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EMPLOYMENT TRIBUNALS

Claimant: **Mr J Patel**

Respondent: **Barclays Bank UK plc**

Heard at: **East London Hearing Centre**

On: **12-16, 20-23 & 26-29 March 2018**

Before: **Employment Judge Jones**

Members: **Ms M Long**
Mr M Rowe

Representation

Claimant: In person

Respondent: Mr A Burns QC (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1 **The Claimant was not subjected to any detriment on the grounds that he made protected disclosures.**

2 **The claim is dismissed.**

REASONS

1 In an ET1 issued on 22 June 2017 the Claimant complains of detriment following the making of protected disclosures. The Claimant sought damages for detriment for victimisation on the grounds of whistle-blowing. The Respondent resisted the complaint.

2 The matter came before the Employment Tribunal on 4 September 2017, before Employment Judge Russell. At that hearing, the Respondent confirmed its acceptance that the Claimant had made a protected disclosure on 12 May 2016 but it resisted the claim on the grounds that if there was any detriment, it was not caused by the protected disclosure/s. The Claimant complained that his identity as a whistleblower was disclosed to colleagues and that he was moved out of the investment bank and into the retail bank to his detriment as a consequence. He further claims that his career progression has been hampered and that he was subjected to aggressive, demeaning and flippant conduct by colleagues between 16 and 27 May 2016, as a consequence of the whistle-blowing and to his detriment.

Issues

3 The list of issues was further refined after that preliminary hearing. At the start of this hearing, the Claimant presented the Tribunal with a final list of issues. Those issues were as follows:

3.1 Protected disclosures?

3.2 Whether the Claimant made the following protected disclosures:-

3.2.1 in writing to the Respondent on 12 May 2016 (conceded)

3.2.2 by email to Ben Bair on 24 June 2016

3.2.3 orally to Ben Bair on 27 June 2016, and

3.2.4 orally to Ben Bair on 9 December 2016

Detriments?

3.3 Whether the Claimant was subjected to the following detriments by any act, or any deliberate failure to act on the ground that the Claimant made protected disclosures?

3.4 The Claimant relies on the following:-

3.4.1 Between November 2016 and January 2017 - being selected to be moved to the retail bank division of Treasury and away from the investment bank division resulting in a change of role, responsibilities and accountabilities.

3.4.2 From April 2016 onwards, the Respondent failed to action a tangible 'development action' which was defined for the Claimant during the 2016 Talent Review.

3.4.3 Causing the Claimant to be identified widely in his management team, between 12 – 13 May 2016 as a Whistleblower, which resulted in him being subjected to negative treatment by his managers, as follows:

3.4.3.1 Billy Suid's aggressive approach towards him between 17-20 May 2016.

3.4.3.2 Unfair scrutiny of his performance by Billy Suid on 19 May, and during June/July 2016.

3.4.3.3 A negative attitude towards the Claimant from his line manager, Anthony Knobel from 19 May onwards.

Time – Limitation points

4 The question for the Tribunal here was whether the complaints of detriment (whether each or all of them) had been presented before the end of the period of three months beginning with the date of the act or failure to act where it is part of a series of similar acts of failures, the last of them (having regard to the ACAS Early Conciliation provision in section 207A of the Employment Rights Act 1996)?

5 If not, can the Claimant show that it was not reasonably practicable to present the complaint before the end of the period of three months and that it was presented within such further period that the Tribunal considers reasonable?

Remedy

6 If any of the Claimant's complaint of detrimental treatment are well-founded, what, if any, compensation would be just and equitable in all the circumstances having regard to (a) the infringement to which the complaint relates, and (b) any loss which is attributable to the act, or failure to act, which infringed the Claimant's right.

7 At the preliminary hearing, EJ Russell noted that if the Tribunal determined that the Respondent had breached any of the Claimant's rights to which this claim relates, it may decide whether there are any aggravating features to the breach and, if so, in accordance with section 12A of the Employment Tribunals Act 1996, it may impose a financial penalty.

8 The Tribunal apologises to the parties in this matter for the delay in the promulgation of the judgment and reasons in this case. This was due to pressure of work.

Evidence

9 On behalf of the Claimant, the Tribunal heard from his line manager - Fiona Chan (former Director of Capital Markets Execution [CME]), former colleagues who worked with him in CME - Amir Hashmi (VP, secure CME), Marc Comasky (former VP, Treasury lead); and the Claimant. On behalf of the Respondent, the Tribunal heard from Anthony Knobel, Director CME, Benjamin Bair, Global Head of Investigations and Whistle-blowing; Billy Suid, Managing Director (MD), CME; Daniel Fairclough, MD Barclays Corporate and International Treasurer; Rupert Fowden, Treasurer of BUK; and Emily Rees HR Business Partner, Treasury. The Tribunal had witness statements from all those witnesses who gave evidence at the Hearing and a bundle of documents consisting of two lever arch files.

10 From the evidence, the Tribunal made the following findings of fact. We have not made findings of fact on every bit of evidence in the Hearing but only on those matters that relate to the issues that we had to determine.

Findings of fact on the issues

11 The Claimant is employed by Barclays Bank UK plc. He began his employment in June 2007 as an analyst on the investment bank graduate recruitment programme. From June 2007 until May 2013 the Claimant worked as a trader and structurer in the Respondent's investment bank's markets division.

12 From May 2013 the Claimant worked on the BOLT (balance sheet optimisation and liquidity trading desk) team which sat within the investment bank's treasury department. He worked under Billy Suid's management. At that time, Mr Suid was the head of BOLT. The BOLT team had a dual reporting line into the Investment Bank Collateral Optimisation Unit and Treasury Execution Services.

13 The Claimant was recruited into the BOLT team by Mr Suid as they had a mutual friend. At the time, the Claimant had been at risk of redundancy at the investment Bank. When he joined BOLT the Claimant's grade was Assistant Vice President.

14 In 2014, BOLT merged with two other teams to form a new group called Capital Markets Execution (CME). The three teams continued the work that they had been doing previously but were renamed CME-unsecured, CME-secured and CME-secured-bespoke. The Claimant continued to work on CME Secured bespoke work. The CME team now sat within the Respondent's Group Treasury Department. This was the beginning of the creation of 'one Treasury' in the Bank. The team was made up of around 20 employees. The CME team was responsible for executing funding, liquidity and capital transactions for the Respondent. The unsecured team focused on the issuance of unsecured instruments, the secured team focused on the execution of asset-backed transactions on behalf of the Respondent, which included the securitisation of the bank's assets; including bespoke products. There were also projects which involved all 3 CME teams.

15 Soon after he joined the BOLT team the Claimant was promoted to the position of vice president (VP). Mr Suid's evidence was that the Claimant performed well upon

joint joining the BOLT team and he was happy to put the Claimant on a fast track for promotion.

16 By June 2015 the Claimant reported to Anthony Knobel, director and Mr Knobel reported to Mr Suid. The Claimant produced a print-out of his entry in the Bank's online directory which stated that he was in the investment bank division and that his job role was VP, Capital Markets Execution. The document did not have a date when it was printed off. He also produced a document entitled 2013 Compensation Profile. On the second page, under the heading "summary of Key Terms", his position was described effective 1 March 2014 as Vice President in the Investment Bank. The BOLT Treasury team was not part of the investment bank but was consolidated into Group in 2014.

17 Mr Fowden's evidence was that until 2014 the Respondent's Treasury had traditionally operated centrally across its various business divisions and legal entities. CME carried out the external capital market issuance and risk transfer transactions as one of Barclays Group Treasury's central functions.

18 We find it unlikely that the Claimant was still in the investment part of the Bank after the creation of CME in 2014.

Talent review

19 The talent review process was one of a number of tools and processes that the Respondent had to facilitate talent conversations with staff and manage their development. These tools were used across the Respondent and were not specific to Treasury alone. We had copies of the Claimant's annual performance reviews in the bundle. The talent review was separate from that process. Whereas an annual performance review takes place between an employee and his manager, the talent review process was between managers. As stated in the document entitled 'holding a talent review'; doing so allowed managers to make a "deeper, constructive, quality assured assessment of the talent in their team, in line with strategic goals" and it should also give the Respondent the "opportunity to think more broadly about individual development, capability gaps and mobility across the business".

20 According to Ms Rees' evidence, historically, the talent review process in Treasury had only been undertaken at a senior level i.e. for the director and managing director populations. At the time, the assessment of talent at other levels within Treasury had been done in varying levels of depth and consistency which had resulted in gaps in information. In view of the changes that would be affecting the Bank due to the anticipated ring fencing process explained below, Naomi James (HR Business Partner) and Emily Rees decided that it was necessary to carry out a much wider talent review across Treasury to cover all employees across corporate grades, from the entry level Business Analyst up to the most senior grade of Managing Director and to do so in a consistent and organised fashion. This would enable the Bank to identify each individual's strengths and areas for development across the whole of Treasury resulting in an in-depth understanding of the talent available within the Bank.

21 In addition, the evidence was that the Respondent had been moving to more role-based promotions which meant that employees had to apply for a vacant role if

they sought promotion. New roles could appear following a restructure. All new vacancies are advertised on the Bank's internal job board. Employees who apply for a new job would be able to apply for the role and go through a competitive application process which would include an interview. Sometimes roles evolve, grow and take on new responsibilities and in that case the role profile could be sent away for re-evaluation. If that results in the role being evaluated upwards, it could be benchmarked at a higher grade which would require senior stakeholder approval. It was also common for employees to move around within the team structure at the Bank's request – not as a promotion but as an opportunity to work in another team and possibly acquire different skills. The talent review process was expected to provide information that would feed into all these employee options for changing roles and gaining promotion.

22 The Respondent's 9 Box Grid was a talent management tool used by the Bank to monitor performance and potential. The Talent Toolkit 2 in the bundle of documents identified it as a tool to enable the Respondent to assess readiness by a combined assessment of potential with performance. That is the overall performance over the past 1-2 years. Box 1 was categorised as an "Under Performer" and was the lowest category within the system while Box 9 is the highest box and is categorised as "ready talent". Those in box 9 were outstanding performers identified as being ready for the next development in their career. Those graded as Box 9 would be expected to move to a new role within the next 12 months. Boxes 2, 3, 5, 7 and 8 were variations of 'inconsistent', 'consistent', 'solid', 'strong' and 'progressing' performers. Box 6 identified the employee as a 'high contributor'.

23 Naomi James and Emily Rees of HR presented the talent plan to the Treasury Management Team (TMT) in January 2016. In its 'talent script' HR outlined that the first part of the meeting would be taken up in outlining a Treasury Talent Plan for the year ahead – including action on supporting key people, setting up regular talent and mobility reviews and developing line manager capability. In the second part of the meeting HR intended to lead a review of Treasury's top performing individuals (at VP and Director level) focusing on those who had been given 'Outstanding' and 'Strong' ratings at their year-end. For those individuals HR planned to suggest that the Treasury should create meaningful individual actions and next steps to support ongoing development and retention. This was adopted and in April, the process continued with the talent review of those Directors and Managing Directors who were identified as being in boxes 7 – 9 in the Respondent's 9 Box Grid.

24 During March and April, a number of talent reviews were held with directors and managing directors from different teams within Treasury in respect of employees at VP level and below. At these talent reviews the strengths, development points, mobility and 9 Box Grid position of each VP within Treasury was discussed. The talent review which included the Claimant took place between on 14 March, 31 March and 1 April 2016. The Claimant's talent review form was completed on 31 March 2016. A number of senior managers were present when the Claimant along with the other VP's in the team were discussed, including Billy Suid.

25 The redacted spreadsheets in the bundle of documents record what was discussed at the meeting and the Claimant's 9 Box Grid rating of 7. Mr Suid recalled that prior to the meeting he had sought feedback from all line managers within the

CME team about their direct reports. He had spoken to Mr Knobel about the Claimant and fed that back to the meeting. In the meeting, Mr Suid identified the Claimant as someone *with "very strong analytical skills"* and *"a good eye for risk and control".* He also stated that *"where there is something complicated or esoteric, it naturally falls to Jeetesh".* A comment noted on the spreadsheet that HR produced afterwards was that *"Anthony needs to stretch Jeetesh though to prevent boredom".* Under the Heading 'development actions' it was recorded that the Claimant should remain in his role and that *"in 12-18 months we should look to develop breadth within TFI, FSTI or STG."* That was the extent of the actions that came out of the talent review for the Claimant.

26 At this point the team had not yet worked on SRTs and so that work did not feature in the discussion. A box 7 grid rating meant that the Claimant was considered a 'progressing performer'. In the 9 Box Grid information it stated that someone graded as 7 should be provided with stretch opportunities to assess their full potential and or look for alternative role at a similar level to build out breadth and depth. The focus should also be on retention. In the meeting the senior managers discussed potential developments for each VP and considered possible time frames for any move to a new role. We find it likely that it was Billy Suid who suggested the areas that the Claimant should be developed in, given his skills and his technical ability.

27 Where an employee was graded as a box 8 or box 9 the Respondent identified specific action points including identifying a new role for them. This was expected and made sense in those situations where the Respondent's focus was on retention of those individuals as they were considered to be at the top of the scale.

