



THE EMPLOYMENT TRIBUNALS

Claimant **Stacey Macken**

Respondent **BNP Paribas London Branch**

HELD AT: **London Central**

ON: **4-18, 21-29 March 2019**
 Chambers 28-31 May 2019, 14-16 August 2019

EMPLOYMENT JUDGE: **Mr J Tayler**

Members: **Dr V Weerasinghe**
 Mr M Simon

Appearances

For Claimant: **Sheila Aly, Counsel**

For Respondent: **Daniel Stilitz, Queen's Counsel**

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The Claimant's contract of employment is subject to an equality clause entitling her to equal pay with Comparator 1.
2. The Claimant was subject to direct sex discrimination and victimisation to the extent set out in the reasons for this Judgment.
3. The claims of protected disclosure detriment and harassment fail and are dismissed.

REASONS

Introduction

1. By Claim Forms submitted to the Employment Tribunal on 19 December 2017 and 8 August 2018 the Claimant brought claims in respect of:
 - 1.1 equal pay,
 - 1.2 direct sex discrimination
 - 1.3 harassment related to sex
 - 1.4 victimisation; and
 - 1.5 detriments done on the ground of protected disclosures

Issues

2. The issues for determination have been clarified and narrowed, to an extent, during case management and during the hearing. The finalised issues for determination were as set out in the finalised list of issues provided for the purpose of the closing submissions.

Evidence

3. The Claimant gave evidence.
4. The Claimant called:
 - 4.1 Beverley Nasmith, a friend
5. The Claimant provided witness statements from the following witnesses who she did not call:
 - 5.1 Julia Kostic, Managing Director in the Prime Finance division of Deutsche Bank
 - 5.2 Connor Finnegan, product development associate in the Prime Brokerage business of Deutsche Bank
 - 5.3 Vishal Thawani, product management associate in the Prime Brokerage business of Deutsche Bank
 - 5.4 Eoin Hourigan, Product, Development for the Synthetic Prime Brokerage at Deutsche Bank,
 - 5.5 Georgina Chapman, personal assistant to Matthew Pinnock

- 5.6 Pierre Yves Chauveau, IT Project Manager
- 5.7 Anna Gallagher, member of the Prime Brokerage Technology department
- 5.8 Marc Sugar, Product Manager for the Prime Finance Business
- 5.9 Margaret Macken, the Claimant's mother
- 5.10 Jennifer Jackson, Matthew Pinnock's personal assistant
- 6. Of the witnesses who were not called by the Claimant the Respondent only sought to cross examine Mr Sugar and Ms Gallagher, who were not available. We gave little weight to their evidence as they were not prepared to attend the tribunal. The other witnesses were not called because the Respondent had no questions, either accepting the evidence or contending it was not relevant to the issues.
- 7. The Respondents called:
 - 7.1 Danielle Taylor, HR Business Partner
 - 7.2 Denis Pihan, Head of International Product Development
 - 7.3 Christine Inge, Head of Client Solutions, Prime Solutions and Financing for APAC
 - 7.4 Emma Turner, HR Business Partner
 - 7.5 Samantha Skocypec, HR Business Partne
 - 7.6 Kirsty Gurr, Head of Client Solutions EMEA
 - 7.7 Erica Moon, Head of UK OPC, Security and Continuity
 - 7.8 Ceri Lawrence, Senior Employee Relations Advisor
- 8. The Respondent also provided witness statements from:
 - 8.1 Antoine L'Huillier, International Prime Brokerage Product Development Manager
 - 8.2 Sebastien Aude, Head of Multi-Asset Prime Services for EMEA
- 9. We gave their evidence little weight as they did not attend for cross-examination.

10. The witnesses who gave evidence before us did so from written witness statements. They were subject to cross-examination, questioning by the Tribunal and, where appropriate, re-examination.
11. We were provided with an agreed bundle of documents. References to page numbers in this judgement are to the page number in the agreed bundle of documents.

Findings of fact

The Respondent's prime brokerage business

12. The Respondent is the London branch of the global banking and financial services company, BNP Paribas.
13. BNP Paribas operates a prime brokerage business from various locations including the London Branch. We accept Mr Pihan's overall description of Prime Brokerage as a package of services offered to hedge funds which typically include global custody, securities lending and financing. Prime Brokerage can be sub-divide into Cash Prime Brokerage (financing assets owned by the client), Synthetic Prime Brokerage (financing assets dealt with synthetically via over the counter bi-lateral financial trades) and FX Prime Brokerage.
14. We accept Mr Pihan's explanation of certain of the key terms used in Prime Brokerage business (without adopting his evidence as to whom is responsible for each component):

"Platform – means the technological and operational platforms through which each of the Respondent's 3 Prime Brokerage services are provided. There is a dedicated platform for each Prime Brokerage Service. ...

Product – are client offerings that sit within a platform (e.g. listed derivatives, financing of securities, client services, corporate actions, payments, are all products that will sit within a Platform). Products are therefore subsets of the Platform, which feed into the proper functioning of the Platform. ...

Project – means an initiative that is run to improve the services provided by the Bank through a Platform. This may involve interacting with a number of Product areas within a Platform. ...

Purchase and integration of Prime Brokerage business of Bank of America

15. In September 2008, BNP Paribas acquired the Prime Brokerage business of Bank of America. Mr Pihan moved to the Prime Brokerage Front Office to assist with the integration of the business into BNP Paribas' existing Prime Brokerage business. The integration of the international Prime Brokerage

platform was a two year project that Mr Pihan undertook with Sam Beaker in the US and Comparator 2 in London. Comparator 2 reported to Mr Pinnock.

16. A management decision was taken that the platform would go live in September 2012. Comparator 2 decided that he did not want to participate in the "go live" process and resigned. Mr Beaker also resigned. This left Mr Pihan as the only person in a product development role working on the International Prime Brokerage platform. The Respondent decided to recruit a further member of to report to Mr Pihan once the project was live. The Respondent contended that a person was sought to replace Comparator 2. However, the role would necessarily be significantly different as Comparator 2 had been involved in setting up the prime brokerage platform; whereas the new role would be to work on the platform and develop it after it had gone live. Mr Pihan accepted that the cash prime brokerage platform went live before it was fully complete.

Recruitment of the Claimant

17. The Claimant was first interviewed by Mr Pihan, having been headhunted by Oliver Bebb of Carisbrook Partners, on 2 August 2012. The only comment recorded was "No - too light".
18. The Respondent did not keep any detailed records of the recruitment of staff to Mr Pihan's department. There are no notes of interviews and very limited records of the recruitment process. Mr Pihan said in evidence "“unfortunately, the documentary evidence is a bit light and I definitely apologise for that.” Mr Pihan stated that he made notes on the Claimant's CV. They were not kept. At no stage in the recruitment process were set questions asked. There was not assessment of candidates against a job description or person specification. No notes of the questions asked and answers given in the interviews were kept. There was no scoring against set criteria.
19. At the time of the first interview, the Claimant was employed by Deutsche Bank as Vice President, Prime Brokerage - Product Development Manager; having been in that role since June 2005. We accept that the Claimant accurately described her experience in her CV; including being an experienced project manager leading global projects with offshore/onshore teams, having had 7 years managing Product Development for International Prime Brokerage and having designed and delivered client facing and internal front to back systems. Before taking up the role she had been a contractor for prime brokerage for Deutsche Bank from October 2004 to June 2005 dealing with Client Service, Operations, Finance, Tax, Legal, and Compliance. The Claimant had a background in accounting and audit. The Claimant has a Bachelor Commerce & Administration from Victoria University, New Zealand and in 1998 became a Chartered Accountant of the Institute of Chartered Accountants of New Zealand.

