

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURĀU ROHE**

[2026] NZERA 235  
3229239

BETWEEN

LYNDA JOYNT  
Applicant

AND

ACCESSIBLE PROPERTIES  
NEW ZEALAND LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Erika Whittome and Liz Lambert, advocates for the  
Applicant  
Guido Ballara, counsel for the Respondent

Date of Investigation Meeting: 29 January 2026 at Auckland

Date of Determination: 21 April 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant, Ms Lynda Joynt, was employed as a Property Manager by the respondent, Accessible Properties New Zealand Limited (Accessible Properties), from 2012 until she was dismissed on 15 February 2022.

[2] Accessible Properties dismissed Ms Joynt because she was unable to meet the mandatory vaccination requirements that applied to her Property Manager role and there was no alternative work for her to do as an unvaccinated employee. This vaccination mandate was

imposed under Part 7 of Schedule 2 of the COVID-19 Public Health Response (Vaccinations) Order 2021 Order (the Order), which covered workers in the health and disability sector.<sup>1</sup>

[3] Part 7 of Schedule 2 of the Order came into effect at 11.59pm on 25 October 2021 in accordance with clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (the Amendment Order), and it remained in effect until Ms Joynt's employment ended on 15 February 2022.<sup>2</sup>

[4] Ms Joynt could not undertake all of her normal Property Manager duties from home while the vaccine mandate was in place, there were no suitable alternative roles Ms Joynt could be redeployed into because she had not agreed to do a proposed new fixed term project role that would have allowed her to work from home.

[5] After consulting Ms Joynt, on 21 December 2021 Accessible Properties gave her eight weeks' contractual notice of termination of her employment because she was unvaccinated, the Order required her to be vaccinated or to have a valid exemption (which she did not have) to perform her usual Property Manager role and no other work was available for her to do.

[6] Ms Joynt disputed that her role was covered by the Order and said she should not have been dismissed because she was unvaccinated. Ms Joynt wants to pursue personal grievance claims for unjustified disadvantage, discrimination on the grounds of her employment status, and unjustified dismissal.

[7] Accessible Properties disputed the Authority's jurisdiction over Ms Joynt's personal grievance claims which it said had not been raised within the 90-day time-limit required by s 114(1) of the Employment Relations Act 2000 (the Act). Accessible Properties did not consent to Ms Joynt raising any personal grievances out of time.

[8] Ms Joynt also claimed that Accessible Properties' view that she was covered by the Order breached her employment agreement, unilaterally varied her employment agreement, breached its obligation to provide her with a safe workplace and exposed her to a "workplace hazard" (referred to together as the "other claims"). Ms Joynt sought damages for these other claims.

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<sup>1</sup> LI 2021/94.

<sup>2</sup> LI 2021/325.

[9] Accessible Properties relied on s 113 of the Act to dispute the Authority's jurisdiction to hear Ms Joynt's other claim. It said s 113 of the Act provided that a personal grievance was the only way to challenge a dismissal, so it barred Ms Joynt from pursuing the other claims as she was effectively attempting to challenge her dismissal, which could only be done by way of an unjustified dismissal personal grievance claim.

### **The Authority's investigation**

[10] It was agreed disputed jurisdiction issues should be determined prior to the substantive claims. However, as it turned out the parties lodged evidence on all matters and witnesses were questioned by the Authority and cross-examined by the opposing party about all matters involving Ms Joynt's claims. The parties also had an opportunity to provide submissions at the IM.

[11] Accordingly, this determination has dealt with all matters raised in Ms Joynt's statement of problem (SoP), and all matters she has raised in her evidence to the Authority. That was done to bring these parties finality regarding these Authority proceedings.

[12] An in-person IM was held in Auckland at which the parties' evidence was tested. The parties lodged a joint bundle of documents and both parties lodged witness statements in advance of the IM.

[13] Ms Joynt was her only witness. Mr Greg Orchard, who at the material time was the Chief Executive Officer (CEO) of Accessible Properties New Zealand Limited but who has since retired, gave evidence for the respondent.

[14] The parties presented oral submissions at the IM after the witnesses had concluded giving their evidence.

### **The IHC Group**

[15] The IHC Group is made up of IHC New Zealand Incorporated (IHC), which is a registered charity, and its wholly owned subsidiaries IDEA Services Limited (IDEA), Accessible Properties, and Choices NZ Limited (Choices), which are also registered charities.

[16] IHC is the umbrella organisation that advocates for the rights, inclusion and welfare of all people with intellectual disabilities, and supports them to live in the community. Within the

IHC group of charities the people who are supported are often called “the people we support” or “PWS” for short.

[17] IHC owns a portfolio of residential properties which form the bulk of the homes where PWS live. IDEA is IHC’s operational, “hands on” service delivery arm, supporting PWS to live as independently as possible and be part of their local communities, which includes providing residential, supported living and vocational support.

[18] IDEA, as IHC’s agent, was at the material time (and still is) a certified provider of health care services under the Health and Disability Services (Safety) Act 2001 (the HDSS Act), including pursuant to contracts with the New Zealand Government (the Government), which provides funding for health care and disability services that are provided.

[19] In this regard, IDEA provides health care services to PWS in homes:

- (a) Owned by IHC or Accessible Properties;
- (b) Leased by IHC/IDEA from Kainga Ora;
- (c) Leased by IHC/IDEA from private landlords;
- (d) Owned or leased by some PWS directly.

[20] At all of these homes, IDEA as IHC’s agent provides on-site (usually) 24-hour/7-day a week/365 day a year support for the PWS via its support workers and other personnel. IDEA has a critical health and disability support role for PWS who are inherently more vulnerable than others and who (the Authority was told) were at a much greater risk of adverse health outcomes as a result of COVID-19.

[21] Accessible Properties, as IHC’s agent, is IHC’s social and disability housing management arm, facilitating the provision of homes and property management services for IHC/IDEA. Accessible Properties also provides homes directly to people with disabilities, for older people, those on low income and people from the public housing waiting list. Accessible Properties also provides property management functions in relation to office premises used by the IHC/IDEA.

**Ms Joynt's role**

[22] Ms Joynt's Property Manager role was responsible for 250+ homes and other premises used by IHC/IDEA for the provision of health care services to the PWS.

[23] Ms Joynt was responsible for all property management functions related to the homes in her portfolio. This included the buying; selling; maintaining; renovating; and building health, safety and other compliance to ensure the homes were maintained in good order, were safe and met the needs to the PWS (and IDEA), to enable the safe and effective delivery of health care services to the PWS and other vulnerable groups of people, so the IHC Group was able to meet its duty of care to the PWS.

[24] To effectively undertake the full role, the Property Manager needed to visit the properties regularly, with frequency depending on the level and type of property works required, to ensure that the homes remained fit for purpose and in a good state of repair. Ms Joynt was provided with a work vehicle to facilitate these visits and other 'premises related' travel.

[25] One aspect of the Property Manager's visits to premises was to address any changing support needs of the PWS, which included where they lived and their environment there. Active property management was therefore required in order for Accessible Properties to be able to appropriately respond to the changing needs of PWS. Onsite visits and engagement were a necessary part of the Property Manager's role, to ensure that staff could explain and demonstrate what property needs were required.

[26] Ms Joynt did not directly provide any health care services to PWS. However, Ms Joynt's role required her to come into contact with vulnerable people in residential care and with people who directly provided health care services to vulnerable PWS and others who were in properties Accessible Properties managed.

[27] The Authority was told that, as a minimum (and in the unlikely event that no other work was required and no new matters were to come up during the year that required attention) Ms Joynt's Property Manager role required her to visit the equivalent of one property, each workday, per year. Ms Joynt was also responsible for property management functions in relation to offices used by IDEA and IHC in her area. IHC staff also shared the same office in Auckland where Ms Joynt was based.