28 In relation to those who were rated at box 1 or 2 in the 9 Box Grid system, the focus would be on identifying a lateral move for them or on managing them as bottom rung performers out of the business. In her live evidence, Ms Chan stated that she had immediate actions to be taken in relation to 2 members of her team. It is likely from what she told us that those employees had been graded at box 1 or 2 during this process. In the 9 Box Grid system it stated that an inconsistent or under performer should be managed closely for improvement and either redeployed or exit the business, if there is no satisfactory improvement within a year. That would require immediate action. She confirmed that she did not have to take immediate action in relation to the other 2 members of her team and that might indicate that they had been graded at boxes 6 or 7. She recalled that they were graded in the middle of the scale.

29 For those graded in the other boxes, the 9 Box Grid system anticipates a move to another box rather than a move to another post, once the employee's performance improves. It is likely that that would apply to the Claimant since he was graded box 7.

30 The talent review process brought up talking points and developments points for VP's and their managers. Once the spreadsheets were prepared they were sent to the respective managers. There was an expectation from the TMT that managers would use the information on the spreadsheet to talk to their direct reports. That is set out in the email that accompanied the spreadsheet. Where specific actions had been committed to during the review, those should be actioned. We find it likely that this was a reference to those graded one of boxes 1, 2, 8 or 9. Managers were not allowed to tell those in their team what box they had been graded on in the grid but they were expected to talk to them about their professional development and their immediate

performance in their present role and how it fitted in with the Respondent's business needs. Managers were expected to come back and manipulate the spreadsheet once they had had those conversations with staff.

31 The Claimant confirmed in evidence that he agreed that the timeline for action on his talent review was 18 months but that nothing had been shown to him that demonstrated that there had been any progress on the action in the time between the talent review and when he found out about it in February 2017.

32 We find that the Claimant, Amir Hashmi, Marc Comasky and David Waltham were all line managed by Anthony Knobel. They were all VPs within the CME team. In their live evidence in the Hearing, both Amir Hashmi and Marc Comasky as well as the Claimant stated that Mr Knobel had not had any career development conversations with them. There had been no conversations with them following the talent review. We find that there should have been conversations with them as outlined above – about their professional development, their immediate performance and how it fitted in with the Respondent's business needs and immediate future. Mr Suid met with Mr Knobel and discussed the results of the team's talent review. It is likely that they had a general discussion rather than any detailed points of action. Mr Suid discussed with Mr Knobel the feedback on each of his direct reports. As the Claimant's line manager, Mr Knobel was responsible for discussing the Claimant's development with him after this talent review process and throughout the year and at his mid-year and end of year performance reviews. Mr Knobel's evidence at the hearing was that it had 'dropped off the bottom of his inbox'. He confirmed that he had never had a discussion about the talent review with the Claimant or spoken to him about his career development.

33 Generally, the Claimant's colleagues would frequently approach Billy Suid to discuss their career aspirations or to enquire about roles that they were interested in, although the Claimant did not. Mr Suid told us in evidence that Eliza Kormosh, who was an AVP (Assistant Vice President) in the team, complained on her departure from the business that she had signalled that she wanted to evolve and that it had not been acted on. Ms Kormosh had also been line-managed by Mr Knobel. As Mr Knobel's line manager and overall manager of the team, he took responsibility for that. In his response to the Claimant's grievance, Mr Knobel confirmed that he had not had many 1:1's with his direct reports on 2016 and that this was due to work pressures and a lack of prioritisation of team responsibilities. The Respondent appeared to us to be keen to retain talented people within the Bank, wherever possible.

34 Mr Knobel's direct reports who we heard from stated that they had a 'deficit of air time' with him and Mr Suid confirmed that he was aware of this. Mr Suid had a conversation with Mr Knobel about his career and developmental needs and indeed supported him in applying for a role that year. Mr Suid complied with his obligations in that he had supported his direct reports and spoken to them about their developmental needs and the needs of the business.

35 Mr Suid was also aware of the talent review and the recommendations for the Claimant. The Claimant was to remain in his role but be given opportunities to develop breadth within certain areas. He believed that the best way to provide the Claimant with stretch opportunities or breadth was to ensure that he became heavily involved with the SRT programme that the CME Secured Team expected to undertake during

the second half of 2016. SRTs are Significant Risk Transfers securitisations. They are transactions that involve securitising certain loans held by the Bank such as corporate loans. This could involve selling a tranche of those securitisations to institutional investors in order to reduce the credit risk and hence, the amount of capital the Bank needed to hold to support those loans. Mr Suid's evidence was that SRTs had been subjected to increasingly strict regulation since the global financial crisis and, as a result, no new SRTs had been executed by the Bank since 2011. By 2016 the Bank had decided to revisit the topic and set a programme of SRT transactions that would meet the Bank's internal requirements, the relevant regulations and investors' expectations. In or around May 2016 Mr Fairclough and Mr Suid approached the Respondent's Capital Task Force and obtained a mandate to carry out a three-year programme of SRTs.

36 Mr Suid recognised, and it was agreed at the Hearing that SRTs were particularly complex financial products. Mr Suid believed that the Claimant had the technical and analytical ability to take a lead role on the SRT transactions. He confirmed in live evidence that the Respondent did not assign the Claimant to SRT work because of the talent review. It was work that the team undertook. However, the aspects that he led on were assigned to him because it was thought that he would respond well to the challenge. The Respondent would not have created new work specifically for the Claimant to be provided with stretch opportunities. SRTs would have been new work for the whole Secured CME team. The Claimant was involved in the initial planning phase of one of the largest SRT transactions from May 2016.

37 At the Hearing the Claimant's evidence was that no-one had told him that his abilities had been recognised or that he was seen as being good at the work around SRTs. However, the evidence from Mr Hashmi was that the Claimant had the technical knowledge and Mr Comasky confirmed that the Claimant delivered project Dover and was, in his opinion, the highest skilled VP in this area of work. He stated that he would go to the Claimant for assistance if he were working on a similar project again. Mr Suid's evidence was that while Mr Hashmi and Mr Comasky worked on the SRTs at different stages during the transactions it was the Claimant who was involved in them throughout 2016 and who had a more prevalent role in them than any other VP. Project Dover was the biggest SRT that the team executed and the one that was most urgent and important to the business. By the end of 2016 the Respondent had closed three significant transactions under the SRT project which meant that the Claimant would have gained significant experience and more than his colleagues, in the construction and delivery of them.

38 The evidence was that if a vacancy came up in any of the departments referred to in his talent review, in round 12 – 18 months' time, he would have to apply in the normal way and be considered for the role. The review stated that the Respondent should look to build breadth and stretch him so that he would be in a good position to apply and be considered for such roles should they arise in future or in about 12 – 18 months' time.

May 2016

Whistle-blowing

39 We find that on 12 May 2016 the Claimant sent an email to the Respondent's Chief executive, Chief Financial Officer, Treasurer and copied in to the Compliance and Whistle-blowing department. In the email he raised a concern over a series of transactions carried out in CME Secured that he believed had been done in breach of the Respondent's Tax Principles and Barclay's Values. He referred specifically to the activity of the Luxembourg Collateral Management and complained that in his opinion its activity amounted to shifting significant income from Barclays Bank plc to entities where no corporate tax is paid. He believed that this type of activity was effectively, tax evasion. The Claimant stated that he had come to this belief after conducting his own research as he did not accept the answers that had been given to him when he raised this matter with colleagues. The Claimant attached the results of his research and asked that his disclosure be treated in a formal manner.

40 We find that the Respondent has a robust whistle-blowing policy. We had a copy of the policy in the bundle of documents. Training is provided to every employee of the business from the CEO to the lowest ranking person. Training is conducted by the whistle-blowing team. There is a mandatory annual e-learning module that employees are required to complete and attest to every year. In addition to specific whistle-blowing training, reference to whistle-blowing is made in other training courses to remind employees how to raise concerns should they have any.

41 The policy is called the 'Raising Concerns (Whistleblowing) Global Policy'. The police stated that individuals are strongly encouraged to speak up about behaviours and practices that contradict the Barclays Values. The purpose of the policy was to ensure that Barclays provided a process for individuals to raise concerns about inappropriate conduct without fear of retaliation and with confidence that the concern will be taken seriously and a meaningful review conducted. The policy set out clearly that any employee who has retaliated against an individual because they raised a concern about inappropriate conduct may be subject to disciplinary proceedings.

42 There was a Global Whistle-blowing Standard to accompany the policy. The Respondent had a dedicated intranet page where the Whistle-blowing team could post relevant information such as the policy and examples of scenarios of whistle-blowing to help employees recognise situations where they should contact the team.

43 We find that the Claimant made his disclosure to the individuals that he thought would have knowledge of the matters that he referred to. Daniel Hodge was the Respondent's Treasurer and had, as far as the Claimant was aware, worked in this area of the business in the past. The Claimant believed that they would all have been able to understand the issue that he was raising. The Claimant's evidence was that although he copied the email to the whistle-blowing team, his expectation was that he would have a conversation with senior management where he could set out his concerns, discuss them and have them resolved.

44 We find that even though the Claimant had sent his email to more than one person he still had an expectation of confidentiality. He did not take advantage of the

possibility of anonymity as he sent it to more than one person, but he had not waived his right for this matter to remain confidential.

45 We find that upon receipt of the Claimant's email, Mr Hodge immediately shared it with the Respondent's Group Finance Director, the Respondent's Chief Executive, the Head of Group Structural Reform Program and the Managing Director of Group Capital Markets Execution. We did not hear from Mr Hodge in evidence.

46 Mr Hodge asked: '*who is this person?*' in his email of the same day. A few moments later he emailed the Group Finance Director and the Group CEO to say that they should let him '*deal with this'*. He went on to say that it had taken him by surprise and he believed that to send it in this way was *'an unusual form of escalation'*. He stated to his managers that he did not agree with the statements being made and that he would deal with compliance and tax on the matter and let them know. We find it likely that Mr Hodge was taken by surprise by the Claimant's disclosure and responded quickly without reference to the whistle-blowing policy or team. He later told Mr Bair that he had decided that prompt action was required and forwarded the email to senior managers within the Treasury team with a view to working out who was best placed to respond to the concerns. Mr Hodge informed Mr Bair that he had never had an email like this before. Mr Bair told us that he did not ask Mr Hodge who he had forwarded the email to. He informed Mr Hodge that what he had done was not appropriate and he also spoke to Mr Hodge's manager, Tushar Mozaria about it. The Claimant also described it in the Hearing as inappropriate. However, as far as the Compliance department was concerned, what Mr Hodge had done in forwarding the email, although unhelpful was not considered a breach of policy. He had forwarded the email before he had the benefit of guidance from the Compliance team, because he had not considered it as whistle-blowing and because the Claimant had distributed it to more than one person.

47 We find that the Claimant had expressly asked that the email be treated as a formal matter. We find that the senior managers, Daniel Hodge and Daniel Fairclough had not initially treated it as whistle-blowing and instead sent it to other managers and expressed opinions on it before an investigation had been conducted.

48 On 13 May, Mr Fairclough sent an email to Alexander Andreadis (head of EMEAPAC Markets & BNC Compliance) to ask for assistance. They spoke on the telephone. Mr Andreadis followed the Respondent's procedure and immediately advised him both in their telephone conversation and also by a follow-up email, that the whole matter should be dealt with solely by whistle-blowing. He also advised Mr Suid and Mr Hodge that the matter should be kept confidential and should not be discussed with others. It is likely that Mr Fairclough then emailed Mr Hodge and the other senior managers to say that he did not think it was right for management to speak to the Claimant about his concerns but that instead he would contact the whistle-blowing team for advice on how to respond.

49 We find that in response to Mr Hodge's email asking who the Claimant was, Steven Penketh, the Head of Group Structural Reform Program responded to say that the Claimant works in CME Secured funding under Billy Suid's management and that he was '*young, bright and intelligent'.*

50 Mr Andreadis forwarded the Claimant's original email to Benjamin Bair, the Respondent's Global Head of Investigations and Whistle-blowing. His team would usually check the whistle-blowing inbox for messages and any information in there would then be allocated to a caseworker to progress. In this case, as the matter had been referred to Mr Bair from Mr Andreadis, the case was taken up by Mr Bair.

51 One of the first things Mr Bair did was to give Mr Hodge the following form of words to respond to the Claimant, which he used:

> *".. thank you for raising these issues. I have forwarded your email to Benjamin Bair, Global Head of Investigations & Whistleblowing who will assign an independent team to review the issues. A member of Benjamin Bair's team will be in touch shortly to understand the issues in more detail".*

52 Before the end of the 13 May, the Respondent's Global Compliance Whistleblowing Team wrote to the Claimant. He was advised that he had done the right thing and was thanked for raising his concerns. He was advised that they could not confirm timescales for the investigation but proposed a meeting with Mr Bair so that the Claimant could discuss his concerns further.

53 At this point, the Claimant thought that only those people to whom he had addressed his email knew of its existence and its contents. He had sent it to senior managers within the Respondent and he assumed that they had endorsed the corporate whistle-blowing policy and would respect his confidentiality. He was now aware that Mr Bair was also aware of the email and that he had raised concerns. He was not aware that his senior line managers, Billy Suid and Dan Fairclough who was Mr Suid's line manager, knew of the email at this stage.