20. Mr Pihan gave evidence that he did not consider that the Claimant would be an appropriate replacement for Comparator 2 as she did not have sufficient experience.
21. The Claimant's CV does not demonstrate that she lacked experience, particularly as Mr Pihan accepted that the Deutsche Bank prime brokerage platform was "significantly more advanced and mature" than that of the Respondent.
22. Mr Pihan question the Claimant at length during his interview about the Deutsche Bank prime brokerage platform and her experience there.
23. Mr Pihan did not keep any contemporaneous record of why he considered the Claimant was "too light" or what precisely he meant by that term. When it was put to Mr Pihan that the Claimant had lead large global projects at Deutsche Bank, he said "Yes, indeed".
24. On 24 September 2012 the Claimant accepted voluntary redundancy from Deutsche Bank.
25. The Claimant was interviewed again in November 2012 by a number of managers; Mr Pihan, Matt Pinnock (Head of Global Prime Solutions & Financing), David Lonsdale, Jeff Lowe, Marc Sugar and Giulia Bennett, Human Resources Resourcing Partner. Mr Pihan accepted that Ms Bennett would not have been able to assess the Claimant's technical abilities. There are no notes of the questions asked and answers given in the interviews.
26. It is not clear to what extent the email exchanges at about this time reflect the views of those who had interviewed the Claimant, including Mr Pihan and Mr Pinnock, the, or those of Ms Bennett. The documents appear to record the views of Ms Bennett, although the Respondent contended it was a distillation of the view of all the managers. We have no records of the decision making of Mr Pihan and Mr Pinnock or the other subject experts. It was recorded that the Claimant was "Recommend with Reservations" and that:

"It is a business decision as to whether they require someone more senior, who had the gravitas to lead and direct global projects, in this standalone role. Stacey is clearly more junior than the other comparatives we have seen for this opportunity. She comes across as someone who is dependable and has some good execution experience in the PB arena. Although, only more recently has she had some exposure to global projects, she would need support and management and doesn't yet have the breadth of experience to be the lead."
27. The key decision makers were Mr Pihan and Mr Pinnock. We conclude that Ms Bennett was recording a summary that was mainly of what they had said about the Claimant. It was Mr Pihan and Mr Pinnock who played the main role in deciding that the Claimant was to be treated as if she was a "junior" hire.

28. In fact, the Claimant had a leadership role at Deutsche Bank and was significantly involved in globalising the entire prime brokerage platform.
29. On 8 November 2012 Ms Bennett sent an email stating:
- “I enjoyed meeting with Stacey. She has a more junior profile than the others we have met to date for this position. In an ideal world, if we could hire two, she would be a good addition to the team and could provide valuable support.”
30. Again, it is unclear whether this reflects Miss Bennett’s personal view or that of others who had interviewed the Claimant, particularly, Mr Pihan, who regarded the Claimant as a potential junior hire. We conclude it is the latter as Ms Bennett was not in a position to form a view of the Claimant’s technical skills. Mr Pihan’s suggestion that the Claimant was “junior” was inconsistent with the experience shown on her CV. We are not persuaded that the interview process demonstrated that the Claimant did not have the experience set out in her CV.
31. On 9 November 2013 Mr Pinnock wrote: “Feedback consistent, would make a great junior hire”. A view had emerged that the Claimant would be treated as if she was a “junior” hire when this was inconsistent with the material the Respondent had at the time.
32. Although it is the Respondent’s case that they were initially looking to recruit a person to replace comparator 2 but had to settle for a more junior hire; within the formal HR files there are no job descriptions and/or McLagan codings for senior and junior roles. There is nothing to suggest that the roles were given a McLagan code until they were recruited to.
33. It appears that Jeff Lowe, Global Head of Prime Services Product Development and Global Head of Prime Finance, had a more positive view of the Claimant and strongly supported her recruitment. On 9 November 2012 he recorded “I have a high level of confidence we will hire Stacey”. He is not recorded as suggesting that she would be a junior hire.

Negotiating the Claimant’s salary

34. Once the decision had been taken to recruit the Claimant, Mr Pihan and Matthew Pinnock took the lead in negotiating her salary through the head-hunter, Mr Bebb. Mr Pihan stated that Mr Pinnock made the final decision. We accept his evidence.
35. On 8 November 2012 Ms Bennett included in an email a salary range of £120,000 - £130,000. She quoted a McLagan Code Base with; low £108.9k, median £120k and high £130k. The McLagan code is an industry benchmarking process used by the Respondent. It was not relied upon as amounting to a job evaluation scheme.

36. On 15 November 2012 Mr Pihan suggested offering the Claimant a salary of £110,000. Ms Bennett responded stating that the Claimant may be disappointed by such an offer:

“She felt she was underpaid. She may be disappointed with a £5K increase if we hire her to do a big job alone? What about £115K? Its unlikely she will receive a pay increase in line with the market for some time”

37. Ms Bennett thought the sum they were proposing to offer was under the market rate.

38. Non-the less Mr Pinnock and Mr Pihan decided to stick at £110,000, Mr Pihan sent an email to Mr Pinnock on 15 November 2012 stating:

“I just made it £110 as you proposed”

39. We consider it is clear that Mr Pinnock and Mr Pihan were seeking to recruit the Claimant at the lowest salary within the McLagan code base and below the level of £120,000 that Ms Bennett had set out. The Claimant’s base salary at Deutsche Bank was £105,000.

40. There was then a process of negotiation through Mr Bebb at the end of which the Claimant indicated that her expectation was of £130,00. However, in an email dated 19 November 2012 the Claimant stated that she would be prepared to accept £120,000 but that it was important that she was “positioned at the senior VP level which can be justified by my 8 years’ experience as VP at DB”.

41. The Respondents offered an annual salary of £120,00 to the Claimant which she accepted.

42. On 20 November 2012 Mr Pihan produced two job descriptions for a junior role and a senior role. The job description for the junior role referred to “3 to 5 years’ experience in Front Office Prime Brokerage” which justified the “junior” categorisation. This is a considerably lower level of experience than the Claimant had. Mr Pihan accepted in evidence that the Claimant had 8 years’ experience in front office prime brokerage. Mr Pihan saved the job descriptions on his own computer drive but did not share them with anyone else. They were disclosed for the first time at the hearing. The reality is that the Claimant’s experience fits her for the senior job description, not the junior. In any event , the job descriptions were not used.

