EMPLOYMENT TRIBUNALS

Claimant: **Mrs A Pirie**

Respondents: **(1) Unilever de Centroamerica SA de CV**
(2) Unilever plc
(3) Unilever UK Central Resources Ltd

Heard at: London South

On: 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 March 2018
In chambers: 25, 26 & 27 April; 01 & 02 May; and 29 June 2018

Before: Employment Judge Freer
Members: Ms. J Forecast
Ms. M Foster-Norman

Representation:
Claimant: Mr. N Porter, Counsel
Respondent: Ms Y Genn, Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. **The Claimant's claim of a detriment on the ground of having made a protected disclosure is successful relating to information concerning her entitlements and prospective benefits as against the Second Respondent;**

2. **The Claimant's claim of a detriment on the ground of having made a protected disclosure is successful relating to the Claimant's grievance as against the Second Respondent;**

3. **The remaining claims of detriment on the ground of having made a protected disclosure are unsuccessful;**

4. **The Claimant's claim of automatic unfair dismissal by reason of having made a protected disclosure is unsuccessful;**

5. **The Claimant's claim of ordinary unfair dismissal is successful as against the First Respondent;**

6. **This matter will be listed for a remedy hearing.**

REASONS

1. By a claim presented to the employment tribunals on 27 January 2017 the Claimant claimed unfair dismissal, detriments in employment on the ground of having made a protected disclosure; and automatically unfair dismissal by reason of having made protected disclosure.

2. The Respondents resist the claims.

3. The Claimant gave evidence on her own behalf.

4. The Respondents gave evidence through:

   - Ms Alice Taylor, HR Director, Legal, for Unilever plc;
   - Mr Gopalan Natarajan, VP Finance for Unilever Central Resources Limited;
   - Mr Theo Kitsos, VP HR Global Functions (Finance, Legal and ETS);
   - Ms Sangeetha Rajalakshmi, Global HR Director for Finance;
   - Mr Steve Weiner, Executive VP for Change Programmes;
   - Mr Eric Tiziani, VP for Finance for Global Personal Care and Global R&D;
   - Mr Adam Litmanovich, VP for Finance – Latin America (LATAM);
   - Mr Luciano Wiszniewski, VP for Finance – Mexico and the Greater Caribbean for Unilever Mexico;
   - Mr James Simmons, Managing Director for Unilever South Central Europe SA;
   - Mr Michael Koler, Global Business Integrity Director;
   - Mr Marcial Zabalo, Supply Chain Finance Director, Southern Cone for Unilever de Argentina SA;
   - Mr Placid Jover,VP HR for UK & Ireland;
   - Mr Simon Mabley, HR Director, UK & Ireland MCO, for Unilever UK Limited;
   - Ms Nicky Clement, VP HR, Organisation and People Analytics.

5. The Tribunal was presented with three level-arch files comprising 1299 pages and additional documents during the course of the hearing as agreed by the Tribunal.

The Issues

6. The list of issues was agreed between the parties and is in the bundle at pages 57 to 59.

7. It was agreed that in the first instance the Tribunal will address liability only.

A brief statement of the relevant law

8. Section 47B of the Employment Rights Act 1996 provides that a worker has the 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. This section does not apply where the worker is an employee and the detriment in question amounts to a dismissal.

9. Section 103A of the Employment Rights Act 1996 provides that an employee will be regarded as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

10. Part IVA of the Employment Rights Act 1996 contains provisions relating to protected disclosures.

11. Section 43A states that a protected disclosure means a 'qualifying disclosure' as defined by section 43B which is made by a worker in accordance with any of sections 43C to 43H.

12. Sections 43B, as amended from 25 June 2013 and applicable in this case, provides that 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 one or more of" prescribed circumstances set out in the subsections in s43B(1)(a) to (f) of the Employment Rights Act 1996.

13. It is irrelevant whether or not the information is correct, provided the worker reasonably believes it to tend to show one or more of the prescribed circumstances (**Darnton –v- University of Surrey** [2003] IRLR 133, EAT and also see **Babula –v- Waltham Forest College** [2007] ICR 1024, CA and **Korashi –v- Abertawe Bro Morannwg University** [2010] IRLR 4, EAT on reasonable belief – it is objective reasonableness).

14. Mere allegations are not enough, the disclosure must convey facts It can be sufficient where there is mixed allegation and fact (see for example **Cavendish Munro Professional Risks Management Ltd –v- Geduld** [2010] IRLR 38, EAT and **Kilrane –v- London Borough of Wandsworth** [2016] IRLR 442, EAT).

15. By virtue of section 43L (3), a disclosure of information shall have effect where the person receiving it is already aware of it.

16. Sections 43C to 43H provide the circumstances when a qualifying disclosure may be made sufficient to make it a protected disclosure.

17. In **Chesterton Global Ltd –v- Nurmohamed** [2015] IRLR 614 the EAT held that there was no bright line between what is personal and public interest and the criterion of what is in the public interest does not lend itself to absolute rules:

> "The words 'in the public interest' were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. . .

> In the present case . . . Whilst recognising that the person the respondent was most concerned about was himself, the tribunal was satisfied that he did have the other office managers in mind. . . All this led the tribunal to conclude that a section of the public would be affected and the public interest test was satisfied".

18. Factors for consideration include: (a) the numbers in the group whose interests the disclosure served; (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; (c) the nature of the wrongdoing disclosed; (d) the identity of the alleged wrongdoer.

19. A detriment is an objective consideration of whether a reasonable worker in the circumstances would consider that the treatment was to their detriment. A detriment includes a disadvantage or deprivation of a benefit.

20. The EAT in **Blackbay Ventures Ltd -v- Gahir** [2014] IRLR 416 gave guidance on the general approach to be taken by Tribunals in explaining its conclusions once a protected disclosure has been found.

21. A detriment for the purposes of the legislation can occur even after the relevant relationship with the employer has ended or been terminated (see **Woodward -v- Abbey National plc** [2006] IRLR 677, CA)

22. Pursuant to section 48 of the Employment Rights Act 1996, "it is for the employer to show the ground on which any act, or deliberate failure to act, was done".

23. This requires an analysis of the mental processes (conscious or unconscious) which caused the employer to act. It is not a 'but for' test (see **Harrow London Borough -v- Knight** [2003] IRLR 140, EAT). The employer must prove on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act. The Court of Appeal held in **NHS Manchester –v- Fecitt** [2012] IRLR 64 **"**section 47B will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."

24. Unlike under discrimination law, if the employer fails to show an innocent ground or purpose, the tribunal *may* draw an adverse inference and find liability but is not legally bound to do so. This applies equally to detriment and dismissal cases (see ***Serco Ltd -v- Dahou*** *[2016] EWCA 832, CA and* ***Kuzel****, below)*.

25. With regard to the burden of proof in dismissal cases, the Court of Appeal in **Kuzel –v- Roche Products Ltd** [2008] ICR 799, confirmed the following:

> ". . . the burden of proof issue must be kept in proper perspective. As was observed in *Maund*, when laying down the general approach to the burden of proof in the case of rival reasons for unfair dismissal, only a small number of cases will in practice turn on the burden of proof. . .

I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.

Having heard the evidence of both sides relating to the reason for dismissal it will then be for the ET to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.

The ET must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it *must* have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason".

26. As confirmed in **Serco Ltd –v- Dahou** [2015] IRLR 30:

"If a tribunal rejects the employer's purported reason for dismissal, it may conclude that this gives credence to the reason advanced by the employee, and it may find that the reason was the one asserted by the employee. However, it is not obliged to do so. The identification of the reason will depend on the findings of fact and inferences drawn from those facts. Depending on those findings, it remains open to it to conclude that the real reason was not one advanced by either side".

27. In **Reynolds -v- CLFIS UK Ltd** [2015] IRLR 562, the Court of Appeal held that a tribunal must look at the motivation of the manager imposing the detriment. Only if that person is motivated by the whistleblowing can the employer be liable. In that case the claimant could only succeed if the managers were acting jointly in taking the relevant decisions, which had not been the case.

28. This was further confirmed in **Royal Mail –v- Jhuti** [2018] IRLR 251 where the Court of Appeal added that what the employer reasonably believes when dismissing the employee has to be determined by reference to what the decision maker actually knew, not what knowledge ought to be attributed to them.

29. However, in expressly obiter comments Underhill LJ gave two examples that might form an exception. First, "in the more elaborate forms of disciplinary procedure, manager A is sometimes given responsibility for investigating allegations of misconduct which are then presented to manager B as the factual basis (albeit, typically, challengeable at a hearing) for a disciplinary decision. . . . there would in my view be in such a case a strong case for attributing to the employer both the motivation and the knowledge of A even if they are not shared by B".

30. Second, "where someone at or near the top of the management hierarchy – say, to take the most extreme case, the CEO – procures a worker's dismissal by deliberately manipulating, for a proscribed reason, the evidence before the decision-taker. Such a case falls outside [*the general principle in Reynolds*] because the CEO, despite his or her seniority, would not have formal responsibility for making the dismissal decision. . . . it rather sticks in the throat that even in a case of this particular kind the manipulator's motivation should not be attributed to the employer for the purpose of s 98(1). There may well be an argument for distinguishing the case of a manager in such a senior position" but the issue did not arise in the case. Underhill LJ also suggested that "it would of course be different if the ostensible decision-taker were more or less directly told by the CEO what to decide. His or her involvement would in such a case be a sham and the CEO would be the real decision-maker. In a true 'manipulation' case the decision-maker makes a genuine decision but on tainted information (and, in this case, tainted from the top)".

31. By the same logic, that reasoning is likely to apply to detriment cases with regard to lack of knowledge of the decision maker relevant to the detriment in question, but under the provisions of section 47B(1A) the 'employer' (under the extended definition) is fixed with statutory vicarious liability, irrespective of knowledge or approval, for the detriments committed by workers or authorised agents, which would cover circumstances of detriment by manipulation.

32. Section 43 of the Employment Rights Act 1996 provides an extension to the definition of 'worker' for the purposes of protected disclosure claims:

> "(1) For the purposes of this Part "worker" includes an individual who is not a worker as defined by section 230(3) but who—
>
> (a) works or worked for a person in circumstances in which—
>
> (i) he is or was introduced or supplied to do that work by a third person, and
>
> (ii) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them,

(b) contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and would fall within section 230(3)(b) if for "personally" in that provision there were substituted "(whether personally or otherwise)",

(2) For the purposes of this Part "employer" includes—

(a) in relation to a worker falling within paragraph (a) of subsection (1), the person who substantially determines or determined the terms on which he is or was engaged.

33. The Tribunal has been referred to the cases of **Hinds -v- Keppel Seghers UK Ltd** [2014] IRLR 754, EAT; **McTigue -v- University Hospital NHS Trust** [2016] IRLR 742; and **Day -v- Health Education England** [2017] IRLR 623, CA confirming a purposive approach should be taken to the statutory provisions and also that it is possible to for the extended definition to apply to multiple parties.

34. The legal provisions relating to ordinary unfair dismissal are contained in Part X of the Employment Rights Act 1996.

35. Section 98 provides that, where dismissal is not controversial, the Respondent must show that the reason for dismissal is one of a number of permissible reasons. In this case the First Respondent relies upon redundancy or 'some other substantial reason'.

36. If there is a permissible reason for dismissal, the Employment Tribunal will consider whether or not the dismissal was fair in all the circumstances in accordance with the provisions in section 98(4):

"the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case"

37. The standard of fairness is achieved by applying the range of reasonable responses test. This test applies to procedural as well as substantive aspects of the decision to dismiss. A Tribunal must adopt an objective standard and must not substitute its own view for that of a reasonable employer. (**Iceland Frozen Foods –v- Jones** [1982] IRLR 439, EAT as confirmed in **Post Office – v- Foley** [2000] IRLR 234, CA; and **Sainsbury's Supermarkets Ltd –v- Hitt** [2003] IRLR 23, CA).

Facts and associated conclusions

38. The parties produced a useful agreed chronology with bundle page references.

39. As a consequence, the Tribunal will not set out all the circumstances relating to the Claimant in full and relies upon the chronology, which the Tribunal has assessed in detail through the course of the hearing.

40. In these reasons the Tribunal will address in greater detail its findings of fact in relation to the issues for determination in accordance with Rule 62(5) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

Background to the Claimant's relevant working history

41. Up to the date of dismissal the Claimant worked within the Unilever Group of Companies ("Unilever") for 19 years.

42. The Claimant is of Costa Rican nationality. She first started working for Unilever in El Salvador on 31 August 1998 as a Commercial Manager.

43. The Claimant held a total of eleven roles during the period of her employment with Unilever, including being based in Puerto Rico and New Jersey with responsibilities within different geographic clusters such as North and Central America and the Caribbean.

44. The Claimant's final role was as Global Finance Director, Business Partner for Finance Services, Information Management Services and Business Excellence Services based in Kingston upon Thames, United Kingdom.

45. The First Respondent is a Unilever Group Company registered in El Salvador.

46. The Unilever structure has four core categories of product together with support functions, such as HR, Finance and Legal. Unilever operates globally and is divided into eight geographical clusters. The relevant clusters for the purposes of this case are Europe and Latin America.

47. Each employee at Unilever has a job title and a work level ("WL") that denotes seniority. For example, WL1 is a non-managerial role and WL5 is head of a geographic cluster. Above WL5 is the Unilever Leadership Executive, which reports to the CEO.

48. Some of the work levels are subdivided. The Claimant's final role with Unilever was at WL3B, Director level. The next level up would typically be Vice President for one of the four core categories.

49. When the Claimant commenced employment in the UK on 01 September 2013 her management reporting line was to Mr Gary McGaghey, Vice President of Enterprise and Technology Solutions ("ETS"), a WL4 position, also based in Kingston upon Thames.

50. On 01 October 2015 Mr McGaghey transferred to the position of CEO in a Unilever/Pepsi joint venture and Mr Gopalan Natarajan transferred into Mr

McGaghey's job title and work level from Unilever in Singapore and consequently took over as the Claimant's line manager.

51. When the Claimant commenced work in the UK she signed a 'Statement of Terms and Conditions of Employment' (page 202 of the bundle) and an 'International Assignment Letter' (page 73).

52. The employer in the contract of employment is detailed as the First Respondent and the Claimant's continuity of employment was preserved as from 31 August 1998.

53. The contract also stipulates that the Claimant shall comply with Company rules and policies, expressly including the Code of Business Principles. It provides that: "Breach of any Company rules, policies or procedures may result in disciplinary action".

54. The disciplinary and grievance procedures were expressed as not forming part of the contract.

55. The contract expressly provided that its terms superseded "all prior agreements".

56. The Letter of Assignment states:

"This letter is to confirm the general terms and conditions applicable to your global assignment to the United Kingdom. In order to give effect to your planned secondment to the United Kingdom the following terms and conditions will apply:

During your international assignment,

1. The terms of this letter together with the terms contained in your Home Country Employment Contract shall govern your employment. . .

2. Location and Place of Work. Your assignment period will be from 1 September 2013 to 31 August 2016. Your place of work shall be Kingston upon Thames, Surrey, United Kingdom. Your working schedule being in accordance with local laws and customs in the host location. Unilever UK Central Resources Limited shall have day-to-day control of your activities and you should comply with their policies and procedures. . . .

6. Term of Agreement. Your international assignment shall continue for the period set out in 2 above unless terminated early by Unilever UK Central Resources Limited giving you three months prior written notice. . . .