54 We find that Billy Suid had been aware of the email from the 13 May as he had been sent it by Mr Fairclough. At that point, Mr Fairclough proposed to address it but was told, along with Mr Suid, by Mr Andreadis that they should not discuss it and that it was to be treated as whistle-blowing. They had a brief chat in which Mr Fairclough expressed surprise at the content. It is unlikely that anything further was said. Mr Suid recalled that after that conversation it was unlikely that he spoke to anyone else about the email apart from Mr Andreadis; before he spoke to Benjamin Bair and was reminded of the need to keep the matter confidential.

55 Also, on 13 May, Mr Bair caused confidentiality notices to be sent to all of the original recipients of the email as well as employees within the Respondent's Legal and Compliance teams who were likely to be assisting with the investigation into the issues raised in the email. These notices reminded the recipients that the situation they had knowledge of was considered a whistle-blowing event which was being investigated by the Respondent's whistle-blowing team and that they were not to take further action on the issues raised. It also informed them that any form of retaliation against a whistleblower was prohibited by the Bank. Both Mr Suid and Mr Fairclough confirmed that they knew or assumed that the Respondent was not allowed to do anything to the Claimant that could be considered to be retaliation.

56 Mr Bair set up an insider list i.e. a list of all the people who he knew were aware of the email. He did so because of the unusual circumstance in this case that it was not only the Compliance team and the legal department that were aware of the whistle-blowing and because he wanted to keep track of all those who knew about it. Also, on 13 May, Mr Bair had conversations with Mr Suid and Mr Fairclough about the whistle-blowing. He advised them both that they should take no further action in relation to the email as his department was handling it. In his meeting with Mr Suid, Mr Bair discussed in particular how Mr Suid's knowledge of the whistle-blowing could affect his day to day interaction with the Claimant as he was in his direct line management. Mr Suid sought some guidance on this. Mr Bair advised him to proceed as normal and not to treat the Claimant any differently. Mr Suid was advised that he could reach out to the whistle-blowing team if he ever needed assistance. Like all of the Respondent's employees, Mr Suid had attested to the whistle-blowing policy and knew of the requirement to keep the matter confidential.

57 On 16 May the Claimant had an arranged meeting with Mr Bair, Mr Andreadis, James Meadows, and the Respondent's Americas Head of Investigations & Enforcement. The meeting started with just the Claimant and Mr Bair present. The Claimant was given a copy of the Respondent's Whistleblower's Charter which contained the Respondent's promises to a whistleblower. Mr Bair explained that he would be managing the investigation. They also discussed the distribution of the email and the issues it raised. The Claimant was not informed that his managers had already had sight of and knew about the email. It was around this point that Mr Andreadis and Mr Meadows joined the meeting. The Respondent asked the Claimant for further details of his whistle-blowing. They asked about his research and about more questions about his concerns. He was given some details about the investigation process but not given any details of the investigator as this had not yet been decided.

58 On 17 May Billy Suid wrote to Mr Bair. He stated that although he had been copied in to the 12 May email and briefly looked at the attachments; he was now unsure as to whether he is supposed to look at them or to delete or ignore them. In response, Mr Bair asked him to hold on to them and not discuss or forward them to anyone. Mr Bair arranged for him to be sent a confidentiality notice which arrived on 18 May.

59 We find that Billy Suid did his best to abide by that confidentiality notice. When issues arose between him and the Claimant on the desk he sought advice from the HR, the whistle-blowing team and ER Direct. When that advice appeared to be that he should let Mr Knobel know about the whistle-blowing he challenged that advice as it did not appear to be in keeping with the concept of confidentiality. As the matter progressed Mr Suid also queried whether he ought to let the Claimant know that he knew of the whistle-blowing. A member of the whistle-blowing team advised him that he should but, in keeping with the confidentiality notice that he had been sent, he did not.

60 On 17 May the CME Secured team received an email about a transaction extension being carried out by the Luxembourg business. Billy Suid asked the Claimant to take a look at the pricing as the team would usually do and provide comments to the team in Luxembourg. The Claimant did so and commented that he considered that: "the levels seemed very high and a lot higher than traditional trades of

this sort". The Claimant also sent an email to Daniel Fairclough raising the issue of the pricing level and transaction features as matters of interest.

61 On the following day, the Claimant wrote to Ben Bair about his concerns with the transaction which were similar to the concerns he raised in the 12 May email. He also wrote to the senior managers to whom he had blown the whistle to on 12 May and who he believed were the only ones apart from whistle-blowing department that knew about it. He told them about the trade that was in process. In the email he confirmed that he had already discussed the trade with Luxembourg and they confirmed that it would not have been done if it were Barclays Bank plc. The Claimant had been told that this sort of transaction was required to support the tax benefits of holding assets in Luxembourg.

62 In his response Mr Bair reminded the Claimant about the need to keep the matter confidential. He asked him to address any future emails on the matter to him. He also reminded the Claimant that the whistle-blowing department were preparing to start an investigation into his concerns.

The relationship between the claimant and his managers

63 To put this section into context, Mr Comasky told us that most of the team were unhappy and that this was confirmed in the survey of Treasury staff which gave a detrimental verdict of how the team was being run. This was also confirmed by Mr Fowden when he stated that he was aware that there had been discontent in the team. 2016 had been a very stressful and high-pressured period for the team. Mr Suid described it in the Hearing as one of the most intense period of time that he had experienced at the Respondent. Mr Suid also had some personal issues that year, including having a brother-in-law with cancer and losing a baby due to a miscarriage. His brother-in-law died in early 2017.

64 Mr Suid's evidence was that he did not see the Claimant's email of 12 May as an attack on anyone's personal integrity and although he was surprised at its content, he recognised the seriousness of it from the Claimant's standpoint. He believed that the Claimant's concern was around practices rather than personalities. He confirmed that he had not been part of the approval process for setting up the Luxembourg business but had been involved in a few particular transactions.

65 However, interactions between the Claimant and Mr Suid and Mr Knobel over the days following the disclosure were quite difficult. The Claimant was sensitive to some of the work he was asked to do as he had a belief that some of the work was in breach of the Respondent's policies and because he had raised a concern about it. The Claimant was not aware that Mr Suid knew of his whistle-blowing. On the other hand, Mr Suid knew of the whistle-blowing but also knew that the Claimant was not aware that he knew, which meant that he was particularly careful about how he dealt with him.

66 There was a meeting with Fiona Chan on a particular piece of work after which, Mr Suid sent an email to express his disappointment that not enough progress had been made despite the amount of time that had elapsed. He referred to both the Claimant and Marc Comasky and stated that they had '*hardly done anything'* on the

matter. The email was sent to Ms Chan rather than Mr Knobel as she was managing the project. At the time, it is unlikely that Ms Chan shared the contents of the email with either Mr Comasky or with the Claimant and it was not his case that she came down hard on them as a result of it. The Claimant learned of the email much later. Although in the Hearing the Claimant demonstrated that he had been working hard on the research part of the project, Mr Suid was still frustrated that by that time, the matter had not progressed further than it had. Mr Suid confirmed that the project all came through on time in the end.

67 Later that afternoon Mr Suid and the Claimant had a discussion about the Claimant's comment that the price of a product that was to be traded with Luxembourg was too high. There followed an exchange of curt emails between them. They also had a loud argument in the office about this.

68 Although Billy Suid's evidence was that he was never 'sweary' at work we find it likely he did swear in his exchanges with the Claimant on 19 May. Both Amir Hashmi and Marc Comasky stated that they heard him swear in that exchange with the Claimant. The Claimant recalled that he stated: "*what's the fucking problem here?"* and it is likely that something like that was said. Mr Hashmi stated that he would have no hesitation in challenging an instruction if he considered it to be incorrect. He would not be comfortable putting his name to something that he did not agree on.

69 After that exchange the Claimant noticed that both Billy Suid and Anthony Knobel went into a room to talk. He overheard his name being mentioned. The Claimant did not hear what was being said but noted that Mr Suid was animated in the discussion. Mr Knobel confirmed in the Hearing that they did talk about the Claimant's recent conduct. Mr Suid confided that he was frustrated with the Claimant's recent conduct in the office and Mr Knobel confirmed that he had similar issues. Mr Knobel confirmed that it was the continuation of the heated discussion the Claimant had just been having with Mr Suid. Mr Suid did not tell him to 'crack the whip' which was the phrase used in the Hearing or to chase up the Claimant on work. However, it is likely that the discussion with Mr Suid caused Mr Knobel to think about matters that may have been outstanding from the Claimant.

70 After meeting with Mr Suid, Mr Knobel sent the Claimant an email about some work. They had previously met with a potential new client on 22 April and the Claimant had been asked to carry out an initial analysis on the potential for working with that client. Mr Knobel sent him an email chasing this up. He also chased up on Project Dover. His live evidence was that he did have a short conversation with the Claimant about 'pulling his weight' in relation to Dover although he had not been told to say so by Mr Suid. This was not just aimed at the Claimant but at the whole team as management were frustrated at the slow pace at which it was moving.

71 We find that Mr Suid arranged to meet with the Claimant the following afternoon. The Claimant was worried about this. He was not told the subject of the meeting but thought that given their recent conflicts it was likely to be about the same matters that had been raised in the whistle-blowing, i.e. the Luxembourg trades. The Claimant decided to reach out to Benjamin Bair for advice on the meeting.

72 He emailed Mr Bair on the morning of 20 May and informed him that he was sick and tired of the treatment and responses he had received from his direct management. This was a reference to Billy Suid and Anthony Knobel. He referred to the trade which had caused the argument between him and Billy Suid and stated that he was *'strongly against the activity'*. He reported that it had been an extremely difficult week for him.

73 As the Claimant was quite stressed, Mr Bair offered to meet with him. They met at 11.30am that day. The Claimant reported that there had been aggressive responses from Billy Suid. Mr Bair asked the Claimant whether Billy Suid should be brought over the wall and told about the whistle-blowing but the Claimant was not happy with that suggestion and did not agree for that to happen. Mr Bair decided that he would not tell the Claimant that Mr Suid and Mr Fairclough already knew about the whistle-blowing. The Claimant was advised that he should have the meeting with Billy Suid if he felt comfortable doing so but if something came up in the meeting that was of concern to him or if the conversation went in the wrong direction, he should ask for the meeting to be adjourned and ask compliance to be there when it is reconvened.

74 At about midday on the same day, Mr Suid contacted the Respondent's HR about the Claimant's conduct at work. He informed them that the Claimant's behaviour had been confrontational and aggressive when responding to feedback. He did not tell them that the Claimant was a whistleblower. They advised him to contact ER Direct; the bank's outsourced employee relations resource which supports line managers when dealing with employee issues. Mr Suid contacted ER Direct. Their advice to him was that he should send the Claimant a memo explaining that behaviour was not in line with the bank's values and that he should also have a formal documented meeting with the Claimant in which he was to warn him that any further behaviour of this nature could result in formal disciplinary action and get him to countersign the memo. This advice seemed to Mr Suid to be to take a form of disciplinary action against the Claimant. He decided that such action was not appropriate and decided not to follow that advice. Mr Suid had the option of taking formal disciplinary action against the Claimant and decided against it.

75 Instead, we find that he reached out to Mr Bair and asked for advice in dealing with the challenges that he considered he had with the Claimant. Mr Suid spoke with Mr Bair on 20 May. He expressed concern that any actions he took as a result of the Claimant's argumentative attitude could be misinterpreted as retaliation for the whistle-blowing. Mr Bair advised him to cancel the meeting scheduled for that day with the Claimant. He advised him against meeting the Claimant on his own. Mr Bair advised that he would arrange for Mr Suid to have a senior contact within the Respondent's employee relations to support him in managing the Claimant. Mr Bair contacted Ms Goodbrand and Ms James from the Respondent's HR team to inform them of the issues between the Claimant and Mr Suid so that they could provide him with ongoing support. Mr Bair wanted to make sure that Mr Suid would have the benefit of HR's guidance in addressing any issues that he had with the Claimant in the future. This would also protect the Claimant. Mr Bair informed them about the whistle-blowing and that the 12 May email had been forwarded to Mr Suid.

76 As the concerns that the Claimant raised in his disclosure on 12 May were quite serious, the Claimant had access to Mr Bair, as the most senior person within the

whistle-blowing team, from the morning of 13 May throughout the investigation of his disclosure.

77 On 1 June 2016, Mr Suid met with Naomi James and Emily Goodbrand from HR. After that meeting he made a note of what had happened on 19 May, from his perspective and thereafter. We find that he had been advised by HR to keep a note of things as they occur.

78 On 2 June Mr Suid wrote to HR to inform them that Anthony Knobel was also at the receiving end of aggression and confrontation from the Claimant. We find that he effectively asked HR to support Anthony Knobel also. He made sure to warn them that Anthony Knobel did not know about the whistle-blowing, which meant that they needed to be careful how they provided that support. They advised him that Mr Knobel could contact them if he needed any support in addressing issues that may come up in managing the Claimant. Mr Knobel's live evidence was that their advice to him had been to talk to the Claimant.