**Relevant timeline**

[28] The following timeline sets out the key dates regarding Ms Joynt's claims:

- June 2012 – Ms Joynt was employed by Accessible Properties as a Property Manager, initially on a fixed term basis.
- July 2015 – Ms Joynt's fixed term employment became permanent. Her Property Manager role and terms and conditions of employment did not change - other than the changes associated with her fixed term employment becoming permanent.
- October 2021 – Accessible Properties began communicating with employees about COVID-19, which included consulting about a proposed employer vaccination requirement.
- 11 October 2021 – The Government announced mandatory vaccination for those working in the health and disability sector, with the first vaccination dose initially to be received by 30 October 2021 and full vaccination to occur by 1 December 2021 (although these dates were later changed to 15 November 2021 and 1 January 2022).
- From 14 October 2021 – Accessible Properties had communications, and consultation with (among others) Ms Joynt, about the legislated mandatory vaccination requirements imposed by the Order.
- 15 October 2021 – All IHC group staff received a note regarding the Government announcement about the mandate.
- At 11.59pm on 25 October 2021 the Order came into effect, which imposed mandatory vaccination for individuals who were working in the health and disability sector. The Order overtook Accessible Properties' consultation with staff (including Ms Joynt) about a risk assessment-based vaccine mandate, meaning from that point Accessible Properties consulted with staff (including Ms Joynt) about the effect the Order would have on them instead of continuing its consultation about whether to impose its own risk based workplace vaccination policy.
- 15 November 2021 – Ms Joynt emailed Mr John O'Brien, Accessible Properties' General Manager Property Services, a copy of her letter dated 14 November 2021

which recorded (among other things) her views that the Order was unlawful, did not apply to her role, and that she believed the vaccines were unsafe so she was not going to be vaccinated. Ms Joynt said her letter raised a disadvantage grievance because she had stated:

Should my choice not be respected, and you elect to disadvantage my employment by linking my employment with participating in a trial for an experimental treatment that does not guarantee the prevention of transmission of COVID-19, then **I may exercise my right to file a personal grievance.** (emphasis added)

- 16 November 2021 – Mr O’Brien responded by letter to Ms Joynt. He responded to her various questions and confirmed Accessible Properties’ view that her role was covered by the Order. He informed Ms Joynt that meant she could not continue to do her Property Manager job as an unvaccinated employee and, because redeployment options were limited, her employment could potentially be terminated.
- 18 November 2021 – Mr Orchard, who until June 2024 was Accessible Properties’ CEO, took over communicating with Ms Joynt about the effect of the Order on her. Mr Orchard informed Ms Joynt he was the decision maker and he referred her to Part 7 of Schedule 2 of the Order. He explained Ms Joynt’s Property Manager role was covered by the Order because she was employed or engaged by a certified provider and carried out work at the premises at which health care services were provided. He said Ms Joynt was required to visit the homes of PWS and local offices, which meant her role fell within the scope of the Order. Accessible Properties said it was not aware of any redeployment opportunities, but she was invited to provide her feedback on that.
- 26 November 2021 – Ms Joynt emailed Mr Orchard (prior to meeting with him later that day) asking him to apply for an exemption for her under clause 12A of the Order. Ms Joynt also proposed she be redeployed to do project work she could do from home and advised that another employee had offered to do the site visits her Property Manager role had to undertake while the vaccination mandate was in place, which Ms Joynt said would enable her to do her current role from home.
- 26 November 2021 – Ms Joynt met with Mr Orchard and the IHC Business Partner Dion Twiss, via Teams to discuss Ms Joynt’s feedback on the application of the Order to her role. Mr Orchard explained why a clause 12A exemption was not appropriate, as

she still had to go into homes and offices to do her role which put PWS and staff at risk. A potential fixed term redeployment option was discussed. After the meeting Mr Twiss emailed Ms Joynt links to the new legislation.

- 29 November 2021 – Ms Joynt emailed Mr Orchard with two potential redeployment options for him to consider.
- 1 December 2021 – Mr Orchard emailed Ms Joynt to advise her that he was working through the information she had provided.
- 2 December 2021 – Mr Orchard emailed Ms Joynt in response to her feedback. He said her role was covered by the Order and it required site visits and regular face to face meetings with clients, contractors and colleagues. She was also required to interact with staff who interacted with vulnerable PWS. Mr Orchard said a clause 12A exemption was not going to be applied for as the criteria would not be met, namely that it was necessary “to prevent significant disruption to health services”. He responded that two of the redeployment options Ms Joynt had proposed were unsuitable as they required site visits but he offered to discuss creating a potential new fixed term project work role for her which could involve her training and supporting new property managers and which she could do from home. Mr Orchard also responded to the personal grievance reference in her letter dated 14 November 2021 by stating:

... you reference your ability to pursue a personal grievance. **While you have not raised a personal grievance, if you did so I would respond to that at the time on its merits.** For now though, I consider the Organisation is acting within the law, with which, in connection with mandatory vaccination under the Health Order, it is required to comply. (emphasis added)

- 8 December 2021 – Ms Joynt replied to Mr Orchard’s email dated 2 December 2021 by stating (among other things) in response to the reference made to her having not raised a personal grievance claim:

Thank you, I was merely outlining all my options as advised by my lawyer, this is certainly not my preference.

- 9 December 2021 – Ms Joynt was asked by Mr Orchard if she would consider having the AstraZeneca vaccine.

- 10 December 2021 – Mr Orchard emailed Ms Joynt that a newly created fixed term role for her was a possibility, but that option would involve her current Property Manager role ending.
- 15 December 2021 – Ms Joynt advised she would not be taking the AstraZeneca vaccine as she did not consider it was safe. She also continued to object to being vaccinated. Ms Joynt referred to a Lease Co-ordinator role which had not been advertised that she alleged Mr O'Brien had conducted "coffee interviews" for. Ms Joynt claimed it was "discriminatory" that she had not been offered redeployment into the Lease Co-ordinator role, even though at that time this role had not actually been created.
- 16 December 2021 – Accessible Properties responded to Ms Joynt's allegations about the Lease Co-ordinator, saying the role did not have a job description, was still being developed but would require site visits, so it would not be suitable for an unvaccinated person. It also denied that any "coffee interviews" had been conducted, as the role had not even been approved. Accessible Properties provided Ms Joynt with its preliminary view that if she remained unvaccinated, or was not exempt from vaccination or redeployed into another role, then she would likely be issued with notice of termination. Ms Joynt was given until 20 December 2021 to provide feedback on that preliminary indication before a final decision would be made about her ongoing employment.
- 20 December 2021 – Ms Joynt emailed Mr Orchard that it was "disturbing and upsetting" the Lease Co-ordinator role had not been considered as a redeployment opportunity for her. Ms Joynt said she had worked from home doing her Property Manager job for 11 months so should be permitted to continue doing so. She also said she could do the site visits required by the new Lease Co-ordinator role without being vaccinated. She said these properties would largely involve private owners so Accessible Properties had a discretion about whether she needed to be vaccinated to visit them. Ms Joynt also provided links to resources which she said proved the vaccine was unsafe.
- 21 December 2021 – Accessible Properties gave Ms Joynt eight weeks' notice of termination of her employment on the grounds she was covered by clause 7.3 of Part 7, of Schedule 2 of the Order, was not vaccinated or exempt, so could not continue to do

her usual Property Manager role and there were no suitable redeployment opportunities available for her.

- 15 February 2022 – This was Ms Joynt’s last day of employment.
- 2 September 2024 – Ms Joynt lodged her statement of problem (SoP) with the Authority.
- 3 September 2024 – The Authority served the SoP on Accessible Properties’ lawyer via email.

### **The SoP**

[29] Based on discussions during the case management conference (CMC) held on 25 August 2025, and on written communications with the Authority before and after the CMC, the parties agreed that Ms Joynt’s SoP required the following issues to be determined:

- (a) Was Ms Joynt’s Property Manager role covered by Part 7 in Schedule 2 of the Order?
- (b) If so, was Accessible Properties required to apply to the Minister of COVID-19 Response (the Minister) under clause 12A of the Order for an exemption for Ms Joynt from the vaccination mandate?
- (c) Was Ms Joynt consulted about the effect of the Order on her?
- (d) Did Accessible Properties require Ms Joynt to be vaccinated?
- (e) What if any alternatives were available to enable Ms Joynt to continue working in her Property Manager role as an unvaccinated employee?
- (f) What if any redeployment opportunities were available to Ms Joynt?
- (g) Did Accessible Properties’ advice to Ms Joynt that she had to be vaccinated to continue performing her usual Property Manager duties:
  - (i) Breach her employment agreement?
  - (ii) Unilaterally vary her employment agreement?
  - (iii) Breach of its implied obligation to provide Ms Joynt with a safe workplace?

- (iv) Expose Ms Joynt to a ‘workplace hazard’?
- (h) If Ms Joynt’s employment agreement was breached, is she entitled to an award of damages for breach of contract?
- (i) Did Ms Joynt raise any personal grievance claims within the 90-day time-limit required by s 114(1) of the Act?
- (j) If so, did Accessible Properties:
  - (i) Unjustifiably disadvantage Ms Joynt?
  - (ii) Discriminate against Ms Joynt on the prohibited ground of her “employment status”?
  - (iii) Unjustifiably dismiss Ms Joynt?
- (k) If any of Ms Joynt’s personal grievance claims succeed, what if any remedies should she be awarded?
- (l) Did s 113 of the Act bar any of Ms Joynt’s claims?
- (m) What if any costs and disbursements should be awarded?

