Case No: 2208031/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Dimitri Rozanov	**v**	**EFG Private Bank Limited**

Heard at: London Central **On**: 25 – 28 June 2018, 2 – 3 July 2018
In chambers: 1 – 2 October 2018

Before: Employment Judge Lewis
Ms S Plummer
Mr J Walsh

Representation

For the Claimant: Ms D Sen Gupta, Counsel

For the Respondent: Mr T Croxford, QC

JUDGMENT

The unanimous decision of the employment tribunal is that:

1. The claimant's employment did not transfer from Coutts to the respondent by reason of a transfer of an undertaking. His claim for ordinary unfair dismissal under s98(4) of the Employment Rights Act 1996 is therefore dismissed for want of jurisdiction.

2. The claim for automatic unfair dismissal for whistleblowing does not succeed.

3. The claim for detriments for whistleblowing does not succeed.

REASONS

Claims and issues

1. The claimant brings claims for unfair dismissal, automatic unfair dismissal for whistleblowing and whistleblowing detriment. The issues were agreed and are attached at the end of this judgment. These do not set out the alleged protected disclosures. The alleged disclosures were as set out in the claim form at paragraphs 24 – 59. Broadly these can be summarised as follows:
    a. Disclosure 1: Information in the claimant's email to Mr Cooke-Yarborough on 5 March 2017.
    b. Disclosure 2: In May 2017, disclosures to Mr Cooke-Yarborough, Mr Vlahovic and Mr Hornsby-Clifton in May 2017 regarding Ms Mason's conduct in relation to the potential $100m Guernsey transaction.
    c. Disclosure 3: In May/June 2017, disclosure to Mr Vlahovic regarding the proposed movement of the client's account to the Monaco office.
    d. Disclosure 4: In May/June 2017, disclosure in a meeting to the Head of Internal Audit, Mr Davies, about tensions between Client Relationship Officers ('CROs') and the Compliance team ('Compliance') and Mr Cooke-Yarborough's failure to address this.
    e. Disclosure 5: on 7 August 2017, writing to Mr Vlahovic regarding a further error in Ms Mason's approach.
    f. Disclosure 6(i) – disclosures to Mr Cooke-Yarborough in one-to-one meetings about the attitude of some CROs wanting to take short-cut
    g. Disclosure 6(ii): Expressing similar concerns to Ms Alzapiedi following the FCA's visit during a formal interview to discuss corporate culture.
    h. Disclosure 6(iii): Writing to Mr Hornsby-Clifton on 26 January 2017.
    i. Disclosure 6(iv): on 8 May 2017 during a ManCo meeting, coming up with a list of initiatives.

2. The alleged detriments in addition to the automatic unfair dismissal claim were:
    a. Placing the claimant immediately on garden leave and asking him to remain away from the office
    b. Immediately disabling the claimant's access to his work email account and his Blackberry
    c. Not following any redundancy or dismissal process, not offering alternative vacancies and not offering the right of appeal
    d. Providing a draft settlement offer which he was asked to accept on short notice
    e. In the respondent's solicitors' letter 26 September 2017, calling into question the claimant's fitness and propriety.

Anonymity and redaction: rule 50

3. The parties agreed that the names of Bank clients should be redacted. The respondent made a rule 50 application additionally to redact the names of four individuals and to keep a 'confidential annexe' ie a small bundle of three articles.

4. Three of the four names were 'Individual 2'; 'relative 19' and 'relative 20'. They are from one family. They paid in funds in relation to one of the clients whose names has been redacted. The tribunal agreed to the redaction of the names of the additional three individuals. It was a transaction which would come under close scrutiny as it is the subject of alleged protected disclosures. There was a risk that the identity of that client could be identified were the names of these three individuals not redacted. Client confidentiality is very important in the Banking world. Indeed the claimant agreed that clients' names should be redacted.

5. The confidential annex contained documents which the CROs would have found on internet google searches on that client. We understand it comprised three articles. This information would have been handed to Compliance and, on that basis, Compliance would have decided whether the transaction could go ahead. We accept that articles relating to a certain client would make it clear who the client was. Having agreed on the necessity to keep the client's name redacted, it followed that we should keep these articles confidential. We said the matter could be reopened if necessary when the witnesses were questioned on it. In the event, neither party wished to show the tribunal these documents.

6. Ex-employee 11 was the former whistleblower. The respondent felt her name should be redacted and not referred to as she had nothing to do with these proceedings and had not chosen to go to a tribunal herself. We did not rule that the name of this individual should be redacted and kept anonymous. We do not know the views off the particular individual, but in any event, we do not see that her position is any different from numerous individuals who are named during proceedings as part of the context for a case. We are unaware of any principle that whistleblowers in this context should get extra protection. The principle of open justice is a strong one and looking at the case law, it is insufficient solely to call to aid the right to privacy. No persuasive case was put to us as to why this person's name should be anonymised.

Procedure

7. The tribunal heard evidence from the claimant, and for the respondent from John Reed, Anthony Cooke-Yarborough, Dominika Alzapiedi, Russell Hornsby-Clifton, Michael Vlahovic, Sabrina Mason and Chris Davies. There was an agreed trial bundle of 913 pages.

8. Time-tabling. Unfortunately the afternoon of 2 July and the morning of 4 July were unavailable due to prior bookings of the tribunal panel. The parties had already jointly agreed that there would not be time for remedy. There was also some delay in starting the evidence because it had been agreed at the preliminary hearing that day 1 would be for reading only. In the time-table produced for the hearing, the parties had allowed only half a day for the tribunal's deliberations. After some discussion, the parties agreed, albeit with a degree of reluctance, that evidence and submissions would be completed

by 12.45 on 2 July and that submissions no longer than 45 minutes each would be made first thing on 3 July. The tribunal would then be able at least to make a start on reaching its decision but would have to book a further day or two to conclude its deliberations.

9. By consent, the order of evidence was also arranged so that the claimant would not have his evidence interrupted by a whole week-end.

Fact findings

10. Throughout the claimant's employment, he reported to Anthony Cooke-Yarborough, the respondent's CEO. Mr Cooke-Yarborough had been CEO since June 2011. Prior to that, he was Head of Private Banking from when he joined in 2009. As CEO, Mr Cooke-Yarborough chaired the respondent's executive management committee ('ManCo') and was responsible for the execution of the respondent's strategy.

<u>Appointment of the claimant</u>

11. The claimant worked in financial services in the UK throughout his career, initially in investment Banking and latterly in wealth management. He worked at Coutts from 2011 as Managing Director, Head of Russia and CIS. CIS refers to the Commonwealth of Independent States. He built up a team of around 17 private Bankers and support staff. The claimant is Russian.

12. The claimant's team at Coutts was a stand-alone business unit with its own key performance indicators and a discretionary remuneration model. The team focused on the market in Central and Eastern Europe ('CEE'). The claimant reported to Michael Vlahovic, who was based in Switzerland and responsible for the overall CEE market for Coutts.

13. In Spring 2015, Coutts International was sold to the Swiss Bank, Union Bancaire Privee. The decision to sell was made in around Summer 2014 and Mr Vlahovic started looking for an exit strategy. The UK based CEE team was not part of the transaction. Mr Vlahovic joined the respondent in July 2015 as Global Market Coordinator for Russia and CIS across the whole of the respondent Bank.

14. In December 2014, at Mr Vlahovic's suggestion, the respondent contacted the claimant to discuss the possibility of him moving to the respondent. The claimant was introduced to Mr Cooke-Yarborough. It was envisaged that the claimant would bring his team with him.

15. On 16 January 2015, the respondent offered the claimant the position of Managing Director, Private Banking and Market Coordinator for Russia, Eastern Europe and the CIS Region. Lengthy negotiations followed regarding salary, title and membership of the respondent's management committee ('ManCo'). Terms were finally agreed in late May 2015. A high salary was agreed and it was also agreed that the claimant could attend ManCo. Shortly

after he joined the respondent, the claimant was formally appointed as a member of ManCo. The job title settled on for the claimant was UK Market Co-ordinator for Russia, Eastern Europe and the CIS countries.

16. The claimant resigned from Coutts in June 2015. His last day employed by Coutts was Friday 11 September 2015. He started working for the respondent on Monday 14 September 2015.

17. Once the claimant had agreed terms, Dominika Alzapiedi, the UK Head of Human Resources, consulted the claimant over how to contact his former team members, what job title and salary to offer them etc. They liaised closely over the interviews and negotiations with his previous team. They discussed appropriate pay and benefits to offer in the light of their current salaries, qualifications, experience, the respondent's internal structure (to an extent), and a premium for the Russian market. Ms Mason also negotiated over her holiday entitlement.

18. The recruitment exercise became known as 'Team Eagle'. In the event, 11 out of the 17 person CEE team at Coutts resigned to join the respondent. They started at different dates between August and October 2015, depending on the length of their notice period. Some joined the respondent before the claimant did.

19. At no stage was there any discussion between Coutts and the respondent regarding a transfer of staff or business. The respondent did not obtain any employee liability information from Coutts.

20. Although the majority of the team transferred, there was not a complete match. Victoria Filatova was recruited from the Royal Bank of Scotland. She had been interviewing for a position with the CEE team at Coutts. Ms Rillman, who was interviewed by the respondent and offered a position, decided to remain at Coutts.

21. Five CEE team members remained with Coutts but not in a dedicated CEE team; they were absorbed into the wider Europe team. The claimant's position was not replaced.

22. Once the team had transferred, the respondent asked the claimant to approach his former clients at Coutts about moving to the respondent. Some clients chose to come with the claimant to the respondent. Other clients remained with Coutts. From October 2015 up till the end of 2016, the respondent opened over 100 accounts for clients who had transferred from Coutts. By the time of the claimant's termination of employment with the respondent, client business which the team had brought over from Coutts amounted to over 70% of the total AUMs ('Assets under management') of the team.

23. The respondent had no dedicated CEE team before the claimant joined, although it was doing Banking for a certain number of CEE PEPs ('Politically Exposed Persons'), eg government officials and oligarchs in the CEE region.

The respondent did not have an existing organisational structure to support this specialist work.

