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*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ANDREAS MIHAIL

(Claimant/Appellant);

-and-

LLOYDS BANKING GROUP

(Respondent).

Before: Girvan LJ, Coghlin LJ and Deeny J

COGHLIN LJ (delivering the judgment of the court)

[1] This is an appeal by Andreas Mihail ("the appellant") from a decision of an Industrial Tribunal sitting in Belfast from 4 to 6 June 2013 dismissing the appellant's claims of unfair dismissal, disability discrimination and breach of contract. Mr Mihail represented himself while Ms Rachel Best appeared on behalf of the Lloyds Bank Group ("the respondent"). The court wishes to acknowledge the assistance that it derived from the carefully prepared oral and written submissions of both the appellant and counsel.

The factual background

[2] The appellant entered employment with the respondent on 16 July 2001 as a Customer Sales Adviser. He had previously worked for some 23 years as Managing Director of his own company in the fashion industry and he saw his employment with the respondent as an opportunity to increase his knowledge in the service element of business prior to retirement. The appellant was dismissed by the respondent on 15 October 2012 when he was then working as a Band A Customer Advisor dealing with customers' telephone calls. The ground relied upon by the respondent for the dismissal was that of gross misconduct in that appellant had:

(*i*) committed breaches of the Customer Verification Procedure ("CVP"), and

(*ii*) had refused to promote the respondent's internet banking services in the course of telephone contact with customers.

[3] The Tribunal found as a fact that the appellant and the respondent had been involved in a wide range of disputes for some time with the appellant maintaining that his problems had started some ten years earlier when he did not receive a sales bonus at a level to which he was entitled as part of a "hidden agenda" on the part of the respondent. In November 2009 the appellant received a first written warning for misconduct from Glen Stephenson, Team Manager, with regard to alleged misconduct in the manner in which he had dealt with a telephone call from a customer. In the course of an exchange of e-mails between the appellant and the same team manager in April 2010 the appellant expressed strong dissatisfaction with the respondent's emphasis on sales – "we are not sales persons and the requests you are making are totally unreasonable … Personally I feel I am being unreasonably pushed in a direction I do not want to go in nor have any intentions in pursuing and the stress levels around me are on the rise." In the same exchange Mr Stephenson pointed out to the appellant that, as a customer service consultant, his role included sales.

[4] The appellant was absent from work from June until November 2011.

[5] By letter dated 6 September 2011 the appellant was invited to attend a disciplinary meeting to deal with an allegation that, despite previous discussions and having the requisite knowledge and understanding, he had failed to adhere to Customer Sales Prompts Processes when engaged in telephone calls with customers.

[6] A disciplinary meeting was held on 1 October 2011 which was attended by the appellant and a union representative. The appellant acknowledged that he had not adhered to the Sales Prompts Process but he also emphasised his objections to the sales element of his role. He explained that he had lost faith in the protocol process and expressed the view that he should be permitted to exercise his own judgment in deciding which services an individual customer might want. By letter dated 17 October 2011 the respondent informed the appellant that he was being given a first written warning for misconduct for failing to adhere to the Customer Sales Prompt Processes.

[7] On 20 October 2011 the appellant was examined by a consultant in occupational medicine. In the course of giving a history to the consultant, the appellant stated that he had been treated for a depressive illness for about three years that had been precipitated initially by the death of his mother, that he greatly disliked the selling aspect of his role and that his work situation had more recently contributed to his anxiety and depressive symptoms. He explained that he had moral objections to the selling role which he had discussed with management and freely admitted that, on one occasion, these objections had led to him failing to follow protocol which had resulted in disciplinary proceedings. The consultant noted that the appellant was the holder of an MBA qualification together with a

degree in international marketing and that he had a long history of working in the sales industry, including acting as the Managing Director of his own company. As such the consultant expressed surprise at his "relationship to undertaking sales in his current job, excluding his moral argument." He expressed the view that the treatment which the respondent had arranged for the appellant to receive appeared appropriate but that he might benefit from further treatment. However, he also recorded that such further treatment would be unlikely to affect the appellant's moral objections to the selling aspect of his role. In such circumstances the consultant expressed significant concerns about the appellant being able to return to his current post without significant change including a reduction or removal of the sales component. The consultant considered that, if it was possible, such a return, without a sales role, should be encouraged rather than continuing long-term absence. Such a return would allow completion of the appellant's grievance process and consideration of further long term options.