**Was Ms Joynt’s Property Manager role covered by the Order?**

*The applicable legislation*

[30] The Order was made by the Minister for COVID-19 Response under s 11 of the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) in accordance with s 9 of the COVID-19 Act.

[31] The Order came into effect at 11.59pm on 30 April 2021,<sup>3</sup> and for the purposes of Ms Joynt’s claims it included all amendments made to it up to and including 15 February 2022, which was the date her employment ended. The Order was revoked at 11.59pm on 22 September 2022.

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<sup>3</sup> LI 2021/94.

*Clause 7.3 of Schedule 2 of the Order*

[32] Accessible Properties relied on clause 7.3 in Part 7 of Schedule 2 of the Order, which came into effect at 11.59pm on 25 October 2021, as having imposed the vaccination mandate on Ms Joynt’s Property Manager role.

[33] Part 7 of Schedule 2 of the Order imposed a vaccination mandate on “Groups in relation to the health and disability sector” which remained in effect as at 15 February 2022, when Ms Joynt’s employment ended.

[34] The material clause in Part 7 which related to Ms Joynt was clause 7.3 which stated:

Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided.

[35] Ms Joynt claimed the Order did not apply to her because:

- (a) Accessible Properties was not a certified provider.
- (b) It was confined to premises that were registered and the homes she visited in her Property Manager role were not registered.
- (c) She was not a health or disability worker because she looked after properties, so she did not provide health care services.

*Health and Safety at Work Act 2015*

[36] The following definitions in the Health and Safety at Work Act 2015 (the HSWA) were relevant to Ms Joynt’s claims:

- (a) “**employee**” has the meaning given by s 6 of the Act.
- (b) “**PCBU**” as defined in s 17(1)(a) meant “a person conducting a business or undertaking” whether alone or with others...”
- (c) “**worker**” as defined in s 19 meant “an individual who carries out work in any capacity for a PCBU”, including work as (among other things) “an employee; or contractor or subcontractor; or an employee of a contractor or subcontractor.”
- (d) “**workplace**” as per s 20(1)(a) and (b) was any place where work is being carried out or is customarily carried out for a business or undertaking or a place where the employee goes or is likely to be while at work.

*Health and Disability Services (Safety) Act 2001*

[37] The Health and Disability Services (Safety) Act 20012 (the HDSS Act) included the following definitions that were relevant to Ms Joynt’s claims:

- (a) “**health care services**” means services that are hospital care, residential disability care, rest home care, or specified health or disability services.
- (b) “**health care services of any kind**” means services that are hospital care of any kind, **residential disability care of any kind**, rest home care of any kind, or **specified health or disability services of any kind**. (emphasis added)
- (c) “**health or disability services**” has the meaning given to it by section 5(1) of the HDSS Act.
- (d) “**residential disability care**” means residential care provided in any premises for 5 or more people with an intellectual, physical, psychiatric, or sensory disability (or a combination of 2 or more such disabilities) to help them function independently”.
- (e) “**specified health or disability services**”, means services of any kind declared under section 7 to be services to which the HDSS Act applied.

[38] Section 5(1) of the HDSS Act defined “**health or disability services**” as follows:

**5 Health or disability services defined**

(1) In this Act, **health or disability services**—

(a) **means services of any of the following kinds:**

[...]

**(iii) services, provided to people with disabilities or people who are frail (whether because of their age or for some other reason), for their care or support or to promote their independence; and**

**(b) includes services intended to prevent, or lessen the prevalence or severity of, illness or injury; and**

[...]

**(e) includes administering the provision of health or disability services.**

*COVID-19 Act definitions*

[39] Section 5 of the COVID-19 Act had the following definitions that were relevant to Ms Joynt’s claims:

- (a) “**affected worker**” means a worker who is employed or engaged by a PCBU to carry out specified work.
- (b) “**specified work**” means work, or classes of work, specified in a COVID-19 order made under section 11AB by the Minister that (among other things) may not be carried out by an affected worker unless they are vaccinated.
- (c) “**worker**” has the meaning given to it by s 19 of the HSWA.

[40] The reference in the definition of specified work to “classes of work” casts the net widely.

*Material definitions in the Order*

[41] For the purposes of Ms Joynt’s claims, the relevant definitions in clause 4 of the Order were as follows:

- (a) **Relevant PCBU** meant the PCBU (as defined by s 17 of the HSWA) who employs or engages an affected person to carry out certain work.
- (b) An **affected person** meant “a person who belongs to a group (or whose work would cause them to belong to a group)”.
- (c) A “**group**” meant “a group of affected persons specified in the second column of an item of the table set out in Schedule 2 of the Order”.
- (d) “**Certain work**”, in relation to an affected person, means work that the affected person carries out (whether paid or unpaid) in respect of a group specified in Schedule 2 of the Order.
- (e) “**Certified provider**” meant a person who is certified under section 26(1) of the HDSS Act to provide health care services of any kind.
- (f) “**Health care services**” had the same meaning as in section 4(1) of the HDSS Act.

[42] The relevant “group” for the purposes of Ms Joynt’s claims was set out in Part 7 of Schedule 2 of the Order, namely “Groups in relation to health and disability sector”, with the specific group she belonged to being defined in clause 7.3.

*Obligations imposed by the COVID-19 Act and Order*

[43] Clause 17C of the COVID-19 Act imposed a duty on PCBUs not to allow unvaccinated workers to carry out specified work unless vaccinated, exempt or an “authorised person” (which did not apply to this matter). Failure to comply with that obligation was an infringement offence, under s 17C (3).

[44] Clause 17D of the COVID-19 Act prohibited “affected workers” from carrying out “specified work” unless vaccinated, exempt or authorised. Failure to comply with that was an infringement offence, under s 17D(2).

[45] Under the COVID-19 Act, the Order confirmed that, unless affected workers (called “affected persons”) were vaccinated, (or exempt) they could not carry out certain work. The Order confirmed that a PCBU could not allow that to occur. Clause 8 of the Order imposed a duty on a PCBU not to allow an affected person (unless they were exempt) to carry out “certain work” unless satisfied the affected person was vaccinated.

[46] Under the Order, a “Relevant Chief Executive” authorisation to carry out certain work also did not apply to “[g]roups in relation to health and disability sector”, because it did not apply to an affected person who belonged to a group specified in Part 7 of Schedule 2. Clause 13 of the Order made it an infringement offence not to comply with vaccination mandates imposed by the Order.

[47] The Order meant that Ms Joynt was required to inform Accessible Properties of her vaccination status, to ensure that neither she nor her employer committed an infringement offence under the COVID-19 Act by carrying out work, or working at premises, which were restricted under the COVID-19 Act and/or the Order.

[48] The Order required Accessible Properties to inform Ms Joynt she was covered by vaccination mandate and it had to treat her as unvaccinated if she did not provide it with written proof she had been vaccinated, as required by the Order.

[49] Ms Joynt’s advocate’s memorandum dated 5 September 2025, lodged in response to requests to clarify what grievances Ms Joynt was pursuing, said her disadvantage grievance(s) related to actions that had already occurred over the period 25 October to 14 November 2021. However, none of the actions Accessible Properties took over the period 25 October 2021 to 14 November 2021 could have given rise to a valid unjustified disadvantage personal grievance claim because Accessible Properties was legally required to comply with the Order. This is addressed in paragraphs [88], [112] and [113] of this determination.

*Analysis of coverage of the Order*

[50] The nature, operations and structure of the IHC group, which included IHC’s wholly owned subsidiaries IDEA and Accessible Properties and the requirements of Ms Joynt’s role are set out in paragraphs [15] – [27] of this determination.

[51] At the material time, IDEA was a certified provider of healthcare services, as per the Notice of Certification dated 28 June 2021 that was issued under s 26 of the HDSS Act.<sup>4</sup>

[52] Clause 4 of the Order therefore meant that any person employed or engaged by IDEA, and who carried out work at the premises where health care services were provided by IDEA, was “an affected person” under the Order. That covered work that Accessible Properties did at the offices it shared with IDEA, the homes of PWS, and other premises where IDEA provided healthcare and disability services.

[53] The Authority in *Flavin v Te Whatu Ora* held that the Order applied to the entire “premises” and not just parts of the premises or a specific building on the premises on which health care services were being provided.<sup>5</sup>

[54] In terms of the requirements of clause 7.3 in Part 7 of Schedule 2 of the Order which stated: “Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided”:

- (a) Ms Joynt was a worker.

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<sup>4</sup> See also *Wills v IDEA Services Ltd* [2020] NZERA 630, at [24]-[27]; and *IDEA Services Ltd v Wills* [2025] NZEmpC 28, at [33].

<sup>5</sup> *Flavin v Te Whatu Ora* [2023] NZERA 202, at [54].