43. On 6 December 2012 the Claimant was offered the role of Global Prime Services Product Manager. The contract recorded:

“You are engaged as a Global Prime Services Product Manager, reporting locally to Matthew Pinnock currently the Head of International Prime Brokerage and functionally to Denis Pihan currently the Head of Product Management, Europe & Asia within Global Equities Commodity Derivatives ..

You will be eligible to participate in the Company's discretionary annual incentive award scheme, subject to the terms and conditions of its scheme as in force from time to time. The first year for which you will be eligible to participate in the Company's discretionary annual incentive award scheme will be the year 2013 (payable in the first quarter of 2014). ...

Payment under the Company's discretionary annual incentive award scheme is at the absolute discretion of the Company ...”

Commencement of the Claimant's employment and job role at that time

44. The Claimant commenced employment with the Respondent on 14 January 2013.
45. In January 2013 an appraisal document was produced for the Claimant including objectives and a job description. The job description set out a series of duties and responsibilities. We accept that our focus must be on the duties actually performed. However, we do not consider that the job description is near valueless as suggested by the Respondent. We consider it is a reasonable reflection of what the job entailed;

“The role of Product Management team for the Prime Brokerage business is to provide front office leadership to all Technology and Operations infrastructure related projects for the business.

Team members are Prime Brokerage subject matter experts who leverage their knowledge and skills to improve the product capabilities and efficiencies of the business.

The role includes driving client revenues by assuring that the most valuable projects are prioritized and advanced with urgency and effectiveness.

The job requires close relationships across the front office and the corresponding Technology, Operations and other support groups across the organization.

Members of the Product Management team have the following key duties and responsibilities:

- Platform development
 - Identify opportunities to improve the capabilities of the Prime Brokerage business and lead the projects to effectuate
 - Coordinate with management and stakeholders to prioritize projects (based on revenue potential and risk mitigation to business)
 - Develop strategies for discussing projects with members of the sales teams and internal support groups
- Project management and approvals
 - To build relationships with key support partners
 - Create efficient process for managing projects
 - Present information to support partners and create consensus on approach
 - Document project, its progress and any related policies or procedures
- Client-focus
 - Work with Sales team to understand client's needs for platform and incorporate into platform
 - Advance client-originated requests to improve or enhance product offering
- Business building
 - Build relationships with front office partners to enhance revenue production and drive business development
- Organizational responsibilities Direct contribution to BNPP operational permanent control framework

46. The core element of the job description is carrying out projects to improve the platform.
47. Both the Claimant and the Respondent at our request produced summaries of what they contend the jobs involved. On reflection we treat such documents, produced after the event, with caution and note that the Respondent's analysis appears to focus on the latter period after Comparator 1 had been given some additional responsibilities over time.

48. At the time of her recruitment the Claimant played a principal role in managing the International Cash Prime Brokerage and Synthetic Prime Brokerage products. Mr Pihan was asked whether the Claimant was given full responsibility for the platform at the time of recruitment and said "The claimant was not seen as someone for whom we could readily or yet give the full responsibility of the platform. That would be something that the claimant would need to prove in the years to come."

Recruitment of Comparator 1

49. In February 2013 the Respondent commenced discussions with Comparator 1 about joining the prime brokerage team. On 21 February 2013 Mr Pihan sent an email stating:

"Jim and Ahmed both met [Comparator 1] today and provided positive feedback (experience, knowledge & personality)."

50. There is no formal record of the meeting.
51. Comparator 1 provided a CV that demonstrated his most recent experience was in EMEA & ASIA Equity Finance (stock loan, repo & swaps) at Merrill Lynch from 2007. He had been a Front Office Business Manager at Dresdner Kleinwort Wasserstein from 2002 -2007 which was a predominantly administrative role which was taken into account by the Respondent as relevant experience; whereas the Claimant's experience in non-administrative banking roles was not included, so her start date in the industry was said to be 2005. Comparator 1 referred to international "exposure" to assignments in UK, Germany, Switzerland. Mr Pinnock accepted that Comparator 1 "may not have had experience in Product Development". We find that at the time Comparator 1 joined the Respondent he did not have direct experience of product development for prime brokerage.

Negotiation of salary

52. On 12 March 2013 Mr Bebb informed Mr Pinnock that Comparator 1 salary was £125,000 not £145,000 as he had previously suggested. On 13 March 2013 Mr Bebb wrote to Matthew Pinnock;

"I haven't had a chance to catch up with Comparator 1 yet but am hoping to have a coffee with him at some point today. His brief feedback yesterday was very positive, which is obviously great. I wanted to give you an outline of his situation and his drivers. Unlike Stacey, who had left DB Comparator 1 is in a secure spot at BAML and is very well regarded. With Comparator 1 we have a candidate who I have targeted because he is arguably the best on the street at his level covering Equity Finance and Delta 1 product management. It is not going to be easy to pull him out of BAML because they will fight to keep him. As

you know, we are in a market where counter-offers for good people are especially aggressive, primarily because there is no guarantee that headcount will be given to find a replacement hire. This is also a highly specialised role and they would find him very hard to replace were they to try.

One of his drivers is promotion to Director. Fortunately BNPP does not have corporate titles in Europe, so that is not a problem, but he is aware of what Directors are paid. ... he's being given substantial assurances he will be moved to D at the end of this year. He was bitterly disappointed not to reach D level this year for a second time. At this point his basic salary will also move to £175k. BAML will also be able to counter-offer him with the promise of this."

53. Mr Pinnock replied:

"Sounds good and you should be in sales!

We will not be able to hire a £125k person at anywhere near £175k and I wouldn't view him as the best on the street either, though you clearly are selling your book so I understand!

Let's wait and see what he responds with."

54. Mr Bebb Responded:

"Yeah I figured 175k might be a stretch. What about putting something in place to give him comfort that promotion to D is a realistic target?

In all seriousness, Eq Fin / D1 product development specialists are thin on the ground. Of those I have met (which is most) I would rate him as amongst the better ones . Certainly of those we could realistically move.

Will let you know once I 've met with him."