[8] The appellant returned to work in November 2011 upon what he appeared to regard as a "rehabilitation plan with no sales". It was common case before the Tribunal that sales targets were removed from the appellant and his sales performance was not to be further assessed. The arrangement was that if a customer directly asked the appellant in the course of a telephone conversation for a service, such as a loan, he was entitled to proceed with such a request. However, he was not required to positively market such services as part of his role.

[9] The appellant initiated a grievance by letter dated 20 October 2011 alleging unreasonable, bullying and dictatorial behaviour on the part of the respondent, disregard of and abuse of his (the appellant's) strengths and micro-managing his weaknesses with a possible "hidden agenda". He also complained of failure to informally address a disability issue and take corrective action involving discriminatory behaviour against him for longer than three years. The appellant also appealed against the outcome of the disciplinary process.

[10] Some delay took place with regard to the hearing of the appellant's grievance resulting from the appellant's objection to the hearing being conducted by a Mr Manning and his request for the matter to be heard by an external hearing manager. On 21 November 2011 Ciaran Moore conducted the grievance hearing and, following the meeting, Mr Moore met separately with three other members of staff on 24 and 28 November in order to investigate the appellant's grievance. At those meetings the members of staff confirmed that they had always known about the appellant's reaction to the death of his mother and given him support. However they also said that, when it had previously arisen, his difficulty with sales had always been expressed by him as a moral issue. Mr Moore was informed that, since he was now apparently relating his problem with sales distress, it would be necessary to reconsider the situation and they confirmed that they were not considering any sales work for the appellant until the following year.

[11] By letter dated 30 November 2011 Mr Moore informed the appellant that his grievances had been rejected and that the matters raised were to be dealt with as follows:

(*a*) Firstly, with regard to the appellant's concern about the accuracy of the informal well-being assessment, the letter assured the appellant that he had the right to review minutes of any meeting and to provide amendments where necessary and that, even if not agreed, such amendments would be kept and considered in terms of any future action.

(*b*) Secondly, the appellant was reassured that he had been fully considered for promotion in the setting up of the complaints team even without recommendation from the team manager.

(*c*) Thirdly, that the appellant's performance around sales had been managed within policy and procedure. It was accepted that the appellant had shown other key strengths but sales were an integral part of the job and his performance needed to be balanced and managed across all aspects of his role. The letter confirmed that it was only as a result of the appellant's recent absence that the management team had become aware of a potential association between the sales aspect of the appellant's role and his health. Mr Moore recommended that, based on the occupational health report, that connection would be fully considered and that reasonable adjustments had been and would be made.

[12] On 12 December 2011 the appellant appealed the outcome of the grievance procedure and an appeal hearing, to be conducted by Neal Mockford, was arranged to take place on 6 March and 3 April 2012. The appellant attended the appeal accompanied by a representative. During the course of March 2012 Mr Mockford interviewed ten people for the purpose of investigating how members of staff had achieved their roles, the nature of the process for team selections, how other members of staff interacted with the appellant and the appellant's contribution to various projects. During this period the existing three teams concerned with late shifts in relation to credit card queries were reduced to two under the line management of Glen Stephenson and Rachel Chambers. The appellant was moved from Mr Stephenson's team to Ms Chambers' team in April 2012.

[13] On 18 May 2012 the appellant was informed by a letter from Neal Mockford that his appeal against the grievance outcome had been unsuccessful. Once again, the letter dealt in some detail with the various concerns that had been expressed by the appellant. By letter dated 30 May 2012 the appellant indicated his wish to appeal this decision but no internal procedure for further appeal existed.