- (b) IDEA was a “certified provider” which provided health care services at its premises and the homes of the PWS.
- (c) IDEA’s property management and related functions (for its premises and the homes of the PWS) were performed for it by Accessible Properties (because IDEA “engaged” Accessible Properties to provide these).
- (d) Ms Joynt’s Property Manager’s role required her to carry out work at IDEA’s premises and the homes of the PWS at which IDEA provided health care services.
- (e) IDEA (as a certified provider) was therefore effectively “engaging” Ms Joynt (via her employment with Accessible Properties and her Property Manager role) to carry out work “at the premises at which health care services were provided”, by IDEA, even though Ms Joynt’s role did not require her to personally provide health care services to PWS.

[55] Ms Joynt’s job description recorded that she was based in Accessible Properties’ Auckland office, which it shared with IHC. Her Property Manager role required visiting/accessing the homes of PWS where health care services were being provided by IDEA. Health and disability services were provided at premises from where Ms Joynt worked and at the homes where PWS resided, which she was “engaged” by IDEA to carry out work at.

[56] Ms Joynt was therefore an “affected person” whose Property Manager job meant she belonged to the “group” in the health and disability sector that was covered by clause 7.3 of Part 7, Schedule 2 of the Order. Ms Joynt’s Property Manager role was therefore covered by the mandatory vaccination requirements in the Order.

[57] A parallel to Ms Joynt’s situation would be a cleaning company engaged by IDEA to clean its offices/premises/properties/the homes of the PWS where health care services were being provided. Clause 4 of the Order meant those cleaning staff who were providing cleaning services would have to be vaccinated, because they would be caught by clause 7.3, in Part 7 of Schedule 2 of the Order, even though they were providing cleaning and not health care services at/in/on IDEA’s premises.

[58] As per the offer of permanent employment dated 15 July 2015, Ms Joynt’s role was defined in her individual employment agreement dated 2 July 2012 (other than the fixed term clauses) and in the Property Manager job description dated June 2021. Ms Joynt’s role was

based at the Auckland office of Accessible Properties, which was shared with IHC, and required visiting/access to its homes where the PWS (and others) lived. It was that role Ms Joynt had to be vaccinated to be able to perform as usual.

[59] Ms Joynt's submission that she was not covered by clause 7.3 was not accepted.

[60] Ms Joynt was an "affected person" under the Order because her Property Manager role caused her to belong to the "Groups in relation to the health and disability sector" which was covered by Item 7.3 in Part 7 of Schedule 2 of the Order, specifically Item 7.3. Item 7.3 as "workers ...engaged by certified providers [such as IDEA] and carry out work [such as property visits] at the premises [offices and PWS' and others' homes] at which health care services are provided [by IDEA to PWS and others]."

*Section 33AB in the COVID-19 Act risk assessment tool*

[61] Ms Joynt's submission that s 33AB of the COVID-19 Act applied to her situation was not accepted.

[62] Section 33 AB of the COVID-19 Act provided that a PBCU may conduct a work assessment using the assessment tool in s 33AA of the COVID-19 Act to assist it in meeting its duty of care under s 36 of the HSWA. The use of the assessment tool was discretionary. It was intended to assist a PBCU to assess whether it should require workers to be vaccinated or to undergo a medical examination or testing for COVID-19 before carrying out work on the PCBU's premises.

[63] Ms Joynt's claim that Accessible Properties had to undertake its own risk assessment of her role before she was dismissed was not accepted. Her role was covered by the Order and Accessible Properties had to follow the law. That view was supported by the Employment Court's decision in *Young v Port of Tauranga Ltd* which concluded:<sup>6</sup>

[52] Mr Young claims that the Port ought to have conducted risk assessments and did not do so. I take it he says the Port was required to do a risk assessment of the health and safety risks of him not being vaccinated before the border order was implemented. I do not agree.

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<sup>6</sup> *Young v Ports of Tauranga Ltd* 2025] NZEmpC 2, at [52] and [53].

[53] Absent an exemption, employees whose work was covered by the border order could only conduct that work if they were vaccinated. The Port had to follow the law; there was no scope for it to second-guess it.

*Interpretation of the Order's coverage*

[64] Even if Accessible Properties' and the Authority's interpretation of the references to "certified provider" and "engaged" in clause 7.3 in Part 7, of Schedule 2 of the Order as covering Ms Joynt's Property Manager role was incorrect, Accessible Properties was nevertheless justified in considering that Ms Joynt's Property Manager role fell within the vaccination mandate in the Order.

[65] The reasonableness of Accessible Properties' interpretation of the Order and actions following from that had to be assessed at the time in the context of the prevailing circumstances. In particular, COVID-19 was deemed a global epidemic and a national emergency, and it was occurring within a rapidly evolving environment and at a time of uncertainty. Safety, particularly of those who were considered to be particularly vulnerable, was of the utmost concern.

[66] The evidence established that Accessible Properties had a genuine belief, based on reasonable grounds, that Ms Joynt's Property Manager role was covered by clause 7.3 in Part 7 of Schedule 2. That belief was justified in all the circumstances as at 21 December 2021 (when she was given notice) and continued until 15 February 2022 (when her employment ended). Accessible Properties acted responsibly to protect the vulnerable PWS who would potentially be affected by Ms Joynt undertaking her usual Property Manager role.

[67] The purpose of the Order was to provide additional protection to those involved in the health and disability sector. Accessible Properties required Ms Joynt to go into the homes of PWS (and others), many of whom were particularly vulnerable. She also had to share office premises with IDEA's and IHC's employees who had close contact with vulnerable PWS.

[68] The Employment Court in *Young v Port of Tauranga Limited* stated that "a broad and precautionary approach" was appropriate when assessing what was covered by the Order.<sup>7</sup> The Court also recognised in *GF v Comptroller, New Zealand Customs Service* that how the

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<sup>7</sup> *Young v Port of Tauranga* above n6, at [38].

Order was to be applied in a given workplace was not always clear cut but, that given what it was intended to achieve, if there was ambiguity a broader construction was to be favoured.<sup>8</sup>

*Finding on coverage of the Order*

[69] Ms Joynt's Property Manager role was subject to the vaccination mandate imposed by the Order because she was "engaged" by IDEA (via her employment by Accessible Properties) to carry out work at premises (i.e. visits to offices and homes) at which IDEA provided health care services to PWS and others.

[70] Ms Joynt's Property Manager role was covered by clause 7.3 in Part 7 of Schedule 2 to the Order. This meant the parties were both lawfully obliged to comply with the Order. Accessible Properties was therefore justified in requiring Ms Joynt to be vaccinated before it could permit her to undertake the site visits where IDEA's clients resided.

[71] Ms Joynt submitted that Accessible Properties believed it had to terminate the employment of all non-vaccinated employees. That submission was not accepted because it was inaccurate and misinterpreted what she had been told by Accessible Properties. What the Order mandated was that affected persons could only undertake specified work if they were vaccinated, exempt or authorised to do so while unvaccinated. That is what Accessible Properties communicated to Ms Joynt during the consultation process.

[72] Accessible Properties concluded that the Order prevented it from allowing Ms Joynt, who was unvaccinated and who did not have a valid exemption, to attend the shared offices and/or visit PWS homes and/or other premises owned by the IHC Group at which health care and disability services were being provided. The issue then became whether Ms Joynt could continue to do her usual Property Manager role in such circumstances, which was what Accessible Properties consulted with her about before it made a final decision to terminate her employment.

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<sup>8</sup> *GF Comptroller, NZ Customs Service* [2023] NZEmpC 101, at [170].

**Was Accessible Properties required to apply to the Minister for an exemption under clause 12A of the Order for Ms Joynt from the vaccination mandate in the Order?**

[73] Ms Joynt asked Accessible Properties to apply for an exemption for her from the vaccination mandate imposed by the Order.

[74] The exemption provision in clause 7A of the Order was revoked at 11.59pm on 7 November 2021, by clause 9 of the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021.<sup>9</sup> It therefore did not apply when Ms Joynt was given notice on 21 December 2021 or when her employment ended on 15 February 2022.

[75] The exemption provision in clause 12A(4)(a)(ii) of the Order, which related to health services, came into effect at 11.59pm on 25 October 2021, as a result of clause 11(1) of the Amendment Order. Clause 12A allowed a PCBU to apply to the Minister for an exemption from vaccination for a person covered by (among other things) Part 7 of Schedule 2 of the Order.

[76] Clause 12A(4)(a)(ii) of the Order permitted the Minister to exempt a person from vaccination if the evidence/information provided by the PCBU established the exemption was “necessary or desirable - ... to prevent significant disruption to .. health services”.