55. On 13 November 2013 Ms Bennett sent an email to Mr Pinnock stating:

"Please confirm you are supportive to offer Comparator 1a base salary of £160,000"

McLagan coding for Comparator 1

56. Ms Bennett suggested a McLagan Code of EQG-WB-CCPD. The last letter of the coding, D, is a grade higher than the Claimant who was coded E. Ms Bennett stated that the McLagan Code Base was; Low £130k, Med £160k, HQ £180k. She gave as justification;

"Solid Equity Finance background

Strong Product Development experience

Good cultural fit”

57. There is no clear explanation in the documents, by reference, for example, to an amended job description why Comparator 1 was offered a salary based on a McLagan Code one level higher than the Claimant. In evidence Ms Taylor accepted that the fact that a potential hire does or does not have a job should not affect the McLagan Code of the role but might be reflected in a sign on bonus. She accepted, as did Mr Pihan, that a personal driver, such as seeking promotion to director, should not affect the McLagan Code. She accepted that the banding should be about the role not the individual being recruited “No, I think that ’ s a fair point . It is about the role”.
58. Mr Bebb wrote on 14 March 2013 stating;
- “Just tried calling, do give me a call back when you have a moment. Had a good coffee with Comparator 1 my summary is as follows:
- He is really bought in to the role and importantly the people, there are no issues on that front
 - I put £155k to him and he said it feels low. He was given assurances of being promoted to D at year end at which point his salary will go to £175k (standard at BAML for all D's)
 - We need to push the salary towards D level because he understands that the promise of promotion at year end with BNPP would be too much to ask
 - My advice is to offer £160k. In my opinion this is the number we need and I promise I'm not just selling my book!”
59. We consider that the reference to pushing for a D Code shows that the process was led by the recruiting managers. Ms Turner referred to a discussion with the manager. The evidence shows that Comparator 1 was given a higher banding to support his higher salary; rather than the banding genuinely reflecting a different and more senior role. This process was driven by Mr Pihan and Mr Pinnock
60. Mr Pinnock replied:
- “I will suggest 160k though don't tell Comparator 1 as he needs to get past Benjamin first”

61. On 19 March 2013 Mr Bebb sent an email to Mr Pinnock stating:

"I just had a call from Comparator 1 and the VC with Benjamin went well from his end. He also met a couple of reports called David on the CSR side and Ash in stock loan. He was impressed by all three - he's been very comfortable with the personality/ cultural fit during the course of this interview process. Everyone has been very candid with him about the business, its current state and the vision for the future, and that consistency and honesty has resonated well with him. Do let me know when you get the feedback from their end."

Comparator 1 offer

62. On 27 March 2013 Comparator 1 was offered employment by the Respondent as a Global Prime Services Product Development Manager.

Comparison of contracts of the Claimant and Comparator 1

63. The following is recorded in the note of a Preliminary Hearing for Case Management before Employment Judge Brown on 13 February 2019;

"The Respondent said that It is not contending that the contracts of the Claimant's comparators contain any additional duties which justify the difference in pay. The Respondent does not contend that there are job descriptions which justify the difference in pay, nor any other documents which record different job duties."

Comparator 1 commences work and role at the time

64. Comparator 1 commenced employment with the Respondent in July 2013. His annual salary was £160,000. His salary did not increase during the period under consideration in this case.
65. The Claimant was not told that his role was more "senior" than hers or that he had a higher McLagan Coding. The relevant part of the Prime Services Organisations Chart for Europe produced in July 2013 showed the Claimant and Comparator 1 at the same level. Mr Pihan responded to question about what they would have thought about their roles "Yes. As far as they are aware, they do the same role."
66. Before Comparator 1 started the Claimant had responsibility for both cash and synthetic prime brokerage. When comparator 1 joined the responsibility was spilt with the Claimant having responsibility for the more significant cash prime brokerage and Comparator 1 having similar responsibility for synthetic prime brokerage, although the Claimant retained some involvement in synthetic prime brokerage herself. Mr Pihan accepted that in 2013 synthetics prime brokerage was about 50% the value of cash prime brokerage.

67. We accept the Claimant's evidence at paragraph 34-35 of her witness statement;

"In June 2013 Comparator1 joined our team (Vol 10 P149). He was recruited as a Securities Lending expert to manage projects for the Securities Lending business (Vol 1 P101-103). However, shortly after Comparator1 accepted the offer and before he started, Matt was demoted and lost responsibility for this business (Witness Statement Jennifer Collis). Denis told me they had to give Comparator 1 something to do and asked which of the remaining two businesses I wanted to manage, because Comparator 1 didn't have much experience in either. I chose to keep the Cash Prime Brokerage business, however I also retained responsibility for some of the Synthetic projects due to Comparator1's lack of experience (Vol 1 P92-96; Vol 10 P126-148). Comparator1 really only wanted to focus on the trading aspects and did not want to manage the product end to end. I provided Comparator1 with a handover on the Triaiana project and told him it had taken us 6 months to implement at my previous firm (Witness Statement: Eoin Hourigan). However, it ended up taking Comparator 1 almost two years to implement this, demonstrating he had less skill and experience, and yet was still paid more."

68. At the commencement of his employment Comparator 1 did not have the key responsibilities set out in the Respondent's document headed Product Development Manager Role/Tasks that are suggested to differentiate his role from that of the Claimant. He did not have the overall responsibilities set out in the section Platform Responsibilities; Responsibility/Accountability for the platform or platform management and was not the lead on legal liaison, tax liaison or finance liaison. Mr Pihan stated that Comparator 1 was gradually given greater responsibility over time; He stated Day 9, p106;

"It would have been progressive, so I wouldn't have given, day 1, absolutely everything to any one individual. They have to prove themselves somewhat. ...

So Comparator 1 was given responsibility of the platform for synthetics in 2013. He was the sole product development person actually on the synthetics platform. I would have given him some accompanying for regulations and so on and other topics of that nature and tax but just as a concrete example, 2015, I put him in the deep end on EMEA and again in 2016 on MiFID too. So it's a progressive taking on of responsibility and Comparator 1 was in the deep end starting from 2015, meaning he was responsible and accountable for the implementation of EMEA in 2015 and MiFID in 2016."

69. In the Respondent's closing submissions it was stated "Platform responsibility: Critically, since 2013 Comparator 1 has had overall responsibility and accountability for the Synthetics Platform and is responsible for the management of that Platform: see DP/27." We do not

accept that is the case. We do not accept that Comparator 1 had more responsibility for the synthetic platform than the Claimant had for the, more financially important, cash platform in 2013. Comparator 1's responsibility for the platform grew, to some extent, over time. In the Respondent's chronology they refer to Comparator 1 being given responsibility for product development in Hong Kong in Q1 2014 and being assigned responsibility for Synthetic Prime Brokerage Product Development globally in Q3 2014. We consider the contention that Comparator 1 was given global responsibility for Synthetic Prime Brokerage Product Development globally overstates the position as Marc Sugar continued to have a significant role in the US.

Witch's hat

70. In October 2013 a witch's hat was left on the Claimant's desk. Georgina Chapman, former personal assistant to Matthew Pinnock, stated;

“In October 2013, a large Halloween-style black witch's hat was left on Stacey Macken's desk after some of the Prime Brokerage team, including Matthew Pinnock, had gone drinking at the pub towards the end of the day. I was working later than usual (possibly around 7-8pm) and was packing up to leave as they came back from their drinking session. They were visibly drunk and were racing around the nearly empty office being loud and boisterous. I arrived at work the next morning (around 8am) and there was a witches' hat on Stacey's desk, directly in front of her computer. Stacey arrived into work around 8.45am, which was when she saw the hat and asked me if I knew who had put it there. I told her that I did not know, but I suspected it was one of the drunk team members, because they were the only people in that area of the office the evening before, which, combined with their drunkenness, made them most likely to have done it. Stacey was visibly upset and confided in me that she felt really uncomfortable working with those male colleagues, knowing that one of them had purposefully gone out of their way to leave a witch's hat on her desk.”

