

**IN THE MATTER OF ASA COMPLAINT 2018/014**

**Mr I Newell v Shiverers Swimming Club**

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**COMMISSIONER'S REJECTION OF COMPLAINT PURSUANT TO ASA  
JUDICIAL REGULATION 160.1.5 (ALLEGATIONS OF WRONGFUL  
TERMINATION OF A CONTRACT/UNFAIR DISMISSAL BEING MATTERS  
FALLING WITHIN THE JURISDICTION  
OF THE ENGLISH CIVIL COURTS AND/OR EMPLOYMENT TRIBUNAL  
SERVICE)**

**REVISION**

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**This document has been produced in accordance with the Judicial Laws and Regulations of the ASA. It is provided solely for informing the Parties to the Complaint, the Office of Judicial Administration ("OJA") and those to whom it is copied on the instruction of the Judicial Commissioner. It shall remain confidential to those persons and shall not be used for collateral or ulterior purposes.**

**All references hereunder to ASA Judicial Laws and Regulations unless indicated otherwise refer to the Laws, Regulations, Codes and Protocols published on the ASA website under "ASA Handbook 2017"**

**The Parties are advised that the Judicial Commissioner and/or the Chairman of a Committee of the IDDRP reserve the right to publish in summary or fully his/her/their Determination of this Complaint**

1. The Complaint, dated the 28<sup>th</sup> March 2018, was received at the Office of Judicial Administration 'OJA' and by the ASA Judicial Commissioner on the 6<sup>th</sup> March 2018.
2. The Complainant alleges in Section 5 Brief description of Complaint:

***"Concise Description of Complaint***

***Unfair treatment by club officials in particular Paul Kendrick.  
Resulting in unfair dismissal. See letters as evidence."***

3. The Commissioner has carefully considered the Complaint, the response of the Respondent and the further submissions of the Respondent.
4. The substance of this complaint is the validity in legal terms of the decision of the Respondent to terminate its contract with the Complainant. The nature of the contractual relationship is disputed. The Complainant contends it to be one of

employment (hence his reference in his concise description of complaint to “unfair dismissal”). The Respondent club contend that they have lawfully terminated a contract with a self-employed contractor.

5. What is common ground is that the Complainant was involved in the provision of coaching services to the Respondent in return for payment. It would be for a court or employment tribunal to adjudicate on this contractual dispute not the ASA judicial system.
6. It is contended by the Respondent that the action of alleged misconduct referred to in the letter of termination dated 1 February 2018 namely the use of “*inappropriate “expletive” language in front of the children in a hostile manner*” amounted to “*conduct constituting a serious infringement of a safeguarding nature*”.
7. The Commissioner has taken the opportunity to seek the views of the ASA Safeguarding team on this aspect and understands the Respondent club was in receipt of support and guidance from the ASA Safeguarding team prior to the date of termination of the Complainant’s contract. The view expressed to the Commissioner from the ASA Safeguarding team is that the alleged behaviour complained of, if proven, would not meet the threshold for child protection concern. The Complainant contends that use by the representatives of the Respondent club of the expression child “safeguarding” (or similar) may have created a misleading impression as to the gravity of the alleged misconduct complained of (and relied on). The Commissioner agrees. Accordingly the Commissioner finds that **this was not a case in which a child protection concern arose** and directs that the Complainant may seek to rely on this finding in support of any other form of legal proceedings taken in respect of the contractual dispute between himself and the Respondent club. Any further publication of this Determination or any part thereof shall not be made without further order of the Commissioner.
8. However, notwithstanding the above finding and direction, the Commissioner rejects this complaint on the grounds that the allegation is not appropriate to be dealt with by the ASA judicial system (ASA Judicial Regulation 160.1.3) as the alleged wrong to the Complainant will be addressed through another process, that of the English civil law (either the civil courts or the employment tribunal).
9. The complaint fee to be returned to the Complainant.
10. ASA Laws and Regulations do not provide for appeals against the Commissioner’s rejection of Complaints.
11. **SAVE AS PROVIDED HEREIN THE PARTIES SHALL NOT PUBLISH COPIES OF THIS DETERMINATION ON SWIMMING CLUB NOTICE BOARDS UNLESS OR UNTIL THE COMMISSIONER DIRECTS OTHERWISE.**
12. **THE PARTIES SHALL NEITHER PUBLISH NOR MAKE ANY REFERENCES TO THIS DETERMINATION ON SOCIAL NETWORKING SITES, NEWSPAPERS, MAGAZINES OR ANY OTHER MEANS OF MASS COMMUNICATION UNLESS EXPRESSLY DIRECTED TO DO SO BY THE COMMISSIONER.**

*A Gray*

**ASA Judicial Commissioner**

Revised and corrected 27<sup>th</sup> March 2018

Cc: Mr I Newell

Ms A Theobald, Chartered Human Resources Consultant at Mercury:HR,  
Representatives of Shiverers Swimming Club