[77] Accessible Properties did not consider the requirements for an exemption under clause 12A(4)(a)(ii) of the Order had been met. Specifically, it did not believe that “health services” were likely going to be “significantly disrupted” if Ms Joynt was not exempted from the vaccination mandate in clause 7.3 in Part 7 of Schedule 2 of the Order. Accessible Properties’ view about that was subsequently proven to be correct, because there was no evidence any health services were disrupted because Ms Joynt had elected not to be vaccinated.

[78] Accessible Properties informed Ms Joynt before she was given notice of termination of her employment that it would not be applying for an exemption for her. There was no legal obligation on Accessible Properties to have applied for an exemption for Ms Joynt.

[79] Accessible Properties was justified in declining Ms Joynt’s request that it apply for a clause 12A exemption from vaccination for her, as her situation did not meet the requirements

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<sup>9</sup> SL 2021/358.

needed to obtain one. Ms Joynt therefore did not have an exemption from vaccination before her employment ended on 15 February 2022.

### **Was Ms Joynt consulted about the effect of the Order on her?**

[80] The evidence established Ms Joynt was appropriately consulted about the effect the Order would have on her role and likely ongoing employment if she elected not to be vaccinated.

[81] The Authority did not accept Ms Joynt's claim that her dismissal was pre-determined because during consultation with her Accessible Properties had identified dismissal as a potential outcome if she remained unvaccinated and could not be redeployed. The evidence established Mr Orchard had considered alternatives that would have avoided Ms Joynt's dismissal. However, he was justified in concluding that there was no suitable alternative work available to Ms Joynt in all the circumstances.

### **Did Accessible Properties require Ms Joynt to be vaccinated?**

[82] Ms Joynt's claim that Accessible Properties required her to be vaccinated was not accepted. It was the Government that had imposed the vaccination mandate on her Property Manager role.

[83] Although prior to 11 October 2021 Accessible Properties had been considering whether it should require its employees to be vaccinated, that was overtaken by the implementation of Part 7 of Schedule 2 of the Order which took effect from 11.59pm on 25 October 2021. Ms Joynt and Accessible Properties were legally required to comply with the vaccination mandate and failure to do so was an infringement offence.

[84] Ms Joynt's claim that Accessible Properties had the discretion to allow her to take precautionary measures (other than becoming vaccinated) when visiting properties was not accepted.

[85] Ms Joynt's suggestions to try to mitigate the impact of the Order, such as by avoiding the PWS by standing two metres away from them while she was on their premises, or by asking the PWS's support person to take them out for a drive or other activity while Ms Joynt was on the premises, or by asking the PWS to remain outside their homes while Ms Joynt was there could not be agreed to by Accessible Properties because her role was covered by the Order.

[86] Whether or not to become vaccinated, and if so, what vaccine to take and when, were personal decisions Ms Joynt had to make for herself. Accessible Properties did not impose any requirements on Ms Joynt about that. It also respected her decision not to be vaccinated.

[87] The Order meant that Ms Joynt was required to inform Accessible Properties of her vaccination status, to ensure that neither she nor her employer committed an infringement offence under the COVID-19 Act by carrying out work, or working at premises, which were restricted under the COVID-19 Act and/or the Order.

[88] To the extent that Ms Joynt believed her letter dated 14 November 2021 had raised a disadvantage grievance for actions up to that date, Accessible Properties could not have unjustifiably disadvantaged Ms Joynt by advising her:

- (a) The Order covered her Property Manager role, so she had to be vaccinated in order to continue doing her usual job.
- (b) She would be treated as if she was unvaccinated if she did not provide written proof of vaccination by the specified date.

**What alternatives were available to enable Ms Joynt to continue working in her Property Manager role without being vaccinated?**

[89] There were no viable alternatives available to enable Ms Joynt to perform her usual Property Manager role without being vaccinated.

[90] Accessible Properties was justified in concluding Ms Joynt could not:

- (a) Perform her usual Property Manager role from home due to the volume and type of property visits she had to undertake.
- (b) Divest all of the property visitation elements of her role to another employee to do while the Order remained in place (so she could work from home), as that was such a major part of her usual role.

**What redeployment opportunities were available to Ms Joynt?**

[91] Accessible Properties explored redeployment opportunities with Ms Joynt as it put proposals to her and responded to the suggestions she had made. However, Ms Joynt was not

interested in accepting the potential new project work role, that Accessible Properties said she could do from home while unvaccinated, because it was for a fixed term.

[92] The Lease Co-ordinator role Ms Joynt identified was not yet created (or approved) so it had not been finalised but the creation of that new role was under review during her consultation process. Ms Joynt's belief about "coffee interviews" occurring was incorrect. Mr Orchard had not even finalised the job description, which he told the Authority would also require site visits.

[93] The need to do site visits made the potential Lease Co-ordinator role unsatisfactory as a redeployment option for Ms Joynt. Accessible Properties was justified in not offering to redeploy Ms Joynt into that potential (yet to be created) role due to the site visits requirement.

### **Did Accessible Properties' implementation of the Order breach Ms Joynt's employment agreement?**

[94] Accessible Properties' implementation of the Order did not:

- (a) Breach Ms Joynt's employment agreement, as it involved compliance with a legal obligation imposed by the Government.
- (b) Unilaterally vary Ms Joynt's employment agreement, because compliance with the Order did not involve changing her terms and conditions of employment.
- (c) Breach its obligation to provide Ms Joynt with a safe workplace, as the Order was intended to ensure her safety and the safety of others.
- (d) Expose Ms Joynt to a 'workplace hazard', as the decision about whether or not to be vaccinated was her own decision, which Accessible Properties respected.

[95] Accordingly, Ms Joynt's damages claim for alleged breaches of contract, based on the identified alleged breaches of her employment agreement, did not succeed.

### **What personal grievance claims did Ms Joynt want to pursue?**

[96] The purpose of requiring an employee to raise a personal grievance with the employer within 90-days is so it is clear there is a problem the employer needed to address. The employee should therefore be able to identify what the complaint/grievance/problem was that they raised

with their employer, because the employer needs to know what it was they had to address if they wanted to resolve the problem.

[97] However, there has been considerable difficulty in obtaining clarity from Ms Joynt about what personal grievance claim(s) she wanted to pursue. Her position about that has repeatedly changed at every stage of the Authority's process. The constantly changing nature of Ms Joynt's claim(s) has made this matter challenging to investigate.

[98] That changing approach, which has occurred even though Ms Joynt wrote her 14 November 2021 letter after legal advice and even though she has been represented at all stages of the Authority's investigation, indicated Ms Joynt had not made it clear to Accessible Properties what it needed to address - other than her wanting to avoid being covered by the Order.

[99] Ms Joynt's struggle, even with the benefit of ongoing representation, to clearly identify what grievances she is pursuing suggested she had not raised her grievance(s) with Accessible Properties prior to lodging her SoP.

[100] To ensure that everything Ms Joynt has potentially raised with the Authority has been addressed has required this lengthy and somewhat repetitive analysis of what has been put before the Authority, and when, so that everything has been finally determined and all preliminary and substantive matters before the Authority have been concluded.<sup>10</sup>

### *The SoP*

[101] Section 1 of Form 1 (the required statement of problem (SoP) form for lodging an employment relationship problem with the Authority) asks an applicant to set out the problem or matter they wanted the Authority to resolve. Although Ms Joynt's SoP was lodged by her advocate, after Ms Joynt had reviewed and approved it, no personal grievance claims were identified in section 1 of the SoP.

[102] Clause 16 of the SoP said Ms Joynt had sent a personal grievance letter dated 15 November 2021 to her employer in response to its advice that the Order applied to her role, and she referred to there being no consultation over the mandate and to her safety concerns

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<sup>10</sup> That just left costs to be resolved.

about the vaccine. Clause 22 was headed up “My personal grievance” but did not identify the nature of the personal grievance(s) she was pursuing.

[103] Section 3 in the SoP set out the remedies Ms Joynt was seeking which included reinstatement, along with findings of:

- (a) “unjustified disadvantage by way of discrimination under ... sections 103, 104 and 105”; and
- (b) “unjustified dismissal under section 103A and 110A of the [Act].”

[104] Section 103 in the Act lists the various personal grievance claims that can be pursued, s 104 in the Act refers to discrimination and s 105 in the Act lists the various prohibited grounds of discrimination. Section 103A of the Act is the justification test and s 110A in the Act refers to “adverse conduct for a prohibited health and safety reason”.

[105] No evidence was provided to support a claim under s 110A of the Act. Other than referring to that section in the remedies part of the SoP, no mention was made by Ms Joynt in any communications with Accessible Properties or with the Authority, when giving her evidence during the January IM, or by her advocate when presenting submissions on her behalf to a claim having been made under s 110A of the Act. Accordingly, to the extent that a s 110A claim may have existed, it did not succeed.