71. The Respondent did not ask that Ms Chapman be made available for cross examination. We accept her evidence.

Appraisal for 2013

72. The Claimant and Comparator 1 were appraised for the calendar year 2013. The appraisal included job descriptions that were the same. Ms Turner accepted in questioning that if job duties have changed significantly during the year this should be reflected in an updated job description and job titles.
73. Mr Pihan stated of the Claimant;

“Stacey has had a seamless integration into BNPP and is a valued employee.

In addition, since her arrival she has:

- done an excellent job on the AIFMD Due Diligence
- participated in various compliance and operational reviews
- actively participated in providing market information and guidance to help BNPP teams progress towards a true Prime Brokerage offer
- helped identify and correct a major funding issues with financial impacts
- analysed and developed P&L tools to help the business improve its profitability
- developed a Reset To Date swap report appreciated by PB clients”

74. Mr Pihan gave an overall comment for the Claimant;

“Stacey has had a good year, she helped identify and solve a significant and recurrent operational funding error which was causing significant funding drag. She has consistently shown significant rigor in major tasks such as the BoNY on-site Due Diligence or PnL investigations and projects such as CoA on swaps and client level PnL. We are counting on her rigorous nature to help bring operational expertise up to the level required to service our clients.”

75. The Claimant received an overall grade of 4, meets expectation and was awarded a bonus of £3,822. In her oral evince the Claimant stated that she did not know how the overall grading was reached or what she specifically needed to do to increase her grade. Mr Pihan accepted in evidence that the overall grade was not established by any averaging or weighting of the scores under particular headings. He stated “We don't tally the numbers here to get an overall rating. The overall rating is an overall appreciation of what has been delivered, plus the interaction with the rest of the teams, plus, more importantly, the feedback from the managers of the other front office teams.” He said “So it's not an exact science”. When asked whether there was an written policy on how overall grades were to be assessed he said “They are very generic guidelines but not a specific , detailed policy”. When he was asked if he had explained the process to the Claimant he stated “Probably not in sufficient detail”. He suggested that certain aspect of the appraisal, such as projects were given a greater weight but there was no specific policy. We consider that the process of applying an overall grading was highly subjective and was the process of fixing the bonus payment.

76. Mr Pihan provided an overall comment for Comparator 1;

“A strong start, within less than 6 months Comparator 1 has already made a major impact to the organisation of the swap projects and helped formalise and document sales trading and stock loan procedures. In addition he has earned the respect of his peers and is well on the way to helping bridge the knowledge gap after desk departures. We expect Comparator 1 to progress well over 2014 and become a key member of the team.”

77. This is consistent with our finding that Comparator 1 did not have overall responsibility for the synthetic platform from the start and did not have greater responsibility than the Claimant. There is a reference to work on the swaps “projects” rather than to having overall responsibility for the synthetics platform. The work of the Claimant and Comparator 1 was similar and, if anything, Comparator 1 had less responsibility than the Claimant.
78. Comparator 1 received an overall grade of 4, meets expectation (the same as the Claimant), and was awarded a bonus of £8,492 (more than twice that of the Claimant).
79. Mr Pihan stated that the bonuses were determined by Mr Pinnock. When asked why, when the Claimant and Comparator 1 received the same overall grade, Comparator 1 received more than twice the bonus of the Claimant, he said that Mr Pinnock might have given some “moral undertaking” about the level of bonus when they were recruited. This is not supported by the evidence and we do not accept that any reason for such an undertaking has been evidenced or that such an undertaking was actually given.

Comparator 1 conducts end to end job mapping exercise

80. In March 2014 Comparator 1, at the request of HR, carried out an end to end job mapping exercise for the prime brokerage product development roles. to “understand levels of autonomy and interaction with other teams”. He did not differentiate between his role and that of the Claimant.

Hey Sexy

81. In 2014 Mr Pinnock was overheard by the Claimant and others answering the telephone to friends saying ““Hey Sexy” and “Hey Fuckface”.

The Claimant raises concern about pay in comparison to Comparator 1 in September 2014

82. We accept the Claimant’s evidence that she raised a concern with Comparator 1 and Mr Pihan that she believed that she was paid less than Comparator 1 in about September 2014. We accept that Comparator 1 was supportive and would occasionally bang his fist on the table and chant “equal pay and equal rights!”. When this was put to Mr Pihan he stated “It’s not impossible. I don’t recall.” We accept that the Claimant’s evidence. We also conclude that the complaint made was that there was gender based disparity in pay. The Claimant alleges that raising her concern about the lack of equal pay was a protected act.

Role play comment

83. In about 2014 Matthew Pinnock told the Claimant a story about a friend who had engaged in a prostitution role play with his wife.

Appraisal for 2014

84. The Claimant and Comparator 1 were appraised for the calendar year 2014. The appraisal included job descriptions that were the same. The overall comment for the Claimant was;

“Despite her clear disappointment during the bonus exercise in 2014, Stacey recovered her natural drive contributing actively and managing the daily project review. Subsequently, Stacey showed great motivation in successfully bringing to completion a number of critical business projects such as PnL per client, X due diligence, client reporting enhancements, payments review, etc.”

85. The Claimant received an overall grade of 4, meets expectation and was awarded a bonus of £10,000.

86. The overall comment for Comparator 1 was;

“mature and positive attitude is recognised and appreciated by all his colleagues without exception. He has made significant contributions to the robustness, operational risk management, functionality and scalability of the platform. A key asset for the firm.”

87. Comparator 1 received an overall grade of 3, above expectations, and was awarded a bonus of £40,000.

The Claimant's 2015 pay rise

88. In early 2015 the Claimant was given a pay rise to £125,000. We accept the Claimant's evidence that she was told that this was to do with the “gender pay gap”. This is consistent with an email in 2017 in which Mr Pihan referred to this pay increase, stating that it was “A great indication of our attitude to equality”.

2015 McLagan spreadsheet

89. In May 2015 there is a spreadsheet showing the McLagan banding for the Claimant (E) and Comparator 1 at (D). There is no evidence of their job roles being analysed in any detail against the McLagan criteria.

2015 Global Markets Banding exercise

90. In July 2015 there was a Global Markets Banding exercise. Proposals for global banding were sent out in October 2015 putting the Claimant at C2 and Comparators 1 and 3 at D1. However, there was no evidence of detailed assessment of their job roles that underpins this analysis.

Do you think you're better than us?

91. The Claimant alleges that in winter 2015 Mr Pihan said words to her to the effect "*Do you think you're better than us?*". Mr Pihan stated he made have made such a comment in 2017 when the Claimant was contending that she could complete her work in less time than her colleagues. The Claimant contended the comment was made when she was seeking to help with an issue that had arisen about FXs not being booked correctly on Synthetic trades. On balance we prefer the Claimant's evidence on this issue. It is consistent with the complaints she raised internally from 2017. She relatedly referred to the comment and we do not consider she would have done so had the comment not been made.
92. In November 2015 Mr Pihan moved from Paris to London and thereafter had day to day line management of the Claimant.