[14] Further incidents of non-compliance with protocols/policies occurred and on 27 July 2012 a disciplinary meeting took place between the appellant and the new line manager, Rachel Chambers. During this meeting the appellant confirmed his refusal to promote internet banking when discussing matters with customers. He expressed his view that internet banking registration was a "headache", the process was broken and he was not prepared to be "a Del Boy who sells broken down cars". He described the service as a "waste of time". He was reminded that, at an earlier meeting on 18 July, he had said that he would not promote internet banking as to do so would be detrimental to his job insofar as the more customers who registered the more chance there was of losing his employment. He had been instructed to promote the service.

[15] The appellant was subsequently invited by the respondent to attend a disciplinary meeting on 10 September 2012 to answer allegations that:

(*i*) he had breached the CVP on three specified dates by failing to ask customers the correct number or type of security questions and had failed to acknowledge the breaches or their importance; and

(ii) he had breached the requirements of his role by refusing to carry out the promotion of internet banking.

Before the disciplinary meeting took place the respondent carried out a review of telephone calls since the start of July. These appeared to show breaches of the CVP and the appellant received coaching in relation to two of those calls.

[16] On 21 September 2012 an investigation meeting took place between the appellant and Rachel Chambers. The appellant refused to accept that there had been as many as three breaches of the CVP since the start of July but accepted that in relation to one of the breaches he had not followed the correct process because he had suffered "just a blank moment – no reason a lapse of concentration – that's all I can say". At the end of that investigation meeting the appellant was suspended from duty.

[17] A further investigatory meeting with Lisa Dempsey took place on 24 September 2012 again in an attempt to understand the reasons for the alleged CVP breaches. The appellant stated that he had said everything he needed to say and agreed that he had admitted to making a mistake.

[18] On 2 October 2012 the appellant was sent a letter inviting him to a disciplinary meeting on 9 October 2012 to deal with his refusal to carry out promotion of internet banking and the alleged breaches of the CVP. The meeting was conducted by Patrick Crawford and the appellant attended together with a union representative. At the meeting the appellant accepted that he had breached the CVP on one call on 18 September 2012 but disputed the allegations in relation to calls on 10 February and 15 August 2012. He again maintained that he would not

promote the internet banking service which he regarded as a sale. As a consequence of that meeting the respondent concluded that the appellant would continue to deviate from company policy, guidelines and requests and that this would pose a business risk. The respondent concluded that dismissal was appropriate and, by letter dated 12 October 2012 the appellant was dismissed with effect from 15 October 2012. The appellant appealed that decision by letter dated 16 October 2012. An appeal meeting was held on 12 November 2012 chaired by Lynn Dalglish. The appellant attended together with a trade union representative. His appeal was dismissed.

The Tribunal proceedings

[19] Before the Tribunal the appellant alleged unfair dismissal, disability discrimination, victimisation and breach of contract.

[20] The claims lodged by the appellant with the Tribunal were case managed and, at a Case Management Discussion on 19 December 2012, the issues for determination by the Tribunal were agreed between the parties. Following that discussion a written record of the agreed issues was sent to both the claimant and the respondent. The full details of that record were set out by the Tribunal at paragraph 5 of the decision. The claimant and seven witnesses on behalf of the respondent exchanged written witness statements in advance of the hearing. It was agreed that the written witness statements were to be read as evidence in chief and that any cross-examination and re-examination was to be conducted on the basis of those statements. The case-management record dated 28 December 2012 required witness statements to be exchanged in accordance with a specified timetable and provided that:

> "A witness statement must be a complete statement of the evidence relating to the issues, in respect of both liability and remedy, in the case that the witness wishes to give to the Tribunal. A witness will not be permitted to add to his statement without the consent of the Tribunal. Consent will only be given where there is good reason for doing so."

[21] The hearing commenced with a reading day on Monday 3 June 2013 which was to be followed by two days of evidence on the Tuesday and Wednesday and submissions on the Thursday. On 4 June 2013 the appellant produced a letter from his GP dated 3 June 2013. The appellant wished to submit the letter as evidence in respect of the first specified issue ie. whether or not he had been disabled. The Tribunal advised the appellant that the production of unsworn evidence at the last minute without notice to the respondents was unsatisfactory, particularly where the evidence purported to relate to a central issue in the case. He was reminded of the specific directions of the Tribunal with regard to witness statements and the earlier agreement of the parties to the identification of the issues. The appellant claimed

that he had not understood that the Occupational Health Report disclosed by the respondent would not be sufficient in relation to the issue of disability and that he would be required to produce his own evidence as to that issue until he had spoken to a "barrister". On Wednesday 5 June 2013 the appellant asked the Tribunal to permit the introduction of oral evidence from the GP who would be available to give evidence on Friday afternoon. No communication from the GP indicating such availability was produced.