79 Following his conversation with Mr Suid on the afternoon of 20 May, Mr Bair reflected on matters and decided that matters had got to the point where it was appropriate to let the Claimant know that Mr Suid and Mr Fairclough knew about the whistle-blowing. Mr Bair telephoned the Claimant on the afternoon of 20 May and told him that the 12 May email had been forwarded to Billy Suid and Dan Fairclough. He also confirmed this in an email. The Claimant was surprised to get a telephone call from Mr Bair as up until that moment they had been communicating by email. We find that Mr Bair did so because once he made the decision to tell him, he wanted to let the Claimant know quickly.

80 Around the same time, Mr Suid wrote to Mr Bair to let him know that 2 other individuals, the Head of Group Structural Reform and the Managing Director of Group Capital Markets Execution, had also been forwarded the 12 May email by Daniel Hodge; at the same time as it was forwarded to him. Mr Bair immediately asked his team to send confidentiality notices out to them. He then sent another email to the Claimant to let him know about that these individuals also knew about the 12 May email and that he had blown the whistle. It was not until 20 May that Mr Bair found out that these other individuals had been forwarded the 12 May email.

81 We find that by the end of the day on 20 May the Claimant was worried that his managers - Billy Suid and Daniel Fairclough - and other senior managers in his department had known about the 12 May email from around the time he sent it. He had to continue to work with them and even though Mr Suid was not his direct line manager, he worked in the same room with him and Mr Knobel. They had already had arguments about the work. The Claimant was also aware that they had all now been issued confidentiality notices. Similarly, Billy Suid's position also continued to be difficult. He had to continue to work with and manage the Claimant and support Mr Knobel in managing the Claimant without telling him about the whistle-blowing.

82 On Mr Bair's advice, Mr Suid cancelled the meeting that had been arranged with the Claimant. Mr Bair advised him that he should try to not be on his own in a meeting with the Claimant. We find it likely that this advice was intended to protect both the Claimant and Mr Suid. The Claimant expressed his unhappiness with the distribution

of the email by Mr Hodge - both in an email to Mr Bair and when they met on 23 May. The Claimant was given the option of working on other projects outside of his team if he felt that he was in overly uncomfortable position but he declined the offer and decided to remain in his team for the for the moment. The Respondent informed the Claimant that they had arranged a meeting with external tax experts to begin the investigation into the concerns he raised in the email of 12 May email. The Claimant was invited to that meeting and took the opportunity to discuss fully his concerns with the investigators as well as with the Respondent.

83 That meeting took place on 24 May and the Claimant describes it as a 'deep dive' into the issues he raised. The meeting lasted approximately three hours. We find that the Claimant discussed the issues with the Respondent's lawyer and the independent legal/tax experts brought in by the Respondent. He also brought the papers that he had reviewed as part of his investigation and gave those to the legal counsel appointed to conduct the investigation. He sent further documentation to the Respondent's lawyer after the meeting.

84 In the summer of 2016 the Claimant was part of the team working on the Respondent's SRT program. The Claimant had been involved in the planning phase of the Dover project. Mr Suid had assigned him the task of obtaining certain key data from the bank's portfolio management team which they would have to provide to the rating agency once the project had moved from the planning to the execution stage. Mr Suid wanted to ensure that the necessary data was as complete as possible ahead of time so that nothing will impede the progress of the transaction once it was underway. By June, Mr Suid became impatient with the team on this issue as although they had obtained some data; it was incomplete. He considered that this stage of the process was happening too slowly and he sent some emails expressing his frustration. He expected them to get all the data together before the rating agency was hired. Mr Suid expressed his frustration to Mr Knobel and this was fed back to the Claimant. The Claimant had been the main driver of the project.

85 The Claimant took us to some emails in the bundle of documents which showed that he had done some work on the matter, which Mr Knobel confirmed in live evidence that he was aware of. However, we also find it likely that the project was a little behind at this stage as stated in an email dated 20 June. Mr Suid was concerned as Project Dover had time critical elements in it which this delay threatened. Mr Knobel confirmed that the intention had been to execute the transactions before year-end. Mr Suid was ultimately responsible for Project Dover with Mr Fairclough having oversight. They had personally advocated to the Bank's Capital Task Force for the mandate to carry out this programme of SRT transactions. Any delay would have reflected badly on them as well as the team.

86 Mr Suid's frustration with the pace of the project at this stage was not reflected on the Claimant's performance record. Instead, the Claimant's performance appraisal for this period stated that he had been a '*leading light'* on Project Dover. In his evidence, Mr Suid stated that the Claimant was a leading contributor to the Dover project.

87 On or around 1 June 2016 the Claimant had a meeting with Mr Knobel in which he became angry and called Mr Knobel a '*shit manager'*. The Claimant was being

asked to book a swap on behalf of the Luxembourg team which he had a principled objection to. The Claimant denied that he said those words and that instead he said that it was a '*shit way to manage'*. We considered both phrases to be inappropriate to say to a manager. Mr Knobel considered the Claimant's conduct to be entirely inappropriate and he was concerned that the Claimant's behaviour may be having a negative impact on other junior members of the team. Mr Knobel was not aware of the whistle-blowing or the stress that the Claimant would have been under at this time. Mr Knobel held a meeting with HR to discuss how best to handle the Claimant's conduct. HR suggested that he had a follow-up meeting with the Claimant which he did. The Claimant accepted in evidence that Mr Knobel did not know about the whistle-blowing so this could not have affected Mr Knobel's treatment of him.

88 Part of Mr Suid's role was to put forward recommendations to Mr Fairclough for any salary increase and/or bonus to be awarded to members of his team. The majority of people in the CME team did not receive a significant increase and some received no increase at all in total compensation for 2016. Mr Suid considered that the Claimant's performance, particularly on the SRT transactions was strong and he wanted to ensure that the Claimant and other individuals who had played a significant role in those transactions received a pay rise to reflect their hard work. Mr Suid was aware that there had also been conduct issues with the Claimant in May and June but he put that down to the Claimant been stressed as a result of raising his concerns in the email of 12 May and having to continue working with the team that were continuing to do the work. Mr Suid decided that his recommendation for the Claimant's pay award should not be affected by any concerns that he had about his conduct. His recommendation for the Claimant's compensation increase was in line with the best performers in the team and the 2017 pay review.

89 In December, Limor Ressler, head of Treasury compliance, contacted Mr Suid seeking clarity on the recommendations he had made to Mr Fairclough regarding the Claimant's 2017 compensation. She wanted to ensure that there was no possibility that the Claimant may have been treated less favourably in the 2017 pay review than other employees within his team. Mr Suid explained to her that he had recommended a compensation increase for the Claimant for 2017 that was higher than for most colleagues in his team, to reflect his performance in 2016. Miss Ressler sent an email to Mr Bair on 20 December confirming this.

90 The Claimant was the highest-paid VP within CME. In the past, while Mr Hashmi was being told that his pay could not be increased because of legacy salaries from those who had previously worked in investment bank, the Claimant has been told that his increases had to be kept low because he was now in a different part of the bank. His increases at the start of his time in CME were initially not what the Claimant expected and he expressed his disappointment to his managers. His evidence was that he was content with the more recent salary changes just before he moved to BUK. The Claimant disputed that he had a confrontation with Mr Knobel about the amount of his bonus after the pay review in February. Figures produced by the Respondent during the Hearing, on 14 March 2018, show that the Claimant remains the VP with the highest full-time equivalent fixed pay in 2017 in comparison with VP's at BI CME and BUK CALM/FLM and BI CALM/FLM teams.

Investigation into 12 May 2016 email

91 We find that the Respondent decided sometime in May to instruct external counsel to investigate the Claimant's concerns as spelt out in his email of 12 May and in the email he sent to Mr Bair and Mr Fairclough on 18 May. This was because the issues raised were complex and the allegations serious.

92 We have already found above that the Claimant was invited to a meeting on 24 May at the beginning of the investigation, so that he could explain his concerns more fully.

93 The Claimant became frustrated with the pace of the investigation and sent several emails to Mr Bair chasing up an outcome. After one such email on 24 June, Mr Bair invited him to meet for an update. In that email the Claimant gave further details on his concerns over other trades and the possible effect of the EU Referendum. Mr Bair replied and confirmed that the investigation was continuing. His evidence was that he sometimes found the Claimant to be confrontational in his communications with him and his team. He spoke to the Claimant about this and he noted that the Claimant's manner improved. It is likely that this was an extremely stressful time for the Claimant. Also, the Claimant stated in evidence that he was not expecting this type of investigation. At the time he raised the concerns his expectation was that he would discuss it with his managers and it would be resolved. He also did not appear to have an understanding of the depth and breadth of the investigation that the Respondent had set up. In his witness statement he stated that it should not have even taken a full day. The Respondent took the issues he raised far too seriously to conduct a cursory investigation. It is likely that Mr Bair tried to explain all of this to the Claimant when they met on 27 June to discuss the progress of the investigation.

94 In that meeting the Claimant provided further details of his concerns surrounding the Luxembourg trades. It is likely that given the level of frustration he was expressing, Mr Bair offered the Claimant the option of moving to another team temporarily while the investigation continued. We find it unlikely that he repeatedly requested that he do so, but it is likely that as part of his job to support the whistleblower and ensure that they are protected and not subject to unhealthy levels of stress while internal processes occur; Mr Bair mentioned to the Claimant for probably the second time that he could transfer to another section for a short while until the results of the investigation were published. There was no evidence that this suggestion came from the Claimant's management within CME Secured. The Claimant made it clear that he preferred to stay within the CME Secured team.

95 We find that Daniel Fairclough, Daniel Hodge, Billy Suid and Rupert Fowden had no involvement in the investigation into the Claimant's concerns as set out in his email of 12 May. However, around 21 October Mr Bair arranged a meeting with Mr Hodge, Mr Suid, Mr Andreadis, Limor Ressler who at the time was head of Treasury Compliance, and Emily Goodbrand and Naomi James from HR. He advised them that the investigation was coming to a close. It is likely that it was Mr Suid who recommended that the external counsel/expert should explain the outcome of the

investigation to the Claimant. It was agreed that this was a good idea given the strength of feeling the Claimant had about the subject and his conviction that his interpretation of the Respondent's Tax Principles and the law and how it applied to the trades was correct. Mr Suid considered that if the Claimant had an opportunity to hear the result of the investigation from the investigators, he might accept it. Mr Bair arranged for the Claimant to meet with the external counsel.

96 We find that it was unusual at the Respondent for employees to be told the detailed findings of the investigation into concerns they raised. They would usually be told whether their concerns had been found to be substantiated and if so, they would be given an outline of what actions had been taken as a result of the investigation. However, in this case, the Respondent decided that the Claimant would appreciate having access to external counsel and the opportunity to understand the investigation and the conclusions that had been reached. The Claimant would be able to assess the breadth of the Respondent's investigation and understand that the Respondent had taken his concerns seriously. He would also have an opportunity to ask questions about the investigation and its conclusions.

97 We find it unlikely that the Claimant's alignment in the ring fencing process was discussed at this meeting on 21 October. We heard from most of the attendees and they all confirmed that it was not discussed.

98 The Claimant met with the external counsel who conducted the investigation on 18 November 2016.

99 The investigation concluded around 8 December and the Claimant met with Mr Bair to discuss it on the following day, 9 December. The Claimant expressed his unhappiness with the outcome and with the amount of time it had taken before the investigation concluded. The Claimant did not accept the findings of the investigation which was that the Respondent's activities in Luxembourg had not breached its tax principles. This was tax avoidance as opposed to tax evasion and was not in breach of HMRC rules or with the Respondent's Tax Principles. He continued to put forward his interpretation of things at this meeting. The Claimant's concerns were upheld in relation to two other issues that he raised. In the Hearing it was evident that the Claimant continues to believe that his interpretation of the Respondent's policies is correct and that the investigation came to the wrong conclusion on his main concern. In the chronology he created for the Hearing, he stated that the investigation *"demonstrated management's ignorance to the tax avoidance activity".*

100 Mr Bair did not discuss the report with Mr Suid. Having read the report and discussed the analysis with the Respondent's in-house lawyer, Mr Bair felt comfortable with report and signed it off. Mr Bair is a qualified lawyer and considered that the report covered all the matters that it needed to cover. Mr Bair confirmed in the Hearing that at the time, the Respondent's internal audit unit had done a review around the Luxembourg transactions. Nothing arose from that review. The transactions had also been through a governance process within the Respondent which had involved the law firm, Slaughter and May and the Respondent's management had already signed off on the transactions and considered that they were appropriate. Mr Bair's team provided an executive summary of the investigation to the Respondent's senior managers. In particular, it was provided to Mr Fairclough's manager, Tushar Mozaria who was the

Respondent's Group Chief Financial Officer along with others and Mr Bair spoke to him about it. We find it unlikely that Mr Bair spoke to Mr Suid, Mr Fairclough or Mr Hodge after the meeting in October.

101 At their meeting on 9 December, Mr Bair reminded the Claimant that if he had any concerns moving forwards he should contact him. By this we find that he meant any concerns about work or about his relationships with his managers.