Appraisal for 2015

93. The Claimant and Comparator 1 were appraised for the calendar year 2015. The appraisal included job descriptions that were the same.
94. The overall comment for the Claimant was;
- "Stacey has provided a steady and tenacious progress on her projects this year,
- She is particularly appreciated by Client Service for her contributions on the portal and client payment controls.
- However, she needs work on your communication with other teams."
95. The Claimant received an overall grade of 4, meets expectation and was awarded a bonus of £10,000.
96. The overall comment for Comparator 1 was;
- "Comparator 1 is an asset to the firm and a pleasure to work with. More importantly he has been able to achieve positive results and improvements to the platform despite resource challenged environment. Feedback from other managers:
- strengths: easy to work with, pillar for the platform, committed, mature attitude, organised, go-to person for swaps and stock-loan, link with ITO, ...
- developments points: flexibility, risk of being pigeon holed, swaps reporting"

97. Under the heading Team Player Mr Pihan recorded; "pleasure to work with".

98. When asked about this comment Mr Pihan

"I guess the way to say it is that, no matter what we requested of Comparator 1, he would potentially make a joke, which, as you've heard, he is accustomed to do but he would always take on the task and he would perform to a very, very high standard. So obviously, one when is a manager and one can allocate tasks and know that they are going to be done, it always makes the job significantly easier in that regard. So it's someone who is dependable and you can rely upon."

99. For the first time Comparator 1 was specifically referred to as "Autonomous". Mr Pihan recorded "can manage his projects with minimum supervision and intervention" which is a factor of significance in achieving a D McLagan banding. There were also specific comments about strategic thinking.

100. Comparator 1 received an overall grade of 3, exceeds expectation; and was awarded a bonus of £50,000.

Not now Stacey

101. From the time that Mr Pihan moved to London when the Claimant asked him questions he would tend to say "not now, Stacey". He did so often that the Claimant's colleagues made sarcastic comments about it. In a chat on 21 March 2016 in which Mr Pihan was being discussed one of the Claimant's colleagues, Alistair Beckett, wrote "NOT NOW STACEY:-)".

102. On 22 March 2016 the Claimant wrote:

"When I ask questions he says "Not now Stacey" and I am fed up with it".

103. We do not accept the evidence of Mr Pihan that it was said only occasionally as a way of explaining that he was busy, but consider that the comment was rude and dismissive of the Claimant. Although Mr Pihan made a similar comment to Mr L'Huillier on occasion we do not accept it was anything like as frequently as it was said to the Claimant. Mr L'Huillier was not called to give evidence.

August 16 review; is this the right bank/role

104. In August 2016 Mr Pihan met the Claimant for a performance review. During the meeting he said to the Claimant "I wonder if this is the right bank for you" The Claimant reported the comment to Anna Gallagher in August 2016. We do not accept the evidence of Mr Pihan that he only asked whether the Claimant was in the right role. Mr Pihan's evidence on this issue in his witness statement is not particularly clear. He states "That is not my recollection of what I said and, given that my concern was about whether

Stacey was happy in her role and her stress levels, I do not believe that I would have said this". We accept the Claimant's evidence about the comment as she contemporaneously reported it to her colleague.

Recruitment of Antoine L'Huillier

105. In August 2016 Mr Pihan decided to recruit Antoine L'Huillier to a product development role to manage the FX Prime Brokerage product. L'Huillier was from an IT background, The Claimant alleges that Mr Pihan failed to inform her that he had re-assigned responsibilities when Mr L'Huillier was hired into Product Development. This was not explored to any significant extent in evidence.

Recruitment of Comparator 4

106. In October 2016 the Respondent was seeking to recruit Comparator 4, who would lose his bonus at his previous employer on moving. As a result the Respondent agreed to pay him a sign-on bonus.

Christine Inge

107. In November 2016 the Claimant amended the rights of Christine Inge, Head of Client Solutions, Prime Solutions and Financing for APAC, to access a Platform called Puma. Ms Inge was very annoyed about this because the Claimant had not discussed it beforehand. The Claimant requested the amendment to the user access rights because an audit of the Respondent by an external third party had recommended that only people who were responsible for onboarding clients should have access rights to Puma. The Claimant and Kirsty Gurr had discussed the audit suggestion before the Claimant sent the email asking that Ms Inge be removed from access rights. Ms Gurr states in her statement that she was not aware that there would be an issue with removing Ms Inge's access rights, or the rights of any other users. Ms Gurr accepts that the Claimant was following the audit request and that it was reasonable for her to assume that the audit request was correct, so she would not have known that she needed to check with Ms Inge, or any of the other users before she requested that their access be deleted. We accept that the Claimant was not in the wrong in how she dealt with this issue. Ms Inge's view that the Claimant was at fault was fundamental to the negative feedback that she subsequently gave about the Claimant.

Seeking feedback for 2016

108. On 22 November 2016 Mr Pihan sought feedback about the Claimant for her end of year review. There was predominantly positive feedback from Yves-Francois Brogard, Andrew Cavanagh, Mangala Prakash, Rajanikanth Gaddam, Peter Streeten and Stephen Corderoy. There was mixed feedback from Manouella Rabot. There was negative feedback from Ms Inge. Mr Pihan asked Ms Inge to expand on her negative feedback and give concrete

examples and details. It is stated that Ms Gurr also provided oral feedback. There is no record of her feedback.

Appraisal for 2016

109. The Claimant and Comparator 1 were appraised for the calendar year 2016. The appraisal included job descriptions that were the same.

110. The overall comment for the Claimant was;

“Stacey has made important high level contributions this year such as Segregation engine bug fixes, CoA flow improvements, platform synergies. The feedback from her colleagues and partners is mixed:

- positive points:

- rigorous
- significant technical knowledge
- communication clarity (both written and oral)

- improvement points

- ensure that Asian Relationship Managers are on-boarded
- global reach for dedicated topics”

111. The Claimant received an overall grade of 4, meets expectation and was awarded a bonus of £10,000.

112. The overall comment for Comparator 1 was;

“Comparator 1 is an asset to the firm and a pleasure to work with. More importantly he has been able to achieve positive results and improvements to the platform, despite resource challenged environment.

Feedback from managers:

- Great attitude, very solution focused and positive about our platform and evolution.
- Very dedicated and works hard
- Delivers on time.
- Good relationships with his partner, communicates very well.
- His determination and drive on the Trianna project has and will continue to save
- FO time and wasted effort on trade entry.
- He is extremely diligent and methodological and I feel comfort in knowing he is involved in a project.

Improvement points:

- Manage multiple projects

- Be more assertive on certain topics or with ITO”

113. Comparator 1 was referred to as “Clear global leader on all swap product topics.”
114. Comparator 1 received an overall grade of 3, exceeds expectation and was awarded a bonus of £68,950.

Comments on bonus for 2016

115. On 6 January 2017, when discussing Comparator 1’s bonus with Mr Pinnock, Mr Pihan stated;

“Is a solid 3 in my mind, even if I did not sell him very well before Christmas.

He is worth the time I will invest in him to see him grow.

Last year = 50k
Ask= 75k”

116. Of the Claimant Mr Pihan stated:

“Stacey

Is good at what she does and we know her short comings.