8. End of Assignment. At the conclusion of your international assignment in the United Kingdom, the company will consider possible options available to you as follows:
(a) Unilever de Centroamerica SA de CV will take reasonable steps to identify a suitable role; if a suitable role is not available in any location then the

redundancy process shall commence on the terms of the Euronet Reward Policy; or
(b) you may be offered a new international assignment; or
(c) you may be asked to agree to localise in the United Kingdom resulting in the termination of your Home Country Employment Contract and entering into a regular contract of employment (as used for a local employee) of indefinite length with Unilever UK Central Resources Limited.

11. Applicable Law. This agreement shall be governed by and construed in accordance with the law of the United Kingdom and each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of the United Kingdom over any claim or matter arising under or in connection with this agreement."

57. The Unilever International Assignments Policy for Global Assignments confirms that global assignments may end in one of three ways: retransfer to a new assignment in a new country; localisation by becoming a local employee in the host country and leaving the business.

58. The localisation provisions in the Letter of Assignment and the Policy do not refer to localisation necessarily being in the person's existing role.

59. Employees are typically employed in the geographical area where they live, working on contractual terms relevant to their local market: what is known in Unilever as "local terms".

60. An employee's "Home Country" is the country in which they are first employed. In the Claimant's case, although she is a Costa Rican national, her 'Home Country' is El Salvador because that was the country in which she first worked. El Salvador is part of Unilever's Latin America ("LATAM") geographical cluster.

61. Employees may also sometimes work in different countries, at which time different terms and conditions may apply. There are two main types of contracts in these circumstances, but for the purposes of the Claimant's case the relevant type of contract is an International Assignment ("IA").

62. An IA is a contract given to employees who Unilever consider have potential and are considered to be 'high flyers'.

63. Typically, IA contracts are for fixed terms and are for the purpose of those employees obtaining skills and experience that may then be transferred to other areas within the Unilever Group.

64. As a consequence, an IA provides enhanced terms and conditions of employment, such as salary, housing, schooling, travel and cost of living allowance.

65. An IA employee can cost Unilever around three times as much as an employee on local terms.

66. IA assignments were typically for three-year fixed-term contracts, which for some employees were successively renewed in the same or a different country, geographic cluster, or roles.

67. The Unilever 'End of Assignment Guidelines For HRBP's' states that most international assignees go on assignment for a stated period of 2-3 years but there are circumstances where an extension to the assignment is recognised as being the best outcome for the individual and the business. However, no extensions will be granted for any period beyond five years in any one location. Also, it also states that repatriation should be planned early.

68. IA's are used exceptionally and Unilever has sought to reduce these contracts over the relevant time for cost saving purposes. For example, IA's within Unilever's global finance function have reduced over successive years from 143 in 2014 to 81 in 2017.

69. Also, in around 2015 Unilever started a global finance restructuring programme called 'Future Finance', which involved a head count reduction and a reduction in IA's. For example, all IA's in Switzerland were not having their contracts renewed and LATAM IA's were under consideration for IA and other roles back in LATAM.

70. Each employee is given a set of yearly targets which are assessed by the line manager twice annually: at mid-year in June/July and end of year November/December. The end of year assessment is the most important and includes input from multiple stakeholders. The ratings are calibrated across broader business groups. Ratings were PR1 poor, PR 2 moderate, PR3 good, PR4 excellent and PR 5 outstanding. At the material time a normal distribution of ratings was expected such that around 60% of employees would receive a rating of PR3 and around 5% received a rating of PR1 or PR5.

71. At the time, Unilever employed a formal process called 'Listing' where employees were identified for potential promotion. That process had been in place for around ten years. It is not a process that Unilever continues to use.

72. The listing process commences with a discussion between the employee and their line manager and the completion of a JDI form ('judgement, drive, influence') which is both a self and manager evaluation.

73. 'Listing' requires the support of the line manager, plus a range of stakeholder managers with whom the employee has worked, and the approval of a line management cohort: in the Claimant's case she needed the support of the LATAM Functional Resource Committee ("FRC").

74. The result may be the employee being 'listed', where their personnel file is marked "HP" for High Potential (so a WL3 would be recorded as an HP4); or being 'watch listed', which was an informal 'nearly there' status; or not securing any recommendation for listing. Formal listing is also calibrated, which for WL3 and above would be at a global level.

75. The Tribunal was shown successive end of year performance reviews between the Claimant and Mr McGaghey. The first was in 2013 (pages 78A to D) where the Claimant was given a rating of PR3. In 2014 (pages 78F to H) the Claimant received the same overall rating of PR3. It is recorded by Mr McGaghey: "I am confident in 2015 Andrea will build upon a very successful 2014, where she has operated as the 2ic to myself, playing the lead role in the ETS FLT, setting & driving the agenda, as she has the respect of the FLT, her peers and business partners. Playing this leadership role in the FLT and driving the performance management agenda for ETS will position Andrea for potential WL4 listing in H2 2015"

76. In an e-mail to Ms Rajalakshmi from Ms Taylor dated 15 June 2015 it is recorded with regard to the Claimant "I need to confirm with Pauline if there was any acceleration of Andrea Pirie's registration agreed with Mike. She is due to repat May 2016 but we have no job for her at home so we were considering repatting earlier. I think it would make sense if there are suitable candidates coming up earlier as the feedback from the last FRC will tell Andrea that she will not be listed and will not get a WL4 role, which will not be what she is expecting to hear. Gary is supportive of repatting her early if good candidates are available as there is no path forward for her in Unilever at this point".

77. Ms Taylor clarified in her witness statement that shortly after she joined Unilever in April 2015 she had a discussion with Mr McGaghey about the Claimant and Ms Taylor was aware the Claimant was working on an IA which was due to end the following year:

"I therefore wanted to speak to Gary about her repatriation. It is common to start discussions about repatriation about 12 months before an assignment ends, and it gives both the employee and the business a lot of time to consider the various options, particularly whether there is a new role that could be considered for the employee. If this process was left to the last minute, the employee might miss alternative role opportunities in the months leading up to the end of the assignment. Also, if the employee is going to move to a different country, it can take time to arrange visas etc. If a new role does come up before the end of the IA, and the employee is appointed, the employee might end up leaving their IA early to take up that new role. All of these are possibilities and that is why we start to think about the ending of an IA well in advance. In this case I wanted to know whether Gary needed the claimant to work to the end of her IA or whether he envisaged that she would end her role sooner, which sometimes happens. I don't remember when I met with Gary but I think it was in May or early June 2015. I recall that Gary told me that he believed that there was no role for the claimant back in LATAM and he was therefore considering whether to repatriate her before the end of her IA. Early repatriation is not common, but it can happen, particularly if a replacement has been identified and is ready to start in that role. Gary also told me that the claimant had hoped she would secure listing but the feedback from stakeholders was that this would not be supported. I believe that there had recently been a Functional Resource Committee meeting (FRC) of the LATAM finance leadership team where this had been confirmed. As the claimant was a

LATAM resource the FRC in LATAM would decide whether to approve listing or watch listing status for the claimant".

78. There is no evidence to suggest the Claimant was aware of that view of her potential listing and she completed a JDI draft which she e-mailed to Mr McGaghey on 15 July 2015. His response was “Sure let me try to move this forward. I really feel you deserve it!”.

79. The Claimant forwarded an updated JDI to Mr McGaghey on 25 September 2015 thanking him for his feedback which she had incorporated, to which he replied: “Hi Andrea, this is significantly stronger. I think the next step should be to share it with GN *[Mr Natarajan]* & then we have a 3way discussion with GN. I have spoken to him but if you can send it to him & ask Jo to set up a 3way discussion in the next couple of weeks”

80. There was a hand-over meeting between Mr McGaghey and Mr Natarajan in around late September/early October 2015. The Tribunal accepts Mr Natarajan’s evidence that there was no detailed discussion about the Claimant’s Listing, but there was discussion about the end of the Claimant’s IA.

81. There was subsequently a meeting on 09 October 2015 between Mr McGaghey, Mr Natarajan and the Claimant. By that time, Mr Natarajan had received a copy of the Claimant’s JDI form and there had been a brief discussion between Mr McGaghey and Mr Natarajan about it. It is Mr Natarajan’s evidence, accepted by the Tribunal, that Mr McGaghey did not tell him of the FRC view that the Claimant would not be listed although he did tell Mr Natarajan that he did not consider her suitable for Listing status.

82. Mr McGaghey started the meeting by discussing the Claimant’s JDI form. Mr McGaghey stated to the Claimant that he had not seen sufficient evidence of drive and influence to be able to propose the Claimant’s WL4 Listing. The view expressed in the meeting is confirmed in an e-mail from Mr McGaghey to the Claimant dated 11 October 2015:

"Earlier on this year we had discussed the ambition to get you into a place to be able to propose to list or watchlist you for WL4 by the end of 2015, subject to demonstrating strong WL4 competencies, which will be reflected in the JDI assessment. To help provide the opportunities to develop and demonstrate these competences, we agreed you would play a leading role in the ETS location strategy project, the Manila operating centre creation project and the ETS strategy work. In the past 9 months you have demonstrated your significant strength in judgement, leveraging your wide and deep experience base. In this aspect I feel you are operating at a WL4 level. However, I have not yet seen sufficient evidence of drive and strategic influencing which would enable me to propose a WL4 listing at this point in time. The projects you have worked on in 2015 have been very challenging, particularly in the area of strategic influencing, but a WL4 listing would require more evidence of a wider range of influencing stakeholders to drive an agenda and more evidence of operating outside your comfort zone, taking personal responsibility to deliver objectives. Whilst you are operating very effectively at senior WL3b level, I am

not yet comfortable of the evidence to demonstrate operating at a WL4 level in these two areas of the JDI competences. I have consulted other finance stakeholders/business partners at WL4 to share my view and they have agreed with my conclusion. You are highly respected and valued as an excellent WL3b, both by myself, GN and other stakeholders whom I have consulted, but there remain some gaps in competences to operate a WL4. Keep focusing on these areas to continue to develop into a fully rounded finance professional, operating WL4 level of competences across the full JD spectrum".

83. At the meeting the Claimant was not expecting Mr McGaghey to express that view but was expecting him to confirm that he was supporting her efforts to secure Listing. The Claimant was relaxed and happy when she entered the meeting and her demeanour naturally immediately changed when Mr McGaghey gave his feedback. The Tribunal can perfectly understand how the Claimant felt seriously misled by Mr McGaghey over his support for her Listing application.

84. The Claimant replied to Mr McGaghey's e-mail on 12 October 2015:

"I was actually quite taken aback by our meeting on Friday, as the feedback you provided was very different from what we discussed the last two times, one four weeks ago, the other in July. Last time we met, you were fully supportive of listing me and spoke about strategically what was the best way of taking this forward, and concluded that you were going to discuss with Tony. At that time, your main feedback was that my JDI needed work to support the area of showing "how I drive positive outlook and strength of belief". Also, you praised at that time both my judgement and range of influence, which you labelled as "strong". On initiative, you also said "this area is strong, and your examples are a bit underplayed". In general, the conclusion we arrived to at that meeting was to go on all areas and I just needed to add meat to my JDI examples.… In summary, I was surprised at the divergent feedback on our Friday meeting, which made me wonder what happened in the last three weeks to make you change your mind?".

Alleged protected disclosures

(a) *The Claimant alleges that she raised a Code issue orally with Mr Gopalan Natarajan toward the end of 2015.*

85. On 12 October 2015 the Claimant and Mr Natarajan had an un-minuted weekly update meeting in which the Claimant mentioned that Mr McGaghey had been biased towards an employee under his line managership, known to the Tribunal as Mrs X, to the detriment of the Claimant, because Mr McGaghey and Mrs X were having "an affair".

86. The witness statement evidence of Mr Natarajan was that the concern related to the end of year performance rating process and that Mrs X would be favoured and rated PL4 whilst the Claimant would be rated PL2. Mr Natarajan assured the Claimant that the end of year process would be fair.

87. In oral evidence Mr Natarajan stated that the complaint was one of many made at the meeting as part of general conversation by the Claimant who he said was clearly feeling outraged about the JDI conversation and how it had gone. The Claimant's account broadly mirrored that of Mr Natarajan's witness statement. The Tribunal prefers Mr Natarajan's witness statement evidence.

88. The Claimant relies upon this conversation with Mr Natarajan as the first of four protected disclosures.

89. The Claimant's comment to Mr Natarajan can be categorised as a complaint under the Unilever Code of Business Principles ("the Code"), compliance with which forms an express term of the Claimant's contract, although the Claimant did not expressly raise it with Mr Natarajan as being a complaint under the Code.

90. The Tribunal was taken to a number of extracts contained in the Code, which commences at page 1123 of the bundle. For example, under the heading of 'conflicts of interest': "All employees and others working for Unilever are expected to avoid personal activities and financial interests which conflict or which could conflict with their responsibilities to the company."

91. With regard to compliance with the Code principles, it states: "Day-to-day responsibility is delegated to all senior management of the geographies, categories, functions and operating companies. They are responsible for implementing these principles, supported by local code committees… Any breaches of the Code must be reported. The board of Unilever will not criticise management for any loss of business resulting from adherence to these principles and other mandatory policies provision has been made for employees to be able to report in confidence and no other employee will suffer as a consequence of doing so". Further: "Any failure to comply with the Code and any of the Code policies is taken very seriously by Unilever and may result in disciplinary action, including dismissal and legal action".

92. The Code sets out some mandatory provisions. Those relating to employees state that they "must:… Immediately report actual or potential breaches of the Code or Code policies, whether relating to them, colleagues or people acting on Unilever's behalf and whether accidental or deliberate. This includes instances where business partners' behaviour may not meet the same standards. . . . Their line manager is usually the right person to report potential or actual breaches. If this is not appropriate, they must talk to one of the following: their business integrity officer; a member of the business integrity committee in the country where concerns occur; Unilever's confidential Code support line by telephone or web using the telephone number or web address communicated locally". The Code also states employees "must not: ignore or fail to report situations where they believe there is or may be a breach of the Code or Code Policies".

93. Mr Natarajan did not report the Claimant's complaint regarding Mr McGaghey's relationship with Mrs X.

94. It was the Claimant's evidence that she had noticed a relationship between the Mr McGaghey and Mrs X by the end of 2014 and began to notice, on her account, favourable treatment of Mrs X by Mr McGaghey compared to another work colleague Ms Sriram. Also, that she definitively came to the conclusion in or around April 2015 that they were having an affair and "for certain" a business trip to Australia was not merited and was used to justify Mr McGaghey going to Australia to spend more time with Mrs X.

95. The Claimant's submissions contend that during the end of 2014 into 2015 the Claimant was concerned as to an undisclosed relationship between Mr McGaghey and Ms X (a direct report) which was "obviously at the very least an undisclosed conflict of interest".

96. Accordingly, on the Claimant's account by April 2015 she was certain of the relationship; an undisclosed conflict of interest; the alleged bias to Ms Sriram; and an alleged expenses fraud, all of which are potential breaches of the Code. She did not raise any of these matters until after she received the information regarding the status of her own Listing candidacy six months later.

97. The Claimant argued that she did not want to report those matters until she was satisfied there was an evidential basis to do so. However, when the Claimant raised the issue with Mr Natarajan on 12 October 2015, which on her account was the first time she had raised the matter with management, the only additional 'evidence' she had by that stage was Mr McGaghey's unexpected lack of formal support for her Listing application.