Alignment to BUK

102 In order to comply with UK ring fencing legislation, the Respondent intended, subject to regulatory and High Court approval, to establish Barclays Bank UK (BUK) as a separate legal entity in or around April 2018. It was expected that BUK would become the "ring fenced" bank and would service the Bank's domestic retail banking and small and medium enterprise clients. The other part of the bank, Barclays International (BI) would provide services to the Bank's larger corporate, wholesale and international banking clients through various subsidiaries across the Bank. The bank would also continue to be responsible for issuing all regulatory capital across the Barclays group of companies and be responsible for the group's overall capital position. That meant that it would also be necessary to retain a "Group" treasury function. Mr Fowden's evidence was that it was expected that BUK and BI will operate alongside but be independent from each other. As a result, it was determined that they would both require an independent treasury. The bank's Treasury had traditionally operated centrally across the Bank's various business divisions and legal entities, supported by some regional Treasuries and subsidiaries in other countries. CME had been carrying out external capital market issuance and risk transfer transactions for the Group Treasury's central functions. That was where the Claimant worked. Following the realignment, it was determined that it would be necessary to set up a CME team within each of the BI, BUK and Group Treasuries. The Claimant agreed in live evidence that the Respondent was required by law to split the Bank into BUK and BI.

103 The process of splitting the bank's UK Treasury into three separate Treasuries was a complex one. One of the main tasks that Mr Fowden as BUK's new treasurer had to grapple with throughout 2016 and early 2017, was the process of setting up a separate Treasury for BUK. It was necessary to ensure that BUK had the necessary roles and the appropriate personnel in place to effectively support the funding and capital requirements of the BUK business. Clearly, the make-up of the individual Treasury teams would be from the existing Treasury teams within CME and elsewhere, including from external recruitment.

104 Towards the end of 2016, Mr Fowden met and had discussions with Mr Fairclough who at that time was head of Capital and CME and other members of the Treasury Management team to agree on the mapping of roles across the three treasuries.

105 The bank's employees had been informed of the need to create a ring-fenced bank in or around 2013 after the Financial Services (Banking Reform) Act 2013 was passed. At the time, it was not clear how the ring fencing would impact on the Treasury and CME team. Mr Suid thought it possible that the CME team might be able to continue to operate centrally as a shared function and support BI and BUK. But as

BI and BUK needed to operate independently from one another the Regulatory Authority stipulated that BI and BUK would each require its own fully independent Treasury teams. The Claimant accepted this in the Hearing. This meant that the CME Secured team would have to be split between Group, BI and BUK as well as the Group Service Company which provides services to all teams.

106 It was expected that both BI and BUK would be doing SRT transactions once they were set up. They would do those transactions with different asset classes. Mr Suid's understanding was that it was likely that the split between them would be that 2/3rd of the work would be carried out by BI with the remaining 1/3rd would be done by BUK.

107 There were some conflicts of evidence in relation to the dates when parts of the alignment process happened in relation to the CME Secured team. Taking that into consideration, we make the following findings in relation to the process by which the Claimant came to be aligned to BUK.

108 In September 2016 Mr Suid and Mr Fairclough were asked by Mr Kellner and Mr Fowden, Treasurers of BI and BUK respectively, to put forward a proposal for the potential split of the CME team between BI and BUK. That made sense as Mr Suid and Mr Fairclough were the senior managers of the CME team and would be familiar with the skills and potential of its members. At this stage they were not asked to propose names. They considered what the likely needs of each team would be. As BI has a materially larger balance and a greater number of expected SRTs than BUK, it was agreed that the CME Secured team should be split so that the BUK CME Secured team would have one Managing Director (MD), one Director (D), one Vice President (VP), two Assistant Vice Presidents (AVP); and the BI CME Secured team would have one MD, two Ds, 3 VPs, one AVP and one Business Analyst. That final structure was agreed at the Treasury Management Team in October 2016. Mr Fairclough's evidence was that it was agreed at TMT in November.

109 By that time, Jennifer Moreland had already been identified as the MD for BUK Treasury. This happened in August/September. Later, Fiona Chan was identified as the most suitable person to be its Director. She had extensive experience in managing and executing secure funding programmes in relation to covered bonds and mortgage backed securities – both of which would be important for the BUK CME team. It was agreed that she was the most suitable person to take up the role of Director in charge of the BUK CME team and she was provisionally aligned to BUK in or around October 2016. We find that the way the Respondent decided where to place these senior members of staff is instructive. They first decided on the roles, the work-plan and then a decision was taken on who had the skills to fit the role. We find that to be the process that was applied in addressing the rest of the CME team and its split between the two banks. Billy Suid had by then been aligned to BI as MD with Mr Knobel as his Director.

110 Early on the re-alignment process, the Chief Operating Officer of Barclaycard and the Chief Financial Officer of BUK made it clear to Mr Fairclough in a conference call that an SRT portfolio in respect of the UK Barclaycard business was something they wanted to be part of the future for the business. Although it was agreed that there were likely to be significant challenges in making this happen, they indicated that it was

something that they wanted to focus on. This meant that the CME Secured team within BUK would need to have the necessary skills in order to come up with and put in place SRTs on the Barclaycard UK portfolio. It was also intended that BUK would work on other SRTs over the long term.

111 We find that although Jennifer Moreland and Fiona Chan had extensive experience in the funding programmes that would be undertaken in BUK, making them suitable for their roles, they had not had much experience with SRTs. This meant that the Respondent were keen to ensure that the BUK team had someone who had the necessary skills, experience and knowledge to drive forward the plan on SRTs under their leadership. In the Hearing the Claimant was sceptical as to whether the Respondent really intended to have an SRT programme in BUK. Ms Chan stated in her witness statement that it was not now proposed that any SRTs would be attempted in 2019. However, Mr Fowden was adamant that at the time of these discussions there had been a real plan to do SRTs in BUK and that plan was still live. However, he also agreed that the transactions had so far proved challenging as had been expected and had been put on hold in the immediate term.

112 Once the structure of the teams had been decided and the MDs and Directors had been provisionally aligned, Mr Fairclough asked Mr Suid to put forward suggestions as to how he thought the current members of the CME Secured team, from VP level downwards, should be split between BI and BUK. It was not intended that Billy Suid would have the final say regarding each individual's alignment but that his proposals will be considered by the TMT at a subsequent meeting.

113 In October 2016 Mr Suid organised a meeting with Mr Knobel, Ms Chan and Mr Jain who was based in New York joined in by telephone, in order to get their input as to what they believed would be the most sensible split of VP's, AVP's and BA's between the BUK and BI CME Secured teams. Mr Suid was seeking input and consensus on the suitability of each member of his team to the projected business needs of the two banks, given their skill set and potential. The object of the exercise was to create two balanced teams with the right mix of skillset and corporate levels to meet the business needs of both entities. At the end of the meeting, there were two possible scenarios for the alignment of individuals. In one of those scenarios, the Claimant was aligned to BUK and in the other, he was aligned to BI. One scenario was with a VP, an AVP with the SRT experience and a Business Analyst. The other was where the SRT experience was at VP level, which was the Claimant. Given the Claimant's skills, Mr Suid wanted to keep the Claimant with him in BI as by this time Mr Suid had heard that he had been aligned to BI.

114 Miss Chan's evidence was that both scenarios would require staff to have training in some areas as no-one had skills across all three areas i.e. secured funding, collateral trades and SRT transactions. We find it likely that Mr Suid considered that the Claimant was the most technically capable and one of the strongest performers within the CME team and therefore wanted him on his team.

115 The two possible scenarios were then discussed between Mr Fairclough, Mr Fowden, Miss Moreland and Mr Suid. Mr Fairclough's position was that it would be more appropriate for the Claimant to be aligned to BUK as opposed to BI as he had the skill set which the team needed given that Ms Moreland and Ms Chan had limited

experience with SRTs as set out above. Some of this discussion took place by email between himself and Mr Fairclough in which it was made clear to him that Mr Fowden and Miss Moreland considered that it was essential for BUK to have a VP in its CME Secured team who had strong SRT experience given that it was intended that BUK would carry out SRT transactions within the next three years. They felt that the team would be too weak with only an AVP with experience of SRTs in their team. In the discussion Mr Suid agreed that aligning the Claimant to BUK would give him exposure to different asset classes to what he had been used to so far in his career at the bank such as credit cards, mortgages and other types of transactions. Aligning him to BUK would allow him to demonstrate his potential given the importance of SRTs within BUK and the fact that he would be the only member of the CME Secured team with serious SRT experience. Mr Suid confirmed that he did not communicate any views to TMT on which option he considered to be the better or his preferred option.

116 The Respondent expected that while working on SRTs and other projects within BUK, the Claimant would have the opportunity to work closely with senior management which would give him more exposure throughout the bank. There would be a lot of work required in order to set up the SRT programs. There was potential for the Claimant's skills and expertise to be acknowledged and recognised by other managers within the Bank which could be beneficial for his future. If the Claimant had been aligned to BI he would be working with four other VP's on SRTs. It is unlikely that, being one in a team of four, would have given him the same level of exposure to senior management. It was acknowledged in the Hearing that in BUK the Claimant would also have to acquire new skills to add to what he had before, in order to be able to work on the different asset classes there. Mr Suid's evidence was that out of all the other VP's the Claimant was the one who could pick up new things and run with it. He referred to the Claimant as one of the strongest performers in CME. The Claimant did securitisation which was something he had not done before. He stated that what the Claimant brought to the work on SRT transactions was something far superior than the other VP's. The Respondent was confident that the Claimant had the intellectual ability to be able to do the work required of him in BUK and that it would enable him to broaden his skillset.

117 We find that the final mapping of CME population across BI and BUK took place on 25 November 2016 at a meeting in Mr Fairclough's office. Present at that meeting was Mr Fairclough, representatives from the Respondent's HR and the Respondent's Treasury business manager. Mr Suid was not present at that meeting. The mapping of VP, AVP and Business Analysts to posts within each bank was completed at that meeting. Over the next few days, a decision was made by the TMT confirming the alignment of all employees within Treasury.

118 On 2 December Miss Rees of HR circulated an email with an attachment which mapped output for the VP, AVP and business analyst population. This was sent to the Chief Operating Officer for Group Treasury, the Treasury business manager and Naomi James. In the attachment, the Claimant is identified as a 'lift and drop' to BUK. The Claimant spent some time on this phrase in the Hearing. We find that what this meant was that the Claimant would be able to align to BUK without much difficulty or significant change to his role. It did not mean that he would be doing exactly the same thing as he had been doing previously. An email in the bundle dated 6 December to Mr Fairclough from the Treasury Business Manager confirmed the alignments.

119 We find that one of the Claimant's colleagues, Amir Hashmi asked by email whether he could be aligned to BI as this was his preference. His evidence in the Hearing was that he wanted to move to BI because he considered that there was more scope for his income to be increased at BI. That was his perception of an investment bank. Previously, when he had asked about harmonisation of levels of pay within the team he was told that because of legacy issues with individuals who had come from the investment bank with higher salaries, it could not be done. Some of the work that he had been doing eventually went to BI. Although Mr Hashmi was eventually aligned to BI, it is highly likely that this was because of business need rather than because he expressed a preference to go there. Members of the CME Secured team were not asked to express preferences or their opinions on where they wished to be aligned as the Respondent intended to conduct the alignment primarily to suit the needs of the business.

120 In the interim period, members of staff within CME were concerned as to what was going to happen to them. Staff had been told that the decisions on people's alignment would be made towards the end of 2016 and early 2017 and that they would be kept updated. They frequently asked if there was any further information or update. Mr Knobel had not been party to any of the discussions that had been going on within senior management. However, in order to reassure them in a team catch up meeting in November, he stated that he had not received any further information from management, but he assumed that the CME Secured bespoke team would be moving to BI and that it was his belief that the work done in each team would naturally fit within BI, BUK or Group. It is likely that the Claimant and the rest of the team expected that the alignment would follow the work they had been doing up to that time.

121 Mr Suid's evidence was that he had been away from the office when the alignments had been agreed by TMT at the end of 2016. He was not part of TMT at the time and had been off on paternity leave. When he returned to work in January he realised that these decisions had been made and now had to be communicated to staff and acted on. Mr Suid decided that since this was a big change for Treasury and given the Claimant's whistle-blowing in the background it would be a good idea to check with HR that the papers made clear that there was a solid base for the Claimant's alignment decision. He discussed this with Naomi James of HR in a meeting with Mr Fairclough and the Chief Operating Officer. HR was meeting with all decision-makers to ensure that they were prepared for the conversations they had to have with their direct reports. However, in Mr Suid's case they also talked about his concerns regarding a possible complaint by the Claimant that his alignment to BUK was an act of retaliation. Ms James made clear to Mr Suid that he would need to be able to clearly articulate to the Claimant that his alignment decision had been based on the content of the role and current accountabilities. They discussed the business reasons behind the decision to align the Claimant to BUK and how his skillset fitted the role. After that discussion, Ms James was able to confirm that since she had been given a rationale for the alignment of the Claimant within the BUK CME team based on the content of the role and with a clear business rationale; she was comfortable with the decision.

122 In late January, the Claimant and his colleagues were informed by CME management that the CME team structures will be communicated to them in the following weeks.