Last year = 10k
Ask = 10k”

Claimant finds performance review papers

117. On the evening of 8 January 2017 Mr Pihan accidentally left papers relating to the Claimant’s performance review on his desk overnight. The Claimant read them. As result she was aware of the feedback that had been provided on her.

2016 appraisal analysis sent to the Claimant

118. On 9 January 2017 Mr Pihan sent the Claimant her 2016 Annual Appraisal Analysis in advance of her performance review meeting. On 9 January 2018 the Claimant sent an email to Mr Pihan stating;

“Dear Denis,

Thank you for taking the time to do my review and providing it in advance this year. I really appreciate that as I know how busy you are. And thank you for all the kind comments which are also appreciated.

Please find attached my responses proactively prepared in anticipation of our meeting tomorrow (they are in excel format for your quick review). Given your introductory comment during the HR half yearly review process (*ie that you "did not think this is the right bank for me and what do I want to do about it?"*), I am obviously very sensitive to being marked down unfairly without specific examples and want to ensure that we follow due process.

Could you please consider and address the following:

1. Many of the items that you have marked as "unsatisfactory" were in fact out of my control (eg management putting projects on hold etc) Could you please review these and amend the rating. Or provide specific examples of things that were in my control which you determine to be unsatisfactory, many thanks

2. There are many projects that I have not been graded on which were raised as objectives during the year (ie unscheduled work prioritised by management during the year in response to client onboardings/requests etc)

Could you please add these as objectives and grade them accordingly, many thanks.

Look forward to discussing this in depth with you tomorrow."

119. The Claimant attached a three page excel spreadsheet setting out the areas in which she disagreed with Mr Pihan's analysis and set out her comments and suggested gradings. This was the beginning of a pattern of the Claimant asking for examples of general criticisms and providing detailed responses (with supporting documents) when she was criticised, to support her contention that she was being underscored.

2016 Appraisal review meeting

120. On 9 January 2017 the Claimant attended her Annual Appraisal Review meeting for 2016 with Mr Pihan.
121. On 10 January 2017 Mr Pihan sent the Claimant an amended Annual Appraisal Analysis, increasing some of her grades.
122. On 10 and 11 January 2017 Mr Pihan met the Claimant again to further discuss her Annual Appraisal Review. On 11 January 2017 the Claimant told Mr Pihan that some of the objectives that he had set for 2017 were unachievable due to lack of global agreement and lack of resources.

Objectives for 2017

123. The Claimant alleges as a detriment that she was set unachievable objectives and projects with no budget and having her projects arbitrated (ATS/WTS; Operations Project List; Asset Location Corporate Actions; Train Lisbon Ops in February) and projects assigned to her during the year not being updated as objectives.

January 2017 meeting

124. On 11 January 2017 Mr Pihan sent an email to the Claimant about her non-attendance at a meeting stating;

“If you could not make the meeting you should have told me yesterday

What I don't find acceptable is that when you arrived at 8:45 am, you went to have coffee instead of joining us.

I have moved the meeting to Friday 9am fortnightly”

125. The Claimant responded on 12 January 2017, explaining that the meeting was not accepted in her diary and that she had not appreciated it was taking place, when she had walked past the window of the office. She was on her way to the kitchen to get a smoothie as she was feeling unwell.

Ms Inge asked for concrete examples

126. On 18 January 2017 Denis Pihan sent an email to Ms Inge seeking concrete examples to illustrate her feedback on the Claimant which was provided on 19 January 2017.

Bad cop, good cop?

127. The Claimant alleges that in early February 2017 that an unnamed colleague overheard Mr Pihan saying to Christine Inge, “You play bad cop and I’ll play good cop”. We did not consider that there was sufficient evidence to establish this allegation.

13 February 2017 feedback meeting

128. On 13 February 2017 the Claimant met with Mr Pihan. Mr Pihan said he had received negative feedback about the Claimant. The Claimant contended that there was also positive feedback. Mr Pihan asked her how she knew. The Claimant stated that she had seen her file when Mr Pihan left it on his desk. We accept the Claimant’s evidence that the colour drained from Mr Pihan’s face. Mr Pihan said in evidence that his blood boiled when he heard that the Claimant had read the documents he had left on his desk.

129. Mr Pihan spoke to Mr Pinnock about the incident. Mr Pinnock sent an email to himself with a note of the discussion;

“Denis had a difficult conversation with Stacey regarding some confidential feedback people had provided regarding Stacey performance in 2016 which Stacey advised Denis was not accurate and tried to correct this. Denis questioned how she knew the accuracy as this was confidential. Stacey advised Denis she was in receipt of the confidential information and had been for some weeks. Stacey advised Denis had left her appraisal on his desk the night prior to the performance review and she saw it. Stacey proceeded to photocopy this which also had other information for Denis to perform her review, namely the confidential feedback from colleagues. Stacey said she chose to photocopy this as it was quicker than printing the review out from her PC and it was late (circa 8pm-8.30pm) and she was leaving. Stacey acknowledged she then realised this included confidential information and decided to keep this and not share with Denis she was in receipt of this for many weeks until today. Stacey advised she was not upset Denis had left her appraisal on his desk. ...

Stacey quickly became agitated and constantly interrupted, even when asked not to on numerous occasions. Stacey wanted to justify her actions and accused us of twisting the story. We explained we wanted to share our thoughts and move forward rather than debating this further. Stacey reluctantly agreed to finish the meeting and was clearly still agitated. We explained there was limited value or need to debate this further and wanted to put this behind us and asked she advise her manager if a similar situation occurred in the future.”

130. The Claimant alleges that she did a protected act by raising the issue of Mr Pihan omitting positive feedback from her 2016 performance review on 13 February 2017.

Bonus discussion 2017

131. The Claimant alleges that Mr Pinnock subjected her to detriment by not discussing her bonus before going on holiday on 14 February 2017 and by responding to other employee's emails about bonus but not hers. This was not explored in any detail in evidence.
132. On 3 March 2017 the Claimant was informed of her 2016 performance year bonus and basic salary.
133. On 3 March 2017 Mr Pinnock sent an email with a spreadsheet with comments on bonus. In respect of the Claimant he said;

“Disappointed. Totally expected and a performer we are keeping a close eye on”.

134. In respect of Comparator 1 he stated;

“Happy. Appreciative of the positive message.”

March 2017 Claimant queries bonus a when comparator one undertook a job matching exercise same role and salary for 2016

135. On 9 March 2017 the Claimant sent Mr Pihan an email querying her bonus and salary for 2016;

“I joined BNPP Product Development with the understanding that as the business/P&L grows, so too would my total remuneration. This is the understanding of all Product Developers.

During the 2016 financial year, the business grew, as did the profitability and the bonus pool. My bonus should also increase given my role and contribution.

Please would you review the following to ensure that I am fairly treated:

1. **Bonus:** please increase my bonus to reflect my contribution
2. **Basic:** please review to ensure I am in line with colleagues in the same role with similar experience.