[22] The Tribunal carefully considered the appellant's application and at paragraph [10] of the decision the Chairman observed:

> "The purpose of the case-management procedure was to avoid difficulties of this nature and to avoid the unnecessary reconvening of cases and the unnecessary disruption of cases. The Tribunal is firmly of the view that the claimant knew what was required of him and, for whatever reason, failed to secure the necessary evidence and failed to put himself in a position where he could comply with the Tribunal's directions. If his application for a further witness had been acceded to, the respondent would not have been in the position to call rebuttal evidence and submissions would have been significantly delayed. Given the claimant's clear understanding of the obligations placed upon him and his equally clear disregard for those obligations, the Tribunal concluded that it would not be appropriate to delay the determination of this matter by reconvening on the Friday to allow for the possible attendance of the claimant's GP with the inevitable requirement for rebuttal evidence and the equally inevitable delay in final submissions."

In such circumstances the Tribunal refused the appellant's application.

[23] The Tribunal ultimately rejected all of the claims put forward by the appellant in a detailed, carefully constructed and well-reasoned decision that recorded the relevant legislation, authorities and finding of fact.

The grounds of appeal

[24] The grounds of appeal relied upon by the appellant may be conveniently summarised as follows:

(*i*) The refusal of the Tribunal to adjourn in order to permit the plaintiff to introduce the evidence from his GP and to permit the GP to attend court as a witness.

(*ii*) Permitting the respondent to withdraw critical witness statements from the hearing which the Tribunal had already read, thereby depriving the appellant of the opportunity to prove forgery on behalf of the witnesses.

(*iii*) Failing to afford the appellant a fair hearing as a personal litigant and, in particular, inhibiting proper cross-examination relating to any subject other than discrimination.

Preliminary application

[25] Before this court the appellant sought to admit a statement from a Questioned Document Examiner as expert evidence tending to show that the signature on a letter dated 9 November 2011, purporting to be that of Matthew Manning an HBOS employee, had been forged. At the relevant time Mr Manning was a Service Coach for the Northern Ireland and North West Service Region and he had been corresponding with the appellant with regard to the grievance procedure. The appellant accepts that Mr Manning had written to him on 1 November acknowledging receipt of his grievance letter of 20 October and notifying him that the matter would be fully investigated. A copy of the HBOS Grievance Policy and Procedures was attached to the letter. The appellant also accepts that he received a letter from Mr Manning on 9 November 2011 advising that there had been a delay in the grievance hearing resulting from the request by the appellant for a hearing manager outside Belfast Gasworks but that a hearing manager was now in place and would contact the appellant shortly to schedule a hearing date and time. The appellant wished to challenge the signature to a second letter dated 9 November 2011 purporting to come from Mr Manning in which he was informed that the hearing would be delayed outside the timescale detailed in the Grievance Policy because of the delay in appointing a hearing manager. That letter also confirmed that a hearing manager was in place and would be in touch with details of a date and time for the hearing.

[26] In giving consideration to the application for the admission of fresh evidence by the appellant this court reminded itself that this was an appeal from a lower tribunal to which such evidence had not been tendered. After careful review of the relevant circumstances, we did not consider that the admission of the evidence of the Document Examiner would have been relevant to any of the issues raised before the Tribunal or the grounds of appeal and, accordingly, the appellant's application was rejected.