123 The HR team created a script with some specific talking points together with a set of frequently asked questions to standardise how managers across Treasury spoke to individual team members about the alignment decisions. The documents were prepared by Emily Rees and Naomi James of HR. It was expected that these would be difficult discussions for managers to have. Also, the Respondent had decided that it would not allow anyone to appeal against their alignment. People could apply for jobs that came up in the usual way. The scripts gave managers an easy format to follow: they set out the background to the structural reforms, a clear overview of the new structure; how the structure would impact Treasury disciplines and the individual's specific alignment. Managers and Treasury were instructed not to reveal the alignment of any peers in the meeting as the Respondent wanted to make sure that decisions were communicated directly to individuals before more general changes were announced. Managers were told that they should keep as close to the script as possible.

124 We find it likely that the Respondent expected some of the employees within Treasury to be unhappy with their alignment. That is the likely reason for the stipulation that employees would not be allowed to appeal against their alignment. However, as the alignments had been done on skillset and business need, the Respondent considered that everyone should be able to do the jobs that they had been aligned to and should allow themselves an opportunity to become familiar with the particular area/asset class they would be working with.

125 On 30 January, Jennifer Moreland indicated in an email to Billy Suid that she was planning to meet with each of the new members of the BUK CME team once individual alignment decisions had been confirmed to them.

126 The Claimant was sent an email invitation to a meeting with Billy Suid and Fiona Chan to talk about his alignment. Miss Chan had been invited because she was going to be the Claimant's line manager in BUK. Mr Suid confirmed in his evidence that the reason for asking Miss Chan to attend the meeting was because he knew that they had a good working relationship and the Claimant would have the opportunity to ask Miss Chan direct questions regarding the BUK CME team. Also, Miss Chan could assert her position as the Claimant's line manager straightaway.

127 The Claimant contacted her once he received the email invite as he guessed that this meant that he was going to be aligned to BUK. Ms Chan referred the Claimant back to Mr Suid. The Claimant also spoke to Anthony Knobel about his alignment and Mr Knobel was unable to help.

128 The Claimant contacted Mr Suid on 3 February to speak about the forthcoming meeting. From the tone of his conversations and emails on 3 February, both Ms Chan and Mr Suid got the impression that the Claimant would be unhappy with a role in BUK. They had a discussion on the morning of 6 February as to how to best communicate the decision to him in a way that would enable him to understand the business rationale and also to see that his alignment to be BUK could amount to an exciting role for him.

129 They met with the Claimant on 6 February 2017. Mr Suid followed the script and explained the general background to ring fencing to the Claimant and the business need of BUK around SRTs. He also explained to the Claimant that the transition would probably not be likely until Q4 (the fourth quarter of the financial year or the calendar year) and that there was an intention that there would be an agreement for BI CME to work with BUK CME on some projects. The Claimant was unhappy about the news and wanted to know what objective criteria have been used to choose him rather than one of the other three VP's. The Claimant asked about the overall BUK team structure and he was given an outline. He was not given the names of the individuals concerned. The Claimant was told that it was not possible to change his alignment and that this was not a change in his role or his employment contract/terms and conditions of employment. The Claimant was concerned that he was being moved away from the investment bank as despite the changes in 2014 he still saw himself as being an investment bank employee.

130 At the end of the meeting on 6 February 2017, the Claimant had a discussion with Ms Chan. It was in that discussion that the Claimant learned about the talent review process and what had been discussed about his potential and future career at the meeting on 31 March 2016.

131 Mr Suid reported back on the meeting with the Claimant to Ms Moreland who held her own meeting with the Claimant on 7 February. Despite her apparent excitement about the prospect of building a new bank and the opportunities for him across disciplines within her team, the Claimant remained unhappy about his alignment and expressed that in the meeting. This prompted Ms Moreland to ask whether the Respondent should revisit its alignment decision. Mr Fairclough was adamant that it would not as BUK would be left without the knowledge and understanding it needed in order to be able to progress with propose SRTs. He agreed to speak to the Claimant and met with him on 10 February. The Claimant explained to him that he did not believe that it will be possible to create an SRT portfolio in respect of Barclaycard. Mr Fairclough suggested that the Claimant should meet with Mr Fowden for further reassurance on his role in BUK. Mr Fowden met with the Claimant on 14 February. They had not met before this meeting. He told the Claimant about the proposed pipeline of work within BUK and why he believed the Claimant was an excellent fit for the role based on the feedback that he received from Mr Suid and Mr Fairclough about him. He agreed with the Claimant that there were likely to be challenges with executing the proposed SRT transactions but encouraged him to see those as an excellent opportunity to demonstrate his abilities and value to the Respondent. In addition to SRTs there was other work that the Claimant would be required to do in BUK that Mr Fowden considered would be varied and exciting for him and would enable him to develop his skills. To date, the Claimant continues to be unhappy about his alignment to BUK.

132 Mr Fowden's evidence was that although there are now three treasuries across BUK, BI and Group, the Respondent still wanted to keep the concept of 'one Treasury' to ensure that they would continue to work as one function although within different legal entities. TMT still operates centrally across the three treasuries and it was decided that Treasury employees would still be encouraged to attend town hall discussions to maintain close working relationships across Treasury. Treasury leadership are encouraged to look favourably on individuals applying for roles in

different treasuries, if they are interested in alternative roles. He stated that it was open to the Claimant to accept the position at BUK, take the opportunity to add value to BUK, work well with his new management team and build relationships within the wider treasuries so that when roles come up – whether in BI or elsewhere – he would be in a position to successfully apply. The Claimant confirmed in the Hearing that he had not applied for any positions within the Respondent since his alignment to BUK.

133 We find that in the 2016 performance review form, among some very complimentary comments, Mr Knobel also stated that although the Claimant had demonstrated that he is a real team player and has put considerable effort in supporting junior members of staff to develop, there was also a tendency at times for unnecessary pushback and contradiction which could degenerate into abusive argument. The Claimant protested at this feedback in his employee comments and referred to them as not factual, unfair, unjustified, defamatory and inappropriate. He refused to affirm the form online.

134 The Claimant's overall grading for 2016 was 'strong'. This is the same grading that he received in 2015. Mr Knobel felt that it was also important to draw the negative points to the Claimant's attention in his performance review as a potential area for development. The comments were based on his own experience and on feedback Mr Knobel had received from colleagues with whom the Claimant worked closely. He discussed this with Mr Suid and it was agreed that it was appropriate for it to be entered into the form. The Claimant had not objected to these comments during their review meeting. He indicated on the form that his supervisor had discussed it with him.

135 Emily Rees of HR raised this matter with Mr Suid as she saw the review form. This led to a meeting between the Claimant, Mr Knobel and Mr Suid to discuss the matter. They discussed the performance review and the Claimant's concerns. Mr Suid took the opportunity to address the working relationship between the Claimant and Mr Knobel. In a meeting that lasted over an hour, they attempted to iron out the difficulties in their relationship, with Mr Suid's assistance. At subsequent meetings between the Claimant and Mr Knobel, Mr Suid noticed that the relationship appeared to have improved. Mr Knobel also confirmed in his evidence that his relationship with the Claimant appeared to have improved after this meeting. The only other incident that happened between them is when on 22 September 2017 the Claimant became very aggressive towards Mr Knobel and shouted at him in front of other colleagues. Mr Knobel held a discussion with the Claimant about this when he considered that the Claimant appeared to have calmed down and the Claimant explained that he was angry at not having been copied in on an email chain at an earlier stage.

136 It is likely that because the Claimant and his colleagues in the CME Secured team were working on a number of projects that had been ongoing from 2016 and were still in existence when the alignment decisions were announced, team members that had been aligned to either BI or BUK continued to work on certain projects that did not sit within the business area that they had been aligned to. This meant, for example, that after the realignment had been confirmed, the Claimant continued to work on BI projects/SRT transactions in 2017.

137 On 22 February, the Claimant emailed Benjamin Bair to raise a concern that he believed that he has been subject to retaliation and that his career has been subjected

to serious detriment as a result of whistle-blowing in 2016. The Claimant set out his objections to being aligned to BUK. He attached a matrix that he had created showing that out of all the VP's in CME Secured team, he had the less contact with BUK work. He contended that he was an employee of the investment bank. The Claimant complained about Billy Suid's failure to follow up on the talent review and stated that he believed that he had been subjected to increased scrutiny from direct line management and to noticeably negative behaviour from his managers, since he had blown the whistle. Mr Bair confirmed that it was appropriate for him to have raised matter with him and that allegations of retaliation were taken seriously by the Respondent. Mr Bair confirmed that the Respondent and his team will open a separate investigation to the allegations.

138 In his correspondence chasing up an outcome for the whistle-blowing team's investigation in this matter, the Claimant used the word 'grievance'. Mr Bair responded on 21 March to say that the whistle-blowing channel did not constitute a grievance in terms of HR policy and if he wanted to raise a grievance he would need to contact HR direct to do so. It was possible for both HR and the compliance department to work together if the Claimant wished.

139 Having taken some advice from ACAS, the Claimant indicated by email on 22 March that he wanted his email of 22 February to be taken as a formal grievance.

140 On 22 March, the Claimant met with Benjamin Bair, another investigator from the compliance team who was dealing with the matter and Jon Beaumont. In the meeting, Mr Bair confirmed that he had spoken to Naomi James from HR and that the matter was already being treated as a formal grievance. The Claimant was reassured that compliance would now make the necessary enquiries, such as when the decision to move the Claimant to BUK had been signed off and who made that decision; and that they would revert back to him as soon as they had concluded their investigations.

141 The Claimant met with James Ankers, Director Group Strategy, on 20 April 2017 to discuss his grievance. Mr Ankers was going to investigate the grievance as an independent Director. The meeting was also attended by a representative from employee relations. The Claimant set out his grievance in detail in this meeting. We had minutes in the Bundle prepared by the ER representative. Following this meeting, Mr Ankers met with Amir Hashmi, Benjamin Bair, Marc Comasky, Jennifer Moreland, David Waltham, Anthony Knobel and Billy Suid to investigate the Claimant's complaint that his alignment to BUK was retaliation for his disclosures.

142 In her interview, Miss Moreland stated that the Claimant had the reputation of being a superstar and as the most senior person on SRT - they were going to need a superstar. She said that he was seen as someone who was outgoing and was not worried about being pigeonholed. She confirmed that there had been very good reasons on both sides why the Claimant had been aligned to BUK. Although the Claimant's case was that Mr Suid had not explained the rationale behind his alignment to him in the meeting on 6 February, Miss Moreland got the impression when she spoke to him on the following day that there was nothing that she was saying that was new to him and it was likely that everything she said had already been said by Mr Suid. Mr Hashmi stated that over the past 9 to 10 months there have been very low morale within the team and that 80 to 85% of the team were unhappy with the way things were

being run. He referred to a lot of suspicion and paranoia. He confirmed that there have been a number of heated arguments between the Claimant and Anthony Knobel.

143 Around the time that the Respondent was considering his grievance, the Claimant had also submitted notification to ACAS for Early Conciliation. He contacted ACAS on 12 April 2017. The Early Conciliation Certificate was issued on 25 May.

144 The Claimant received a letter from Mr Ankers dated 1 June 2017 in which he informed him that he had decided not to uphold the Claimant's grievance. He concluded that the Claimant had not been the subject of inappropriate behaviour and that the decision to allocate him to BUK was the result of robust business considerations rather than as retaliation for his protected disclosures.

145 The Claimant issued his Employment Tribunal claim on 22 June 2017.

Career

146 The Claimant confirmed that he did not make any application for jobs in the bank in 2016. He felt that it would not assist his career to switch regularly between roles. The Claimant confirmed that he was aware of someone called Keith Smithson who was a sponsor for VP's within the Respondent. He was coordinating communication with VPs about their mobility. The Claimant remembered dialling in to one of his calls but concluded that Mr Smithson was not available for VP's to contact. We find that this conflicts with his other conclusion that Mr Smithson's role was to assist VPs to develop their careers inside Treasury. It is likely that Mr Smithson was available for VPs to contact for advice about career progression.

147 By the time of the Hearing, the Claimant had transferred to BUK and was line managed by Fiona Chan.

148 The Claimant's case is that his career has been damaged by being aligned to BUK. In his witness statement, he states that his activities so far in BUK have been restricted to picking up some of the basic tasks so that he could help on the main projects. He believed that he was restricted by his lack of prior knowledge of the programs that are underway on the desk. He felt as though he had come to a standstill in his career. The Claimant also said that he believed that there was less opportunity for progression within BUK. The Claimant accepted that while in BUK, he can apply for any promotion or jobs advertised on internal job boards. We find that in order to do so, he would not need a manager to sponsor him or support him as long as he could demonstrate that he had the skills and expertise or potential for the job. It would depend on whether they were looking for someone to develop or someone who could immediately perform the necessary tasks.

149 Mr Fowden and Mr Fairclough both gave evidence that in their careers in banking they had done jobs that they had been assigned to or applied for that were not what they expected or would have sought out but when they look back; with the benefit of hindsight, they can see that they acquired skills and expertise in those positions which assisted them in their future career progression.