24. On joining the respondent, the claimant proposed that all high-risk and PEP clients be transferred to the new CEE team. Mr Cooke-Yarborough initially resisted this as he was concerned existing Client Relationship Officers ('CROs') would be unhappy to give up high value clients as they were linked to bonuses. It was therefore agreed that this would only apply to new clients from the region. On 7 November 2016, Mr Cooke-Yarborough sent out an internal email formalising the referral mechanism and also encouraging, though not insisting, CROs to refer existing clients within the relevant categories.

25. On 17 June 2015, the day before he left Coutts, the claimant received a text from Michael Vlahovic. This was part of a longer text exchange, but we do not have the preceding text. Mr Vlahovich's text says:

> 'I don't know – there's a similar story in GE which I'll need to address once I've started. Bottom line, though, the guys who aren't in the front line will always try to secure their positions whichever way they can. Business has always taken precedence at EFG, sometimes excessively so, and that's not going to change. The Head of PB role, however, may evolve somewhat, and work building the foundations'

26. The claimant says he understood Mr Vlahovic to be warning him that the respondent took a different approach to Coutts in prioritising commercial business over regulatory requirements, and he would have to adapt if he wanted to survive. Mr Vlahovic said he was referring to the fact that CROs took precedence as opposed to Head of Private Banking and that some CROs were a little bit too focused on business and not following strategic directives of the Head of Private Banking.

27. Without seeing the email chain, it is impossible for us to be sure what the text referred to. It could be interpreted either way.

<u>The claimant's team</u>

28. At the respondent Bank, the claimant was responsible for overseeing a team of five CROs and five assistants, plus coordinating the development of the respondent's business in Russia, Eastern Europe and the CIS Region.

29. The CROs reporting to the claimant were Sabrina Mason, Katya Sviridova, Evgeniy Pozin and Nicoletta Bruccoli (who had all worked with the claimant in is team at Coutts) and Victoria Filatova.

30. We mention here that the parties in these proceedings referred interchangeably to the CEE team; the Russia and CIS team; and the Russia team. All these were the same team, ie the one headed by the claimant.

<u>Compliance</u>

31. The respondent is regulated by the Financial Conduct Authority ('FCA') and the Prudential Regulatory Authority ('PRA'). The rules in the FCA Handbook are made under s139 of the Financial Services and Markets Act 2000. The Handbook imposes regulatory and legal obligations on the Bank.

32. The Handbook contains Senior Management Arrangement, System and Controls ('SYSC') rules. Paragraph 3.2.6 of SYSC3 states that a firm must take reasonable care to establish and maintain effective systems and controls for compliance. Paragraph 4.3.1 says a firm must ensure that senior personnel and, where appropriate, the supervisory function are responsible for ensuring the firm complies with its obligations. The FCA's High Level Principles for Business ('PRIN') state in chapter 2 that a firm must conduct its business with integrity and with due skill, care and diligence. It must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.

33. Russell Hornsby-Clifton was Head of Compliance. He joined the respondent in 2016. Mr Cowan-Young had recently been recruited in February 2016 as Senior Analyst in Compliance as he had experience in the CEE region.

34. The respondent is also subject to anti-money laundering regulations. When onboarding clients, the respondent follows a 'Know Your Client' (KYC') process, to help verify the identity and source of the client's wealth. This includes a Client Information Profile ('CIP'). This process helps the respondent identify the risk status of potential clients and whether enhanced due diligence is required before a decision is made to take them on. Where the client is a politically exposed person ('PEP'), particular vigilance is required.

35. The respondent had three lines of defence on Compliance: (i) the initial CRO and team leader (ii) the Compliance team (iii) the management committee (ManCo). When starting the process of onboarding any client, CROs had to complete an electronic CIP form. They were assisted by a Guidance Manual. The Compliance department would then check whether it was satisfied with the information provided by the CRO and whether the onboarding process could continue. The CIP form was then placed for approval before the CIP management committee, which was a sub-committee of ManCo.

36. The EER bonus scheme defined a bonus pool for the Bank. The claimant was supposed to be responsible for distributing amongst team members the amount allocated to his team. The size of the bonus pool was determined by the revenues and new AUMs generated by the team.

Previous fine and whistleblowing

37. On 28 March 2013, the then Financial Services Authority (FSA) fined the respondent £4.2 million for breaches of Principle 3 of the FSA's Principles for Businesses which occurred between 15 December 2007 and 25 January

2011. The respondent had also breached Senior Management Arrangements, Systems and Controls rules in the FSA Handbook. The FSA Final Notice said the respondent had 'failed to take reasonable care to establish and maintain effective anti-money laundering systems and controls in relation to customers that were identified by the Firm as presenting a higher risk of money laundering for the purposes of the 2007 Regulations (higher risk customers), including those customers deemed to be a politically exposed person.'

38. The FSA stated that laundering money through UK financial institutions undermines the UK financial services sector. It is the responsibility of those institutions to ensure they are not used for criminal purposes and that they do not handle the proceeds of crime. Unless firms have in place robust systems and controls in relation to anti-money laundering ('AML'), they risk leaving themselves open to abuse.

39. The FSA noted that the respondent provides private Banking services, and acts as a gateway to the UK financial system, for high net worth international customers, including some from jurisdictions which do not have equivalent AML requirements or have recognised sources of corruption. The FSA said 'The failings at EFG were serious, systemic and continued for more than three years. The weaknesses in EFG's controls resulted in an unacceptable risk of it handling the proceeds of crime.' In particular, the respondent had not at all times maintained adequate and effective systems and controls to identify, assess and manage potential money laundering risks associated with higher risk clients.'

40. At around the same time, Coutts had also been found guilty of similar failings and received a large fine.

41. The FSA was replaced shortly after by the FCA (Financial Conduct Authority) and PRA (Prudential Regulatory Authority).

Previous whistleblowing complaint

42. In July 2016, Ms Lennox, the then Head of UK Compliance and Financial Crime, made an internal whistleblowing complaint. She said 'the AML onboarding team is being pressurised by the business, CFO and Chairman to on boarding (sic) Russian business. … James Loftus has raised this as a concern but this has not been answered by anyone in the Bank during my absence. I have previously raised my concerns with Anthony Cooke-Yarborough, Vittorio Ferrario and Andrew Simmonds as functional reporting heads. I believe the Bank is expecting the standards of the AML processing team to reduce to allow business not to be fully vetted as per the agreed standards to the Bank.'

43. The whistleblowing complaint was heard by Michael Higgin, an independent non-executive Director of the Bank. The investigator was Philip Amphlett. On providing his report to Mr Higgin, Mr Amphlett stated 'I have been requested by the Chairman to act as an investigator for a whistleblowing claim'. The

Chairman, John Reed, told the tribunal that he appointed Mr Higgin and Mr Higgin appointed Mr Amphlett.

44. Mr Amphlett recognised the tension between the business imperative and compliance necessities which could in other circumstances lead to pressure for a lowering of vetting standards, but he did not think that had happened here. He thought there was just the usual frustration of CRO teams, exacerbated by the new team's unfamiliarity with the take on process.

45. In a follow-up report on 1 September 2016, Mr Amphlett noted that Mr Riley had complained that Ms Filatova and Ms Sviridova still did not understand what was required to produce a CIP to the Bank's standards and at times appeared not to have a full understanding of their prospective clients or to be using that information selectively. In his conclusion, he said that due to business pressures, there was tension at various levels between some individual members of the CIS team and Compliance over client take on, but the process was sufficiently robust to ensure the respondent Bank was not thereby at risk and it did maintain its standards.

46. The whistleblowing complaint was not upheld. The investigation papers and outcome were copied to the FCA. The respondent states the FCA was satisfied there was no case to answer.

47. At around the same time, the claimant was interviewed by the FCA on 21 September 2016. He did not express any concerns about pressure from the business to be lax on compliance.

<u>Meeting between claimant's team and compliance: 24 January 2017</u>

48. The claimant did not see the Amphlett report until October 2016, when he was shown it by Ms Alzapiedi, who wanted him to consider the comments about Ms Filatova and Ms Sviridova, who were two of his team members. She arranged a meeting with the claimant and Mr Hornsby-Clifton. They decided to hold a joint meeting between the claimant's CRO team and the Compliance team to see how the two teams could work better together.

49. Mr Hornsby-Clifton told the tribunal that the claimant's team had become known within Compliance as being quite vocal and pushing back on requests for 'Know Your Client' ('KYC') information and corroboration documents. The behaviour was sometimes unprofessional and there were particular problems with Ms Filatova. He said that he and the claimant had an ongoing dialogue around how they could ensure the CROs who reported to him behaved professionally and followed compliance procedures.

50. Before the meeting, they exchanged feedback. Members of Compliance said that the majority of CEE team members could be rude when something was sent back and liked to bulldoze their way through, expecting every exception in the book to be made for them.

51. The claimant responded, saying 'If we could further improve cooperation between the first and second lines, it would make us more competitive in the market place'.

52. The meeting was held on 24 January 2017. The claimant said he was concerned that risks relating to sources of wealth ('SOW') were being omitted from KYC submissions and he requested additional training and KYC surgeries to be available to CROs for complex cases involving PEPs.

53. In a follow-up email of 26 January 2017, the claimant commented that it was a productive session and this type of open dialogue was an important step towards smooth cooperation between the first and second lines of defence. He went on:

> 'In terms of follow up, I noted three main items:
> The possibility to have a weekly surgery to discuss complicated areas with COT expert prior to commencement of CIP writing. It will be the CROs responsibility to provide an initial briefing on SOW and potential risk factors.
> Transparency on time spent by COT on different types of cases standard/HRC/PEPs – to be provided through FOS for better management of CRO and client expectations.
> Possibility of alignment of COT resources by market – I would be happy to provide periodic market training sessions and updates to those earmarked for CEE. I am sure Daniel and FOS could organise the same for other key markets.
> I would also be happy to review and provide comments to the CEE guidance mentioned to the extent it's going to be a helpful tool for COT and CROs.
> Let me know if I missed anything.'

'COT' stands for the Compliance Onboarding Team. This email is alleged to be PID6 (iii).

<u>Cowan-Young incident</u>

54. In about March 2017 an incident occurred when Ms Filatova was seen to shout at Mr Cowan-Young because he was asking for basic information on a CIP. This was serious enough to be reported by the Head of Compliance Monitoring, who saw the incident, to the Head of Anti-Money Laundering under the heading 'Dignity at Work'. On being informed, Mr Hornsby-Clifton emailed the claimant to ask how this should be dealt with. He said the behaviour was inappropriate, especially given previous complaints. Mr Cooke-Yarborough was also informed and said it needed to be addressed.