98. In paragraph 66 of her witness statement the Claimant states:

> "I thought Mr McGaghey is doing exactly the same thing to me that he did to Ms Sriram. Mr McGaghey's relationship with Mrs X made him so twisted he was creating a hostile work environment, especially for women. This environment meant Shandhya left and now he was treating me in a similar way. I was worried this kind of thing would unfairly set back women in general in finance and Unilever. I precisely told Mr Natarajan about the unfairness in Mr McGaghey's objectivity, and that his affair with Mrs X and preference he showed towards her was driving him to lie about me. Additionally, this created a conflict of interest that Mr Natarajan as VP should have addressed, including the risk of collusion between them and inappropriate use of company resources. I did not spell this out of the time, but it was at an obvious consequence of what I was saying. As a VP, I was sure Mr Natarajan knew this. I did spell out there was a hostile work environment and there was unfairness and discrimination towards women. I thought bringing this up was important for women working in Unilever, addressing the issue of inequality, especially as this has always been a concern".

99. The Tribunal notes that at paragraph 53 of her witness statement the Claimant set out the nature of what actually happened in the conversation between her and Mr Natarajan in far simpler terms. There she states that she simply said to Mr Natarajan that she felt like Mr McGaghey's change of mind with regard to

Listing her "may have been due to the affair he was having with Mrs X and the fact he preferred to support her".

100. The Tribunal concludes on balance having heard all the evidence that this is the extent of what was said in the meeting and that it related to the end of year rating, not Listing, as asserted by Mr Natarajan in his evidence as accepted by the Tribunal.

101. The Tribunal concludes that the Claimant's account as set out in paragraph 66 of her statement is a retrospective attempt to import a different suggestion of what the Claimant reasonably believed at the time. The Claimant did not raise any issue with Mr Natarajan of unfairness to women either expressly or impliedly. The Tribunal concludes that it was a purely self-interested point the Claimant was raising at that time. No criticism is made of the Claimant by the Tribunal in that respect, but the Tribunal concludes that the Claimant was concerned that Mr McGaghey had undertaken a 180 degree turn in his support of the Claimant and Mrs X would be marked up and the Claimant would be marked down in their end of year rating as a consequence.

102. The Claimant was forthright enough to accuse Mr McGaghey, quite rightly as it transpired, of having an affair with Mrs X. Having considered the evidence received, the Tribunal considers it implausible that at that time the Claimant was considering the issues relating to women and the treatment of Ms Sriram as set out in paragraph 66 of her witness statement but did not mention any of that to Mr Natarajan and left him to "imply it" from what she had stated. The Tribunal concludes that had the Claimant genuinely thought those views at the time, she would have stated them expressly. The Claimant is an extremely intelligent person and has a work history of making her views known, including in respect of suspected wrongdoing. It was as she had said: Mr McGaghey is having an affair with Mrs X and the Claimant thought Mrs X was going to get an unfair advantage over the Claimant to her detriment. At that time the Claimant's concerns were no broader than that.

103. If the Claimant's contention is that she thought at that time of all the issues she has raised in paragraph 66 of her witness statement, which she accepts she did not tell Mr Natarajan, then she too had also failed to comply with the Code for a considerable period of time, particularly as she was a very senior manager and could have alternatively reported all those matters through the confidential Code Support Line. That was her mandatory responsibility and she failed to do so. The Claimant also did not follow up this alleged disclosure with Mr Natarajan.

104. Accordingly, the Tribunal concludes having regard to all the evidence that although the Claimant may have reasonably thought the raising of the affair and the potential conflict of interest tended to show a breach of a legal obligation in the non-compliance with the Code, the Tribunal concludes that the Claimant did not believe at the time that her disclosure was in the public interest. Her sole belief and focus at the time she raised the McGaghey affair issue with Mr Natarajan was simply regarding her own position (whether that was the end of year rating as found by the Tribunal, or Listing status as

contended by the Claimant). Therefore, the Tribunal concludes that this did not amount to a protected disclosure.

(b) *The Claimant alleges that she raised a Code issue orally with Mr Adrian Litmanovich towards the end of 2015.*

105. The Claimant and Mr Litmanovich knew each other from 10 years previously when undertaking finance roles in Central America. They got on well. At the time Mr Litmanovich was based in LATAM and was the Claimant's career mentor.

106. The evidence of Mr Litmanovich was that he would have general discussions with the Claimant in Spanish. He considered that the Claimant was strong in her views about management with particular regard to her career progression, but gave evidence that he was unaware of the Mr McGaghey allegation until preparing for these Tribunal proceedings. The Tribunal having reviewed all the evidence accepts that contention.

107. The Claimant argues that she mentioned Mr McGaghey's affair to Mr Litmanovich in a conversation and he was dismissive of her concerns.

108. The Claimant placed that conversation as occurring in October/November 2015.

109. The Claimant did not state in her e-mail to Mr Koler on 23 March 2016 (page 176) that she had raised her concerns regarding Mr McGaghay to Mr Litmanovich, but she did state that she had "mentioned" them to Mr Natarajan and Mr Weiner.

110. The Claimant gave inconsistent evidence over whether she mentioned Mr McGaghey's trip to Australia during this conversation, which the Claimant claims was to visit Mrs X and not necessary for work purposes. The Claimant first stated in oral evidence that she had not mentioned it and then stated she had and what it had implied. The Claimant did not mention that matter in her detailed witness statement, see paragraph 69 for example where there is no express mention of expenses and which can be cross-referenced to paragraph 36 where the Claimant confirmed that before the conversation she "knew for certain" that the business trip was not merited and was simply to justify Mr McGaghey going to Australia to meet with Mrs X.

111. The Claimant had worked with Mr Litmanovich on an audit in the Greater Caribbean regarding potential fraud that the Claimant had identified and had led her to raise a formal Code complaint. The Claimant accepted that Mr Litmanovich supported her during that period. That Audit proved fraud had been committed. Therefore, the Tribunal concludes that it is improbable that Mr Litmanovich would be dismissive over the Claimant alleging Mr McGaghey was having an affair which had led to him committing an alleged expenses fraud.

112. The Claimant details in paragraph 70 of her witness statement the dismissive comments Mr Litmanovich is alleged to have made and states: "these

comments did not appear in the feedback to GN" and cross-refers to Page 112 of the bundle, an e-mail from Mr Litmanovich to Mr Natarajan dated 14 October 2015. The conversation the Claimant refers to between herself and Mr Litmanovich must on the Claimant's account therefore have occurred before 14 October 2015.

113. Mr Litmanovich was Head of Audit. The Claimant's oral evidence was that relationships at work for him "were a big thing", but alleges in her witness statement that he said: "it's normal for people to have affairs". The Tribunal concludes that Mr Litmanovich would have raised the matter as a Code Complaint had the Claimant raised the matter with him as she alleges. The Tribunal prefers the evidence of Mr Litmanovich and finds as fact that the Claimant did not raise the affair or expenses allegations. Accordingly, no protected disclosure was made.

114. In so far as the Claimant argues her disclosure to Mr Litmanovich caused him to have a negative attitude towards her, the Tribunal's conclusion is also consistent with Mr Litmanovich's e-mail dated 04 February 2016 to Mr Weiner, Mr Kitsos and Mr Natarajan in which he spoke in favourable and positive terms about the Claimant. It is also consistent with Mr Litmanovich's approach to correspondence with Ms Taylor on 30 March 2016, set out below, where he declined the suggestion of a "strategic move" by Ms Taylor on the Claimant where she would forfeit any severance payment. Mr Litmanovich considered it to be not the right action and doing something for the wrong reasons.

(c) *The Claimant alleges that she raised a Code issue orally with Mr Weiner on or around 29 January 2016.*

115. The Claimant alleges that she mentioned Mr McGaghey's relationship with Mrs X to Mr Weiner on or around 29 January 2016 but had not mentioned the expenses issue. The Claimant argued that her allegation was ignored by Mr Weiner and claims he had acted the same way in the past on another issue.

116. Mr Weiner says he cannot recall the conversation and considers he would have done if the Claimant had raised a complaint that Mr McGaghey had been having an affair with Mrs X. Mr Weiner's first recollection of the issue was when Ms Rajalakshmi spoke with him prior to a meeting in March 2016.

117. The meeting between Mr Weiner and the Claimant was booked in Outlook, but there was no confirmatory evidence of whether or not it actually occurred. The meeting topic was 'career advice'. No notes were produced of the meeting.

118. On 10 March 2016 Mr Weiner passed the Claimant's details on to Mr Henry Schirmer regarding a potential position in Greece.

119. Ms Rajalakshmi met with the Claimant on 22 March 2016 after she had been unsuccessful applying for the Greater Caribbean role (see later) and the Claimant had said she wanted a severance package and to leave Unilever. The Claimant told her that she thought Mr McGaghey was in a personal relationship with one of his direct reports, considered the relationship had led to bias, she

had been promised Listing and it had not happened. The Tribunal accepts Ms Rajalakshmi's evidence that this was the first time she had been made aware of the allegation. The Claimant said that she was going to speak to Mr Weiner about it. Ms Rajalakshmi advised the Claimant to raise a Code complaint.

120. It was not disputed that Ms Rajalakshmi spoke with Mr Weiner by telephone on 22 March 2016 and told him what the Claimant had said about Mr McGaghey. The Tribunal finds that Ms Rajalakshmi told Mr Weiner that she had advised the Claimant to raise a Code complaint. After that conversation the Claimant also spoke with Mr Weiner by telephone. He accepts that the Claimant raised the McGaghey issue with him at that time.

121. The Claimant states in an e-mail to Mr Koler dated 23 March 2016 that she had spoken to Mr Weiner, but this could have been a reference to the day before and is not necessarily indicative that the conversation occurred on 29 January.

122. Considering the evidence as a whole, the Tribunal concludes that the Claimant did raise the allegation with Mr Weiner as alleged, but not until a telephone conversation on 22 March 2016, not in January 2016. The Tribunal prefers the evidence of Ms Rajalakshmi regarding her conversation with both the Claimant and Mr Weiner. There is no suggestion that the Claimant intimated to Ms Rajalakshmi that she had already raised the matter with Mr Weiner. It was the fact that the Claimant said that she was going to raise it with him that led Ms Rajalakshmi to call Mr Weiner to give a "heads up" that the Claimant may contact him about her concerns. The Tribunal also accepts Ms Rajalakshmi's evidence that Mr Weiner had also not conveyed or intimated to her that he was already aware of the allegations.

123. The Tribunal concludes that the telephone conversation on 22 March 2016 was a protected disclosure.

124. The Tribunal concludes that the Claimant provided information that she reasonably considered tended to show a breach of a legal obligation in the breach of the Code. The Tribunal concludes that compliance with the Code was a legal obligation. The signed Statement of Terms and Conditions of Employment provide at paragraph 14.4: "You will comply with all Company and site rules, policies and procedures contained in policy documents . . including those published by the Unilever Group Companies which are applicable to you. Copies of these policies can be obtained from local HR departments and include, without limitation, Unilever's Code of Business Principles . . For the avoidance of doubt such rules, policies and procedures can be changed, replaced or withdrawn at any time at the discretion of the Company. Breach of any Company rules, policies or procedures may result in disciplinary action". That is also consistent with the terms of the Code itself (see above).

125. Certainly, at the time the disclosure was made it was reasonable for the Claimant to consider, and she did consider, that compliance with the Code was a legal obligation. In reaching this decision the Tribunal has fully taken into account the Claimant's delay in raising what she knew was a Code complaint.

126. The Tribunal also concludes that it was reasonable for the Claimant to consider that the disclosure of information was in the public interest in so far as the Claimant by this stage was considering the wider picture and considered that the conflict of interest and the expenses issues affected a wide group of employees and managers whose interests the disclosure served; the nature and extent to which they were affected; the nature of the wrongdoing; and the identity of the alleged wrongdoer. Mr McGaghey was a former VP Finance ETS and was at that time Chief Finance Officer in a joint venture with Pepsi/Lipton working with their CEO. He was a senior manager in the organisation. The Code Complaint Investigation Report by Mr Mabley echoed the Claimant's concerns.

(d) *The Claimant alleges that she raised a Code issue with Mr Koler in late February/early March 2016 and in an e-mail to him dated 23 March 2016*.

127. On 24 February 2016 the Claimant sent an e-mail to Mr Koler requesting advice regarding "ethics and principles" but without any further detail. Mr Koler confirmed he was happy to have a call.

128. There was a subsequent telephone conversation between the Claimant and Mr Koler on 26 February 2016. This call was instigated through an email exchange on 24 February 2016 at page 149 of the bundle. The Claimant claims she raised the Code complaint issue during this call and Mr Koler had asked for two weeks to review the matter.

129. Mr Koler argues that the Claimant raised that she knew of a conflict of interest matter, did not provide details and to the best of his recollection she did not mention any names. Mr Koler alleges the Claimant wanted information on the process for reporting a concern and maintaining confidentiality and then wanted time to think things over. Mr Koler made no written record of this conversation, which he stated was usual as matters raised are typically in confidence.

130. On 17 March 2016 there is an e-mail exchange between the Claimant and Mr Koler where the Claimant states: "Wondering if you have an update on what we spoke about? By the way, Sandhya, who resigned Unilever due to what we spoke about, mentioned to me that she would gladly speak with you if needed". Mr Koler's reply was "I was planning on reaching out to you. Would you have time for a call tomorrow. . .".

131. The language of the e-mails does not sit easily with Mr Koler's account. On his account there would be no reason for an "update" and his reply e-mail does not query the content of the Claimant's communication.

132. On balance the Tribunal concludes that the Claimant did mention detail of the complaint to Mr Koler on 26 February 2016.

133. It is accepted that the Claimant did raise the detail of the Code complaint in a telephone conversation between herself and Mr Koler on 18 March 2016 as set out in Mr Koler's witness statement at paragraph 14 and which was confirmed

in an e-mail to him from the Claimant dated 23 March 2016 (page 176 of the bundle).

134. The Tribunal concludes that there were clearly public interest disclosures made by the Claimant to Mr Koler on 18 and 23 March 2016.

135. For the reasons set out above relating to Mr Weiner, the Tribunal concludes that the Claimant provided information that she reasonably considered tended to show a breach of a legal obligation in breach of the Code and at that stage reasonably believed it was in the public interest.

The Legal Relationship Between the Parties

136. The Claimant was employed by the First Respondent.

137. The Third Respondent was a party to the IA Contract which states: "Unilever UK Central Resources Limited shall have day-to-day control of your activities and you should comply with their policies and procedures". The Third Respondent gave annual leave entitlement, approved holiday requests, had the right to terminate the IA agreement and had the right to process the Claimant's sensitive data.

138. The Tribunal therefore concludes that the Claimant fell within the extended definition of a worker with regard to her relationship with the Third Respondent as she was under its day-to-day control, was supplied by the First Respondent, and the terms of the IA agreement were substantially determined by the Third Respondent, as it clearly reserved and granted rights as part of the terms, and also by the First Respondent which was obviously the main party to the agreement.

139. The Tribunal also concludes that the Claimant was a worker of the Second Respondent under the extended definition. The EAT in the case of **Hinds** stated that "it is appropriate to adopt a purposive construction, to provide protection rather than deny it, where one can properly do so". The Tribunal concludes that this is an appropriate approach in the instant case where there is an overlap between multiple companies for operational reasons, particularly between the interactions of the personnel working within a global company. It would seem to work against a purposive approach if a person acts detrimentally against a worker in an multi-company employment context but was then able to seek refuge within the identity of their employer. It was accepted in evidence that the Claimant undertook work in a global function and as Mr Natarajan stated, ETS (Enterprise & Technology Solutions) in which the Claimant worked is the in-house shared services vertical for Unilever and provides a range of support services for Unilever businesses across around 80 countries. The Claimant worked within a team that provided the finance and performance management for the whole of the ETS.

