case, I am satisfied that Mr Cawood has been deprived of his proprietary interest in the Club's property. The Club accepts that he is no longer a beneficiary of the trust under which the Club's property is held. In my view, he has been deprived of his equitable property rights in the Club's property in breach of contract.

163. He cannot access the Club and make use of its facilities. He cannot enter the Club unless he is invited to do so as a guest. I am satisfied that he has the right to enjoy the property as a beneficial joint owner.

164. The defendants have claimed that the relationship with members of a social club is a personal one in which the grant of injunctive relief is not appropriate. Mr Croxford says that any proprietary rights that exist would only have a real significance if the Club were dissolved and its assets distributed which is unlikely.

165. I disagree. For the reasons set out in paragraph 163 above, I find that Mr Cawood does have proprietary rights applying *Showmen's Guild.* I consider it is more important to protect his rights to enjoy the property rather than an unlikely scenario where the Club is dissolved. There is no doubt the Club is a thriving and popular club.

166. The strongest point against granting an injunction, and which is one that Mr Croxford makes, is, in my view, the breakdown of trust and confidence between the parties. In my view, that would be important within a small club I think – but this is a club with an international reputation, and it has no less than 1,100 members. I accept that there will inevitably be some difficulty due to the clash of personalities evident in the oral evidence I heard but, in such a large club, I am satisfied that the risk of that would be small, that the parties as a whole are sensible, and that any tension or conflict could easily be managed and avoided.

167. I have considered delay. In my view, the injunction corrects the mischief and the question of delay is not significant. I am not convinced that the relationship has deteriorated to such an extent that delay has had an effect on that relationship.

168. I, therefore, consider that an injunction should be granted in the terms sought.

169. In so far as damages are concerned, it is accepted by both parties that these would be relatively nominal. It is almost impossible to calculate as there is little in the way of guidance. I have been shown some authorities – such as Collins v Lane, Cornish and Worcester Norton Sports Club [2003] LLR 19 where £250.00 was awarded. Any award must be low considering that the claimant's principal objective of an injunction has been achieved.

170. I award the claimant the sum of £250.00 to reflect some embarrassment caused by the decision but no more.

171. The question of any applications or consequential orders such as the terms of the injunction and costs can be dealt with following the handing down of this judgment.

HHJ SAUNDERS

20th DECEMBER 2019