<u>Culture project:</u>

55. Ms Alzapeidi was responsible for the 'Culture Implementation Project', a long-term project which started in 2016 to articulate, measure and report on culture at the Bank. This looked at implementation of the respondent's core values. It was a standing item at every strategic ManCo meeting. The claimant had attended a 24 person workshop on 3 February 2017 as part of the project. Ms Alzapiedi says one area which posed challenges from a

cultural perspective was the relationship between CROs and Compliance across the Bank.

The one-to-one meetings - PID 6(i)

56. The claimant had fortnightly half-hour one-to-one meetings with Mr Cooke-Yarborough. The claimant wrote the agenda, setting out matters which he wished to raise. On 1 August 2016, the third agenda item refers to 'Onboarding – CIS expert'. On 8 and 14 September 2016, the first item is 'Onboarding – current status UK, CIS expert'. On 18 November 2016, the fifth item is 'CRO cultural behaviour'. This is the first mention of such an item. On 6 January 2017, 'CRO cultural behaviour' is third on the agenda behind update on team performance and team bonus. On 16 January 2016, the only item is follow up on the team bonus. 30 January 2017, the first item on the agenda is 'Feedback on meetings with COT/Compliance including suggested improvements – DR' On 20 February 2017, the first item is 'CIS Guidance and CIPs sign off'. On 27 Mach 2017, the second item is 'CIS Guidance'.

57. The claimant says that he raised concerns about the CRO-centric model to Mr Cooke-Yarborough during the one-to-ones on 18 November 2016, 6 January 2017, 30 January 2017 and 20 February 2017. He says he told Mr Cooke-Yarborough he was concerned about CROs taking shortcuts to drive the growth of AUMs and that he had observed bullying behaviour by some of the CROs towards Compliance. He says he brought these topics up under the agenda items 'CRO Culture/Behaviour' and 'Compliance'. The claimant says he told Mr Cooke-Yarborough that the tensions between the CROs and Compliance needed to be addressed. The CRO team were resisting Compliance requests for more detailed information on source of wealth.

58. The claimant says he told Mr Cooke-Yarborough that he had received strong push-back from a few of the CROs on the new CIS guidance which the Compliance Team had drafted with the claimant's input. He said he was concerned that these measures were viewed as an unnecessary hurdle by the CROs. The claimant says Mr Cooke-Yarborough did not want to engage on the subject and did not offer any support.

59. Mr Cooke-Yarborough says the agenda references to 'Culture/Behaviour' were because they were discussing cultural values as a whole within the Bank during that period. He says he does not recall any specific mention by the claimant of the issues with his team regarding shortcuts and bullying, except for the one incident involving Ms Filatova, which he was told about on 22 March 2017.

60. We accept the claimant's account. We can see from the agenda items that issues of 'CRO culture' were raised. The respondent own culture project took that to include relations between CROs and Compliance across the board. In the context of one-to-ones, we think it unlikely that the claimant would persistently have been discussing more general issues. This was not a ManCo meeting. It was not a Culture Workshop. The claimant was discussing his team with his manager, as can be seen by the vast majority of the other

agenda items. Moreover, there were specific issues regarding his team to discuss, for example Ms Filatova's behaviour towards Mr Cowan-Young and Ms Filatova and Ms Sviridova's attitudes as mentioned in the Amphlett report, as well as the meeting in January 2017 to discuss tensions between the teams.

61. We also find that during the one-to-ones the claimant had told Mr Cooke-Yarborough that his CROs wanted their own P&L accounts and there had been disagreement over that.

The claimant and his team

62. Meanwhile, unknown to the claimant, on 2 November 2016, Ms Mason had asked to have a confidential meeting with Mr Cooke-Yarborough. She raised various issues on behalf of the CROs. She said they had been told the claimant would run the team as a cooperative and that the claimant's position on ManCo was to provide additional support to the team. However, they felt they were not involved in strategic decision-making. They were also concerned that the claimant had instructed them not to speak to the Head of Private Banking (Mr Gerber) or to Mr Cooke-Yarborough without him present, and that he had asked Finance not to provide individual profit and loss reports to team members.

63. The team initially had an amicable meeting with the claimant when they discussed their request for more day-to-day management support. They had a further meeting on 11 November 2016 which was less successful. Ms Mason reported the issues to Mr Cooke-Yarborough in an email on 14 November 2016. She said the CROs wanted to see their own CRO numbers, like the CROs did in the rest of the Bank, but the claimant felt they did not need any more information. She said they wanted a clear picture of what they were individually producing to see whether they were in bonus territory or even if their pricing model worked. She said the claimant had told them that if any of them wished to leave the team, that could be arranged, but the clients would have to stay on the team. She said that if the claimant was unwilling to authorise Finance to provide them with individual reports, the four CROs were not willing to accept this way of working and would like to discuss directly with Mr Cooke-Yarborough where they went from here. The email also complained about 'micromanagement'.

Team Dinner 1 March 2017

64. On 15 February 2017, Mr Cooke-Yarborough had lunch with Ms Mason, when she voiced the same concerns she had back in November 2016.

65. On 20 February 2017, Mr Cooke-Yarborough and the claimant agreed to invite the CROs to a one-to-one dinner to celebrate their success in 2016 and to give Mr Cooke-Yarborough the opportunity of hearing directly from the team their views on the matters which the claimant and his team had been discussing.

66. The dinner on 1 March 2017 was attended by the claimant, Mr Cooke-Yarborough and the four CEE CROs, ie Ms Mason, Ms Filatova, Ms Sviridova and Mr Pozin. As previously agreed with the claimant, Mr Cooke-Yarborough opened the discussion by saying that everyone should be open and there would be no adverse consequences.

67. The discussion at the dinner was wide-ranging. The CROs discussed their desire to have the same individual P&L reports as other respondent CROs received. They discussed the point that profit for any future bonus purposes was calculated after deducting all costs of the team including the cost of the claimant. They expressed their wish to discuss business matters with other business managers including Mr Cooke-Yarborough and queried why the claimant had instructed them not to do so and always refer to him. There was a discussion regarding the claimant's role on ManCo. The CROs did not understand why the claimant did not support approval for CEE new accounts when on ManCo. This was something the team had complained about before to the claimant.

68. There was a general discussion about Compliance procedures. The CROs felt Mr Cowan-Young should be removed because he was too detailed and asked too many questions which delayed speedy onboarding of new clients. They asked if they could replace him. As the dinner went on, they started complaining about the number of additional controls which the claimant had added. They said they did not need the CIS Guidance and that it was an unnecessary extra layer. They asked why the claimant needed to look at their CIPs, as none of the other teams had anyone looking at their CIPs before they went to Compliance. Although Mr Cooke-Yarborough said he does not recall the discussion covering this ground, we accept the claimant's evidence that it did. We know from some of the feedback from the meeting with Compliance that the CROs were pushing back on controls. They had been invited to speak out about their concerns generally at the dinner. Ms Mason had the impression that she generally had the ear and support of Mr Cooke-Yarborough. In the relaxed atmosphere of a dinner, they are bound to have covered this ground.

69. The CROs also asked why the claimant needed to be a member of ManCo given that he could not vote to approve their CIPs. Mr Cooke-Yarborough explained that the claimant did not vote on those because it would be a conflict of interest. The team asked if they could attend ManCo discussions when their new accounts were being considered, so that they could provide any useful input. Mr Cooke-Yarborough said he thought that a good idea.

70. Mr Cooke-Yarborough encouraged the CROs to come and talk to him afterwards on an individual basis to seek guidance on how to pursue business successfully.

71. The above-mentioned views of the CROs at the dinner were expressed by Ms Mason, Ms Filatova, and Ms Sviridova. Mr Pozin said little and indeed conveyed to the claimant a few days later that he had been uncomfortable

with some of the comments made, particularly about some of those made about the Compliance team and the claimant personally.

72. After the dinner, Mr Cooke-Yarborough left in one direction, and the claimant and the CROs walked in another. Ms Mason commented that the criticisms they had made were justified because it was the CROs who paid for the team's salaries. The claimant said that they were all Bank employees. He said anyone who was unhappy with the team model and preferred to work as an autonomous CRO should let him know and he would look into finding them a position elsewhere in the Bank. He said he was surprised they still had such animosity towards Compliance given the long team meeting in November 2016, at which these points were discussed.

73. After the meeting, at 23.51, Ms Mason sent Mr Cooke-Yarborough an email from her phone. She started 'Many thanks for the evening and your ongoing support'. She went on:

> 'Unfortunately 1 min from the restaurant Dmitri forgot the rule everything stays in the room and decided to single me out for questioning in front of the CROs – he still doesn't know why I continue to protest that I was an individual CRO report, when the team is paying for me not paying for the team.
> He wants to continue this discussion back in the office, we are all happy to continue this discussion, but ultimately I don't think he is going to like what we have to say and our understanding is that you are in agreement we can have these reports, so no further discussions are necessary.
> It's a shame that he refuses to acknowledge that we will not continue to operate as we are, and that it is he who needs to change.'

74. The next morning, Ms Sviridova emailed Mr Cooke-Yarborough to ask to speak to him about '2 very strong comments Dmitri made to all four of us the moment you left'.

75. Mr Cooke-Yarborough asked Ms Mason exactly what had been said. Ms Mason said the claimant had said 'I don't understand you guys you want the security and the comfort of the team, as you are not confident to stand on your own two feet, but you are still demanding individual reports. I said we do want to remain a team, we made a conscience decision to come here as a team and we also made a conscience decision to pay for you and Nicoletta, to which he replied you don't pay for it … the team pays for you'.

76. On 3 March 2017, Mr Cooke-Yarborough told the claimant there had been complaints about his comments following the dinner. He did not show the claimant the emails. He simply said he had heard comments 'through the grapevine' that the claimant had taken an aggressive tone and spoken threateningly to the team. The claimant asked that HR look into the matter but Mr Cooke-Yarborough refused. The claimant said any such allegations were untrue and defamatory.

77. The fact that the claimant had challenged the CROs on leaving the dinner and his response when Mr Cooke-Yarborough raised this on 3 March made

Mr Cooke-Yarborough concerned that it might not be possible to have a good working relationship within the team in the future.