140. The Claimant was supplied to do that work by the First Respondent and the terms upon which she was engaged were substantially determined by the First Respondent.

Alleged Detriments

Alternative Roles

Greater Caribbean

141. Mr Litmanovich contacted the Claimant in around late January/early February 2016 to ask whether she would be interested in a role in the Greater Caribbean similar to the role the Claimant had previously undertaken in that region.

142. Mr Litmanovich spoke in favourable and positive terms about the Claimant to Mr Weiner, Mr Kitsos and Mr Natarajan in e-mails dated 04 February 2016.

143. The appointment to that position was undertaken by Mr Wiszniewski. Mr Wiszniewski worked in London before he transferred to the position of VP for Finance, Mexico and Greater Caribbean. Mr Wiszniewski knew Mr Zabalo when he worked in London.

144. Mr Wiszniewski moved to his new position, based in Mexico City, in early 2016.

145. As soon as Mr Wiszniewski took up his new post he learned that the incumbent Finance Director for Greater Caribbean was to leave. Mr Weiner took the decision to split that role between two new posts of Finance Director for the Greater Caribbean and Financial Controller for Mexico (the previous incumbent had been doing both roles).

146. On 14 October 2015 Mr Litmanovich sent an email to Mr Natarajan stating:

> "Call happened today. Andrea's contract expires July 2016 or so. She is open to accept a role back in Latam, provided it is something not repetitive for her.… The point is that there are fewer roles than before, so not easy to find one suitable for her.… She likes what she does and she thinks she adds value. Happy to continue until her contract expires or even more if the business needs are there. Summary: you still have to know her and her work; I will consider her for suitable roles. She does not like to come back to previous roles like Central America, her home sub-region; it is clear for her that there could be no roles in the future back in Latam but we will remain open to alternatives; we will discuss again in March 2016".

147. Mr Natarajan made contact with Mr Litmanovich on 14 January 2016 regarding this matter and he forwarded the communications to Mr Wiszniewski stating: "She could be a candidate for a role in the Caribbean (I prefer Nico), however I'm sure she wouldn't accept it because she has already done that."

148. By an email dated 16 February 2016 from Mr Barea-Vials, VP Human Resources, to Mr Simmons, he states:

> "Steve Weiner has approved an extra WL3 for MX&GC, basically *[redacted]* role will be replaced by 2 directors. One will be a Controller for MX and the

other will be a Finance Director for the Caribbean. As you have probably heard, the finance team is planning to move *[redacted]* back to MX as controller (promoted WL3) and Andrea Pirie (who has worked in the Caribbean already in the past) as Finance Director for the Caribbean. This, of course, is subject to confirmation through interviews. We should be scheduling your interviews with Andrea and *[redacted]* with Luciando and the MX team in the next couple of weeks. Are you okay with this? One key point: as we planned, we would be moving the "Caribbean" roles to DR, so Andrea should be based in DR then". To which the reply from Mr Simmons was: "Thanks Nico: good news on the FD for GC. I spoke with Geert last week and we agreed to consider both Andrea and *[redacted]* for the GC role. Geert was keen to ensure that the 'winning' candidate could handle the challenge of Cuba - needs energy and a willingness to embrace risk. I also have to tell you that I don't like the idea of somebody returning to the role previously undertaken: seems like an odd career decision to me. I'm telling *[redacted]* tomorrow face-to-face: so we can move to schedule the interviews for his successor".

149. Mr Simmons was involved in this matter as MD for the Region, however it was Mr Wiszniewski's decision to appoint to the position.

150. Although Mr Wiszniewski stated in evidence he knew the Claimant, this was in a very limited sense as he had only met her in the corridor at work a few times. Mr Wiszniewski also stated that "he knew people who knew" the Claimant. It was not correct that they had "interacted professionally over the many years we had both worked in Unilever" as claimed in paragraph 10 of Mr Wiszniewski's witness statement.

151. Mr Wiszniewski stated that he did some research on the Claimant. He spoke to someone who used to report into the Claimant when she worked in the Greater Caribbean and also asked a colleague, 'R', to see if he could find out any information about the Claimant from colleagues. R was one of the candidates for the positions for which the Claimant was being considered. Mr Wiszniewski knew R was competing with the Claimant at the time he requested the information.

152. Mr Wiszniewski had no doubt going into the interviews that the Claimant could do the job.

153. Mr Wiszniewski held a telephone conference with R on 23 February 2016.

154. He interviewed the Claimant on 25 February 2016. No notes were taken of the interview. There is no evidence that he took notes of anyone's interview. It was a cursory interview. He did not feel he needed to ask the Claimant any questions regarding suitability because she had done the job before. Mr Wiszniewski was principally interested in the Claimant's enthusiasm to return to a job she had previously undertaken.

155. On 25 February 2016 Mr Wiszniewski e-mailed Mr Simmons informing him that he had interviewed the alternative candidate, to which Mr Simmons replied:

"Here are the notes I took from the interviews with *[redacted]* and Andrea. Andrea is a very experienced WL3 with strong professional skills. She has undertaken the FD role in Caribe before, which is both an advantage and a disadvantage. She is familiar with the role, which will only amplify her impact. She will also rekindle relationships with a number of former colleagues. Against this stands a lack of a fresh perspective in a region which is undergoing some profound changes. She appreciates an 'intellectual challenge" and we can certainly offer this: from Cuba to Trinidad and everything in between! She talked with great fluency about risk and described a recent example of a tax model for unit based in Manila. Here she showed good judgement and maturity in her approach. Single-minded and determined to deliver: persistent and resilient character (strong BFA). I was left wondering if this leads to dogmatism and inflexibility if it's overdone but I have no evidence for this based on our conversation. Business minded too, she had good insights about Caribe and asked thoughtful questions. Her example about building talent and teams were a little thin. She left with the sense that her professional relationships are usually instrumental 'let's get things done' rather than developmental 'how can I develop an individual to operate at a higher level'. Interestingly she said little about leading a team. BTT is at the standard but not a strong suit. In summary: has all the professional skills we need but weaker in BTT. Shows strong BFA but probably adopts a singular style which will divide opinion. Can she do the job: 'yes'."

156. Mr Simmons then set out his views of the other candidate and concludes:

"Of the two candidates, I favour *[redacted]* with the caveat above that we will provide *[redacted]* with first-class help and support. I believe *[redacted]* has real potential and that the experience here in Caribe will see its realisation quickly. Andrea is probably best suited for the Controller role Mexico as it plays to her approach and experience. *[redacted]* is a risky bet but offers greater upside for Unilever. Look forward to discussing this tomorrow".

157. Mr Wiszniewski had reached an opposite opinion about which role each candidate was best suited to.

158. By an email dated 26 February 2016 Mr Litmanovich wrote to Mr Natarajan stating: "It is still not clear, GN, that Andrea will get the Caribbean role. It is now time of interviews and Luciano is taking care of the process". To which Mr Natarajan replied: "Thanks Adrian. I hope she makes it - wait to hear from you. In the meantime, I am warming up the replacement process, just in case. So if you do have any candidate in mind, do suggest that at the appropriate juncture". To which Mr Litmanovich replied: "Concern is just related to the fact that she will compete with other good candidates from one side. From the other, the position will be based in a location that might not be the preferred one for Andrea. In the first case, she will have to phase the interviews and have some advantages over the other candidates, but she is anyway competing for the role and can be selected or not…"

159. Two additional candidates became identified.

160. Mr Wiszniewski became aware of the potential third candidate. The LATAM FRC met frequently and due to a number of changes, including the Swiss hub moving, there had been internet calls discussing all the vacancies and the third candidate's name arose.

161. Mr Wiszniewski emailed Mr Simmons on Monday 29 February 2016 stating:

> "As anticipated, I think it would be great if you could have a chat with *[redacted]* CV attached. His experience seems to be tailor-made for what we need. I really liked him in my lengthy interview on Friday *[26 February]*. I would appreciate if you could reach him directly to book time with him as soon as you possibly can."

162. Mr Simmons replied on the same date:

> "I have spoken about Andrea to a couple of current Leadership Team members and my predecessor, who now chairs our business in Trinidad. There is a similar vein to the feedback. Essentially, she is seen as a great professional with strong skills. However, she also has a reputation as extremely challenging, leaving people feeling uneasy (people in Caribe tend not to like a very direct approach). I suspect this view will still be held in the business by those who know her. Now it's a long time ago and people change, but I am concerned that a shadow already exists and this will not set Andrea up for success. Yes, this can be managed and many people are new to the organisation but I do need somebody who, whilst challenging, is also unifying force. You'll remember that I did sense some of this in the interview. I also chatted to her current boss today: he had good things to say about her skills and confidence: he had been coaching her not to be too respectful of hierarchy at senior level. He was neutral about her team leadership: she is only managing two direct reports today. I have to tell you this is only makes *[redacted]* candidacy more appealing. *[redacted]* fresh, with bags of energy and wants to excel. I can live with the relative inexperience because I know *[redacted]* will bring out the best in others. Unprompted, two of my team have encouraged us to appoint him as *[redacted]* successor!".

163. The Tribunal accepts that Mr Simmons had wanted to gain more feedback regarding the Claimant. He had the reservations earlier expressed and wanted to obtain impressions from others.

164. Despite the above view, the third candidate was dismissed as a possibility early on.

165. A fourth candidate "came on the radar" on 01 March 2016 in a suggestion by Mr Fabio Servulo. That candidate was working in a WL3 Finance Director role in Switzerland. As stated above, LATAM IA employees in Switzerland were being considered for redeployment into LATAM positions.

166. These additional candidates appeared and were considered because that is how the process operated in LATAM.

167. Mr Wiszniewski interviewed the fourth candidate by telephone on 08 March 2016. Mr Simmons met with him on 10 March and sent an email to Mr Wiszniewski on the same date: "With the benefit of an hour's reflection, I'm sure that [redacted] is the best candidate for GC and that we should make every effort to land him. Can we offer him the role? I think he will say 'yes'. As I said, it's the best outcome for Unilever: GC recruits a top player to help us navigate Cuba and the full expression of the new strategy; we help to develop a key talent".

168. On 10 March 2016 Mr Natarajan chased Mr Litmanovich for an update on the Claimant's position. He replied to say that it was still in process and the Claimant seemed not to be the preferred candidate. He enquired about the position in Europe to which Mr Natarajan replied: "Not much opportunity in Europe and difficult to extend terms in the UK – so either she goes back to LATAM or we need to look at an exit (which would be a pity given she is a strong resource)".

169. Mr Wiszniewski e-mailed Mr Natarajan on 18 March 2016 to inform him that he will offer the Caribbean position to someone else.

170. In an e-mail dated 19 March 2016 from Ms Rajalakshmi to Mr Kitsos she states that "we clearly have top talent from El Salvador – Andrea Pirie but we do not wish to offer her the position. She has been an IA for over 10 years".

171. Typically, jobs are advertised on the Respondent's Open Job System, but it was also a regular practice at that time to post and appoint without any open competition, such as when the Claimant moved to her role in the UK.

172. The Respondent looked to promote talent and its movement through the organisation. The Greater Caribbean competition was not out of step with that approach.

173. Mr Simmons, who appeared to be an impartial person in this process, did not question the reasonableness of the introduction of the third and fourth candidates.

174. Mr Wiszniewski had asked R, the other candidate, to get feedback on the Claimant. R was not successful for the FD role either. R had applied for both of the Greater Caribbean roles, but Mr Wiszniewski considered R as the preferred candidate for the FC role in Mexico City because R's wife lived in Mexico City and he worked in Puerto Rico and naturally had found those circumstances very hard.

175. Mr Wiszniewski argued that he had nothing to lose asking for feedback. R was a direct report into the Finance Director role. There was no evidence that R gave negative feedback. Mr Wiszniewski argued that he was just checking with people he trusted.

176. The Tribunal considers that the decision by Mr Wiszniewski to ask R for feedback was an extremely poor one.

177. Although not an ideal process, Mr Wiszniewski's interview process was not outside boundaries tolerated by Unilever at the time.

178. Mr Simmons did follow a formal process. He asked standardised questions during interviews and made notes by e-mail. The Claimant has not complained about the nature of the interview undertaken by Mr Simmons.

179. The Tribunal accepts the evidence of Mr Natarajan and Mr Simmons that in conversation about the Claimant Mr Natarajan was positive or neutral about her various attributes and the allegations regarding Mr McGaghey had not been discussed. There is also nothing in the e-mails that indicated the existence of that issue.

180. The reference by Mr Simmons, in his e-mail to Mr Wiszniewski, to the Claimant being 'extremely challenging' is reference to what he had heard from others, but not from Mr Natarajan.

181. It was also clear from the e-mail evidence that Mr Natarajan appeared genuinely to want the Claimant to succeed in her Greater Caribbean application. The Tribunal concludes on balance that Mr Natarajan had not told Mr Simmons of the Claimant's allegations.

182. The Tribunal does not accept the Claimant's submissions at paragraph 79 that Mr Natarajan had gone out of his way to offer negative views of the Claimant relating to the Greater Caribbean role. Mr Natarajan had not raised any comments on the Claimant to Mr Simmons prior to his interview with her or until 29 February, the day Mr Simmons' feedback email to Mr Wiszniewski.

183. The Tribunal accepts the largely unchallenged evidence of Mr Simmons that he did not know of the nature of the Claimant's Code complaint until these Tribunal proceedings.

184. Mr Simmons gave Mr Wiszniewski feedback after Mr Wiszniewski had interviewed the Claimant. Mr Wiszniewski came to a different view about the candidates after the interviews.

185. The Tribunal considers that the tone of the e-mail from Mr Simmons to Mr Wiszniewski dated 29 February 2016 supports the view that Mr Wiszniewski did not hold the same view as Mr Simmons over who was the best candidate.

186. Mr Natarajan asked Mr Wiszniewski for feedback on why the Claimant did not get a Greater Caribbean role. The reply was: "Interviewed with me; interviewed with James Simmons (VP Greater Caribbean); both believed she's fully qualified and senior to do the job; I decided to give the job to *[redacted]* who is also a WL3". Mr Wiszniewski then gave a more detailed summary, which was the feedback from Mr Simmons interview with the Claimant, which Mr Wiszniewski endorsed and agreed with an additional paragraph from Mr Simmons' feedback that Mr Wiszniewski attributed as only being the opinion of Mr Simmons (see page 171).

187. Mr Simmons was going to be working with the successful candidate so it is not surprising his opinion had significant weight for Mr Wiszniewski.

188. The Claimant claimed heavy reliance on the link with Mr Zabalo, which the Tribunal finds was not made out.

189. Mr Zabalo knew of the the Claimant's concerns regarding Mr McGaghey and Mrs X in around early 2016 and also later knew that she had raised it as a Code complaint with Business Integrity.

190. Mr Wiszniewski worked in London at the same time as Mr Zabalo. Mr Wiszniewski was at a higher grade level than him. They were friendly and met socially at gatherings on about 3-5 occasions.

191. However, both Mr Wiszniewski and Mr Zabalo stated in evidence that they had no discussion about the Claimant's concerns and subsequent Code complaint. Mr Zabalo's evidence was that because of the confidential nature he did not mention it to anyone. He also stated that because of the working relationship with Mr Wiszniewski, being "his subordinate", he did not talk about those types of issues. Mr Wiszniewski stated that he was also not interested in those types of matters. Having weighed all the evidence and finding Mr Zabalo a credible witness, the Tribunal concludes that Mr Zabalo did not tell Mr Wiszniewski of the Claimant's concerns or Code complaint protected disclosure.