150 It is likely that there were other people who were not happy with their alignment in the process.

151 We had evidence from Marc Comasky that his career took a nosedive after the split of CME in which he was aligned to BI. He stated that his new manager did not use his experience and he spent a lot of time getting up to speed. The work he was being asked to do was in an area in which he had no experience or knowledge and this contributed to his underperformance. Mr Comasky was on notice of termination of employment from the Respondent at the time of the Hearing.

Law

152 The Tribunal applied the following law in deciding on the issues in this case.

153 The Claimant's case is that he made a number of protected disclosures and that because of this; the Respondent subjected him to detriments.

What is a qualifying disclosure?

154 A qualifying disclosure is a disclosure that falls within section 43B of the Employment Rights Act 1996 (ERA). In order for the disclosure to be protected it has to be made in the public interest and the Claimant has to reasonably believe that it tended to show one or more of the following: a breach of legal obligation, that a criminal offence has been committed, that there has been a miscarriage of justice, that there is a health and safety danger; or environmental damage or that any of the above is occurring or is likely to occur.

155 Qualifying disclosures can only be made to certain classes of person; these include a person's employer (section 43C ERA 1996). The Claimant's disclosures were all made to his senior managers and to the Respondent's Compliance department. There is no issue in this case that the Claimant had disclosed to the wrong people.

156 The word 'disclosure' must be given its ordinary meaning which involves a disclosure of information, that is conveying facts; which means that making of mere allegations will not be a 'disclosure' for these purposes (*Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38); similarly, if the employee merely expresses an adverse opinion on what the employer is proposing to do, that would not qualify as a disclosure (*Smith v London Metropolitan University* [2011] IRLR 884) that said, if an employee asserts that there has been an omission that can also be 'information' for these purposes (*Millbank Financial Services Ltd v Crawford* [2014] IRLR 18). Care must be taken not to draw false distinctions between allegations and information when often a disclosure may be both (*Kilraine v London Borough of Wandsworth* [2016] EAT 260 and recently confirmed by the Court of Appeal).

157 Where a disclosure is made to an employer, it does not need to be true to qualify for protection but the employee must reasonably believe it to be true (*Darnton v University of Surrey* [2003] IRLR 133). The test of reasonable belief must take account of what a person with that employee's understanding and experience might reasonably believe (*Korashi v Abertawe Bro Mornannwg University Local Health Board* [2012]

IRLR 4). Reasonableness depends not only on what is said in the disclosure but also the basis for it in the circumstances in which it is made.

158 The EAT gave guidance on the findings a Tribunal should make in the case of *Blackbay Ventures Ltd v Gahir* [2014] IRLR 416. HH Serota QC gave the following guidance in paragraph 98:

> *"Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to the statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertake this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered…*
>
> *Where it is alleged that the claimant has suffered a detriment, short of dismissal it is necessary to identify the detriments in question and where relevant the date of the act or deliberate failure to act relied on by the claimant."*

159 The Respondent conceded that the Claimant reasonably, if wrongly, thought that tax avoidance or failing to follow Barclays Tax Principles was a failure to comply with some legal obligation to which he could reasonably have believed that it was in the public interest for the Bank to comply. The Respondent therefore conceded that the Claimant made a qualifying disclosure in his email of 12 May.

160 It was also the Respondent's case that the other disclosures the Claimant relies on are similar or the same in content and therefore do not take his case any further. The Claimant alleges that they were separate disclosures.

Detriment

161 It is unlawful to subject an employee or worker to a detriment on the ground that he has made protected disclosures (sections 47B and 48 of the ERA 1996). The term 'detriment' is not defined in the 1996 Act but it is a concept that is familiar throughout discrimination law and is to be construed in a consistent fashion. A detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to the detriment. An unjustified sense of grievance cannot amount to a detriment. It is not necessary for the worker to show that there were some physical or economic consequence flowing from the matters complained of in order to establish a detriment (*Shamoon v Chief Constable of the RUC* [2003] IRLR 285. In that case Lord Scott held that this is a subjective test. He stated *"... If the victim's opinion that the treatment was to his or her detriment was a reasonable one to hold, that ought, in my opinion, to suffice..."*

162 Under section 47(1A)(a) and (b) ERA the Respondent can be held liable for the acts of its other workers or any of its agents if done to the Claimant on the ground that he had made a protected disclosure. The causation test for the words 'on the ground

that' as set out in the statute is whether the protected disclosure materially influenced the treatment to a significant, non-trivial extent (*Fecitt v NHS Manchester* [2012] IRLR 64). Once an employee or worker has established that he has made a qualifying disclosure and that he has been subjected to a detriment, it is then for the employer to establish on the balance of probabilities the reason for the detriment and to show that the act or deliberate failure complained of was not on the grounds that the employee had done the protected act, meaning that it did not materially influence (in the sense of being more than a trivial influence) the employer's treatment of the employee.

163 As the Respondent submitted, an act can be materially influenced by protected disclosure even if the manager doing the act does not know about the protected disclosure as would be the case if she or he was being manipulated. The decision of a manager made in ignorance of the true facts whose decision is manipulated by someone in a senior managerial position responsible for an employee, who is in possession of the true facts, can be attributed to the employer of both of them (*Royal Mail v Jhuti* [2016] IRLR 854 CA).

164 Section 48(2) of the ERA stipulates that if the Tribunal comes to the conclusion that the Claimant has suffered detriment then it is for the Respondent, (in this case the Bank) to show the ground on which any act, or deliberate failure to act, was done.

Time

165 Under section 48(1A) of the ERA, an employee can complain to the Employment Tribunal about a breach of section 47B. Section 48(3) states that the complaint must be brought within three months of the last act complained of which the parties agreed in this case was the notification to the Claimant of his alignment to BUK on 6 February 2017. Under section 207B ERA, time limits are extended to facilitate conciliation through ACAS, before the institution of proceedings. In that section, Day A is the day on which the complainant concerned contacts ACAS in relation to the matter in respect of which the proceedings are brought, and Day B is the day on which the complainant concerned receives the ACAS conciliation certificate. In working out when the time limit set by relevant provision expires the period beginning with the day after day A and ending with day B is not to be counted (207B(3)). In this case, Day A is 13 April and day B is 27 May. The period is 44 days. The claim was presented on 22 June.

166 According to section 207B(4) if a time limit set by a relevant provision would (if not extended by this section) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

167 Section 48(3)(a) states that where the act or failure is part of a series of similar acts of failures, then the complaint must be presented to the Tribunal before the end of the period of three months beginning with the date of the last of them.

168 Section 48(3)(b) gives the Tribunal the power to accept a claim out of time if it firstly considers that it was not reasonably practicable for it to have been presented within the 3-month time limit and secondly, that it was issued within a reasonable further period.

Remedy

169 Section 49(1) provides for remedies on a successful complaint of detriment on the ground of making a protected disclosure. Where an Employment Tribunal finds a complaint under section 48(1A) well-founded, the Tribunal shall make a declaration to that effect, and may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

170 It is in the assessment of the remedy to be paid to the complainant that the issue of good faith comes into consideration. If the Tribunal assesses that the disclosures were not made in good faith and the Tribunal considers it just and equitable to do so, it may reduce any award due to the Claimant by up to 25%. The Respondent also submitted that the Tribunal should take into account the Claimant's failure to appeal the grievance decision under section 207A of the ERA. Any award for injury to feelings is calculated on the same Vento basis as in discrimination cases.

Judgment

<u>We now set out the Tribunal Judgments on the items in the list of issues</u>

Time

171 The Tribunal addresses the time point first as if the Claimant's complaints are out of time; we would have no jurisdiction to consider them.

172 It is this Tribunal's judgment that the Claimant's complaints are all related to the Claimant's time in one department (CME Secured) and mostly involve the same decision-makers - mainly Billy Suid and Anthony Knobel.

173 It is also our judgement that the latest matters that the Claimant complains about is the failure to action the talent review which he found out about on 6 February and that the decision to align him to BUK which he was told about on 6 February.

174 It is this Tribunal's judgment the could be said to be a continuing act between the matters which the Claimant makes complaint about, beginning on April 2016 and ending on 6 February.

175 In our judgment the primary limitation period begins on 6 February and would normally have expired on 5 May, without the application of the early conciliation process. In relation to that process, day A was 13 April 2017 and day B was 27 May 2017. The limitation period therefore expired between day A and one month after day B. The new limitation period would expire at the end of that period and in this case, expired on 27 June 2017. The Claimant issued his complaint to the Employment Tribunal on 22 June.

176 It is this Tribunal's judgment that it has jurisdiction to consider the Claimant's complaints against the Respondent.

Protected disclosures

177 The Respondent has conceded that the Claimant raised a protected public interest disclosure on 12 May 2017. In relation to the other complaints, the Respondent also conceded that they raised additional information about the same matter and were therefore protected.
178 It is this Tribunal's judgment that the Claimant raised public interest disclosures on 12 May and repeated those concerns with additional detail on 24 and 27 June and on 9 December.

Detriments

179 Was the Claimant subject to detriments? If so were they caused by the protected disclosures? We shall now take the alleged detriments in date order.

1. April 2016 - Talent Review Process

180 Was there a defined tangible 'development action' from the 2016 Talent Review Process that the Claimant's managers failed to implement?

181 The talent review process occurred before the Claimant had made his first disclosure on 12 May.

182 It is this Tribunal's judgment that the talent review did not require the Claimant's managers to do anything immediately. The immediate point was that the Claimant was to *'remain in role'*. There would have been a conversation with him in 12-18 months about whether he wanted to move to a TFI, FSTI or STG or other role; if there were suitable vacancies. In the interim, the Respondent had to identify work that would help him to develop breadth within those areas. In this Tribunal's judgment, that is not an instruction to look for a vacancy and place the Claimant in a role. If the Claimant was suitable at the time of the review for a move to TFI, FSTI or STG then the review would have said that and there would have been a plan for immediate action. That is not what the review said.

183 In our judgment, Billy Suid did not have the responsibility to discuss the results of the talent review personally with the Claimant. It was Anthony Knobel's responsibility as the Claimant's line manager. Mr Knobel did not know of the whistle-blowing and it is our judgment that he did not fail to have the conversation with the Claimant because of the whistle-blowing. However, Billy Suid was aware of the whistle-blowing.

184 The question for the Tribunal was whether Billy Suid manipulated Anthony Knobel into not having any conversation with the Claimant about the talent review after the Claimant made his disclosure. Mr Suid complied with his responsibility to have talent review conversations with his direct reports, including Anthony Knobel. He had also been the one at the talent review meeting to suggest that the Claimant should be stretched and that he should be prepared for possible moves to TFI, FSTI or STG in the future. There is no evidence that he was seeking to thwart the Claimant's career. We also bear in mind that he recruited the Claimant into the department.

185 It is our judgment that Billy Suid did not manipulate Anthony Knobel into not having a conversation with the Claimant about his talent review in 2016.

186 It is our judgment that Anthony Knobel failed to have the conversation about the talent review with all of his direct reports. They were busy in this department with SRTs and other work and Mr Knobel did not prioritise his management duties. He also failed to conduct 1:1's with his direct reports. He failed to give encouragement to anyone to apply for jobs at any stage. There was a negative atmosphere the CME Secured team which we heard about from Mr Hashmi and Mr Comasky. This was not just about the Claimant. It is unlikely that it was just the Claimant's spreadsheets and the talent review results that went to the back of Mr Knobel's inbox. In our judgment, it was likely that this happened to the spreadsheets for all the VP's.

187 In our judgment, Anthony Knobel's failure to have a discussion with the Claimant about the talent review from April 2016 was because of his failings as a manager and not because of that the Claimant had made a protected disclosure in May 2016.

188 It is our judgment that although the Claimant's involvement in the SRT transactions did not come about because of the talent review, it was a fact the experience and challenge that it gave him would align with the stretch opportunities referred to in the talent review. The Respondent saw the Claimant's potential as identified in the talent review and this made him the ideal person to lead on the Dover project and to do the more complicated work to make the transaction happen. The Claimant relished the challenge and shone in the work on that and the other transactions he was involved in at the time. We base that conclusion on the comments made by a variety of managers such as Jennifer Moreland that he was a superstar and Steven Penketh that the Claimant was bright and diligent. The Claimant's witnesses Amir Hashmi and Marc Comasky also confirmed his ability.

189 It is our judgment that the Claimant was provided with stretch opportunities in accordance with that the recommendations in the talent review by the work he did leading up to the period of alignment, including the SRT transactions in which he was a key player.

190 It is the Tribunal's judgment that the Claimant did not suffer a detriment in the way in which the talent review was dealt with by the Respondent. Even though his direct line manager did not have a conversation with him about it in 2016, he still got the experience from the work that he was asked to do which provided him with stretch opportunities as set out in the talent review. At the end of the year his performance was graded as 'strong', which is a testament to how well he performed on those transactions.

191 The complaint fails

2. The whistle-blowing process – May 2016

192 It is our judgment that Mr Hodge and Mr Fairclough did send the Claimant's 12 May email on to other people once they received it. They had not appreciated that it was a protected disclosure. The Claimant had only copied in the Respondent's

Compliance department and had named it 'raising concerns'. In our judgment, it clearly was a protected disclosure and ought to have been recognised as such from the extensive training that the Compliance team conducted within the Bank. As soon as Mr Bair was aware of it he advised the senior managers of the proper procedure. He sent out confidentiality notices and personally took over the investigation and the handling of the disclosure.