78. On 5 March 2017, the claimant emailed Mr Cooke-Yarborough. This is alleged to be a protected disclosure [PID 1]. He expressed his concern about what he had heard from Mr Cooke-Yarborough on 3 March and about the comments by some team members. He said the suggestion he had made threatening remarks was untrue. He said the conversation had lasted a few minutes, when he had expressed his surprise that issues the team had previously discussed with him and which he had felt were resolved, remained contentious. He said anyone who felt strongly they could not live with the team business model and preferred a single cell model should let him know and he would try to facilitate a move.

79. The claimant went on: 'You heard most of the demands by certain CROs at our dinner. They would like more freedom, less compliance control and a more transparent remuneration model. In short, they don't want management…..It is my firm belief that in the current regulatory and political environment, given the Bank's reputational interests and goals and given the client area we are working with, that the front line oversight and guidelines in place are absolutely essential. I would not be comfortable conducting business in a less rigorous fashion, which is exactly the demand being made time and time again. I think we need to be very clear about that.'

80. The claimant added, 'We must in my view be clear that while we all want to build AUMs and grow, that cannot be at the expense of process and controls.' He mentioned the fact that early last year he had instituted a policy that he review all CIPs before they go to compliance in order to improve the overall quality of what they sent to compliance and to minimise back and forth, this being particularly important in the light of Mr Amphlett's report about the conduct of certain CROs. He said he had shared that feedback with them and they had resented it rather than taking it constructively. He said he had had a lot of resistance to his CIP policy – 'it has repeatedly been argued to me that my role should simply be a conduit for the CROs and fight their corner with compliance and Manco'.

81. The claimant said 'I will not jeopardise my reputation or our business by bowing to the pressure to simply act as conduit for the CROs or lowering the bar on scrutiny.' He said he was very happy to have members of his team communicate directly with Mr Cooke-Yarborough or anyone they please, but such conversations could be counter-productive if partial information was communicated. If the CROs felt they could fundamentally change the approach in this way, the claimant could not fulfil his role: 'A team that is not fully supportive of the compliance and other procedures set in place also poses an unacceptable risk. I feel strongly that we need to be both clear in this and in defence of our business model, and firm in our expectations of performance and professionalism…. I hope I have your full support in constructing an appropriate response. I look forward to your thoughts'

82. Mr Cooke-Yarborough did not reply. On 7 March 2017, Mr Cooke-Yarborough wrote to the team and the claimant, thanking them for spending the evening with him and speaking openly. He said there were a number of points to follow up on such as CRO reports, team/individual balance, the role of the claimant in the team and on ManCo, client onboarding etc. He would be discussing these with the claimant and Mr Vlahovic and he would come back to them. Also as discussed, he would arrange one-to-one discussions with each of them over the next 2 – 3 weeks.

83. At their next one-to-one meeting, on 27 March 2017, the claimant suggested involving HR in some of the problems the CROs were having. Mr Cooke-Yarborough did not want to discuss a resolution to the issues and just made general comments that they needed to accommodate the CROs where they could.

84. On 26 April 2017, Ms Mason emailed Mr Cooke-Yarborough on behalf of the four CROs, requesting an update. She said it was agreed at the dinner that they would each receive individual CRO reports, but that had not yet happened. The income numbers for the first quarter were now out. She asked Mr Cooke-Yarborough to confirm that from April, Finance Department would produce individual CRO reports for each of them and backdated reports to the beginning of 2017. She said they were waiting patiently, but the ongoing limbo was affecting productivity and morale on the team.

85. Mr Cooke-Yarborough responded on 8 May 2017: 'As you may imagine, the HoPB role is the key to how we proceed, and I am working to finalise this. In the meantime a first set of individual reports will be produced for April YTD.' HoPB was Head of Private Banking. None of this was copied to the claimant.

86. We mention as an aside at this point, that Mr Cooke-Yarborough had become aware in October 2016 and in his later conversations with the individual CROs, that very few of the clients who had moved from Coutts had originally been brought into Coutts by the claimant. While accepting the claimant had been helpful in bringing the clients over to the respondent, Mr Cooke-Yarborough did not consider him a significant rainmaker.

ManCo meeting 8 May [PID 6(iv)]

87. On 8 May 2017, the claimant presented ManCo with a paper headed 'NNA (Net New Assets) growth initiatives'. This is alleged to be a protected disclosure [6(iv)]. This essentially repeated and followed on from an email dated 24 March 2017, which stated:

> 'Following our discussions at ManCo last week and looking at the slow NNA development so far this year, I would like to share a few observations, which may help us to change the trend. I think that we need to provide better oversight and leadership for CROs rather than simply relying on their initiative, which delivers uneven results and missed opportunities. It is quite clear from the MI we received that many CROs need to be helped to meet their performance objectives and KPIs.'

The email went on to suggest a number of initiatives. There is no mention in

the email of any compliance concerns. Nor is there anything obviously about the compliance part of the CROs' activities. The email is all about expanding business and focusing on priorities.

88. The ManCo minutes of 8 May 2017 show a discussion around change of model once a new Head of Private Banking is on-board. The context is 'challenges the CROs are experiencing and how they plan to make up delivery shortfalls'. Again there is no mention of compliance concerns. At this time, the claimant was focusing on expanding new business.

Meeting with Chris Davies 17 May 2017 [PID 4]

89. Chris Davies joined the respondent in February 2017 as Head of Internal Audit. The Internal Audit Team operated independently of the Bank's management. Mr Davies met the claimant on 17 May 2017 at the former's suggestion by way of getting to know each other.

90. The discussion focused around different bonus models. The claimant was convinced his model, ie discretionary bonuses, was best, because it allowed money to be set aside for investment. This caused tensions with his team because they saw that the rest of the Bank operated fixed bonuses.

91. The claimant added that he also believed in closer supervisory control over CROs than elsewhere in the Bank and that was a good thing. He said that the then Head of Private Banking (Mr Gerber) had 50 CROs under him, but hardly any idea of what they were doing.

92. The claimant may have mentioned that tensions with Compliance arose, but as an aside. We do not find that he asked Mr Davies to take any action or that he said he raised issues with Mr Cooke-Yarborough who had done nothing. Had the claimant made an issue of this, Mr Davies would have remembered because he was finalising an audit of client onboarding across the Bank and aware of the type of difficulty which could arise.

93. Mr Davies felt the meeting had gone well. He mentioned the meeting at a one-to-one with Mr Cooke-Yarborough. He simply said the meeting had gone well and that the claimant had raised the remuneration model.

Meeting with Ms Alzapiedi 18 May 2017 [PID 6(ii)]

94. The claimant met Ms Alzapiedi on 18 May 2017. He had emailed her three times to arrange to meet up. The first email, 28 March 2017, simply asked her if she was free this Thursday for coffee/lunch. On 11 May 2017, he emailed under the heading 'CRO behaviour and conduct':

> 'It would be good to catch up to discuss this topic. Sometimes I feel that the boundaries are pushed too far as in the recent case where Tara and I had a meeting to discuss CRO's outburst with compliance'.

95. This was a reference to the incident when Ms Filatova shouted at Mr Cowan-Young. The claimant said he knew she was working on the broader issue with culture, but he felt more HR involvement would be needed to address the issue.

96. Ms Alzapiedi did not reply and the claimant sent a further chaser on 15 May, suggesting they speak that Thursday. This was agreed.

97. The meeting lasted one hour. Ms Alzapiedi says it was just a chat about how culture initiatives and values could improve behaviours at the Bank. She says the claimant never mentioned he thought the Bank was not meeting its compliance obligations. He did mention some of the CROs did not always conduct themselves as professionally as they should.

98. The claimant says it was a formal meeting. He says he said he was deeply concerned about the attitudes of some CROs towards KYC procedures and that the remuneration model posed an ongoing risk. He says he said the lack of management oversight gave CROs a silent mandate to make whatever AML submissions they could get through the Compliance team. The claimant says Ms Alzapiedi took notes and nodded frequently. Ms Alzapiedi says she cannot remember whether she took notes. There were no notes disclosed.

99. We prefer the claimant's evidence as to the content of the meeting. Ms Alzapiedi, who we did not find a convincing witness, said that she had the impression during the meeting that the claimant was trying to help her with the culture project and that it was a follow up from the workshop he had attended. It is unlikely the purpose of the meeting was a general chat about a project given that the claimant had initiated the meeting and persisted in asking for it. We note also that Ms Alzapiedi did not respond immediately to his second attempt, despite the email heading 'CRO behaviour and conduct'. Further, the meeting took as long as one hour. We think it likely that notes would have been made of a meeting of that length, yet they have not been disclosed. The claimant cannot have been spending an entire hour talking only about the Cowan-Young incident. Indeed that incident had already been discussed with Tara in HR. The claimant was not now talking about remuneration models, but about attitudes towards Compliance. He had already brought these matters up in his letter to Mr Cooke-Yarborough on 5 March 2017.

100. Ms Alzapiedi told the tribunal she could not remember whether she had on that day told Mr Cooke-Yarborough about her conversation with the claimant. She said it was possible that she had done so. Given her evasiveness in the tribunal on this point, we find on the balance of probabilities that she did.

101. The same day, 18 May 2017, Ms Alzapiedi sought legal advice at Mr Cooke-Yarborough's request about his proposal to make the claimant redundant.

<u>Guernsey: May 2017 – [PID 2]</u>

102. Client 1 was a major client of the respondent, handled by Ms Mason. In May 2017, he informed the Bank that he wished to purchase an asset with $100m funds which were being lent by a friend. The $100m was to be paid into client 1's account in EFG Guernsey ('Guernsey'). Ms Mason asked the Guernsey office to accept the funds. She did not mention the transaction to the claimant.

103. On a number of occasions, including during her appraisals, the claimant had told Ms Mason that she must discuss any unusual or high-risk transactions with the claimant before taking action. She repeatedly ignored that instruction. The claimant thought it important to exercise direct supervision over her because she was relatively junior and had limited client experience. She had been promoted by the claimant at Coutts from the position of Private Banking Assistant. It was a condition of her contract to pass various investment and regulatory exams, but at the time of these events, she had failed the exams at least three times.

104. On 21 May 2017, Rod Keiller, Head of Client Services in Guernsey, emailed Ms Mason, copying in the claimant and asking for further information. Ms Mason replied, removing the claimant from the people copied in.