The relevant framework of authorities

[27] This is an appeal from an Industrial Tribunal with a statutory jurisdiction. On appeal, this court does not conduct a re-hearing and, unless the factual findings made by the Tribunal are plainly wrong or could not have been reached by any reasonable Tribunal, they must be accepted by this court (McConnell v Police Authority for Northern Ireland [1997] NI 253 per Carswell LCJ; Carlson Wagonlit Travel Limited v Connor [2007] NICA 55 per Girvan LJ at paragraph [25]). In Crofton v Yeboah [2002] IRLR 634 Mummery LJ said at paragraph [93] with reference to an appeal based upon the ground of perversity:

> "93. Such an appeal ought only to succeed where an overwhelming case is made out that the Employment Tribunal reached a decision which no reasonable tribunal, on a proper appreciation of the evidence and the law, would have reached. Even in cases where the Appeal Tribunal has "grave doubts" about the decision of the Employment Tribunal, it must proceed with "great care", British Telecommunications PLC v-Sheridan [1990] IRLR 27 at para 34."

In Curley v Chief Constable of the PSNI [2009] NICA 8 this court observed at paragraph [14]:

> "[14] It is clear from the relevant authorities that the function of this court is limited when reviewing conclusions of facts reached by the Tribunal and that, provided there was some foundation in fact for any inference drawn by a Tribunal the appellate court should not interfere with the decision even though they themselves might have preferred a different inference. As Carswell LCJ, as he then was, observed in Chief Constable of the Royal Ulster Constabulary and Assistant Chief Constable A H v Sergeant A [2000] NI 261 at 273:
>
> '[4] The Court of Appeal which is not conducting a rehearing as on an appeal, is confined to considering questions of law arising from the case.'"

[28] This court recognises the concerns and difficulties likely to be experienced by personal litigants seeking to conduct their cases in accordance with adversarial process in tribunals and/or courts. The Courts and Tribunals Services has published a freely available guide to proceedings in the High Court for people without a legal representative in September 2012 – "A guide to proceedings in the High Court for people without a legal representative". Personal litigants cannot be

expected to have the same familiarity with legal practice and procedure as professionally qualified lawyers. However such proceedings must be conducted on the basis of relevant issues and rules of evidence and must not be permitted to become vehicles for wide ranging criticisms of economic/corporate policy/morality. Tribunals must be conscious of the need to comply with the overriding objective contained within Regulation 3 of the Industrial Tribunals (Constitutional Rules of Procedure) Regulations (Northern Ireland) 2005 which is based on the provisions of Order 1 Rule 1A of the Rules of the Court of Judicature. In the course of his judgment in Peifer v Castlederg High School and Western Education and Library Board Girvan LJ observed at paragraphs [3] and [4]:

> "[3] …. Having regard to the imperative nature of the overriding objectives tribunals should strive to avoid time wasting, repetition, the failure of parties to concentrate on relevant issues and the pursuit of irrelevant issues and questions. Our system of justice properly regards cross examination as a valuable tool in the pursuit of justice but that tool must not be abused. Tribunals must ensure proper focus on the relevant issues and ensure that time taken in cross examination is usefully spent. The overriding objectives, which are of course always intended to ensure that justice is done, impel a tribunal to exercise its control over the litigation before it robustly but fairly. Tribunals can expect the appellate and supervisory courts to give proper and due weight to the tribunals' decisions made in the fulfilment of their duty to ensure the overriding objectives…
>
> [4] When parties before the tribunal appear in person without the benefit of legal representation the lack of legal experience on the part of the unrepresented party may lead to the pursuit of irrelevancies and unnecessary length of proceedings. While tribunals must give some latitude to personal litigants who may be struggling in a complex field they must also be aware that the other parties will suffer from delay, incur increased costs and be exposed to unstructured and at times irrelevant cross examination. While one must have sympathy for a tribunal faced with such a situation the tribunal remains under the same duty to ensure that the overriding objectives in Regulation 3 are pursued."

This court confirmed and recommended the approach suggested by the learned Lord Justice in the subsequent decision of Rogan v South Eastern Health and Social Care Trust [2009] NICA 47.