*Ms Joynt’s memorandum dated 25 August 2025*

[106] The Authority sent the parties a Minute dated 15 August 2025 asking Ms Joynt to clarify prior to the case management conference (CMC) to be held on 25 August 2025 what personal grievances she was pursuing as that was not clear from her SoP.

[107] Ms Joynt responded on 20 August 2025 identifying her personal grievance claims as:

- (a) Unjustified disadvantage. No details were given about what the alleged disadvantage(s) related to.
- (b) Discrimination under s 105(1)(k) of the Act on the prohibited ground of “employment status”.
- (c) Unjustified dismissal for failure to follow a fair process.

*The CMC*

[108] During the CMC, Ms Joynt's advocate said:

- (a) Ms Joynt had raised her personal grievance claim in her letter dated 14 November 2021, which had been emailed to Accessible Properties on 15 November 2021. That was it. No other raising of grievances was referred to.
- (b) The prohibited "employment status" ground of discrimination Ms Joynt relied on was that she "was treated as if she was unemployed during her notice period".

[109] Accordingly, Ms Joynt's position at the CMC was that only the letter dated 14 November 2021 had raised a personal grievance claim. Nor mention was made to the other occasions she subsequently recorded in her witness statement.

*Ms Joynt's memorandum dated 5 September 2025*

[110] Following the CMC, Ms Joynt's advocate confirmed by memorandum dated 5 September 2025 that Ms Joynt's disadvantage grievance was about the implementation of the Order (which for health and disability workers had come into effect at 11.59pm on 25 October 2021) which had disadvantaged her over the period from 26 October 2021 to 14 November 2021. Ms Joynt's advocate said the letter dated 14 November 2021 raised a disadvantage grievance about events that had already occurred prior to that date.

[111] Again, no mention was made to the ten occasions of raising grievances that Ms Joynt subsequently claimed in her witness statement had occurred. The memorandum confined the grievance to events that had occurred prior to 14 November 2021, but that was changed in Ms Joynt's witness statement.

*Ms Joynt's witness statement*

[112] Based on Ms Joynt's advocate's memorandum dated 8 September 2021, which said the disadvantage grievance she had raised on 14 November 2021 related to actions that had already occurred over the period 25 October 2021 to 14 November 2021, the only events Ms Joynt identified in her written statement as having occurred over that period were:

- (a) Letter from Mr O'Brien advising Ms Joynt that Accessible Properties considered the Order applied to her Property Manager role, so it had to be

performed by a vaccinated worker. That meant if she remained unvaccinated as at 11.59pm on 15 November 2021 it would need to work through a potential termination process with her if she was unable to undertake her usual role on an ongoing basis.

- (b) Letter from Mr O'Brien dated 9 November 2021 advising Accessible Properties' records showed she was not vaccinated, asking about Ms Joynt's vaccination status, advising the Order required the first vaccination by 15 November 2021 and the second dose by 1 January 2022 and informing her it would be assumed Ms Joynt was unvaccinated if she did not provide written evidence she had been vaccinated.

[113] These actions were not capable of being pursued as disadvantage grievances because the Order required Accessible Properties to have taken these actions. That meant even if Ms Joynt could have established these actions had disadvantaged her, any such disadvantage would have been justified due to the requirements of the Order, which Accessible Properties had to comply with.

[114] Ms Joynt did not identify these as disadvantage grievances she was pursuing when she gave her evidence during the IM. At that time, Ms Joynt focused on alleged actions that had occurred after 14 November 2021. She told the Authority her letter dated 14 November 2021 was recording her concerns about things that could occur in future. A disadvantage grievance cannot be raised about anticipatory actions, in advance of the actions having occurred.

[115] In her witness statement, Ms Joynt set out nine occasions of "raising a grievance", which aligned with the consultation communications she had with Accessible Properties over the period 14 November 2021 to 20 December 2021.

[116] Ms Joynt's witness statement did not refer to her having had any communications with Accessible Properties after her emailed feedback on 20 December 2021, and there were no documents that established any contact had occurred between the parties since then.

[117] No dismissal grievance was raised by Ms Joynt after she was given notice of termination on 21 December 2021 before she lodged her SoP on 2 September 2024 by the Authority.

[118] No mention was made by Ms Joynt in her witness statement of having raised a discrimination personal grievance claim. She did not address in her witness statement how, when or why she considered Accessible Properties had discriminated against her.

*Ms Joynt's evidence during the IM*

[119] During the January investigation meeting Ms Joynt was given an opportunity to clarify her evidence about her grievances. There was no evidence she had raised a dismissal grievance with Accessible Properties before her SoP was served on it on 3 September 2024.

[120] Ms Joynt was asked to explain what she had meant in her email to Mr Orchard dated 15 December 2021, in which she said she had not been given the opportunity to be redeployed into the new Lease Co-ordinator position which was “discriminatory”.

[121] Ms Joynt told the Authority that she was referring to being discriminated against because she had not been vaccinated and because she was not offered what she believed was going to be a newly created Lease Co-ordinator role. She did not refer to her “employment status” as being the ground of prohibited discrimination. Vaccination status is not a prohibited ground of discrimination under s 105 of the Act. If Ms Joynt is pursuing a discrimination claim, there was no evidence to support it, so it could not have succeeded.

[122] When asked to explain what her disadvantage grievance(s) consisted of, Ms Joynt said it was Accessible Properties’:

- (a) Requirement that she be vaccinated because she believed the Order did not apply to her; and
- (b) Failure to find alternatives to dismissing her, such as by permitting her to work from home or redeploying her into the Lease Co-ordinator role which she believed was going to be created.

[123] When Ms Joynt was taken through the “ten occasions” she claimed to have raised a personal grievance, she agreed that she was basically reiterating the same thing to Accessible Properties. Namely, that she was not covered by the Order and she believed she could (and should be able to) continue doing her job while unvaccinated. If not, she wanted to be allowed to do her Property Manager role from home until the vaccine mandate was removed or she

wanted to be redeployed into the Lease Co-ordinator which she believed was going to be created.

[124] When asked whether she considered she had already been disadvantaged when she sent the letter dated 14 November 2021 to Accessible Properties on 15 November 2021, Ms Joynt said “not at that point” but she considered she was going to be unless Accessible Properties accepted she did not need to be vaccinated. Ms Joynt also told the Authority that if she did not have to be vaccinated, or could continue doing her job without being vaccinated, then that would have resolved her problem.

*Ms Joynt’s submissions*

[125] The relevant parts of Ms Joynt’s submissions focused on the fact she was not covered by the Order, and that Accessible Properties:

... did not implement the Order correctly and that caused disadvantage to the applicant. The grievances are essentially about the lack of a health and safety process in the first instance and an improper termination process in the second instance. **The applicant does not challenge the order or the termination.** (emphasis added)

[126] Ms Joynt’s advocate also submitted “Had the applicant not been threatened with job loss she would not have raised a grievance.” These submissions demonstrated that Ms Joynt’s claims were about or were intrinsically linked to her dismissal.

[127] The only reference to Ms Joynt having raised a grievance that was made in her advocate’s submissions was to the letter dated 14 November 2021, which had been sent to Mr O’Brien on 15 November 2021. No mention was made in submissions to Ms Joynt having raised discrimination and/or dismissal grievances with Accessible Properties at any time.

[128] The alleged disadvantage grievance was about “no health and safety process” which was not required because the Order covered her role and “improper termination” which could only be pursued by way of a dismissal grievance.

## **What if any personal grievance claims did Ms Joynt raise with Accessible Properties?**

*What is required to raise a personal grievance claim?*

[129] The Employment Court in *CE of Manukau Institute of Technology v Zivaljevic* made the following comments about what was required to raise a grievance in accordance with s 114(1) of the Act:<sup>11</sup>

[36] The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

[37] It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

[38] It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

*Analysis of the ten occasions Ms Joynt claimed she had raised a personal grievance with Accessible Properties*

[130] “First occasion” – Letter dated 14 November 2021. Ms Joynt was responding to Mr O’Brien’s letter dated 3 November 2021 that said her role fell under the vaccination mandate in the Order. She disputed that, said she was not going to take the Pfizer vaccine due to safety and other concerns about it, and said a formal risk assessment of her role was required. In terms of her decision not to be vaccinated, Ms Joynt said:

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<sup>11</sup> *CE of the Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132 at [36]-[38].

[...] In all of the circumstances, it is not unreasonable for me to exercise my rights to not receive the injection at this stage.