105. On 22 May 2017, Mr Keiller sent a further email, again copying in the claimant, stating they had carried out a WorldCheck search on individual 2 (the source of the funds) who was a friend of Ramzan Kadyrov, Head of the Chechen Republic. He said that, before they could accept the funds, they needed to know more about individual 2 and the source of the funds. This was the first the claimant knew about the transaction.

106. Also on 22 May 2017, Stephen Watts, Managing Director and Head of EFG Guernsey, a subsidiary of the respondent, emailed the claimant saying that the Guernsey Bank needed his team's help to provide it with sufficient documentation/corroboration to receive the £100 million. He said the main issue was the provenance of the money, which came from an individual from Turkmenistan, who was a PEP on the basis both of his relatives' political positions and his political connections. The claimant replied to say he was on the same page and had already asked Ms Mason to address the questions about the source of incoming funds.

107. The same day, the claimant emailed Mr Cooke-Yarborough, stating that Ms Mason had thought to execute a transaction without consultation or proper due diligence. He attached Mr Watts' email and his reply. The claimant's email is said to be a protected disclosure under the heading PID 2.

108. Ms Mason called Mr Vlahovic. She said she felt she had answered all the questions and did not understand what was holding up the transaction. She asked if he could help.

109. On 23 May 2017, Mr Vlahovic emailed Mr Cooke-Yarborough. He started 'An important business matter. We will almost certainly lose the client 1 relationship if they don't let this transaction through. Although it's very late in

the day and it's Guernsey we're talking about, I trust anything you can add to help them understand the importance of the matter can only be positive… I accept that this is not the sort of business a pure-play private Bank wants to engage in but, in client 1's case, it's a prerequisite for picking up an increasing amount of investment business he's now seriously considering. It's already an important relationship for us and can only become more important in future. Thanks for your support'.

110. It is clear from the tone and content of the email that Mr Vlahovic is not talking about asking Guernsey to put more resources in because they are being a bit slow. He is asking Mr Cooke-Yarborough to encourage them to accept the funds.

111. A few minutes later (at 15.50), Ms Mason emailed Mr Watts with a copy to Mr Vlahovic, Mr Cooke-Yarborough and the claimant, attaching various documents and summarising available information. She said that 'on the basis of the extensive research we have carried out on the PEPs, businesses and beneficial owner of the SPV providing the loan to our client, we have no reason to believe that any of the family members have acted in an appropriate way or made gains because of their political positions.' She concluded, 'I know that you have to review this transaction independently, but if we do return these funds to our client's long standing friend, the client will be hugely embarrassed and I have been advised by the office that they will close their accounts with us, which will be business in excess of USD 200m lost to the Group'.

112. Also on 23 May 2017, at 8.14 am, the claimant emailed Mr Hornsby-Clifton as follows: 'FYI. Sabrina was trying to execute a 100m transaction without consultation or proper due diligence, which raises some serious issues around her conduct and judgement. Would you have time this morning to discuss?' This is said to be a protected disclosure, also under the heading PID 2.

113. Mr Hornsby-Clifton was tied up in meetings. He responded in the evening to apologise that he had been unavailable but to say he had had a brief word with Mr Riley. He said 'It would be good to understand your thoughts on why this is a conduct issue as it is not immediately apparent to Mike or me.' The claimant replied that the Worldcheck on the supplier of funds clearly indicated he was a PEP by association, but this was not stated in the responses Ms Mason made to Guernsey when asking them to execute the payment. Guernsey had found out the information themselves on google searches and he was unsure how Ms Mason could have missed it when it was so clear. The claimant said 'I am not certain, but we'll need to find out if the withholding of the information about the PEP status was deliberate or just an oversight.'

114. Mr Hornsby-Clifton did not conduct an investigation. He simply suggested the claimant ask Ms Mason to show him the searches she had done.

115. On 24 May 2017, Mr Watts confirmed that Guernsey would be unable to accept the funds within the timescale imposed and would have to return them to individual 2.

116. In the evening of 24 May 2017, Ms Mason emailed the claimant, Mr Vlahovic and Mr Cooke-Yarborough. She expressed her dissatisfaction with the whole way the matter had been managed and that Guernsey had refused to accept the evidence she provided that there was no negative information regarding the client. She was concerned that her reputation with the client's office had been irreversibly damaged. She said Guernsey were setting impossible requirements for clients and business and she would propose to the office that as soon as practically possible, the respondent moves all assets (that they don't take away) out of Guernsey and into Switzerland or another offshore jurisdiction, possibly Monaco.

117. The claimant called a meeting on 25 May 2017 with Mr Cooke-Yarborough, Mr Vlahovic and Ms Mason to discuss the situation. They discussed how to handle the client's expectations. After Mr Vlahovic and Ms Mason had left the meeting, the claimant told Mr Cooke-Yarborough that he suspected Ms Mason's conduct had been deliberately misleading and negligent. This is alleged to be a further protected disclosure under the heading PID2. He said her failure to identify individual 2 as a PEP and his association with Mr Kadyrov in her submission to the Guernsey office was intended to avoid carrying out enhanced due diligence on the source of the client's funds. Mr Cooke-Yarborough said no harm was done as Guernsey Compliance had caught the issue.

118. On 6 June 2017, the claimant telephoned Mr Watts. During the conversation, he asked Mr Watts to look at everything that had been sent to him because he had a feeling that some of the information which was sent before the money arrived had been inadequate or misleading. The fact that the individual sending the money was a PEP had only been picked up by Mr Watts after the money arrived.

119. The claimant suggested on 19 June 2017 in a regular one-to-one with Mr Cooke-Yarborough that they should consider taking disciplinary action against Ms Mason. Mr Cooke-Yarborough's response was, 'We don't want to lose Sabrina'.

120. In around June or July 2017, Ms Mason asked the claimant to authorise a business trip to Monaco, where she was due to discuss with the respondent's Compliance team there opening accounts for client 1. The claimant asked why this was necessary when client 1 already had accounts in Guernsey. Ms Mason said she had obtained authorisation from Mr Vlahovic to do this.

121. The claimant contacted Mr Vlahovic to discuss his concern that the claimant was moving client 1's funds to Monaco because the respondent's office there would be less rigorous in scrutinising the origin of the funds. He said the UK Compliance department would have no visibility of any transactions in Monaco. He also reminded Mr Vlahovic about what had

happened in the past with client 10's accounts. Mr Vlahovic said to 'leave it to Sabrina'. This conversation is alleged to be a protected disclosure [PID 3].

122. In the past, when Guernsey office had decided to close the accounts of client 10 because his father was a close associate of Vladimir Putin, the respondent had moved his accounts to Luxembourg and Monaco. Luxembourg and Monaco were separate legal entities within the Group whereas Guernsey was a subsidiary. The claimant was concerned that information sharing was therefore less available with Monaco and Luxembourg.

Mr Vlahovic's appointment

123. Meanwhile, on 22 May 2017, Mr Cooke-Yarborough had emailed everyone at the Bank to state that Mr Vlahovic had been appointed Head of Private Banking UK, effective 1 July 2017 subject to regulatory approval. He would be continuing his role as Global Market Coordinator for Russia/CIS alongside his new responsibilities. He would start attending meetings in June.

124. The former Head of Private Banking, Mr Gerber, was due to leave in September 2017. Mr Gerber had actually been on gardening leave since 28 April 2017. Mr Vlahovic had sent Mr Cooke-Yarborough his CV on 23 March 2017 and after various conversations, on 19 May 2017, Mr Vlahovic accepted an offer of the role.

125. Mr Cooke-Yarborough had by now decided that he would be making the claimant redundant.

126. The claimant met John Reed, the Chairman of the Bank, for a coffee catch up on 23 May 2017 at the claimant's request. There was some discussion about Mr Vlahovic's appointment. The claimant said he was surprised because Mr Vlahovic had spent the previous 34 years working in Switzerland and had no practical experience working in the UK. He did not fully appreciate the regulatory requirements in the UK. The claimant did not express any concerns about compliance during that meeting.

127. On 4 July 2017, on Mr Reed's advice, Mr Cooke-Yarborough telephoned the respondent's supervisor at the PRA to inform him confidentially of the intention to dismiss the claimant.

128. This was in response to a request by the PRA to be notified in advance if there were senior people likely to leave, so that they were not caught by surprise. This request was the result of two senior people leaving in a year previously.

Ms Mason's error regarding Grozny: 7 August 2017

129. On 3 August 2017, Ms Mason sent an email to Mr Keiller in Guernsey on a transaction she was seeking to expedite. She copied in Mr Vlahovic, but she had not informed the claimant. She said, 'We know that the family have

investments in this region because Grozny (where the client was born) after the split of the USSR is classed as Kazakhstan now.'

130. In fact, Grozny is the capital of the Chechen Republic, which the claimant describes as a volatile and highly corrupt autonomous region within Russia that is over 2000 miles from Kazakhstan. This was a significant error because the purpose of the information in the email was to reassure Guernsey that there was no reason to question the connection between a transaction in Kazakhstan and a client born in Grozny.

131. The claimant did not become aware of the error until Mr Keiller copied him in on his reply to Ms Mason. Mr Keiller had not himself picked up on the error. The claimant took the view that Ms Mason had either shown a sloppy lack of due diligence and geographical awareness of an area which she covered, or that it was an intentional misrepresentation to avoid further scrutiny by Guernsey.

132. The claimant emailed Ms Mason, correcting the error. She did not respond. The claimant also emailed Mr Vlahovic to inform him of the error. He said it demonstrated a slapdash approach and Ms Mason needed more oversight than she was comfortable with. He noted that she had not copied him into the emails, whereas she had copied in Mr Vlahovic. He asked Mr Vlahovic to say whether he wanted the claimant to be involved in an oversight capacity. If so, could he please tell Ms Mason to copy him in. Alternatively, he may wish to take Ms Mason under his own wing. The claimant said either way was fine with him but it needed clarification who had management responsibility. This email is alleged to be a protected disclosure [PID 5]

133. Mr Vlahovic forwarded the claimant's email to Mr Cooke-Yarborough, stating 'I am not sure this is coincidental, and it's not hugely important, but it looks to me that Dmitri is mounting a defence. I can't recall receiving a mail like this from him in the last 5 years we've known each other.'