[29] Girvan LJ returned to the subject in Veitch and Red Sky Group [2010] NI 39 when, at paragraph [21] of the judgment of this court, he referred to the undesirable length of some Tribunal hearings, the overriding objective and the decisions in Peifer and SCA Packaging v Boyle [2009] UKHL 37. The learned Lord Justice noted that Tribunals should feel encouraged to set time limits and timetables to keep proceedings within a sensible time frame and went on to say:

> "In many instances unnecessary protracted oral evidence could usefully be avoided by requiring a party to ensure that the evidence in chief of witnesses should be provided in the first instance in a written statement with the witness then being available for cross-examination only. If a party complains that in the course of case management the tribunal has unfairly conducted the hearing or interfered with the party's fair trial rights that will raise an issue of law which should be pursued in the appeal process and should not generate a separate complaint of misconduct. It is ultimately a matter for this court to determine whether proceedings have been conducted fairly or unfairly. In the event of contentious rulings in relation to the management of a case the tribunal should record succinctly its reasoning so that, in the event of an appeal, this court can determine the fairness of the approach taken. Applying the presumption *omnia praesumuntur* fairness will be presumed unless the contrary is shown."

The appellant's grounds of appeal.

Failure to permit the appellant to put his GP report in evidence and call his GP as a witness

[30] Having regard to the case management discussion on 19 December 2012 and the subsequent provision of the written record of that discussion, we have no doubt that the appellant must have been fully aware that one of the fundamental issues was whether or not he was disabled. The case management record of 28 December 2012 also confirms that the appellant ought to have been fully aware of the importance of providing the Tribunal with relevant witness statements. In such circumstances, it is not difficult to sympathise with the frustration of the Tribunal when, on 4 June 2013, the second day of the agreed hearing, it was presented with the "to whom it may concern" document from the appellant's GP dated 3 June 2013.

The appellant told the Tribunal that, after he had spoken to a "barrister", he knew that the Occupational Health Report commissioned by the respondent did not determine the issue of disability and that he was required to produce evidence.

[31] The appellant informed this court that he had applied to the Pro Bono Unit of the Northern Ireland Bar for assistance in January/February 2013 but that he had not received any response to that application until two days before the commencement of the Tribunal hearing. He said that he was then given a copy letter to give to his GP, that his GP saw him the following day and that was the letter that he produced to the Tribunal. The appellant does not appear to have drawn his application to the Pro Bono Unit to the attention of the Tribunal at the case management meeting on 14 March 2013 and he did not inform the Tribunal on 4 June that he had originally applied to the Pro Bono Unit as long ago as January or February of that year. In the circumstances, this court found it difficult to accept the explanation provided by the appellant.

[32] Despite the rejection of the appellant's application to admit the evidence we note that the Tribunal did give consideration both to the occupational health report and the GP letter in the course of its decision at paragraphs 31 to 35. At paragraph 34 the Tribunal recorded that:

> "34 No other medical evidence was put forward by the claimant other than an unsworn letter from his GP dated 3 June 2013. That unsworn letter, which was obviously not open to cross-examination, states that:-
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> > 'However, due to problems of concentration he has had problems with his memory, his ability to concentrate and apply himself to whatever task was at hand. This ability to assimilate and take on information can lead to poor judgment calls resulting in him putting himself at risk'.
>
> 35 This unsworn letter does not refer to the relevant periods and does not deal with the issue of substantial adverse effect. Even if it had been sworn, it would have had little significant impact on the determination of this issue."

[33] This court has given careful consideration to the application made to the Tribunal by the appellant and the content of the GP document dated 3 June 2013. While the late production of this document clearly failed to comply with the careful case management process instituted by the Tribunal to ensure that the evidence of both parties was exchanged and submitted to the Tribunal sufficiently prior to the

hearing it remains necessary to consider whether, in the overall interests of justice, the Tribunal should have arranged an adjournment. Having given the matter careful consideration, we are not persuaded that the appellant suffered any significant prejudice as a consequence of the rejection of his application to admit the letter and we note from the transcript that, when asked, he was unable to provide any specific information as to how the presence of his GP as a witness would have materially advanced his case. We further note that, after taking account of the occupational health report and the GP letter, the Tribunal recorded at paragraph 69 of the decision:

> "69. Even if the claimant had been able to establish that he had been disabled at any or all of the relevant times for the purposes of the 1995 Act, the unanimous decision of the Tribunal is that he would have failed to establish any matters which would have justified an inference of unlawful discrimination of whatever type under the 1995 Act being drawn by this Tribunal. He would therefore have failed in his initial task of shifting the burden of proof to the respondent."