192. The Claimant suggested in evidence that when she met with Mr Litmanovich in February 2016 he had suggested the Greater Caribbean job was hers and they had to "pretend" to go through the interview process to maintain the credibility of the Open Job Posting ("OJP") process.

193. However, the Tribunal finds as fact that it was known that not all postings go through the OJP, the Claimant having been the beneficiary of the non OJP process herself in obtaining the London role. The Tribunal also accepts the evidence of Mr Litmanovich on that issue having regard to his witness statement at paragraph 24 and the e-mail from the Claimant to Mr Natarajan on 06 February 2016 where she states: "I did speak with Adrian about the Caribbean – not a done deal though. Let's see how it goes. He was very careful not to sound as if I would get it" (page 147). Also, in an e-mail from Mr Litmanovich to Mr Natarajan on 05 February 2016 he states that regarding the Claimant and the Greater Caribbean role: "She will probably have to compete for the role, but she has some competitive advantages". That view was consonant with the view of Mr Barea-Vials that the position was subject to confirmation through interviews. The Claimant stated in her grievance appeal document that "the Caribbean role sounded almost like a certainty – I was the preferred candidate . . . and was told by Adrian that it was practically a done deal".

194. It was suggested in the Claimant's submissions that Mr Litmanovich knew of the allegations and told Mr Wiszniewski. This argument was particularly based on an e-mail exchange between Mr Litmanovich and Mr Wiszniewski on 22

September 2016 after being informed by Ms Taylor that there was to be an internal review to ensure due diligence was done when considering the Claimant for alternative roles. Mr Litmanovich states: "This is unheard of . . . We'll have see what Andrea said. But this seems like a total aberration to me. It seems like as directors and VP's we don't have the right to judge who is the right person to be in the job anymore . . . this is not the unilever I fell in love with many years ago. I am sure something will come back and bite you – because you were the one that did the selection process with the three candidates . . . get ready to say something like 'I used the criteria of logic and common sense to make my decision' hahahah"

195. The Tribunal finds on the evidence that Mr Litmanovich did not inform Mr Wiszniewski as suggested. The Tribunal concludes that his e-mail of 22 September 2016 above was a show of indignity at being audited, rather than a cover up of a decision made because of the Claimant's Code related complaint.

196. The Claimant was not the preferred candidate as at 10 March 2016 and it was Mr Simmons who expressed that view to Mr Wiszniewski. The decision over the position was communicated to Mr Natarajan on 18 March 2016.

197. The Tribunal finds that even if the discussion with Mr Natarajan in October 2015 did amount to a protected disclosure, Mr Natarajan did not report that complaint and the Tribunal concludes that he did not influence the Greater Caribbean appointment through the e-mail communications to Mr Litmanovich and Mr Wiszniewski or in discussion with Mr Simmons.

198. The Tribunal finds that Ms Rajalakshmi did not know of the Code complaint before 22 March 2016.

199. There is no evidence of Mr Koler or Mr Weiner influencing the process.

200. The Tribunal concludes having regard to all the evidence that Mr Litmanovich was not aware of the McGaghey allegations at the time the Greater Caribbean roles were considered.

201. For example, the e-mail chain in early February 2016 (see pages 143 to 145) confirms Mr Litmanovich's personal view that he would take the Claimant for the Greater Caribbean role. The Tribunal concludes that it is very unlikely he would be so supportive if he knew and took a negative view of the Claimant's Code related allegation at that time.

202. Having considered the evidence, Tribunal finds that Mr Simmons and Mr Wiszniewski did not know of the Claimant's allegations regarding Mr McGaghey at the time they formed their views regarding the Greater Caribbean role. Their views were not tainted by the Claimant's protected disclosures.

203. Further, the Tribunal concludes that there was no manipulation of Mr Wiszniewski or Mr Simmons by others.

204. As set out above, as early as October 2015, before the alleged disclosure, Unilever were discussing with the Claimant about her repatriation in advance of her IA coming to an end and Ms Taylor had written to Ms Rajalakshmi earlier still in June 2015, about repatriating the Claimant before the end of her IA contract.

205. In February 2014 Mr Litmanovich had spoken about the Claimant in favourable terms. It was not a done deal that the Claimant would be appointed into the Greater Caribbean Finance Director role and the Greater Caribbean roles were subject to successful interview, which the Claimant knew at the time. Mr Simmons had reservations regarding the Claimant going back to do a role she had done before, which chimes with the Claimant's own view as expressed by Mr Litmanovich in his October 2015 e-mail. Mr Simmons preferred the person who was ultimately appointed to the role. It is not disputed that Mr Simmons did not know of the Claimant's complaint regarding Mr McGaghey and Mrs X. Considering additional applications for the roles during the recruitment process is the way in which Unilever approached appointing to some roles at that time, particularly senior positions. Mr Wiszniewski initially arrived at a different view to Mr Simmons about the Claimant and considered her appointable to the position, but Mr Wiszniewski was careful to place weight on the view of Mr Simmons as he would be working with the Claimant moving forward. Mr Natarajan wanted the Claimant to succeed. Mr Zabalo did not tell Mr Wiszniewski of the Claimant's complaint.

Visa position

206. Whilst in the UK the Claimant worked on a Tier 2 intra-company work visa rather than a Tier 2 general visa. Her visa sub-category allows an intra-company transferring employee to work in the UK, potentially for up to a maximum of nine years if all the criteria are fulfilled.

207. Ms Rajalakshmi gave multiple explanations in evidence of why she considered Unilever could not extend the Claimant's visa upon termination of her IA contract: (i) the Claimant's IA contract would not be renewed due to a reduction of IA contracts being awarded generally; (ii) the Claimant's Tier 2 visa did not give her the right to work in the UK generally; (iii) the Tier 2 visa could not be extended "in perpetuity"; (iv) any job the Claimant envisaged doing in perpetuity on local terms would need to pass the 'open market test' for a local role in UK; and (v) the salary limits relating to a six-year visa extension would not be met by the Claimant, therefore Unilever could only potentially extend her Tier 2 visa for a two year period.

208. The Claimant challenged Ms Rajalakshmi's views.

209. The position as far as the Tribunal can determine on the evidence and information provided (although no expert evidence was received) is that the Claimant was on a Tier 2 visa while on her IA contract. In order to have a Tier 2 visa in those circumstances requires a certificate of sponsorship from Unilever. The Claimant's IA contract and the certificate of sponsorship was for three years. It is possible to extend a Tier 2 visa, subject to a valid certificate of

sponsorship, to a maximum period of five years doing the same or similar job (It could be extended to 9 years if earnings exceeded a certain specified threshold, which would not have applied in the Claimant's circumstances if paid on local terms in her existing job or in a similar job at the same job level). No resident market test would be applicable in those circumstances. To work for Unilever in a *different* occupational role whilst on a Tier 2 Visa would require the potential job to be subject to the resident labour market test. To work permanently in the UK on local terms beyond the term of any Tier 2 visa would require the Claimant to have indefinite leave to remain and would be subject to the resident labour market test.

210. Therefore, it was potentially possible for the Claimant's Tier 2 visa to be extended for a maximum further period of two years to undertake the Deos, or any Financial Director role, as they would be in the same occupational category as her original IA contract in London. In those circumstances the resident market test would not be applied.

211. However, the Tribunal accepts the evidence of Ms Rajalakshmi that the Respondent operates the IA scheme to bring employees into the UK for development purposes. It is a worldwide talent investment scheme that allows employees to acquire skills and experience that they would not obtain in their own geographic area. Unilever operates that system with transparency and only provides a certificate of sponsorship for those on an IA contract. Therefore, a Tier 2 visa would not be extended within Unilever in the UK unless the person is on an IA contract.

212. The Claimant's IA contract would not be extended beyond the original three-year term. That much was clear in e-mails from 2015 before any alleged protected disclosure was made.

213. One of the options available upon the termination of the IA agreement was for the employee to agree to localise in the United Kingdom resulting in the termination of their Home Country Employment Contract and entering into a regular contract of employment of "indefinite length" with Unilever UK Central Resources Limited.

214. This is further reinforced by the Unilever International Assignment Policy which describes the three ways in which an assignment may end (paragraph 10.1 page 1264) of retransfer, localisation or leaving the business and paragraph 10.3 describes localisation as "recognising that the assignee is likely to remain in the host country for an indefinite period into the future".

215. For the Claimant to obtain a contract on local terms for an indefinite period she would require indefinite leave to remain status. Any work outside a Tier 2 visa for any specified period would be subject to visa stipulations and any potential position would likely be subject to the resident market test.

216. Ms Rajalakshmi informed Mr Natarajan that is was not possible to extend the Claimant's visa, but accepted in evidence that was an over simplified general comment. The position was the Claimant no longer qualified for an IA

placement because of lack of financial resources, the global reduction of IA's and the policy emphasis of targeting new IA's for the strategic development of talent; the Tier 2 visa could not be extended for an indefinite period because the Claimant did not have indefinite leave to remain; and placing a person on local terms for a short fixed-term is not something Unilever asks employees to accept or offers as a Company as it can leave an employee in a worse position with regard to rights and benefits.

217. The Tribunal accepts Ms Rajalakshmi's evidence that she was principally considering the Claimant's situation over the long term because of the termination options of the International Assignment agreement.

218. This position corresponds with the contemporaneous e-mail by Mr Natarajan where, although he confirmed in oral evidence that he was told it was "impossible" to extend the Claimant's visa, he stated that the Claimant could not be localised in the UK "under the current terms of her visa", which actually was correct because the Claimant could not be localised *indefinitely* under the terms of her then current Tier 2 visa and loss of IA status.

219. Also, the advice from Deloitte at page 118 of the bundle is consistent with this view where it confirms the Claimant is on a Tier 2 long-term visa and describes the "eligibility to remain in the UK beyond 5 years" as "up to 5 years – unless earning over £155,300 where they can remain up to 9 years. Not eligible for ILR [indefinite leave to remain]".

220. The Tribunal notes the 14 October 2015 e-mail from Mr Litmanovich to Mr Natarajan where it records that the Claimant was "happy to continue until her contact expires or even more if the business needs her there". It does not confirm whether at that time the Claimant was happy to do so on local terms. In an e-mail from Mr Litmanovich to Mr Weiner dated 06 May 2016 as set out above, the Claimant had expressed that she wanted to stay some more time in another role under local conditions before deciding either to leave Unilever or rechecking if there is any role back in LATAM for her. However, Mr Litmanovich did not know the visa requirements in the UK.

221. Ms Rajalakshmi stated in oral evidence that she had received advice from an immigration expert internal to the organisation, Ms Lorraine Justice, although that information was not in her witness statement and Ms Justice was not called to give evidence.

222. Mr Tiziani gave evidence that he had a conversation with Ms Rajalakshmi who had said to him that visa issues were not determinative to the Deos role and was left with the impression it could be dealt with by HR. However, Ms Rajalakshmi considered that if the Claimant was successful in her application "we would have gone back to see what could be done" and did not want to "go in and block" the application.

223. In submissions the Tribunal was referred to Tier 2 visa information on the gov.uk website, although that was not put to Ms Rajalakshmi in cross-examination. It is noted that while an extension to a Tier 2 visa is possible as

addressed above, it states: "Your stay can be extended for the shortest of the following: the time given on your certificate of sponsorship plus 14 days; the time needed to extend your stay to the maximum time allowed in the category; 5 years (9 years if you earn more than £120,000 a year)". Emphasis was added to the final category on behalf of the Claimant, but in fact the key word is "shortest", which in the Claimant's case would be the time given on her certificate of sponsorship plus 14 days.

224. The Tribunal concludes on balance that, although Ms Rajalakshmi gave a number of explanations for the circumstances under cross-examination, they were all broadly correct and certainly if they are incorrect the Tribunal concludes that she reasonably considered them to be accurate and was not influenced by the Claimant's protected disclosures when interpreting the position or giving the general advice to Mr Natarajan.

BFS Roles

225. Around early March 2016 Mr Natarajan was informed by Ms Rajalakshmi of potential WL3 'BFS' roles in finance in Katowice, Poland. The positions would be on local terms and as the Claimant's IA role was coming to an end, any position for her would be on local terms moving forward. Mr Natarajan thought these would be a good fit because they were global ETS roles.

226. Mr Natarajan had a discussion with the Claimant and at the same time he gave feedback on the Greater Caribbean role. The Claimant said she might consider the move if it was not on local terms, but had wanted to go back to Costa Rica.

227. Mr Nagarajan had rated the Claimant as 'middle/middle', a 'white box' candidate in March 2016.

228. In an e-mail from Mr Litmanovich to Mr Kitsos dated 29 March 2016 (page 181) it is mentioned that "there will be no IA terms for white box candidates". The Tribunal accepts that this was the policy of Unilever at that time. It is consistent with Ms Rajalakshmi's evidence that IA terms would only be given if the person was Listed or considered to be "top talent", which was classified as a 'green box' candidate. Therefore, although Ms Rajalakshmi had described the Claimant as 'top talent' in her March 2016 e-mail to Mr Kitsos, as a middle/middle, white box, candidate the Claimant was not going to be considered for another IA role after 10 years on IA terms. That is consistent with the pre-alleged disclosure 2015 e-mails that discuss the IA coming to an end and the Claimant taking up a role back in LATAM.

229. The Claimant did not want to move to Poland, mainly because she and her family did not speak Polish and local salary rates would be too low as she confirmed in evidence to the Tribunal.

230. Ms Taylor created an e-mail on 21 March 2016 that set out for headcount planning purposes WL3 roles and opportunities for Finance Directors, which confirmed the potential BFS roles and their locations (page 169). At this stage

these were not guaranteed roles, for example the role in Greece on the list did not materialise. Mr Natarajan was not provided with this document.

231. The Claimant was not advised of similar roles that were available in the UK. Two of the BFS roles were uncertain as to location, being either in Kingston or Port Sunlight in the UK, or in Katowice, Poland. Ms Rajalakshmi accepted in cross-examination that the BFS jobs could have been in Kingston or Port Sunlight.

232. Mr Natarajan was clear in his mind and confirmed he was told by HR that the Claimant would not get a Visa to work in UK.

233. Mr Natarajan considered that the BFS posts were only in Poland and indicated that to the Claimant in good faith.

234. The Tribunal concludes that it was Ms Rajalakshmi's belief that the Respondent could not extend the Claimant's IA contract and could not employ her indefinitely on local terms in the UK because of Visa limitations. Whether that view was right or wrong, the Tribunal concludes that this is what she thought at the time and is not inconsistent with the advice she had received from Deloittes and internally. Having regard to Ms Rajalakshmi's mental processes, the Tribunal concludes on a balance of probabilities that is the reason for her actions at the time and for the nature of the guidance given to Mr Natarajan. That is also the reason why Mr Natarajan acted as he did and did not consider the Claimant for permanent UK based roles. The Tribunal concludes that those actions were not influenced by any of the Claimant's protected disclosures.

El Salvador

235. In an e-mail to Mr Litmanovich on 30 March 2016 Ms Taylor wrote: "Sangeetha asked me to get in touch as we may have a tactical move to make on Andrea Pirie – as she is not being considered for any other roles now it would be sensible to consider her for the El Salvador role as it is her home country". There is no reply e-mail produced in the bundle (page 180). Ms Taylor operated with a delay on her e-mails that allowed her to retrieve them before they are sent. The Tribunal concludes that this e-mail was not actually sent. Ms Taylor sent an e-mail to Mr Litmanovich on the same date giving almost the same information and to which he replied (see below). In evidence Ms Rajalakshmi denied asking Ms Taylor to make contact over a possible tactical move. Reference to her was removed from the later e-mail.