134. In the notes of the whistleblowing investigation carried out by the respondent in December 2017, Mr Vlahovic told the investigator, Mr Fleming-Brown, that 'It was a slip by SM and a quite amusing and immaterial issue'.

<u>Redundancy</u>

135. Either Mr Cooke-Yarborough or Mr Vlahovic was away through June and July 2017, so steps were not taken to dismiss the claimant until August.

136. On 4 August 2017, Mr Cooke-Yarborough wrote a note for the Remuneration Committee of ManCo ('RemCo'), to inform them of the intention to dismiss the claimant. It said the reason was that, following the appointment of Mr Vlahovic, the Bank would be 'doubled-up' on Market Coordination for the Russian, East European and CIS Region from the UK. As regards the remaining portion of the claimant's role as Managing Director, Private Banking, the Bank had some concerns about his ongoing suitability. There was tension with his team and he had resisted attempts to resolve it. Several

CROs had expressed dissatisfaction at his management style, which they described as unnecessarily controlling. There was a lack of transparency and information sharing within the team. There had been efforts to clear the air at a dinner, but despite reassurances to the team that there would be no adverse consequences for sharing their concerns, the claimant subsequently reprimanded some team members. The claimant had suggested that his way of managing 'is nothing more than prudent risk management in a high-risk market. He has also suggested that the motive for his team's complaints is that they are seeking to get him to lower the bar on regulatory scrutiny.' Mr Cooke-Yarborough said they had considered that point, but felt he was using this justification to hide a domineering management style. The aggressive style ran contrary to the open culture which the Bank was seeking to promote whereby people could express their concerns.

137. RemCo agreed the proposal to dismiss.

138. On 10 August 2017, when attending one of his regular one-to-one meetings with Mr Cooke-Yarborough, the claimant was told he was being let go and handed a termination letter. Mr Cooke-Yarborough then left the room and asked Ms Alzapiedi to go through the formalities.

139. The reason given in the termination letter was that Mr Vlahovic had moved to a UK role. The claimant had formerly had UK regional responsibility for the Russian, East European and CIS Regions, and Mr Vlahovic had had overall responsibility for market coordination in that area. It would be unnecessary duplication to have them both in place in the UK. As regards the claimant's other duties, ie as managing director, private Banking, the Bank was concerned about the claimant's ongoing suitability in the role. There were tensions between the claimant and his team, and he had resisted attempts to resolve those.

140. The letter said that a formal consultation process was unnecessary as the claimant did not have two years' service with the Bank. The termination date would be 31 August 2017 and he would be paid in lieu for the balance of the notice period. Further, he would be put onto garden leave up till 31 August. For that period, he would not be required to do any work, he should remain away from the Bank's premises and should not contact any clients or employees without permission.

141. The letter did not offer any right of appeal.

142. Ms Alzapiedi told the claimant that his Blackberry was disabled and access to his PC blocked, and she took away his security pass. She asked him to leave the building immediately. The claimant was allowed to come in on Saturday 12 August to clear his desk.

143. Ms Alzapiedi also gave the claimant a draft settlement agreement and asked him to let the respondent know by 1 September 2017 if he wished to accept it.

144. Ms Alzapiedi told us that the respondent commonly offers settlement agreements to employees who are being dismissed, and that three weeks is found to be sufficient time for senior employees to notify them whether they are interested in principle. She said the Bank prefers to offer senior executives a 'dignified exit strategy' rather than put them through formal disciplinary or consultation processes. We accept this evidence. There was no evidence that the respondent usually acts differently. We do not find it inherently surprising. In our experience, it is a fairly common way of handling termination in the financial sector.

145. Ms Alzapiedi also told us it was the respondent's standard practice that when there is a dismissal for any reason, to disable computer access and access to the building and wipe the Blackberry immediately. Such steps are a particular priority with senior and client-facing staff who have access to client sensitive information. We accept this evidence. Again, there was no evidence that the respondent usually behaves otherwise with senior employees and it is not inherently surprising or unusual in our experience.

<u>The respondent's whistleblowing procedure</u>

146. The respondent had a written whistleblowing policy. It set out a procedure for reporting concerns. John Reed, the Bank's Chairman, was the Whistleblowing Champion. The claimant did not invoke the whistleblowing procedure at any point.

<u>Post dismissal</u>

147. On 7 September 2017, the claimant's solicitors wrote to the Bank alleging the claimant had made various protected disclosures, threatening litigation and inviting settlement proposals. The respondent's solicitors wrote back by letter dated 26 September 2017. On the third page, the letter stated:

> 'If your client truly believed that a criminal offence was likely to be committed, his failure to resolve these matters, or escalate concerns which he now claims were being ignored, raises serious questions about his own fitness and propriety.'

148. Ms Alzapiedi and Mr Cooke-Yarborough referred the 7 September 2017 letter to Mr Reed. Mr Reed decided that the claimant's concerns should be investigated under the Bank's whistleblowing policy. Mr Fleming-Brown was appointed to investigate. He concluded that the claimant had not made any whistleblowing allegations which had been ignored. The report did state that Ms Mason had not always lived up to standards that might reasonably have been expected in terms of quality of analysis and also of keeping her manager informed of material matters, ie in relation to large transactions. The Bank and her new line manager should be aware of these concerns.

Law

149. The tribunal was given an agreed bundle of authorities and supplementary authorities from the claimant. We do not seek to reproduce them all in these Reasons.

TUPE

150. The Transfer of Undertakings (Protection of Employment) Regulations 2006 preserve continuity of employment.

151. Under Reg 3(1)(a), the TUPE Regs apply where there is a transfer of an undertaking, business or part of an undertaking or business ….. to another person where there is a transfer of an economic entity which retains its identity. Under reg 3(2), 'economic entity' means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

152. In Spijkers v Gebroeders Benedik Abattoir CV: 24\85 [1986] 2 CMLR 296, the ECJ said it is necessary to determine whether what has been sold is an economic entity which is still in existence, and this will be apparent from the fact that its operation is actually being continued or has been taken over by the new employer, with the same economic or similar activity. It is important to consider the following factors:

(a) the type of undertaking or business concerned;
(b) whether assets, tangible or intangible, are transferred;
(c) whether employees are taken over;
(d) whether customers are transferred;
(e) the degree of similarity between the activities carried on before and after the transfer and the period, if any, for which those activities are suspended.

153. In Cheesman v R Brewer Contracts Ltd [2001] IRLR 144, the EAT said this:

> '(i) … the decisive criteria for establishing the existence of a transfer is whether the entity in question retains its identity, as indicated … by the fact that its operation is actually continued or resumed; …
> (iii) in considering whether the conditions for … a transfer are met, it is necessary to consider all the factors characterising the transaction in question, but each as a single factor and none is to be considered in isolation;
> (iv) amongst the matters … for consideration, are the type of undertaking, whether or not its tangible assets are transferred, the value of its intangible assets at the time of transfer, whether or not the majority of its employees are taken over by the new company, whether or not its customers are transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, in which they are suspended;
> (v) account has to be taken … of the type of undertaking or business in issue, and the degree of importance to be attached to the several criteria will necessarily vary according to the activity carried on;
> (vi) where an economic entity is able to function without any significant tangible or intangible assets, the maintenance of its identity following the transaction … cannot logically depend on the transfer of such assets;
> (vii) even where the assets are owned and are required to run the undertaking, the fact that they do not pass does not preclude a transfer; …

(x) the absence of any contractual link between the transferor and transferee may be evidence that there has been no relevant transfer, but it is certainly not conclusive as there is no need for any direct contractual relationship;
(xi) when no employees are transferred, the reasons why that is the case can be relevant as to whether or not there was a transfer.'

Whistleblowing

154. Under Employment Rights Act 1996, s103A, it is automatic unfair dismissal if the reason or principal reason for dismissal is that the employee made a protected disclosure.

155. Under s47B a worker has a right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

156. Under s43B(1), a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and, tends to show, inter alia, one or more of the following:
   (a) that a criminal offence has been committed, is being committed or is likely to be committed,
   (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
   (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

157. Although there must be a disclosure of information, and not a mere allegation, there is no rigid distinction between the two categories. A statement may 'disclose information' even if it is also an allegation. It has to have sufficient factual content to 'tend to show' one of the matters listed in s43B(1). (Kilraine v LB Wandsworth [2018] IRLR 846, CA.)

158. The question is not whether disclosure was made in the public interest, but whether the worker believed at the time that it was, and if so, whether that belief was reasonable. What can reasonably be believed to be in the public interest depends on the circumstances of the case. Relevant factors could include the numbers in the group whose interests the disclosure served; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the wrongdoing disclosed; and the identity of the alleged wrongdoer. Where the disclosure relates to a breach of the worker's own contract of employment, there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. (Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] IRLR 837, CA.)

159. In Kuzel v Roche Products Ltd [2008] IRLR 530, the CA said this regarding the burden of proof on claims for automatic unfair dismissal for making a protected disclosure. Where an employee positively asserts there was a

different and inadmissible reason for his dismissal, eg making protected disclosures, he must produce some evidence supporting the positive case. However, he does not have to discharge the burden of proving dismissal was for that reason. It is enough to challenge the employer's reason and provide some evidence for doing so. Then having heard the evidence for both sides, the tribunal should make findings of fact based on direct evidence or reasonable inferences from primary facts. The tribunal must then decide what the reason or principal reason for dismissal was. If the employer does not show to the tribunal's satisfaction that the reason was what it asserts, it is open to the tribunal to find it is what the employee asserted. The tribunal is not obliged to so find, although that may often be the case.

160. The position is different with detriment claims. Once it is established that the claimant made a protected disclosure and that he was subjected to a detriment, it is for the employer to show the ground on which any act or deliberate failure to act was done. (ERA 1996 s48(2) .) With regard to the causal link between making a protected disclosure and suffering detriment, s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. (Fecitt v NHS Manchester [2012] IRLR 64, CA)

Conclusions

161. We now apply the law to the facts to determine the issues. If we do not repeat every single fact, it is in the interests of keeping these reasons to a manageable length.

TUPE: Issue 1

162. The claimant's team at Coutts was an organised grouping of resources which had as its objective the pursuing of an economic activity. It was a stand-alone business unit with its own key performance indicators. The team focused on the market in Central and Eastern Europe.