In such circumstances, we reject this ground of appeal.

The withdrawal of the witness statements

[34] In accordance with the case management directions of the Tribunal the respondent had submitted witness statements from Ciaran Moore and Neal Mockford prior to the hearing. The former was a Customer and Performance Coach in Northern Ireland for the respondent while the latter was a Service Manager. The former conducted the appellant's grievance hearing on 21 November 2011 as an independent manager outside the appellant's working structure and the latter conducted the appellant's appeal from that hearing. Again, it is important to note that Mr Mockford was chosen by the appellant to hear his appeal. In his statement to the Tribunal the only complaint made by the appellant with regard to the initial grievance hearing appears to have been that of delay and he referred to the "admirable efforts" of Mr Mockford to deal with his appeal. The transcript of the Tribunal hearing confirms that, at the conclusion of the appellant's evidence the respondent was asked how many witnesses they wished to call and stated that they would call five out of their seven witnesses. The appellant does not appear to have made any objection at that point.

[35] In his ground of appeal relating to the statements of Mr Moore and Mr Mockford the appellant has alleged that withdrawal of their statements deprived him of "proving criminal actions in the form of forgery of evidence provided by them". There does not appear to be any suggestion that either Mr Moore and or Mr Mockford were themselves guilty of forgery. The only allegation of forgery

raised by the Questioned Document Examiner related to the signature of Mr Manning upon one of the letters dealing with the delay in holding the grievance hearing. While Mr Moore did refer to these letters in the course of his statement he did so simply as a means of explaining the delay. Mr Manning's correspondence with the appellant was not mentioned at all in the statement of Mr Mockford which, we note, was generally favourable to the appellant. In the circumstances, we also reject this ground of appeal.

The appellant as a personal litigant before the Tribunal

[36] In accordance with the decision of this court in Veitch, the Tribunal in this case took pains to ensure that the litigation was effectively case managed. The legal issues were agreed between the parties on 19 December 2002 and the written record of the meeting furnished to both the appellant and the respondent's representatives. Disability-related discrimination was clearly recorded as one of the agreed issues. During the case-management process it was pointed out to the appellant that witness statements had to be exchanged in accordance with a specified timetable emphasised that such statements required to be a complete statement of evidence in respect of both liability and remedy. Such a direction was confirmed in writing in the case-management record of 28 December 2012. By notice dated 17 January 2013 the respondent sought discovery from the appellant of "all medical evidence which you will seek to rely on in relation to proving you are disabled for the purposes of the Disability Discrimination Act 1995, including but not limited to GP records and all other medical notes". On the same date the respondent served a "notice for additional information" seeking specific details of any relevant impairment alleged to have been suffered by the appellant together with the effects of an such impairment, the nature of any medical advice sought, the nature of any medical treatment received together with specific details of disability related discrimination. The appellant responded to the notice for discovery by affirming that he would only be relying on documents that had already been furnished to the respondent and that the respondent was already in possession of his medical file. Notwithstanding the case management directions and discovery notice the appellant did not produce any evidence from his GP until 4 June 2013 when the letter dated 3 June 2013 was put forward in relation to the issue of disability. On the second day of the substantial hearing, 5 June 2013, the appellant stated that he wished to call oral evidence from his GP on the Friday afternoon.

[37] At paragraph [10] of the decision, with regard to the late application by the appellant to produce evidence from his GP, the Tribunal recorded that the issue of whether or not the claimant has been disabled for the purpose of DDA was a central issue in this litigation from the commencement of litigation. It was clear from the respondent's initial IT 3 response that that was the position. It remained the position throughout the case-management process and it was highlighted and identified as the first issue to be determined. The claimant was further instructed

orally and in writing that the witness statements had to cover the issues set out in the CMD record, including the first issue. The purpose of the case-management procedure was to avoid difficulties of this nature and to avoid the unnecessary reconvening of cases and the unnecessary disruption of cases. The Tribunal was firmly of the view that the claimant knew what was required of him and, for whatever reason, failed to secure the necessary evidence and failed to put himself in a position where he could comply with the Tribunal's directions. If his application to call a further witness had been exceeded to, the respondent would not have been a position to call rebuttal evidence and submissions would have been significantly delayed. Given the claimant's clear understanding of the obligations placed upon him and his equally clear disregard of those obligations, the Tribunal concluded that it would not be appropriate to delay the determination of this matter by reconvening on the Friday to allow the possible attendance of the claimant's GP with the inevitable requirement for rebuttal evidence and the equally inevitable delay in final submissions.