193 Mr Hodge's decision to circulate the email to other senior managers within the Respondent was unhelpful and inappropriate. It was also a matter of surprise to the Tribunal given the Respondent's policy and training as outlined by Mr Bair. He failed to set a good example for junior staff and it was appropriate and right for Mr Bair to mention it to his manager. However, it is our judgment that his intention in doing so was to get it dealt with and respond as quickly as possible. He did not forward it outside of the bank or to more junior staff. In our judgment, it was sent to senior management that he believed could respond to the issues raised. There was no evidence that he had any other motive. The feedback that he got about the Claimant was positive. There was no evidence of Mr Hodge being involved further until he attended the meeting in October when Mr Bair notified all who attended that the investigation was about to be brought to a close. He took no part in the investigation or in the alignment process.

194 There's also no evidence that the Claimant had suffered any detriment by the email been forwarded to other managers. There is no evidence that any manager did something to disadvantage the Claimant as a result of seeing the email.

195 It is this Tribunal's judgment that the Claimant was not subjected to a detriment by the 12 May email being forwarded by Mr Fairclough and Mr Hodge.

196 Part of the Claimant's complaint in the Hearing was that Mr Bair did not inform him straightaway that Mr Suid and Mr Fairclough knew about the disclosure.

197 At first glance it would appear that the Claimant was put at a disadvantage by not knowing that his managers knew about the disclosure. However, it is our judgment that this was not the case. This was an unusual situation. Usually, when an employee makes a disclosure it would usually be to the compliance team only. In such situations, issues of confidentiality and anonymity may not arise or where they do, would be simpler to deal with. This case was different because of the way the Claimant chose to distribute his email as well as send it to Compliance. Mr Suid, Mr Fairclough, Mr Hodge and the other senior managers received it before Compliance became involved. Once Mr Bair knew that Mr Suid had received the email he instructed him not to forward it to anyone or to discuss it with anyone. He said the same to the other managers and ensured that confidentiality notices were sent to everyone. It is our judgment that Mr Suid abided by that notice.

198 Mr Bair raised the issue of how Mr Suid's knowledge could affect his relationship with the Claimant at his first meeting with Mr Suid. He was alive to the situation. He spoke to Mr Suid about it and reminded him of his responsibilities as a manager within the Respondent. He then weighed up the wisdom of telling the Claimant that his senior managers knew of the disclosure against not telling him but ensuring that he kept a close watch on what was happening with the Claimant so that he could jump in and

protect him if necessary. In our judgment, Mr Bair chose the latter. To support the Claimant he ensured that he was very accessible to him from the time he was informed of the whistle-blowing and throughout the period of the investigation. He also offered the Claimant a chance to work temporarily in another department, if he wanted.

199 It is our judgment that Mr Bair was conscious of the need for the Claimant and Mr Suid to maintain a positive working relationship and he wanted to do all he could to support that. When it became clear that both the Claimant and Mr Suid were struggling in their working relationship he made sure that Mr Suid had access to ER Direct and the HR team and increased the frequency of his meetings and contact with the Claimant.

200 It is our judgment that it was unlikely that the situation would have been improved if the Claimant had been made aware on 13 May that Mr Suid and Mr Fairclough knew of his disclosure from the beginning. It is likely that the working environment within CME Secured would have been even more difficult. Once it became clear that the situation could not be contained Mr Bair did inform the Claimant. This was a few days later.

201 It is our judgment that Mr Bair's decision not to tell the Claimant that Mr Suid and Mr Fairclough knew of his disclosure as soon as he knew, was not to the Claimant's detriment. It was to protect him in a unique and difficult situation.

3 - Aggressive approach towards the Claimant and unfair scrutiny of his work by Billy Suid, and negative attitude towards the Claimant from his line manager, Anthony Knobel – covering a period of 17 May to June/July 2016

202 In our judgment, the Claimant was subject to criticisms of his attitude by Anthony Knobel. At the same time, Mr Knobel failed to nurture him or any of his other direct reports or have any conversations with them about their career or even point them to the job board. There were structural failings within the management of the CME Secured team.

203 The work they were doing in CME Secured was interesting but also stressful, time sensitive and important to the Respondent. There were tensions that sometimes flared up between the Claimant and his managers. The evidence showed that the Claimant could on occasion be antagonistic towards his management. We had evidence that both him and Billy Suid swore at each other, on at least one occasion. The Claimant was able to hold his own in this environment. The Claimant's colleagues confirmed that they would also have spoken up if they were asked to do something that they did not agree with and so it is likely that this was not the first time this had happened although the flavour may have been different given the individuals involved.

204 The Claimant was principled and assured of his opinions and pushed back strongly if he considered that something was been done wrongly. In our judgment, although he did not agree with the Claimant's position, Mr Suid respected the Claimant's principled position set out in the disclosure and bore no grudges towards him because of it. The reason why their clashes in May and June 2016 were so

emotionally charged was because of the way in which they spoke to each other. The Tribunal accepted Mr Suid's evidence that he considered the Claimant's whistle-blowing to be about process rather than personality. In the end, he did not see it as an attack on his integrity. It is our judgment that he did not take the whistle-blowing personally. At the end of the investigation he was keen that the Claimant should have an opportunity to meet with the investigator to have the outcome explained to him as he knew that the Claimant would want to understand the outcome. When tasked with the job of devising scenarios as to how the CME team would be split between the new banks at the end of the alignment process, Mr Suid identified the Claimant to be in his team at BI as he recognised the Claimant's analytical and intellectual skills.

205 Mr Suid did chase up the progress on Project Dover and other work but he was entitled to do so as he genuinely believed that parts of the project were not going as quickly as he would have liked and also because he was the manager who had made promises to the Respondent's senior managers about those transactions. Although he spoke to Mr Knobel about the Claimant's performance on 19 May he was careful not to tell him about the whistle-blowing. He was also careful to maintain the confidentiality notice that he had been sent in relation to the whistle-blowing and to check with HR before he took any step in relation to the Claimant's management. In our judgment, although the Claimant and Mr Knobel and Mr Suid may well have argued in the office, the Claimant was robust in his responses. The environment was very stressful and made more so because of the whistle-blowing and the fact that the Claimant was not aware that Mr Suid knew about it.

206 It is our judgment that Mr Suid and Mr Knobel did not unfairly scrutinise the Claimant's performance in 2016. It is our judgment that the way they managed him in 2016 was not related to his protected disclosures. It is our judgment that the management style within CME was something that all team members were unhappy about and left a lot to be desired. This was nothing to do with the 12 May email. It affected Mr Comasky and Mr Hashmi as well as others.

207 Mr Suid made a few written criticisms of the Claimant; to Fiona Chan and to Anthony Knobel. However, neither of those resulted in any detriment to the Claimant. Those criticisms were not recorded Claimant's performance review and did not affect his rewards. In the end all of those transactions were successful and Mr Suid recommended that the Claimant be rewarded with an appropriate increase in his compensation to reflect his significant role in that success. Mr Suid did not take up the advice from ER Direct to send what could have effectively been a warning letter, to the Claimant, when he sought advice after one of their interactions in May 2016.

208 In our judgment, the Claimant had interactions with Anthony Knobel in June that were frank and forthright but were not a detriment to him and did not put him at a disadvantage. The fact that the Claimant had a tendency to push back on criticisms so that it degenerated into arguments was something that Mr Knobel experienced himself and was not something that he had been told to say by Mr Suid although they had discussed it. It is our judgment that this was not a comment put on his performance review because of the Claimant's whistle-blowing.

209 It is our judgment that Mr Suid, who was the only one of his managers was aware of the whistle-blowing, did not hold the whistle-blowing against the Claimant and did not treat him aggressively or unfairly because of it.

210 It is our judgment that the Claimant has not suffered a detriment in the way that he was managed by Anthony Knobel and Billy Suid in 2016.

211 There was no evidence that any comments about the Claimant that Anthony Knobel made on her performance review or any criticisms that Mr Suid made about him to Ms Chan and Mr Knobel played any part in the decision to align the Claimant to BUK.

212 This complaint fails

4. Alignment to BUK – November 2016

213 The decisions on allocations in the alignment to be BI and BUK were not done until November 2017 which was six months after the Claimant had made his main protected disclosure in May 2016.

214 Although Billy Suid had mapped the Claimant to BUK when he was asked to map VP and lower levels into the structure, he had also mapped the Claimant into the BI team. He created two scenarios and put them forward to Mr Fairclough and the others to comment on. We accepted Mr Suid's evidence that he would have preferred the Claimant to be in his team in BI. This is because he appreciated the Claimant's intelligence and ability.

215 No-one was asked to express a preference as to where they wanted to go in the alignment process - not even those at the director or managing director level. At that level, it is likely that individuals are expected to embrace challenges. The evidence was that at Director level employees saw these sorts of challenges as good for their overall career at the Respondent.

216 It is this Tribunal's judgment that it was likely that Mr Hashmi's alignment to BI happened because of his skillset and business need. It was not because he had expressed a preference to be aligned there. There was no evidence that the Claimant was disadvantaged by not expressing a preference.

217 The final decision on the Claimant's alignment was made by TMT and not by Mr Suid or Mr Fairclough. The Claimant did not complain that members of TMT had treated him differently because of his protected disclosures.

218 The Claimant was aligned to BUK although he wished to be aligned to BI. Was this a detriment? The burden would be on the Claimant to show that this was a detriment to him. Mr Fowden stated that if the Claimant is able to demonstrate management potential in his present position by working with senior managers in different parts of the Treasury and breaking new ground with SRTs - when those are back on the agenda - there is no reason why he would not be in an ideal place for promotion as roles arise.

219 It is expected that the Claimant would have to work with different asset classes than he had done before being aligned to BUK but the expectation was that he had skills that should enable him to be able to do so. The Claimant had not done securitisation before he was asked to do so in the CME Secured team but learnt how to do so and excelled. At BUK he is being asked to work with different asset classes but the evidence was that although his managers agreed that this would be a challenge for him, they had every confidence that he would be able to master it.

220 The Claimant accepted in evidence that although he did not agree with the plan, there was a genuine plan within BUK to execute SRTs. This was in existence at the time of the alignment process. The clear evidence to the grievance manager from Jennifer Moreland and the evidence to us from Rupert Fowden was that this was the clear plan for BUK and one that has not been completely shelved.

221 It is our judgment that the Claimant had proved himself in the SRT transactions at the end of 2016. Although the SRT transactions he had worked on were mostly for products that would come within the remit of BI; it was his skillset that they were after in BUK and not the product or asset knowledge. The professional judgment of the managers involved, including Mr Fowden who had not had the disclosure circulated to him, was that the Claimant could learn the information he needed about the asset classes and use his skillset to complete any transactions or work that he would be allocated to in BUK. It is also correct that the Claimant was not the only VP in CME team doing SRT transactions but it was the judgment of his colleagues and his managers that he had demonstrated excellence in the SRT transactions done at the end of 2016 far and above that of the others. He was – according to Ms Moreland – a superstar and that is what made him an asset to her team. There was no evidence to contradict that or to suggest that it was not true.

222 It is our judgment that the Claimant has failed to show that his career would be affected negatively by the move to BUK. From the evidence we had in the Hearing, the Claimant has as much chance as anyone else to move between jobs and to apply for jobs on the job board. The Claimant has not tested this by applying for any jobs since his alignment to BUK. In relation to his remuneration, it is also our judgment that the Claimant has not suffered from his alignment to BUK. The figures produced dated March 2018 shows that the Claimant is still the highest paid VP in comparison with his peers across all of Treasury, including those who were aligned to BI. We had no evidence that could lead us to conclude that his remuneration would not continue to increase commensurate with his roles and responsibilities. There was no evidence that he would fall behind or that his career would suffer. The Claimant was not an investment bank employee when he worked in the CME Secured team and therefore any comparison with former colleagues in the investment bank from whom he parted in 2013 is unhelpful.

223 In our judgment, the alignment process was not done to suit individual's existing responsibilities but was done to suit business need and to match an individual's skillset with what the business needed.

224 It is our judgment that the Claimant was not aligned to BUK because he made protected disclosures. The alignment to BUK was because the Respondent considered that it was best for the business and that it would also be of benefit to his

career. The Claimant submitted that it made no sense, given what he had been doing in CME Secured, for him to be aligned to BUK. The complaint we had to consider was whether the decision to align him to BUK was done because of or was materially influenced by his protected disclosure and not whether it made sense to him. It is our judgment that it was not because he made protected disclosures and was not materially influenced by the fact that he made disclosures.

225 It is also our judgment that his alignment to BUK was not a detriment as we had no evidence to support the Claimant's contention that the alignment had adversely affected his career or his remuneration. Even if it was a detriment, which in our judgment it was not; the Claimant was not aligned to BUK because he made protected disclosures.

226 The Claimant made protected disclosures but did not suffer detriments because of or that were materially influenced by them.

227 The Claimant's complaints all fail and are dismissed.

Employment Judge Jones

30 July 2018