163. On 16 January 2015, the respondent first offered the claimant a position, having initially made contact in December 2014. Negotiations were concluded in late May 2015 and the claimant was offered the position of UK Market Co-ordinator for Russia, Eastern Europe and the CIS countries. The claimant resigned from Coutts with notice in June 2015. His last day employed by Coutts was Friday 11 September 2015. He started working for the respondent on Monday 14 September 2015.

164. In May 2015, once the claimant had accepted its offer, the respondent started discussing with him details of how to contact his former team members and what salaries to offer them to entice them to come. In the event, 11 out of the 17 person CEE team at Coutts resigned to join the respondent. They started at different dates between August and October 2015, depending on the length of their notice period. Some joined the respondent before the claimant did.

165. We find this was not the transfer of an existing business. It was a prolonged recruitment exercise. The respondent first head-hunted the claimant, and offered him a job with the hope that he could bring over his former team members.

166. Although it is not essential that there is a contract between transferor and transferee, it is one of the factors, and we note there was no such contract. Employees resigned with notice from Coutts, after which they took up positions with the respondent.

167. Not all the employees left Coutts and went to the respondent, but the majority did. Ms Rillman, who was interviewed by the respondent and offered a position, decided to remain at Coutts. Conversley, the respondent took on Ms Filatova from the Royal Bank of Scotland. She had been interviewing for a position with the CEE team at Coutts, but had not yet been taken on by Coutts. Although these factors are in no way conclusive against there being a transfer, in the particular context, they do reinforce the impression that this was an extended poaching and recruitment operation, rather than the transfer of an economic entity.

168. The Coutts department was absorbed in its general operation and the employees who stayed behind were likewise absorbed. The respondent previously had no department dedicated to CEE business. After the claimant's move, a new team was set up which resembled the team at Coutts. These are factors in favour of transfer.

169. Once the team had transferred, the respondent asked the claimant to approach his former clients at Coutts about moving to the respondent. A large number did transfer over, although not all.

170. We are aware that a transfer can take place by a number of transactions and also over a period of time. However, here we have the separate and individual recruitment of the claimant and his former team members over a period of time, without Coutts' knowledge, having negotiated their new terms and conditions and then having resigned and served individual notice periods. There had then been the separate and individual approaches to clients over a further period of time. All this had the character of a prolonged recruitment exercise.

171. We add that it is not possible to identify when the alleged transfer took place, nor to say that the claimant was employed by Coutts immediately before such transfer so that his employment would otherwise have been terminated by the transfer except that he transferred over.

172. For all these reasons we find there was no transfer of an undertaking and the claimant's employment did not transfer to the respondent from Coutts. His employment started afresh with the respondent on 14 September 2015. By the time his employment was terminated by the respondent on 31 August

2017, he had not acquired two years' continuous service. He is therefore unable to claim ordinary unfair dismissal under s98(4) of the Employment Rights Act 1996.

173. Issues 2 – 4 therefore do not arise.

<u>Whistleblowing / protected disclosure</u>

<u>Issue 5: PID 1</u>

174. Disclosure 1 was alleged to be the information contained in the claimant's email dated 5 March 2017 to Mr Cooke-Yarborough. In that letter, the claimant stated, inter alia: 'You heard most of the demands by certain CROs at our dinner. They would like more freedom, less compliance control and a more transparent remuneration model. In short, they don't want management…..It is my firm belief that in the current regulatory and political environment, given the bank's reputational interests and goals and given the client area we are working with, that the front line oversight and guidelines in place are absolutely essential. I would not be comfortable conducting business in a less rigorous fashion, which is exactly the demand being made time and time again. I think we need to be very clear about that.' and 'A team that is not fully supportive of the compliance and other procedures set in place also poses an unacceptable risk.'

175. The information which the claimant disclosed here was that the CROs would like to be subjected to less compliance control and that they were not fully supportive of compliance procedures which had been set in place.

176. At the time of his disclosure, the claimant believed that this information tended to show the respondent was likely to fail to comply with a legal obligation, ie its obligation to follow FCA Systems and Controls. The respondent is regulated by the Financial Conduct Authority ('FCA') and the Prudential Regulatory Authority ('PRA'). The rules in the FCA Handbook are made under s139 of the Financial Services and Markets Act 2000. The Handbook imposes regulatory and legal obligations on the Bank.

177. The Handbook contains Senior Management Arrangement, System and Controls ('SYSC') rules. Paragraph 3.2.6 of SYSC3 states that a firm must take reasonable care to establish and maintain effective systems and controls for compliance. Paragraph 4.3.1 says a firm must ensure that senior personnel and, where appropriate, the supervisory function are responsible for ensuring the firm complies with its obligations. The FCA's High Level Principles for Business ('PRIN') state in chapter 2 that a firm must conduct its business with integrity and with due skill, care and diligence. It must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.

178. The claimant believed his disclosures were made in the public interest. Although he was concerned to protect his own reputation, he also felt it was in

the broader public interest that AML checks are carried out in compliance with the regulations and that the FCA Handbook is observed. He felt many potential clients in the Region would suffer unfairly if banks failed to implement controls with high-risk clients. The reduction of financial crime was also important to maintain public confidence in financial services.

179. The claimant's beliefs were objectively reasonable. At the dinner with Mr Cooke-Yarborough, the CROs had said Mr Cowan-Young should be removed because he was too detailed and asked too many questions which delayed speedy onboarding of new clients. They complained about the number of additional controls which the claimant had added. They said they did not need the CIS Guidance and that it was an unnecessary extra layer. They asked why the claimant needed to look at their CIPs, as none of the other teams had anyone looking at their CIPs before they went to Compliance. They queried why the claimant did not support their clients on ManCo and failed to understand the point about conflict of interest. All this was consistent with their attitudes which the claimant had already observed, including an incident where Ms Filatova had shouted at Mr Cowan-Young for asking questions. There was also Mr Amphlett's follow-up report which noted that Mr Riley had complained that Ms Filatova and Ms Sviridova still did not understand what was required to produce a CIP to the bank's standards and at times appeared not to have a full understanding of their prospective clients or to be using that information selectively.

180. It was also objectively reasonable to believe the disclosure was made in the public interest. Expressing concerns about the desire of CROs for less compliance control would self-evidently be in the public interest.

181. The disclosure was made internally to the CEO. For all these reasons, we find PID 1 was a protected disclosure.

Issue 6: PID 2

182. On 22 May 2017, the claimant emailed Mr Cooke-Yarborough, stating that Ms Mason had thought to execute a transaction without consultation or proper due diligence. On 23 May 2017, at 8.14 am, the claimant emailed Mr Hornsby-Clifton as follows: 'FYI. Sabrina was trying to execute a 100m transaction without consultation or proper due diligence, which raises some serious issues around her conduct and judgement. On 25 May 2017, the claimant told Mr Cooke-Yarborough at the end of a meeting that he suspected Ms Mason's conduct had been deliberately misleading and negligent. He said her failure to identify individual 2 as a PEP and his association with Mr Kadyrov in her submission to the Guernsey office was intended to avoid carrying out enhanced due diligence on the source of the client's funds.

183. These communications were the result of the claimant discovering that Ms Mason had failed to identify individual 2 as a PEP and his association with Mr Kadyrov in her submission to the Guernsey office

184. The information disclosed by the claimant was that Ms Mason had tried to execute a transaction without proper due diligence, and indeed that she had been deliberately misleading.

185. The claimant believed that this information tended to show a criminal offence was likely to be committed, ie failure to carry out due diligence to ensure the prevention of illegal money laundering contrary to the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002. By accepting the funds from individual 2, there was a real risk that the respondent would be concealing, converting or transferring the proceedings of crime.

186. The claimant also believed that the information tended to show a breach or likely breach of legal obligations in the FCS Handbook including the SYSC and PRIN principles referred to above. In particular, that a firm must conduct its business with integrity and with due skill, care and diligence, and must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.

187. The claimant was objectively reasonable to believe that a criminal offence was likely to be committed had Guernsey not queried it, and that there was a breach or likely breach of legal obligations. Ms Mason had misled Guernsey by not passing on details of individual 2's PEP status. She had deliberately not copied the claimant in on the email chain or told him about the transaction.

188. We further note that in the respondent's own whistleblowing investigation, it was found that Ms Mason had not always lived up to standards that might reasonably have been expected in terms of quality of analysis and also of keeping her manager informed of material matters, ie in relation to large transactions. This supports our finding that the claimant's concerns that FCS standards were being breached were reasonable.

189. The claimant reasonably believed his disclosure was made in the public interest for the same reasons as already stated above in relation to PID 1.

190. The claimant reported these matters internally to the CEO and to the Head of Compliance. For all these reasons, we find the PID 2 disclosures were protected disclosures.

Issue 7: PID 3

191. In June or July 2017, the claimant contacted Mr Vlahovic to discuss his concern that the Ms Mason was moving client 1's funds to Monaco because the respondent's office there would be less rigorous in scrutinising the origin of the funds.

192. The information disclosed was that Ms Mason was moving client 1's funds to Monaco because the respondent's office there would be less rigorous in scrutinising the origin of the funds.

193. The claimant reasonably believed that Ms Mason's purpose was to avoid scrutiny of the source of funds. Monaco and Luxembourg were separate legal entities to the respondent Bank, as opposed to Guernsey, and the claimant reasonably believed there would be less scrutiny of the source of funds and that that was therefore the purpose of the move. In her 24 May 2017 email, Ms Mason had said Guernsey were setting impossible requirements for clients and business and she would propose moving offshore as soon as possible. This was in a context where she had not revealed the PEP status of the source of funds and had sought to push the transaction through Guernsey as swiftly as possible, while keeping her manager, the claimant, out of the loop.

194. However, we do not find it reasonable to believe that the information tended to show there was or there was likely to be a criminal offence or breach of legal obligation. The information simply concerned transfer to a different regulatory regime with a lighter touch. We were not shown any clear criminal offence or legal obligation breached by transfer for this reason.

195. Therefore we do not find PID 3 a protected disclosure.

Issue 8: PID 4

196. This refers to the meeting with Chris Davies on 17 May 2017. During this meeting, the claimant mentioned as an aside that tensions between CROs and Compliance can arise. He did not disclose any information which tended to show the respondent was likely to fail to comply with a legal obligation ie the provisions in the FCA Handbook. He was simply talking around different bonus models, good systems, inherent conflicts of interest and stating his general belief in close supervisory control.