236. By that further email also dated 30 March 2016, which the Tribunals finds was sent, Ms Taylor wrote to Mr Litmanovich stating: "As you know, Andrea Pirie is no longer in the running for any other roles (UK not an option due to visas) and so it's looking like we would have to pay a redundancy package to her. The only other option is that we offer her the role in San Salvador as this is her home country… I know you guys weren't too keen at interview but from a tactical perspective if we offer her this role and she turns it down then we do not have to pay her a severance package as we have offered her suitable employment. I know this won't be music to your ears but it's an option we

should consider as part of our final placement of candidates, probably as a tactical move rather than with an expectation she would accept".

237. Mr Litmanovich replied: "Alice, it seems not the right action. Firstly, Andrea is not willing to come back to Central America. This has been already discussed with her. Secondly, it would be doing something for the wrong reasons".

238. Ms Taylor then sent an email to Mr Kitsos on 01 April 2016 stating: "Have spoken to Adrian about offering Andrea El Salvador role and need to contact with Luciano on it today, there is pushback as you would expect. Will shout if I need support". Mr Kitsos replied: "Do not get the Andrea issue: she should be offered and if she says no, then it is an easier way out"

239. Ms Taylor and then sent a further email to Mr Litmanovich also on 01 April stating: "It will be a strategic move - I will give you and Luciano a call to catch up today and see how the discussions have gone". To which Mr Litmanovich replied: "Alice, we do not agree. Besides, she said she would not move either to Dom Rep nor to Salvador" Ms Taylor responded: "We just need to document that she already turned down El Salvador so we do not have recourse on that". To which Mr Litmanovich replied: "I will not offer El Salvador to Andrea, it is not what we're looking for".

240. A position in El Salvador did not ultimately materialise as the incumbent did not move

241. The Tribunal concludes on balance that, as underhand as it was, through her suggested actions Ms Taylor was motivated by saving money for Unilever and avoiding a severance package. In reaching this decision the Tribunal has fully taken into account Ms Taylor's unimpressive evidence relating to the "sensitive ER issue", which occurred later in time in May 2016.

242. The Tribunal does not think it necessarily follows one way or another that the removal of the Claimant's severance package as suggested by Ms Taylor would have hastened the Claimant's exit before the Code complaint was addressed as alleged. It may have been that had the strategy been implemented it would have exacerbated the situation.

243. Although the Tribunal concludes that Ms Taylor certainly knew of the Code complaint in May rather than July as she contended, the Tribunal has considered whether it is possible that the strategy was intended to be a stand-alone punishment for the Claimant raising the Code issue, which ultimately was not implemented due to the position not being vacant and the intervention of Mr Litmanovich.

244. The Tribunal concludes on balance after considering the whole of Ms Taylor's evidence that she was at this time seeking, in a pretty crass manner, to save money for the organisation.

Greece

245. On 10 March 2016 Mr Weiner passed the Claimant's details on to Mr Henry Schirmer regarding a potential position in Greece (page 160C): "Another random thought – Andrea Pirie – she is Central American (Costa Rica I believe) who UK assignment in ETS ending, she has done Caribe so a perfectly stable NFD of small unit, unlikely ever to make WL4 – but a good diversity choice Latin into Greece has worked".

246. This suggestion was further pursued by Ms Rajalakshmi on 15 March, but the Claimant was not placed on the short-list as Mr Schirmer had worked with the Claimant in the US and felt there was a stronger alternative candidate (pages 162-163). It has not been suggested by the Claimant that Mr Shirmer was influenced by her alleged protected disclosures and this process corroborates the informal nature of the other recruitment exercises in which the Claimant was involved.

Deos

247. A role for Global Finance Director for Deos arose in the UK. 'Deos' is an abbreviation for Deodorants, which is one of the products in the Personal Care category of products, one of the four core area of Unilever products.

248. Mr Eric Tiziani was the person that interviewed and appointed to the Deos role.

249. The Tribunal accepts that Mr Tiziani did not know of the Claimant's protected disclosures or related allegations until these Tribunal proceedings.

250. The Claimant argued that he was influenced by Mr Weiner, which Mr Tiziani denied.

251. The Claimant found that the Deos role had been advertised internally on the OJP and she applied for the position on 03 May 2016.

252. Ms Katherine Hibbert, Internal Recruitment Advisor, confirmed in an e-mail dated 04 May 2016 that at that time the Claimant was the only candidate and states: "I am liaising with Sangeetha re a list of global internal candidates who might be suitable". It was not unusual for that approach to be taken to widen the potential scope of candidates. It is not suggested that Ms Hibbert knew of the Claimant's Code complaint.

253. Ms Rajalakshmi said in her witness statement: "In the case of the Deos role, the Claimant saw the open job posting and responded to the application. I wasn't aware that the claimant had applied until after she submitted the application. I hadn't mentioned the role to Gopalan as a role that he might discuss with the claimant because the role is based in London working for the UK business and I didn't see that the claimant was a likely candidate, purely from a Visa point of view. As I explained above, the claimant was currently working in the UK on a very specific Tier 2 visa and for her to be able to take the Deos role (if she was considered the best candidate) she would need to be

granted a general right to work in the UK. I have explained above the process this would involve, specifically, Unilever would need to go to market and illustrate that there was no one already in the UK who could take on this role. This seemed extremely unlikely and for this reason it didn't cross my mind to put the claimant forward for this London based role. That said, the claimant's application was not rejected on the basis of potential Visa difficulties. The business wanted the best candidate for the role and if that was the claimant then it would make the necessary application for her to work in the UK".

254. By an email to Ms Rajalakshmi dated 06 May 2016, Mr Natarajan stated: "Andrea seems to have applied for the Deos role!" to which Ms Rajalakshmi replied: "I know, will connect and close" (p258).

255. Ms Rajalakshmi said in evidence that she meant that she intended to speak to the Claimant to confirm the role would be on local, not IA, terms and that there might be right to work difficulties.

256. Mr Natarajan was surprised about the Claimant's application because of what he understood the Visa position to be and because he had not been told by the Claimant about her application.

257. In an e-mail dated 06 May 2016 from Mr Litmanovich to Mr Weiner he stated: "She told me she wanted to stay some more time in another role under local conditions before deciding either leaving Unilever or rechecking with me there is any role back in Latam for her. I told her it would be possible, but depending on roles available in Europe. Latam seems to be difficult right now. And then we have FF before deciding moves"

258. By an email from Mr Tiziani to Mr Natarajan on 5 May 2016 he stated: "it was a bit of a loaded question, as I separately saw that Andrea has applied for my open role as Finance Director for Deos. Could you provide your point of view on how she has been performing and her fit for the Category Finance team?"

259. Mr Natarajan replied: "I have finalised Andrea's replacement – Abimbola Johnson (lister from Africa, currently on expatriation in Kenya). Andrea is currently 3B and has 10 years' experience in Unilever. However, the issue is her contract in the UK comes to an end in 3-4 months and since there is no role for her back in Latam, she's most likely exiting. Hamutal and Sangeetha are in touch and you should have an update from them shortly".

260. Mr Tiziani replied: "Many thanks GN. Clear."

261. Mr Tiziani gave evidence that he had a conversation with Ms Rajalakshmi and she said Visa issues were not determinative to the role and he was left with the impression it could be dealt with by HR.

262. By an e-mail from Mr Litmanovich to Mr Natarajan, he stated: "Andrea asked my opinion to apply to a position in Deos. Not sure if she talked with you about that. My view is that the fact she could not get a role back in Latam this time is not a reason not to post. I would encourage her doing that, but being

conscious that I cannot guarantee she will get something back in Latam after a role in category. And would probably mention to her the fact that she would consider any role in Europe in local terms. But wanted to get your views. She will have a word with Steve end of this week, and I mentioned also to him that I am not against her considering a role there, in local terms, and without the guarantee of a role back in the Cluster after that".

263. Mr Natarajan replied: Agree entirely with your advice – with two additional comments. HR is of the view that she cannot be localised by Unilever in the UK under the current terms of her visa. I have asked them to clarify why and also explain to Andrea if so. There are a few roles in Europe on local terms but Andrea is unwilling to go for these roles. She wants IA which will not be supported as you know".

264. The Tribunal accepts the evidence of Mr Litmanovich that he had not worked in the Eurozone and did not know about any zone other than Latam and was not aware of the details relating to the visa position in the UK.

265. Although Mr Natarajan stated in oral evidence that he was told by HR that it was "impossible" for the Claimant to work in the UK, the above e-mail sets out his understanding at the time that the Claimant could not be localised in the UK "under the current terms of her visa".

266. On 13 May 2016 Mr Weiner wrote to Mr Tiziani copied to Ms Rajalakshmi: "I think you should include Andrea into your slate, although I am not convinced she will come top of your list", to which Mr Tiziani replied "Yes, agreed. I've just sent the message to set up an interview".

267. By an e-mail to the Claimant dated 16 May 2016 Ms Taylor informed the Claimant that it would be a little while until there was a decision and in the meantime Unilever would cover the cost of the Claimant's school enrolment fees of around £1500.

268. On 02 June Mr Tiziani stated in e-mail to Mr Weiner: "I've now interviewed Andrea for the Deos role. Andrea of course has good overall experience (ETS, Cordillera, Regional, PR), but lacks any recent experience in a significant commercial business partnering role (including nothing in Category and/or Deos). Overall, I don't believe she's competitive vs. the other candidates and will let her know". Which he did in an e-mail dated 03 June 2016.

269. At this time there were concurrent discussions relating to the Claimant's severance package.

270. Although Ms Rajalakshmi stated in the e-mail to Mr Natarajan that she would "connect and close", the Claimant was not prevented from applying for the position and there is no evidence of Ms Rajalakshmi influencing Mr Tiziani over his decision.

271. The response of "clear" by Mr Tiziani to Mr Natarajan is not related to the Claimant's Code complaint. Mr Natarajan had been supportive of the Claimant

since the discussion when the Claimant raised the Mr McGaghey affair issue and the Tribunal accepts Mr Tiziani's evidence that he did not read Mr Natarajan's e-mail as an indication to turn the Claimant down for the position.

272. The Tribunal concludes that the comment by Mr Weiner of 'I am not convinced she will come top of your list' at a time when he did know of the Claimant's protected disclosure and while he was line manager to Mr Tiziani could be seen as a coded instruction to Mr Tiziani not to appoint the Claimant to the position. As stated above, the Tribunal concludes that Mr Tiziani did not know of the Claimant's protected disclosures. Mr Weiner was not involved in the decision making by Mr Tiziani as a joint enterprise, nor produced false information relating to the selection process, nor was sufficiently senior to influence Mr Tiziani (himself a WL4 and VP for Finance for Global Personal Care and Global R&D) by his comments.

273. The Tribunal accepts Mr Tiziani's evidence that he did not prioritise length of overall experience, but it was recent 'Category' experience that was crucial. The eventual appointee was currently in a 'Category' role and had the attributes set out in Mr Tiziani's e-mail to Mr Weiner of 02 June 2016 (page 453).

274. That e-mail also confirms that Mr Tiziani would ultimately make the decision, but the preferred candidate would also meet with the other Directors of Deos first to "assess fit".

275. The Tribunal concludes that Mr Tiziani made an independent decision on who to appoint for the reasons set out in his e-mail of 02 June and that this was not influenced by the Claimant's protected disclosures.

Other positions

276. The Claimant has not identified any other roles that she contends were available and which she could or was prepared to undertake.

Incorrect information concerning entitlements

277. On 13 May 2016 Ms Taylor messaged Mr Andrew Forsythe and said: "Hi Andrew – I need to catch you briefly today ahead of our call with Andrea Pirie on Monday. There is a significant ER issue that I need to make you guys aware of. When is a good time to reach you?". To which Mr Forsythe eventually replied: "Sorry got caught in a conversation, will call you now".

278. By an email dated 16 May 2016 Ms Taylor wrote to Mr Forsythe and Ms Leonie Baggott stating:

> "Andrew and I spoke on Friday, I am here summarising the issues so that we are all on the same page:
>
> - Andrea has been on assignment for three years in the UK on a euronet contract and at the time of signing the contract was clearly advised by Hannah in GM she will be entitled to 'the better of home and Euronet severance'. I recognise that the contract states she is eligible for

Euronet only but Andrea made a direct query about the meaning of the severance clause upon receipt of the contract and was told in writing by Hanna she would have the choice of both.

- Andrea has a home pension and so from her perspective it is not unusual that she would get choice of severance and so did not further challenge information from Hanna.
- Based upon this explanation of the contract - Andrea signed and returned her contract in 2013.
- At the end of her assignment in August it is highly unlikely that we have another role for her in Unilever and the requested severance figures which have been provided for Euronet and El Salvador should be ready for us to review tomorrow/Wednesday.
- Andrea is understandably requesting that we provide her with the choice of home or Euronet given that we committed to her upon signing a contract that she would be eligible for this. It has not been communicated to Andrea before now that information given to her in 2013 was incorrect.
- Appreciate the mistakes are made on email but when the stakes relate to significant contractual clauses with great risk to the organisation as Andrea is quite valid in requesting the ability to choose between packages based on information we gave her.
- In addition to the above - there is a complex and sensitive ER issue surrounding Andrea which I have briefed Andrew on which means that we need to handle this with a certain amount of delicacy in order to avoid risk and further cost to the organisation.

Request to you: The request is that we offer Andrea the choice of home (El Salvador) or Euronet severance in line with the agreement we made to her in 2013. Fully aware of the contractual setup but this is not a clear-cut situation. If mistakes had not been made in 2013 we would not be requesting this but given that they were, we have a certain obligation to honour what was committed at the time. The ER situation is not the driver for this request and this has only come up because of the incorrect information given by Hannah, but it does mean we need to be sensitive to the events happening concurrently."

279. That email was copied to Ms Rajalakshmi.

280. Ms Baggott replied by an email at the same date: "I have spoken with both Sangeeta and Andy and reviewed the notes below and from my perspective there is insufficient reason to offer the choice of home or Euronet, particularly as numbers were not shared at the start of the assignment, and Andrea signed and accepted the Euronet contract. I appreciate that there is a previous sensitive ER issue but in my view, this is significantly clouding the facts and judgement of the situation".

281. Mr Forsythe sent an email to Ms Taylor, Ms Baggott and Ms Rajalakshmi dated 18 May 2016 in which he states: "Are we comfortable between us that although legal and contractual issues entitled the Euronet severance figure, we wish to raise an exception due to previous incorrect advice given over email (together

with ER issue impact)? At the end of the day, severance over the statutory minimum is discretionary, and we're not obliged to share the calculations or justify the figure to the employees? As Leonie says below, I think the ER issue is clearly clouding judgement here".

282. Ms Rajalakshmi replied by an email at the same date: "My view is we should pay out the full monies, contractual obligations should be validated if only by a perceived view. There is not ER angle that I feel is playing out here. Just the fact of being fair to the employee".

283. Ms Taylor replied to Ms Rajalakshmi on 19 May 2016: "I think Andy and Leonie are trying to position this as the ER issue clouding judgement when we wouldn't even be in this situation if GM given correct policy advice".