Should my choice not be respected, and you elect to disadvantage my employment by linking my employment with participating in a trial for an experimental treatment that does not guarantee the prevention of transmission of COVID-19, then **I may exercise my right to file a personal grievance...**(emphasis added)

[131] Accessible Properties did respect Ms Joynt's decision not to be vaccinated. As at 14 November 2021 all that Accessible Properties had done was inform Ms Joynt that her Property Manager role fell under the Order.

[132] The vaccine mandate in the Order had superceded Accessible Properties' consideration about whether to implement a risk based vaccination policy in its workplace. No risk assessment was needed for a position that fell under the Order, because those who were covered by the Order could not avoid the vaccine mandate by agreeing to adopt risk management arrangements that did not include vaccination.

[133] The 14 November 2021 letter was sent to Accessible Properties by email on 15 November 2021. It recorded Ms Joynt's objections to the Pfizer vaccination and her belief that she was not covered by the Order. It did not give Accessible Properties sufficient information to address a disadvantage grievance, because her decision not to be vaccinated was being respected and whether she was covered by the Order was a legal issue that Accessible Properties had no power to circumvent.

[134] The language used by Ms Joynt was anticipatory. If her decision not to be vaccinated was not respected she "may" exercise her right to file a personal grievance. Accessible Properties had respected her right not to be vaccinated so it had not breached her rights. Ms Joynt told the Authority she had taken legal advice before she wrote this letter so was aware of her right to pursue a personal grievance.

[135] Mr Orchard informed Ms Joynt in an email dated 2 December 2021 that "[W]hile you have not raised a personal grievance, if you did so I would respond to that on its merits". Ms Joynt did not correct him to state that she had in fact already raised a personal grievance, which he was required to respond to. Instead, Ms Joynt replied on 8 December 2021 stating:

Thank you, I was merely outlining all my options as advised by my lawyer, this is certainly not my preference.

[136] This response indicated that as at 2 December 2021 Ms Joynt believed she had not raised a grievance that Accessible Properties needed to respond to.

[137] “Second Occasion” – This is when Ms Joynt emailed the letter dated 14 November 2021 to Mr O’Brien. She also stated in the email she sent at 1.51am that she was not covered by the Order, so the same findings as above apply. This email did not raise a personal grievance.

[138] “Third Occasion” - This is an email Ms Joynt sent Mr O’Brien at 10.32am on 15 November 2021 (which was the second email she had sent him that day). This proposed options to “mitigate the current situation around my non-vaccination status”, which she said would enable her to continue doing her role while unvaccinated. This did not raise a personal grievance claim as it was about avoiding the vaccine mandate in the Order.

[139] “Fourth Occasion” – Email from Ms Joynt to Mr O’Brien dated 16 November 2021 which restated her view that she was not covered by the Order and asked what redeployment opportunities were available. This email did not raise a personal grievance claim.

[140] “Fifth Occasion” - On 26 November 2021 Ms Joynt emailed Mr Orchard asking for him to apply to the Minister for an exemption from vaccination for her under clause 12A of the Order. This exemption could be applied for if there was evidence it was necessary or desirable to prevent significant disruption to health services. Ms Joynt also proposed that she be redeployed to do project work she could do as an unvaccinated employee from home. Ms Joynt said another employee had offered to do all of Ms Joynt’s site visits until the mandate was lifted. This email did not raise a personal grievance claim.

[141] “Sixth Occasion” – Ms Joynt met via Zoom with Mr Orchard and Dion Twiss, HR Business Partner for IHC, on 26 November 2021 to discuss the impact of the Order on her Property Manager role and, if she remained unvaccinated, on her ongoing employment. Ms Joynt told the Authority when she gave evidence at the IM that she had not raised a personal grievance during this consultation meeting.

[142] “Seventh Occasion” - In an email dated 29 November 2021 Ms Joynt sent to Mr Orchard, she suggested options that would enable her to remain employed while unvaccinated. This email did not raise a personal grievance claim.

[143] "Eighth Occasion" – On 8 December 2021 Ms Joynt sent an email reply to Mr Orchard's emailed dated 2 December 2021, which added her comments in red within the email he had sent her. She explained why she was not going to be vaccinated, and said (among other things) that was open to discussions about being redeployed into a project role that would not require site visits or face to face meetings. This is also the email in which Mr Orchard said she had not raised a personal grievance and she acknowledged that without correcting him. Ms Joynt's comments on Mr Orchard's original email did not raise a personal grievance claim.

[144] "Ninth Occasion" – On 15 December 2021 Ms Joynt emailed Mr Orchard with her feedback on his 10 December 2021 email which had asked if she would take the AstraZeneca vaccine and if she was interested in taking up a new fixed term position (which required her Property Manager role to end) which would not require her to be vaccinated. Ms Orchard said that if so, then the details of a newly created fixed term role would still need to be worked out.

[145] Ms Joynt's email dated 15 December 2021 said she would not be taking the AstraZeneca vaccine and she asked to be able to take other precautions to mitigate the risk of Covid-19 instead of being vaccinated under the Order. Ms Joynt said she did not believe all redeployment options had been exhausted, because she had not been offered the Lease Co-ordinator's role, which was being revised but had not been advertised. Ms Joynt claimed it was "discriminatory" that she had not been redeployed into that role and she asked that her suitability for the role be reconsidered.

[146] The use of the word "discriminatory" was insufficient to have raised a personal grievance for discrimination under s 105(1)(k) of the Act. Ms Joynt had not provided Accessible Properties with sufficient information for it to have addressed a discrimination claim on its merits with a view to resolving it in the first instance. The ground of the alleged discrimination was unclear, even after Ms Joynt had given her evidence during the IM in January 2026.

[147] "Tenth Occasion" – On 20 December 2021 Ms Joynt emailed Mr Orchard with her feedback on Accessible Properties preliminary view, as advised in a letter to her dated 16 December 2021, that termination of her employment was necessary as she was not going to be vaccinated, the Order required her to be vaccinated to continue doing her Property Manger role, and there were no suitable redeployment options available.

[148] Ms Joynt said she could do her Property Manager role from home. She also said she was still interested in the Lease Co-ordinator role, and that even if it required site visits she could take other precautions to avoid Covid-19 without needing to be vaccinated. This email did not raise a personal grievance.

*Totality of Ms Joynt's communications*

[149] Standing back and considering the totality of Ms Joynt's communications over the period 14 November 2021 to 20 December 2021, she informed Accessible Properties that she:

- (a) Did not believe she was covered by the Order.
- (b) Was not going to be vaccinated as she considered the vaccines were unsafe.
- (c) Wanted to continue doing her Property Manager role without being vaccinated, by taking other precautions or by such as working from home and having another employee do her site visits until the vaccine mandate was lifted.
- (d) If she could not do that, then she wanted to be redeployed and was interested in the potential new Lease Co-ordinator role, which had not been finalised, but which she proposed she could do site visits for a while unvaccinated by taking other precautions that did not include vaccination.

[150] The key issue is whether the combined content of Ms Joynt's communications disclosed a complaint that was capable of amounting to a disadvantage grievance. If so, the next question was whether Ms Joynt had taken reasonable steps to make Accessible Properties aware there was a disadvantage personal grievance she wanted it to address.

[151] Ms Joynt's email response on 8 December 2021 to Mr Orchard indicated she had not raised a personal grievance claim. She did not tell Accessible Properties she had already raised a grievance it needed to respond to.

[152] The issues Ms Joynt was engaging with Accessible Properties about formed part of the normal consultation process about the effect the Order had on her role and her ongoing employment. She did not inform Accessible Properties that her communications with it were raising a personal grievance claim, so were not just her feedback and engagement during the normal consultation process.

[153] The issues Ms Joynt had raised about not being covered by the Order, wanting to do her role from home and if that was not possible her request to be redeployed into a role where she did not need to be vaccinated were issues that would have been considered if she had raised an unjustified dismissal personal grievance, but that did not occur. It is artificial to break the key components of a dismissal grievance into separate stand-alone disadvantage grievances when Ms Joynt had not done so herself.

[154] The fact Ms Joynt's case has morphed so much since the SoP was lodged demonstrated that even she was not clear about what complaints she had informed Accessible Properties about its actions that she had wanted it to address, which she was now claiming as a disadvantage grievance.

[155] Ms Joynt's employment ended on 15 February 2022 and her SoP was served on Accessible Properties on 3 September 2024. Any personal grievances that could have potentially been raised for the first time in her SoP were therefore out of time.

### *Findings*

[156] No personal grievances for unjustified dismissal or discrimination on the grounds of employment status were raised by Ms Joynt.

[157] Ms Joynt's communications over the period 14 November to 20 December 2021 were insufficient either individually or in totality to have raised a disadvantage grievance with Accessible Properties.