[38] It seems clear from the content of the decision that the manner in which the appellant chose to conduct the hearing caused a degree of frustration to the Tribunal which felt compelled to intervene upon a number of occasions in an effort to encourage the appellant to "keep to the point". At paragraph [11] of the decision the Tribunal observed that:

> "Again, despite the clear identification of the issues before this Tribunal, the claimant in his written statement and in his cross-examination repeatedly tried to turn this litigation in a form of public inquiry into the banking industry at large and into the respondent's activities in particular, without any focus or any regard for the actual issues to be determined by the Tribunal. For example, the claimant repeatedly raised an alleged incident some ten years before his eventual dismissal in which he had not received a sales bonus to which he felt he was entitled. He raised the fact that he was not of British origin and suggested racial discrimination; an allegation that appeared nowhere in the claim. He queried the fact that he had been moved to a female manager but never appeared to articulate sex discrimination. He repeated allegations against an individual who he frequently described as '*a dysfunctional manager*.' This was not a manager who had any direct or relevant contact with the claimant. He criticised the actions of CEOs of the respondent organisation. He referred to what he called the 'PPI fiasco that I advised him about ten years ago'. In short, it was extremely difficult to persuade the

> claimant to concentrate on the issues which were properly for determination by the Tribunal."

[39] It is to be noted from the portion of the transcript made available to this court that, quite apart from any disability from which he may have suffered, during the hearing the appellant sought to make the case that his dismissal was the product of an "agenda" by certain management employees that had been going on for some ten years. When asked by the Chairman about the reason for such an agenda being pursued the appellant replied:

> "Because of my ability as I opened up communications with directors and I was honest and I did not lie to protect my job. They were looking to get rid of me because I opened up communications with the directors … It started ten years ago – I was not given a bonus because I would not sell a credit card."

[40] Elements of the 'statement' furnished to this court by the appellant by way of skeleton argument in support of the grounds of appeal also confirmed a tendency towards a wide ranging and discursive approach to the litigation. He alleged that the respondent had engaged in illegal behaviour and instructed the appellant to commit illegal acts. Such an allegation was not part of his witness statement or his original claim form before the Tribunal. He also submitted that his claim included "the true legally accepted discrimination called racial discrimination." No claim based upon an allegation of racial discrimination was included by the appellant in his original claim form, the agreed statement of issues or his evidence before the Tribunal.

[41] In this case the Tribunal quite properly sought to comply with the directions of this court in cases such as Peifer and Veitch with regard to ensuring reasonable expedition and due diligence on the part of the parties through effective case management. The Tribunal clearly had the advantage of seeing and hearing the appellant and the other witnesses being examined and cross-examined at first instance. We have given careful consideration to the appellant's complaints with regard to the conduct of the litigation by the Tribunal. However, in doing so, we bear in mind the observations by Girvan LJ in this court in Magill v Ulster Independent Clinic [2010] NICA 33 when he said at paragraph [16]:

> "The personal litigant cannot have an unfair advantage against represented parties by seeking to rely on inexperience or a lack of proper appreciation of what the law requires. The application of legal principles poses a duty on the court to examine cases objectively without fear or favour to any party, represented or unrepresented. While courts are

> conscious of the difficulties faced by a personal litigant representing herself and will strive to enable that person to present her case as well as they can, the dictates of objective fairness and justice preclude the court from in any way distorting the rules or the requirements of due process because one party is unrepresented."

In the circumstances of this particular case, we have not been persuaded by the appellant's submissions that the conduct and control of the litigation by the Tribunal was in any respect unlawful or unjust.

[42] Accordingly, for the reasons set out above, the appeal will be dismissed.