284. Ms Taylor could not explain in evidence what she meant by the "sensitive ER issue". She initially attempted to speculate that it referred to the Claimant's IA coming to an end and her being repatriated. However, she had to accept that it cannot be a reference to those circumstances because that matter is mentioned in express terms in the text of the e-mail of 16 May 2016 before it states "in addition to the above" there is a "complex and sensitive ER issue surrounding the Claimant" "happening concurrently".

285. Ms Taylor was unable to state or suggest further in evidence what the complex and sensitive ER issue was at that time. The Tribunal did not consider that stance to be credible. It was a clear matter of importance, it was in a lengthy e-mail that formed part of a four-way communication, Ms Taylor had briefed Mr Forsythe. Ms Taylor was able to recall details in evidence about other events at that time regarding the case in general, which she had not highlighted to others in such a way.

286. The 'complex and sensitive ER issue' was a matter that the parties to the communication clearly all understood without further explanation and obviously related to concurrent events.

287. Ms Rajalakshmi first stated in cross-examination that the "ER angle" referred to the fact that the Claimant had raised a grievance about the settlement regarding her tax position and way it has been handled. However, that grievance was not made until 02 September 2016, so cannot be correct.

288. Ms Rajalakshmi then stated she was unaware what the 'sensitive and complex ER issue' meant and that it could have been a number of issues, but could not remember which one. When asked why she had responded using the same terms Ms Rajalakshmi speculated that it may have been because they were discussing replacements for the Claimant's position, which appeared unlikely as the Claimant's severance was the point of discussion. Ms Rajalakshmi offered that it could have been sensitive for the Claimant and that she was uncomfortable applying for other jobs.

289. However, Ms Rajalakshmi was able to say in her e-mail that there was "no ER angle playing out" without enquiring in her capacity of Global HR Director for

Finance the obvious question to Ms Taylor, an employee under her line management, “what are you all talking about?” “what complex and sensitive ER issue?”.

290. All the participants in the e-mail exchange clearly knew what the issue was when it was being discussed. It was a matter that prompted discussion about whether it was the “driver” for the Claimant to be paid more severance pay than that to which some thought she was entitled.

291. Given all the above matters and in particular the obvious reticence to describe the matter in open e-mail and conjecture whether it might be the driver for a greater severance payment, the Tribunal is driven to conclude that the reference was to the fact that Claimant had raised the issue of Mr McGaghey’s affair with Mrs X and related allegations.

292. The Tribunal does not find Ms Taylor’s evidence to be credible when she argues that she did not know about the Code complaint issue until July 2016. The Tribunal concludes that Ms Taylor certainly knew about it in May 2016.

293. It therefore must follow that Ms Baggott and Mr Forsythe (both Global Reward Partners, which is an extended part of the HR function) knew about that issue too. Ms Rajalakshmi also knew the matter to which Ms Taylor was referring and as found above, knew of the complaint about Mr McGaghey at 22 March 2016.

294. The Tribunal further concludes that if Ms Taylor knew about the matters, it is more than likely that Ms Rajalakshmi told her about it given Ms Rajalakshmi was told in March 2016 and is Ms Taylor’s line manager, worked from the same office and knew Ms Taylor was tasked with dealing directly with the Claimant to manage her exit.

295. The Tribunal has taken these events fully into consideration when making its findings of fact and conclusions within these reasons

296. On 08 June 2016 Ms Taylor received advice from Mr Justin Murray, Director of Global Employer Services at Deloitte LLP, regarding the tax position on the potential severance payments to the Claimant (see pages 503 to 506). However, this information was not sent to the Claimant in its entirety. Ms Taylor prepared to send an e-mail to the Claimant at 13.40 on 15 June 2016 with what she describes as a summary from Deloitte of the tax implications. However, Ms Taylor chose not to send that e-mail but instead send an e-mail at 13.54 that left out Mr Murray’s substantial advice regarding the potential redundancy situation where, for example, he advises: “The pivotal question here is whether the driver for Andrea’s redundancy was the need to reduce costs or the need to reduce the scope of the role. The facts and circumstances suggest that the driver in Andrea’s departure from the business was indeed based on costs given that she was an international assignee, and this means it would not be a redundancy under UK definitions. Although her role was downgraded, from the discussions with Alice the facts were that the business

has already decided that Andrea would not continue to perform the role as an IA in the first instance and subsequently changed the scope".

297. Mr Murray further advised: "As an aside just for completeness, if the payment were to be considered as a genuine redundancy payment then it could fall within the termination rules which allow for specific treatment . . .the lump sum is treated as tax exempt in the UK. However, in order for this to apply, her severance agreement as well as any accompanying documentation would need to support and reflect the circumstances of redundancy in line with UK definitions to enable this payment to qualify. Based on the information we have been provided we do not believe this to be the case and as such this treatment does not apply".

298. Earlier correspondence between Ms Taylor and Mr Murray was to the effect that if the Claimant's dismissal could align with redundancy it could affect the liability to UK tax on the severance payment. Mr Murray stated: "It is then important that the documentation refers to redundancy or uses phrases that align with the UK definition of redundancy. Based on our experience in other cases, HMRC will not accept an individual has been made redundant if the documentation does not reference closer of part of the business/business reorganisation leading to reduction in headcount etc" (page 496).

299. Ms Taylor stated in evidence that she removed the references to redundancy because she wanted to close-down the situation, was focussed on the tax position and because the matter was treated as redundancy within the organisation.

300. However, she had asked for advice on the redundancy situation and knew its high relevance to the circumstances and the Claimant's tax situation.

301. Ms Taylor and Mr Natarajan met with the Claimant on 30 June 2016 and explained that she was at risk of redundancy and this was confirmed in a letter of the same date. That letter, although in Mr Natarajan's name, was drafted by Ms Taylor. Mr Natarajan was being led by HR.

302. The Tribunal concludes that removing the redundancy section from the advice from Deloitte amounts to a detriment when objectively considered. The information she had requested be obtained from professional advisors was material to the Claimant's ability to evaluate the projected severance figures, her risk to tax liability, and to her understanding of her employment rights under UK law in respect of termination of her employment.

303. The Tribunal reaches the same conclusion in respect of the 'at risk' letter sent to the Claimant on 30 June 2016 and the terms contained within it, having regard to the advice Ms Taylor had received from Deloitte and the failure to share that advice with the Claimant. The Tribunal concludes that when Ms Taylor referred to redundancy within that letter she was not referring to a 'term of art' non-legal meaning of redundancy internal to the Unilever business within its own procedures.

304. At this stage Ms Taylor knew about the protected disclosure Code complaint raised by the Claimant as the Tribunal has found that was the sensitive ER issue discussed in May 2016. The Tribunal concludes that Ms Taylor was not being accurate when she stated she first knew of the Code complaint in July 2016. The accepted knowledge in July as opposed to May would place the redundancy advice removal outside the period of purported knowledge together with the 'at risk' letter.

305. When considering the burden of proof in detriment cases and analysing the mental processes of Ms Taylor the Tribunal concludes that the protected disclosure of the Code complaint was an influence to an extent that was more than trivial when she removed the advice relating to redundancy and drafted the terms of the 'at risk' letter. It has not been proved on a balance of probability that the action of Ms Taylor was not on the on the grounds of the protected act.

306. The Tribunal concludes that Ms Taylor was not seeking to 'close down' the situation to expediate payment to the Claimant and her exit from the Company in order that the Code complaint would not be addressed, as was alleged by the Claimant.

307. The Tribunal concludes that the Claimant making a protected disclosure was an additional and material reason for Ms Taylor to attempt to secure a severance agreement that was as frictionless as possible, which led to her not informing the Claimant of the redundancy advice from Deloitte and the risk that the severance payment may become taxable in the UK if HMRC did not accept redundancy as the reason for termination.

308. The Tribunal further concludes that the actual protracted nature of finalising the Claimant's settlement payment was due to the complexities over the payment and the tax position. The Tribunal was taken through the communications on this in detail during the hearing by both Counsel and will not set out all the evidence in these reasons, but the Tribunal has taken it fully into account. The Claimant, understandably, wanted information on every eventuality to be provided to her so she could take a fully informed decision moving forward and Ms Taylor clearly was struggling with addressing those enquiries. She needed to rely on a number of internal parties, records in different departments and to take account of historical and changed policies and past assurances to the Claimant. Some mistakes were made. As the Claimant acknowledged in her grievance letter: "I must admit myself this situation is complex". The Tribunal concludes that Ms Taylor has proved on a balance of probabilities they were the reasons for the actual delay in providing information.

<u>The Claimant's Grievance</u>

309. The Claimant presented a grievance by a letter to Mr Kitsos dated 02 September 2016 (pages 870 to 872 of the bundle), obviously after the termination of her employment.

310. The Unilever Grievance Policy and Procedure provides under the heading "Grievances after employment ends": "This policy will remain applicable even where your employment with the Company ends whilst a grievance is being dealt with under the procedure. You may initiate the procedure after employment ends, provided that the procedure has not already been exhausted in relation to the grievance in question. If, as a former employee, you wish to continue with or initiate a grievance under the procedure, then if you agree to do so, the Company may elect to deal with the grievance in writing without a meeting. Otherwise the normal procure will apply".

311. The Claimant confirmed that she wished to have a grievance meeting by e-mails to Mr Kitsos dated 11 and 19 September 2016. Mr Kitsos sent an e-mail to Ms Taylor on the subject that made it clear that Ms Taylor was to draft a response.

312. Mr Kitsos replied to the Claimant's complaints by a letter dated 30 September 2016 which was wholly or largely drafted by Ms Taylor at pages 964 to 965 of the bundle (sent to the Claimant on 03 October 2016 – page 969). The letter states: "I am writing to update you on my review of the complaints that you have raised in your e-mail on 2 September 2016. As your employment had already ended with Unilever on this date I have carried out a thorough review into your concerns but will not be scheduling a grievance hearing as this is an internal procedure". This was incorrect under the terms of the Grievance Policy.

313. The Claimant was not notified of a right of appeal. The Claimant wrote to Mr Kitsos on 07 October 2016 pointing out that he had not discussed matters with her, did not seek agreement to deal with the matter on the papers only and was appealing against the decision. The Claimant provided full details of appeal by letter dated 11 October (pages 971 to 973).

314. Mr Kitsos accepted in evidence that he discussed the grievance process, details and outcome with Ms Taylor. Ms Taylor was clearly conflicted to advise (which she did), as opposed to simply giving her account of events, on the grievance. Ms Taylor drafted the questions for Ms Taniskan to ask for her part of investigating the matters raised. Ms Taylor gave the advice that the Claimant would not have a grievance hearing because it was an internal procedure. Mr Kitsos accepted that Ms Taylor had drafted the grievance outcome letter and could not recall whether he had made any changes

315. The Tribunal concludes that when considering the burden of proof and analysing the mental processes of those involved, also having regard to the other relevant findings and conclusions, the protected disclosure of the Code complaint of which both Ms Taylor and Mr Kitsos were aware, was an influence to an extent that was more than trivial when Ms Taylor advised Mr Kitsos during the grievance process, denied the Claimant a grievance hearing, and did not inform her of a right of appeal.

316. It was a perfunctory process that fell outside the applicable procedure and it is reasonable to assume that Ms Taylor as a senior HR practitioner was aware of

what the proper procedure should have been and also the risk she took over a conflict of interest in advising on a grievance where she was a named alleged protagonist. Mr Kitsos should also reasonably have been aware of the difficulties.

317. It may be that Ms Taylor and Mr Kitsos gave the grievance 'short shrift' because the Claimant was no longer employed, however the Tribunal concludes that it has not been proved on a balance of probability that the actions of Ms Taylor and Mr Kitsos were not on the on the grounds of the Code complaint protected act.

318. Ms Clement was approached by Ms Taylor to consider the appeal and contacted the Claimant by e-mail on 21 October 2016: "This has been passed to me as I will be considering your grievance appeal. Given that you are no longer a Unilever employee and have returned to Costa Rica I will carefully consider your appeal and once considered, I will write to you with a decision". The Claimant replied stating that she would prefer to have some form of conversation. Ms Clement acted upon that and spoke to the Claimant on 25 November 2016 and notes of that conversation are at pages 1076 to 1081 of the bundle. It was a detailed conversation about the Claimant's complaints. Ms Clement undertook some further investigations.

319. Ms Clement considered all the relevant matters and drafted her conclusions which she read to the Claimant over the phone as part of an additionally arranged conversation on 16 December 2016. Ms Clement took note of the Claimant's comments and the additional information which the Claimant subsequently provided. A final outcome letter was sent dated 23 January 2017 at pages 1115 to 1119 of the bundle, which was identical to the initial conclusions.

320. The Tribunal concludes that Ms Clement endeavoured to obtain a fair picture of the circumstances and although the information she received from the Company side was from Ms Taylor, it was Ms Taylor who had most of the relevant information of a process in which she was involved and she did balance that with two lengthy conversations with the Claimant about the issues she had raised. Ms Taylor did not act as advisor and the decisions made by Ms Clement were hers alone. Nothing turns on the length of time it took for the appeal to be considered. The draft letter remained unaltered simply due to the fact that her additional enquiries did not produce any matter that Ms Clement considered required amendment.

321. The Tribunal has considered its conclusion above relating to the initial grievance decision and the potential impact on its conclusion regarding the appeal and vice-versa, but considers that compared to the initial process, Ms Taylor's input on an advisory level was minimal and of little, if any influence, on the decision making of Ms Clement. As it was a grievance that involved Ms Taylor it is common-sense that Ms Clement would ask Ms Taylor for her input on the allegations, however the Tribunal concludes that the process adopted by Ms Clement was not outside procedure and general fairness.

322. Sometimes it is not a good assessment of evidence to apply equal logic across all decisions an individual may make. It may be that Ms Taylor was able to influence the initial grievance process and not the appeal process because she was simply afforded that opportunity in respect of the former.

323. The Tribunal concludes that it has been proved on balance that Ms Clement turned down the Claimant's grievance appeal after properly considering the relevant facts and her view was untainted by the Claimant's Code related protected disclosure.

The Code complaint

324. The Claimant informed Mr Koler of the concerns regarding Mr McGaghey both verbally on 18 March 2016 and by an e-mail dated 23 March 2016.

325. In mid-April 2016 Mr Placid Jover, VP HR for Organisation Design and HR Analytics and who reported to Ms Leena Nair, then Unilever's recently appointed Chief HR Officer, was told in a conversation with Ms Nair that there was a potentially sensitive issue raised with the Business Integrity team and asked him to look into it.

326. Later that month Mr Jover was delegated by Mr Koler to undertake an initial fact-finding investigation to ascertain whether the Claimant's concerns "had a solid foundation". Mr Jover met with the Claimant on 04 May 2016 at Unilever's offices in London. The meeting notes were provided to Mr Koler and it was decided that Mr Jover would also interview Mr Michael Latham who was Mr McGaghey's line manager at the time. Mr Latham was interviewed on 25 May 2016 and Mr Jover also shared the notes of that meeting with Mr Koler.

327. Mr Jover's notes of the meeting with the Claimant removed the reference to the Australia trip expenses. Mr Jover stated in cross-examination that this was because it was not first-hand knowledge by the Claimant. Mr Koler replaced the missing sections into the notes as notified in an e-mail dated 06 May 2016 and did so again on 02 June 2016. In this e-mail, although he replaced the Australia expenses allegation, Mr Koler also amended the notes of Mr Latham's interview relating to a reference to an earlier complaint about Mr McGaghey and Mrs X being relayed to Mr Latham by Ms Tubbs. That was changed to the matter being "a rumour, not a Code complaint filed", although Mr Koler was not at the interview. Mr Koler stated in cross-examination that he amended it after discussion with Mr Jover, but the record at page 439 was what Mr Latham had actually said. Mr Jover said the alteration was to give context.