[158] If Ms Joynt's letter dated 14 November 2021 raised a disadvantage grievance about:

- (a) Actions up to that date, then those fell outside the Authority's jurisdiction as they were required by the Order.
- (b) Actions that occurred (or may have occurred) after 14 November 2021, then those fell outside the Authority's jurisdiction as she cannot have raised an anticipatory personal grievance claim about something that had not already occurred.

[159] The Authority does not have jurisdiction to determine if an employer's actions were unjustified merely because the employer acted in compliance with the terms of the Order. Complaints by employees about the lawfulness of the Order, the vaccine mandate, or the safety

and efficiency of the vaccine, cannot be complaints in the nature of a personal grievance under s 103 of the Act. Compliance with the Order was not a breach of an employer's health and safety obligations to employees.

**What personal grievance claims did Ms Joynt raise within the 90-day time limit required by s 114(1) of the Act?**

[160] Ms Joynt did not raise any personal grievance claims with Accessible Properties within 90-days of them arising or coming to her attention, whichever was the later, as required by s 114(1) of the Act.

**Could Ms Joynt have pursued a discrimination grievance claim based on her employment status?**

[161] Even if Ms Joynt had raised a personal grievance for discrimination on the grounds of her "employment status", she had remained employed up to 15 February 2022. She was not "treated as if as if she was unemployed during her notice period", as she was paid as normal and remained an employee. That meant she could have changed her mind about being vaccinated any time up to 15 February 2022 if she did not want her employment to end. Because Ms Joynt was not unemployed, she could not have been discriminated against for being unemployed.

[162] The first reference to s 105(1)(k) of the Act was made by Ms Joynt in her advocate's memorandum dated 20 August 2025 and the first time the alleged prohibited ground of discrimination, said to be "employment status" was raised was during the CMC on 25 August 2025. This was clearly well outside the 90-day time-limit in s 114(1) of the Act.

**Does s 113 of the Act bar any of Ms Joynt's claims?**

*Relevant law*

[163] Section 113 of the Act states:

113 Personal grievance provisions only way to challenge dismissal

(1) If an employee who has been dismissed wishes to challenge that dismissal **or any aspect of it, for any reason**, in any court, that challenge may be brought only in the Authority under this Part as a personal grievance.... (emphasis added)

[164] Section 113 is written in broad terms as it covers “any aspect of the dismissal” for any reason. Section 113 prohibits an employee from effectively challenging a dismissal by pursuing a wrongful dismissal claim or by making damages claims for an alleged breach of contract.

[165] The broad nature of s 113 prevents the 90-day time-limit imposed by s 114(1) of the Act from being circumvented by ‘dressing up’ what is in reality an unjustified dismissal personal grievance claim as other discrete, standalone claims.

[166] The Employment Court in *Hall v Dionex Pty Ltd* stated:<sup>12</sup>

[107] Mr Erickson submitted that the matters Mr Hall wished to pursue by way of a claim of breach of contract **fell within the factual matrix that gave rise to the dismissal and accordingly comprised a challenge to ‘any aspect of [the dismissal]’**. He submitted that **it was artificial to separate out different aspects of the chain of events which began with the suspension and culminated with Mr Hall’s dismissal**.

[108] The effect of s 113(1) is to **prevent** employees from challenging a dismissal through a common law action for wrongful dismissal, an action for breach of contract or under the Contractual Remedies Act 1979. As the authors of Mazengarb’s Employment Law point out, the effect of the provision would appear to be **far reaching**. The authors of Brookers Employment Law suggest that the appropriate approach is as follows:

... if a common law action can be brought by a (dismissed) plaintiff, with **no** reliance on the fact or manner of dismissal as an element in the cause of action, then such a claim will clearly not be barred by s 113(1).

In the present case there is a clear causal connection between the failings of the disciplinary investigation, Ms Cameron’s lack of authority and Mr Hall’s ultimate dismissal. I agree with Mr Erickson’s submission that **it would be artificial, in the circumstances, to separate out the failings relating to the process leading up to the dismissal and the dismissal itself. All were inextricably intertwined**. In my view s 113 applies and prevents the plaintiff from pursuing a claim for damages for breach of contract. (emphasis added)

[167] The Authority has addressed this point in *Robinson v Cromwell College Board of Trustees* in which it held that personal grievances relating to the application of the Order (not

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<sup>12</sup> *Hall v Dionex Pty Ltd* [2015] NZERA 502 at [107].

whether the Order was lawful, for which there is no jurisdiction), was an unjustified dismissal grievance (not unjustified disadvantage grievance(s)). If the dismissal was the consequence for unvaccinated employees that were covered by the Order, an employee could not bring a breach of contract claim in respect of their dismissal.<sup>13</sup>

[168] In *Bastion v Cashmere Primary Te Pae Kereru School Board* the Authority held it did not have jurisdiction to investigate a dismissal claim as a breach of contract.<sup>14</sup>

*What claims has Ms Joynt made in her SoP?*

[169] The lack of clarity and changing nature of Ms Joynt's claims has required what she recorded in her SoP to be assessed to establish if it contained any claims over which the Authority has jurisdiction. The short answer is "no", for the following reasons.

[170] Section 1 of a SoP requires an applicant to state, "The problem or matter that I wish the Authority to resolve is: *[state details fully, fairly, and clearly]*".

[171] In Section 1 of the SoP, the claims were stated by Ms Joynt as:

- (a) My employer made a unilateral decision to vary my agreement to require that I received covid vaccinations to continue employment. There was never any written variation ratified or otherwise.
- (b) My contract was wrongly terminated without cause by my employer, as I had no term in my contract requiring that I take medical treatments or undertake medical testing of any kind [...].
- (c) Clause 1.7 of my agreement does not allow any variations unless they are in writing and signed by the parties. I never signed any variations allowing vaccination.

[172] These claims of breach of contract, unlawful variation of contract, and/or in the nature of wrongful dismissal are barred by s 113 of the Act, because in reality they are about Ms Joynt's dismissal because she was unable to meet the vaccination requirements of her role, which had been imposed by the Order.

[173] Such claims were intrinsically linked to Accessible Properties implementation of the Order. However, mandatory vaccinations for workers doing specified work were a government

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<sup>13</sup> *Robinson v Cromwell College Board of Trustees* [2026] NZERA 11, at [22] and [38].

<sup>14</sup> *Bastion v Cashmere Primary Te Pae Kereru School Board* [2025] NZERA 841, at [36].

imposed requirement that Accessible Properties had no option but to comply with. Failure to do so was an offence.

[174] Section 1 of the SoP also included claims by Ms Joynt that:

- (a) My employer failed to properly comply with the Health and Safety at Work Act 2015 [...].
- (b) My employer attempted to use the vaccination as a control and coerce me to take a medical treatment; This was in direct contravention of the implied term of my contract which says they would act as a good employer in terms of the HSWA; they threatened that they would terminate my employment if I refused to comply.

[175] Section 113 of the Act bars these claims because in reality they are about Ms Joynt's dismissal, and/or they related to a matter involving a breach of the HSWA which WorkSafe New Zealand has exclusive jurisdiction over (not the Authority), and/or they are complaints about Accessible Properties' compliance with the Order. The claims were also not established on the facts. Accessible Properties was not using the vaccination to "control" Ms Joynt and it did not "coerce" her to get vaccinated.

[176] Section 1 of the SoP included a claim by Ms Joynt that:

- (a) My employer claimed my role came under the [Order] ... If it is true that I was covered by the Order, which I deny, then my employer had no legal right to implement it against me.

[177] The Authority does not have jurisdiction over this claim because it is about the validity of the Order itself. Even if the Authority had jurisdiction, this claim is barred by s 113 of the Act, because in reality it is about Ms Joynt's dismissal.

## **Outcome**

[178] The Authority does not have jurisdiction over any of the claims in Ms Joynt's SoP because:

- (a) She did not raise unjustified disadvantage, discrimination and/or unjustified dismissal personal grievance claims with Accessible Properties within the 90-day time-limit required by s 114(1) of the Act.

- (b) The non personal grievance claims are barred by s 113 of the Act, as these other claims effectively involved challenges to “any aspect of” her dismissal. It was artificial to separate out different aspects of the chain of events that started with the Order coming into effect on 25 October 2021 and ended when Ms Joynt’s employment terminated on 15 February 2022.

**What costs and disbursements should be awarded?**

[179] Accessible Properties as the successful party is entitled to a contribution towards its legal costs. The parties are encouraged to resolve costs by agreement, based on the notional daily tariff for a one day IM.

[180] If that is not possible, Accessible Properties has 28 days within which to lodge its costs submissions. Ms Joynt then has 14 days within which to lodge her costs submissions. The parties should identify any factors they say should result in the notional starting tariff being adjusted.

Rachel Larmer  
Member of the Employment Relations Authority