Issue 9: PID 5

197. This refers to the claimant's email to Mr Vlahovic on 7 August 2017 to inform him of the claimant's error in telling Guernsey that Grozny was in Kazakhstan. He said it demonstrated a slapdash approach and that Ms Mason needed more oversight than she was comfortable with. He noted that she had not copied him into the emails, whereas she had copied in Mr Vlahovic

198. The information disclosed was the error that had been made by Ms Mason in stating that 'We know that the family have investments in this region because Grozny (where the client was born) after the split of the USSR is classed as Kazakhstan now'. Grozny is in fact in the Chechen Republic, not where the client was born, and in an area which the claimant says is known to be volatile and corrupt. It was therefore not an ordinary transaction, it was one which required enhanced due diligence.

199. The claimant reasonably believed that this information tended to show the respondent was likely to fail to comply with a legal obligation, ie its obligation to follow FCA Systems and Controls. In particular, the requirement that a firm conduct its business with integrity and with due skill, care and diligence. Even if an unintentional error, it was reasonable to believe that it demonstrated a level of negligence which had serious implications for the level of due diligence required on a transaction.

200. The claimant reasonably believed his disclosure was made in the public interest for reasons already stated. He made the disclosure to a relevant internal manager. For all these reasons, we find PID 5 was a protected disclosure.

Issue 10: PID 6

201. PID 6 comprises a number of smaller alleged disclosures. PID 6(i) is alleged to be the concerns raised by the claimant at his fortnightly half-hour one-to-one meetings with Mr Cooke-Yarborough about the attitude and shortcuts of some CROs.

202. The information disclosed during the one-to-ones on 18 November 2016, 6 January 2017, 30 January 2017 and 20 February the clamant had observed bullying behaviour by some of the CROs towards Compliance; and that the CRO team were resisting Compliance requests for more detailed information on sources of wealth.

203. The claimant believed that this information tended to show a breach of legal obligation was likely, ie the obligation to follow FCA Systems and Controls as set out in relation to PID 1 above. This belief was reasonable. There were tensions between the CROs and Compliance. There were the comments in the Amphlett report about Ms Filatova and Ms Sviridova, and a meeting between the CRO team and the Compliance team had been required in January 2017 to ease tensions.

204. The claimant reasonably believed that his disclosure was made in the public interest, for reasons already stated.

205. The disclosure was made to his CEO. These were protected disclosures.

206. PID 6(ii) appears to relate to the claimant's meeting with Ms Alzapiedi on 18 May 2017. Although in the ET1, the meeting is stated to be following the FCA's visit in September 2016, the claimant's further and better particulars suggested the date was 18 May 2017. The claimant's schedule of disclosures also refers to 18 May 2017. At the meeting on 18 May 2017, the claimant said he said he was deeply concerned about the attitudes of some CROs towards KYC procedures and that the lack of management oversight gave CROs a silent mandate to make whatever AML submissions they could get through the Compliance team.

207. The information which the claimant disclosed was therefore that some CROs had very worrying attitudes towards Compliance procedures. The claimant reasonably believed that this information tended to show a breach of legal obligation was likely to be committed ie a breach of FCA rules as explained above and potentially a criminal offence ie money laundering.

208. The claimant reasonably believed he made this disclosure in the public interest, as stated above. He was also concerned about his own ability to manage the team and the remuneration model which he favoured. However, he equally had in mind the exercise of proper controls in the public interest.

209. PID 6(iii) is alleged to be the claimant's email to Mr Hornsby Clifton on 26 January 2017 following up on the meeting between the CROs and Compliance. This was not a disclosure of information which tended to show that the respondent had committed or was likely to commit a criminal offence or breach a legal obligation. It was simply confirmation of agreed arrangements.

210. PID 6(iv) is alleged to be the claimant's list of initiatives at the ManCo meeting on 8 May 2017. There was no mention of Compliance concerns at this time and there was no information disclosed which in the claimant's reasonable belief tended to show any breach or likely breach of legal obligation or criminal offence.

Automatic unfair dismissal: Issue 11

211. We find the principal reason for dismissal was the irreconcilable conflict between the claimant and the three CROs in his team. The respondent grabbed the opportunity offered by the departure of Mr Gerber to solve this problem. The three CROs were already going over the claimant's head to Mr Vlahovic. By appointing Mr Vlahovic, the respondent was able to dispense with the claimant's services in the UK. Although Mr Vlahovic had lived in Switzerland for the previous 34 years and was not very familiar with UK systems and although he did not speak Russian, he was nevertheless experienced in this area.

212. By 18 May 2017, the respondent was seeking legal advice about making the claimant redundant. At this point, protected disclosures 1, 6(i) and 6(ii) had been made. We note in particular, that disclosure 6(ii) took place on 18 May 2017. However, weighed against that is the strong evidence that what was concerning Mr Cooke-Yarborough was the breakdown of the relationship with the CROs who were bringing in all the money. The claimant was not directly bringing in any money and was not needed for client contacts any more. Mr Cooke-Yarborough did not see him as a significant 'rainmaker'.

213. Mr Cooke-Yarborough exchanged communications with Ms Mason behind the claimant's back for some time, both before and after the dinner. He also arranged at the dinner to speak individually to each member of the team. He was concerned to placate them. He became particularly annoyed that, instead

of the dinner resolving the issues, matters blew up again immediately afterwards. He blamed the claimant for that. The big issue was the bonus system and the CROs' desire for individual reports. That was the subject of the argument after the dinner. Ms Mason informed Mr Cooke-Yarborough that the CROs were not going to change their position. They felt it was the CROs who were paying for the team. Indeed at some point during these discussions, they pointed out that the clients who followed them to the respondent from Coutts had not been brought into Coutts by the claimant.

214. The claimant himself was insistent that his own way of operating was best. In his 5 March 2017 letter, the claimant said that anyone who felt strongly that they could not live with the team business model and preferred a single cell model should let him know, and he would facilitate a move. Mr Cooke-Yarborough did not want that outcome. On 27 March 2017, in the first one-to-one with the claimant following the dinner, he said they needed to accommodate the CROs where they could.

215. The relationship between the claimant and the three most forceful CROs on his team had clearly broken down at this point. There were follow up exchanges of emails behind the claimant's back. The claimant's response to Mr Cooke-Yarborough telling him about the complaints regarding the post-dinner conversation was to call them defamatory and to want HR to look into them. This showed there was a real problem.

216. On 26 April 2017, Ms Mason chased up on receiving individual CRO reports and said the CROs were 'waiting patiently'. Mr Cooke-Yarborough replied on 8 May 2017: 'As you may imagine, the HoPB (Head of Private Banking) role is the key to how we proceed, and I am working to finalise this. The appointment of Mr Vlahovic as Head of Private Banking was already in train at that point – he had sent his CV to Mr Cooke-Yarborough on 23 March. On 18 May 2017, solicitors were consulted regarding the proposal to make the claimant redundant.

217. The desire to placate those directly bringing in the money became obvious again through the Guernsey events. Mr Cooke-Yarborough and Mr Vlahovic's approach was 'no harm done' because the omission was picked up, and 'We don't want to lose Sabrina'.

218. We did take into account all the factors which may have pointed towards the reason for the dismissal being whistleblowing. We noted that the timing of the decision to make the claimant redundant followed closely on from certain protected disclosures. We noted that the Bank had been fined by the FSA for breaches in 2013 and that Mr Cooke-Yarborough and Mr Vlahovic took a fairly casual attitude towards Ms Mason's conduct in relation to the Guernsey and Grozny incidents. Their clear priority at the time was not to lose the client business. We noted the way in which Mr Cooke-Yarborough was prepared to undermine the claimant by communicating with Ms Mason and certain other CROs behind the claimant's back. However, all these facts are equally and indeed more consistent with the true explanation being as we have found it. It was not that the claimant was whistleblowing, but that the most vocal CROs

who directly brought in the money would not accept the bonus system which he favoured and would not accept his management style. The appointment of Mr Vlahovic to the UK killed two birds with one stone. The Head of Private Banking vacancy could be filled and management of the CROs could be taken over by Mr Vlahovic. As we have said, the principal reason was not the redundancy, but the clash with his team.

Detriments: Issue 12

219. Issue 12(i) – we find that putting the claimant on garden leave on 10 August 2017 and asking him to leave the office and remain away was not in any way because he had made protected disclosures. As we explain in our fact findings, this was normal practice on dismissing an employee, particularly a senior executive. We were given no example of any different practice for anyone who had not made protected disclosures.

220. Issue 12(ii) – We find that immediately disabling the claimant's access to work emails and his Blackberry on 10 August 2017 was not in any way because he had made protected disclosures. Again, this was normal practice on dismissing a senior executive.

221. Issue 12(iii) – The reason the claimant was dismissed without following any redundancy process or being offered the right of appeal was not in any way because he had made protected disclosures. He was a senior executive whom the Bank had decided it did not want to retain. He was told of his dismissal and offered a settlement agreement. This way of doing things is in our experience not an unusual way of Banks dismissing employees in the claimant's position. There was no evidence of other senior executives with less than two years' service who were taken through a formal process.

222. Issue 12(iv) – We do not find providing the claimant with a settlement offer and asking him to respond in 3 weeks to be in any way the result of having made protected disclosures. It is a perfectly normal process and normal amount of time in which to be asked to respond. Indeed, often less time is given. There was no evidence that this employer normally gives senior executives longer than 3 weeks to come back with a response.

223. Issue 12(v) - In the context of a post termination dispute and an exchange of solicitors' letters, we do not find the observation a detriment. The respondent's solicitors are answering a letter from the claimant's solicitor which alleges whistleblowing, threatens litigation and invites settlement proposals. The letter meets one argument with another.

224. Moreover, the reason for the observation is not because the claimant had made protected disclosures. It is said because the claimant is threatening legal proceedings and the respondent is robustly defending its corner:

Conclusion

225. We have rejected all the claims. We do so with no great enthusiasm. We would observe that both Ms Mason's conduct and the Bank's handling of the matter does none of those concerned any credit. Nevertheless, we find that the reasons for the dismissal and the other claimed detriments were not because of the claimant's whistleblowing.

226. The provisional dates for remedy have been vacated.

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Employment Judge Lewis
4 October 2018

Sent to the parties on:

5 October 2018

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For the Tribunals Office