328. The Tribunal concludes that these actions did not impact on the Claimant. It was not the cause of undue delay and Mr Mabley considered the Code complaint diligently when he had possession of it in place of Mr Jover.

329. On 01 June 2016 Mr Jover informed the Claimant that a report was being prepared and would include an outcome of the groundwork and recommendations and would also discuss the next steps.

330. On 03 June 2016 Mr Jover reported back a summary of his findings to Ms Nair and requested information on how to proceed suggesting proposed next steps and recommending that they should be supported by Business Integrity and/or local legal counsel.

331. On 06 July 2016 the Claimant e-mailed Mr Koler with cross-reference to his earlier e-mail of 20 April 2016 complaining that she had received no feedback from raising her concerns with him, that they amounted to public interest disclosures, and that she had found an unwillingness on the part of the company to continue her employment "after the end of my fixed term assignment", which was to her detriment.

332. Ms Anny Tubbs, VP Business Integrity, replied to Mr Jover by e-mail dated 11 July 2016 stating that she had discussed the matter with Ms Nair and Ms Ritva Sotamaa, Unilever's Chief Legal Officer, and confirmed to Mr Jover that the matter should be investigated further as a Code complaint.

333. Due to personal circumstances relating to Mr Jover and the scope of the investigation that would occur he did not have the capacity to undertake the investigation required and Mr Simon Mabley, HR Director took over the matter at the end of July 2016. Mr Mabley confirmed that he took over an investigation into whether there was an inappropriate relationship in existence between Mr McGaghey and Mrs X and the Australia misuse of expenses issue but during the investigation it led to considering potential advantage to those involved. Mr Mabley took the notes of the meetings with the Claimant and Mr Latham as briefing notes and background and decided that he would undertake a more forensic investigation starting with a blank piece of paper.

334. The Tribunal accepts Mr Mabley's evidence that he considered the best approach to the matter and sensibly decided that it was most effective to investigate all of the potential documentary evidence and produce any evidence to Mr McGaghey for his comments, rather than approach him direct and react to his response. The Tribunal accepts that Mr Mabley's investigation involved an extensive review of a very substantial amount of e-mail and messaging traffic between Mr McGaghey and Mrs X, together with expenses data. There were around 3,000 e-mails of which only around 10 indicated a breach of the Code. Mr Mabley liaised with Mr Mr Koler and Ms Morag Lynagh, Employment Policy and Practice Director, to review matters as the process progressed. Mr Mabley interviewed Mr McGaghey on 7 November 2017 and Mrs X the following day. Mr Mabley concluded his investigation and found that there had been a breach of the Code by both Mr McGaghey and Mrs X in that there had been a close personal relationship that had not been disclosed to the business. There was no finding of misuse of expenses.

335. As a result of the investigation Mr McGaghey resigned from the organisation and Mrs X received a disciplinary sanction.

336. The Tribunal therefore concludes that the Code matter commenced before the termination of the Claimant's employment and continued with the undertaking of a considerable amount of work afterward her employment ended. The

Tribunal accepts the reasons for the delay in producing the outcome which was due to a number of genuine factors.

337. There was no requirement under the Code Guidance to allow for updating the Claimant on progress, or to inform her of any outcome, or necessarily involving her in the investigation.

338. The Tribunal also concludes after considering all the evidence that the investigation into the Code complaint was not stalled in an effort to delay the process until after the Claimant had left the organisation with a view to its abandonment, as alleged by the Claimant.

339. The Tribunal also finds that Ms Taylor was not endeavouring to conclude the Claimant's termination payment negotiations to speed the Claimant's exit from the organisation and to ensure the Code complaint investigation would also come to an end.

340. The Tribunal concludes that the Claimant's protected disclosures were not an influence on the Code investigation process to an extent that was more than trivial. The process and decision had not been negatively influenced by the disclosures.

Time limits and correct Respondent

341. The Claimant's successful claim regarding her grievance is in time and is successful against the Second Respondent being the employer of Ms Taylor and Mr Kitsos. The successful claim regarding the non-provision of the redundancy advice and the terms of the 'at risk' letter is also in time as the Tribunal concludes it forms part of an act extending over a period with the grievance issue and is successful as against the Second Respondent. Ms Taylor is the connection and her motivation was similar on each occasion.

Dismissal

342. The Tribunal concludes that the principal reason for the Claimant's dismissal by the First Respondent was the ending of the Claimant's fixed-term IA contract and therefore was for 'some other substantial reason'.

343. The Claimant's IA contract was for a genuine purpose and agreed for a fixed-term of three years, which the Claimant was fully aware of at all times during her work within the UK and prior to making any of the alleged protected disclosures. Unilever was substantially reducing the number of IA contracts, which changed the applicability of that type of contract to the Claimant and her IA contract was terminated as a consequence of those circumstances. The dismissal was therefore for some other substantial reason of a kind justifying the dismissal of the Claimant holding the position that she held (the Tribunal refers to the Court of Appeal decision in **North Yorkshire County Council -v- Fay** [1985] IRLR 247).

344. As recorded an e-mail dated 19 November 2015 by Mr Litmanovich: "Andrea Pirie: Once her contract is over, she has either to come back to Latam or leave the company. I had a discussion with her and will have another one in February/March to define. She knows perfectly well. She is fine to leave if we do not find a proper role back in Latam. She does not want to come back to her "home" MCO". The Tribunal concludes that this is an accurate description of the conversation that occurred. Mr Litmanovich was not aware of any alleged protected disclosure and the Claimant was aware of the anticipated problems with role availability in the context of the Future Finance restructure and that other International Assignees, such as those returning from Switzerland, were also part of the equation. In an e-mail to Mr Weiner on 22 January 2016 requesting a meeting, the Claimant states: "My stay in the UK will end in the summer, and I wanted to ask you for some career advice, please".

345. The Tribunal concludes that the Claimant's employment was not terminated by reason of redundancy in law (see section 139 of the Employment Rights Act 1996).

346. It was expressly agreed that the IA contract would be governed by "UK law" (which in the Claimant's case must mean England and Wales). It was not argued by any party that the Claimant's employment was or was not redundant in law with regard to Central America.

347. However, Unilever has an internal meaning of redundancy under its own procedures which is a generic description and is not rooted in the law of any Country or geographic cluster, as demonstrated in option (a) in the 'End of Assignment' provisions in the Letter of Assignment.

348. The Unilever International Assignments Policy for Global Assignments provides that global assignments may end in one of three ways: retransfer to a new assignment in a new country; localisation becoming a local employee in the host country and leaving the business. The Policy addresses "involuntary termination" and states: "In the event that the global assignee is involuntarily terminated without cause (i.e. made redundant)" and refers to consequent severance payments. When the Claimant enquired with the Respondent early on in her assignment how redundancy will work for her in the UK, the response was in terms of severance payments.

349. The Global Mobility 'New Policy End of Assignment Guidelines for HRBP's' dated April 2011 in the Chapter on 'Redundancies' states: "'Navigating redundancy when an individual is on an international assignment is extremely complicated due to the employment law and tax implications in both the home and host country. . . For all redundancy situations, the principle that must be followed is to distinguish between the individual's 'employment' relationship with the company rather than their international assignment. . . Actually determining if an individual is redundant is the most difficult part of the redundancy process. Typically, if the individual has reached the end of their assignment and localisation is not being considered, then redundancy may apply if the position in the host country is being made redundant, there are no alternative assignments and the position is not available in the home country.

However, in some cases, an individual may wish to remain in the host country but the business neither wants to keep the individual on localised basis or on assignment. In these cases, the individual may have acquired mandatory employment rights in the host country; this means the host country must check whether the actual 'role 'rather than the individual is being made redundant. For the role to be redundant, there needs to be a fundamental change in the nature and responsibilities of the role of the role to be eliminated in its entirety. If the role is not changing or being eliminated then due care must be taken to confirm that individual has any ongoing legal right to remain in the position. Any termination of employment in the circumstances must be a fair termination in accordance with the laws of the relevant country".

350. The Tribunal has also referred itself to the sections on 'Legal Employer' and 'Acquired Mandatory Employment Rights' within the Redundancy Chapter in that Policy.

351. The Claimant's IA position was filled by Ms Johnson and although she was on a lower grade to the Claimant, a 3a as opposed to a 3b, the Tribunal concludes that there was no material change to the duties and functions undertaken. It was an example of Unilever bringing through identified talent as mentioned above. Accordingly, the work and the number of workers to do the work that the Claimant was employed to do had not ceased or diminished in a general sense.

352. The First Respondent remained at all times the employer of the Claimant. The identity of Ms Johnson's employer was not established, but as she was moving to London from a position in her Home country in Africa, it is reasonably safe to assume that her employer was not the First Respondent.

353. It was also not established whether or not there were any other employees of the First Respondent working in a similar role on an IA contract in the UK.

354. The Tribunal notes and agrees with the observation in the advice from Deloitte that the driver for the Claimant leaving her employment appears to be financial and not organisational.

355. The Claimant's position at this hearing was there was no redundancy situation.

356. In any event, whether not there was a redundancy situation in law that applied to the Claimant, the Tribunal is satisfied that the principal reason for dismissal was the ending of the fixed term IA contract. The Tribunal concludes that although the Claimant was given an 'at 'risk' letter relating to redundancy, this was contrary to the advice received from Deloitte, Ms Taylor did not believe that it was a redundancy in 'UK law' after receiving the advice and this was a description adopted mainly for tax purposes and was not the principal reason for dismissal.

357. The Tribunal also concludes that whether the decision to dismiss was for redundancy or 'some other substantial reason', the considerations relating to fairness overlap to a large degree.

358. It was not made clear in evidence who was the ultimate decision maker with regard to the Claimant's dismissal and the discontinuance of her International Assignments.

359. Mr Litmanovich was the only witness from the Claimant's contractual LATAM Cluster who seemed to have input and provide advice regarding the Claimant's future moves.

360. The Claimant's 'at risk' status and dismissal were based on LATAM FRC resource planning decisions. The Committee decided in 2015, when Mr McGaghey was still the Claimant's line manager, that the Claimant was not a strategic resource. Mr Litmanovich, as the LATAM Finance VP, was a member of the Committee and had primary responsibility for Finance resourcing decisions in the Cluster.

361. Mr Litmanovich stated in oral evidence that he was asked by Ms Rajalakshmi to give his opinion on what would happen with the Claimant and he told her that from a LATAM perspective she would not be given another IA, would have to return to her Home region and if another role could not be found she would have to leave the company, which is consistent with his e-mail communications set out above. Mr Litmanovich was unaware of the Claimant's Code complaint.

362. Irrespective of the actual individual decision maker (if there was one), what is certain is that the decision that the Claimant's IA would come to an end was made significantly before any of the Claimant's alleged protected disclosures. The Claimant recognised it herself in an e-mail exchange with Ms Hanna Marcholewska, Global Mobility Advisor, in June 2013 and the Claimant's repatriation was being openly discussed in June and October 2015.

363. Therefore, it is not necessary for the Tribunal to establish what was in the mind of the purported decision maker. The end of the IA contract was obviously foreseen before any protected disclosure and the termination options were agreed in advance. There is no doubt that the number of International Assignments were being substantially reduced and the decision not to place the Claimant on another IA contract was made without reference to the protected disclosures. Indeed, in evidence the Claimant was in difficulty explaining why the actual 'reason' for her dismissal was because of any of the alleged protected disclosures.

364. The Tribunal on balance concludes that the reason for dismissal by the First Respondent was not any of the Claimant's protected disclosures as upheld, or as alleged.

365. With regard to the standard unfair dismissal claim, the Tribunal concludes that the reason for dismissal was a permissible reason, but that the dismissal was unfair.

366. In the circumstances, including the size and administrative resources of the First Respondent's undertaking, it acted unreasonably in treating the

termination of the Claimant's IA contract as a sufficient reason for dismissing her, when determined in accordance with equity and the substantial merits of the case.

367. There was a genuine belief in the reason for dismissal by the First Respondent.

368. However, the Tribunal concludes that part of the process relating to the Claimant's dismissal was delegated by the First Respondent to the HR facility of the Second Respondent.

369. Although the position regarding visas was within the range of reasonable responses (indeed it was probably correct), it was objectively unreasonable for the UK BFS positions and the Deos role not to be brought to the Claimant's attention, or be offered to her but subject to local terms and obtaining a suitable visa or visa extension, and also through not explaining to the Claimant the understood potential difficulty over obtaining visas.

370. The Claimant may have had some input into the visa issue and perhaps have gained some support for her applications. Further if Ms Rajalakshmi felt reasonably able under Unilever processes to allow the Claimant to apply for the Deos role knowing of the visa situation but with a view that if she was the best candidate that was "something that would be looked at" and if the Claimant was the best candidate for the role then the necessary application for her to work in the UK would at least be made, then the same approach could reasonably have been adopted with regard to the UK based BFS posts. It was objectively unreasonable not to raise these matters with the Claimant for her input when she was facing the termination of her employment and had expressed a view to being potentially amenable to working on local UK terms and conditions.

371. Any *Polkey* considerations are a matter for the remedy hearing. In that respect it should be noted that outside the positions mentioned above, the Claimant has not identified any post for which she would have applied and which the Respondent failed to consider. The Claimant suggested in evidence that she had purchased a house close to school in anticipation of staying in the UK, but in fact she had purchased it in 2013.

372. The Tribunal also further concludes that the non-provision to the Claimant of the redundancy advice from Deloitte when it had central importance on the Claimant's tax position and where some tax advice had been provided was objectively unreasonable, as was the misrepresentation of the position in the 'at risk letter' having received that advice. An objective reasonable employer would be fair and transparent over the position and reasonably set out the risk to the employee.

373. It should be confirmed that the Tribunal has reminded itself that it cannot substitute its view for that of a reasonable employer and reaches its decision applying an objective standard.

374. With regard to whether the Respondent should have extended the Claimant's Tier 2 visa and placed her into a job of shorter duration (e.g. a maximum of two

years on the Tier 2 visa) or placed her in a short fixed-term post on local terms, while she waited to see if a position back in LATAM materialised, the Tribunal concludes that given the Claimant's IA contract was at an end; there was not an offer of an additional IA contract for the reasons set out above; the options upon termination were agreed in advance; and it was also not possible to place her into a local position on a short-term basis on a non-tier 2 visa without the resident market test applying, it was not outside the range of reasonable responses for the alternative job considerations to focus on the Claimant's suitability for permanent and indefinite suitable alternative employment and to consider visa practicalities.

375. Although Mr Litmanovich had mentioned possible short-term roles in the e-mail communications above, they were referenced to local conditions and he confirmed in evidence that he did not know anything about the local UK visa situation.

376. In addition, the Claimant did not identify in evidence any positions that subsequently became available in LATAM (or the UK) had she remained in employment in the UK for a short period of time.

377. The Tribunal has considered all the circumstances set out in the findings of fact above, including the size and administrative resources of the employer's undertaking, and concludes that the dismissal was objectively unfair with regard to the matters identified above, particularly having regard to equity and the substantial merits of the case.

378. Although not being the 'reason' for dismissal, whether or not the prior protected disclosure detriments set out above which caused the dismissal to be unfair also caused losses that flowed from the dismissal, as identified in **Jhutti**, is a matter for the remedy hearing.

Employment Judge Freer
Date: 21 November 2018