I leave this for you to follow up with Matt (or Jeff in Matt's absence). However if you think that I should take this forward myself, then please let me know.”

136. Mr Pihan forwarded the Claimant's message to Mr Pinnock that day;

“To discuss when you are back”

137. On 10 March 2019 Mr Pinnock replied;

“No problem, let's sit down together with her when I'm back.”

14 March 2017 meeting with Mr Pihan re salary and bonus

138. On 14 March 2017 the Claimant met with Mr Pihan and discussed her concerns about the level of her salary and bonus. Mr Pinnock had been on holiday and had not yet discussed the Claimant bonus with her; although he had discussed bonuses with her colleagues. After the meeting Mr Pihan sent an email to Mr Pinnock stating;

“I just had a difficult conversation with Stacey
she is saying:

- The base top up last year shows we are not paying her enough, she thinks she is under paid by 5k - references to gender equality
- She feels that her bonus should have doubled, due to business growth and she feels she is very efficient at her work so does not need to do extra hours

I mentioned that her 5k top up was a great indication of the bank's proactive attitude to equality.

On bonus I mentioned that it is based on performance.

She also told me earlier in the week that she had gotten advice that she was entitled to any material pertaining to her performance review.”

16 March 2017 email to Raphael Masgnaux

139. On 16 March 2017 the Claimant sent an email to Raphael Masgnaux, Head of G10 Rates and Prime Solutions and Financing raising concerns about her bonus;

“I hope you don't mind me reaching out to you and I hope I am not over stepping the boundaries.

The reason I am emailing is because I have been unable to discuss my bonus with Matt and I don't want to miss the deadline for changes to be made, which I expect is this week.

My understanding is that as I continue to develop the platform, and the revenue grows, so too will my remuneration. I do hope you agree.

- What I got: 10k (FLAT on last year)
- What I was expecting: 20k
- What I have requested: an additional 10k bonus and/or review of my basic (currently 125k)”

140. On 16 March 2017 Mr Pihan forwarded the Claimant’s email to Mr Masgnaux to Mr Pinnock;

“It says a lot that she would write the below and expect a good result ...”

141. Mr Pinnock replied;

“Precisely. I don't know why she thinks it can change though.”

142. On 17 March 2017 Mr Pinnock sent an email to Mr Pihan;

“The last date for changes was about 1 week before the payments were made, maybe even more.

Her number will not change even if we wanted to. One question, were her expectations managed prior? Just so we are in sync for Monday.”

143. Mr Pihan replied;

“I was deliberately more pessimistic about her number when speaking to Stacey. So, although from her reaction speaks for its self, we are talking about someone who does not let reality get in the way of what she thinks.”

144. Mr Pinnock replied;

“Ok, understand. Then she has no reason to be shocked. Disappointed maybe but not shocked.

Good job”

145. Mr Pihan responded;

“What has dawned on me since the incident with the appraisal is the extent to which she is capable of spinning "facts"

As a consequence the level of confidence I have in her has plummeted”

146. Mr Pinnock replied;

“Couple of things

- don't worry, I have your back and trust you fully
- I've been through this numerous times in my career and have seen lots of games, spinning and behaviour

Most importantly, we will fix this.”

2016 Bonus process closed

147. On 17 March 2017 the Claimant sent an email to Mr Pinnock, copying in Mr Pihan, prior to the meeting to discuss her 2017 bonus, referring to Mr Pinnock's comment in the email setting up the meeting “there are no plans to change any numbers” stating;

“This is to confirm Monday. However from the below, it sounds as if you have already made a decision without having the meeting.

I look forward to hearing to your justification as to why my bonus is flat when my productivity, skills and performance is above average by far, and my ideas are routinely used by management. I will happily go in to more detail on Monday with examples proving this point.

Denis said on bonus day that one of the reasons I was paid less was because of my work/life balance hours. I do not believe I should be penalised for being efficient, experienced and using fast "Smart" working techniques. The emphasis was always on "Smart" working at my previous employers (where I learned the techniques), and long hours was questioned as it indicated there was something wrong. In my opinion, consistent long hours only leads to exhaustion and reduced efficiency.

I attach two documents: 2016 work summary; 2017 deliveries (27 items in progress, plus additional 26 items delivered)

That said I hope we can agree a compromising resolution in terms of increasing my bonus and/or basic salary."

148. Mr Pinnock replied;

"Hi Stacey -- we have a strong preference for discussing in person so things aren't misinterpreted over email.

To be clear though, the bonus process closed some weeks ago so we are not able to change this. We will also explain the situation regarding pay increases."

20 March 2017 meeting

149. On 20 March 2017 the Claimant met with Mr Pihan and Mr Pinnock and raised her concern that she was being treated differently from Comparator 1 in respect of pay and bonus because of the difference in their genders. In an email of that date the Claimant noted, in an attached table, a number of comments made at the meeting and gave her responses. We accept that this contemporaneous document was accurate. The Claimant contends that she did a protected act at this meeting. The comments included;

"We gave you a pay rise in previous years to close the gap between genders

You don't go above and beyond

You're average

You don't respond well to negative feedback and criticism

You're untrustworthy (this comment was made based on the incident where Kirsty pointed out to me that Denis left my EOY review on his desk overnight)

You are unhappy at the bank (stemming from the mid year, review which Denis started by saying "We don't think this is the right bank for you, what do you want to do about it"?)

I wish the meeting was filmed and we could play it back to you because you are being very aggressive

Denis doesn't feel like he can give you things to do"

150. On 21 March 2017 Mr Pihan sent a note of the conversation which included the following;

"SM: mentioned that in her view the situation had degraded between her mid-year review where DP had asked her whether she thought that she was happy at BNPP

DP: apologised and mentioned that it was not a formal review and was asking out of compassion as at the time SM had displayed stress, unhappiness and frustration

SM: responded by saying that she had no issues and was happy"

28 March 2017

151. On 28 March 2017 the Claimant met with Emma Turner of HR. The Claimant relies on the meeting as involving her doing a protected act. The Claimant produced an Agenda/note of the meeting accurately recording the issues she raised;

1. Background

- Product Development
- 32 projects in progress
- 37 projects completed in PROD Q1 2017

2. Request for Pay Review - Basic salary (Equal Pay)

- In 2015 BNPP narrowed the gap by increasing my basic £5k from £120k to £125k
- Request for Equal Pay using comparant Comparator 1"

5 April 2017, Claimant alleges that excluded from a meeting with Roxbury

152. On 5 April 2017 the Claimant alleges that excluded from a meeting with Roxbury. This was not addressed to any significant extent in evidence.

Lisbon

153. The Claimant contends that she was assigned the objective of training the new Lisbon Operations team. On 26 April 2017 the Claimant sent an email to Mr Pihan stating;

“Have you confirmed dates for Anna to go to Portugal? Do you want me to go at the same time? As you know, I couldn't go in Feb/March because of my brother and other things. It could be good for Anna and I to spend some time together given our upcoming projects like Asset Location etc ... and I don't think Anna was planning on coming to London? However if you prefer me to go separately at a later date then no problem, just let me know.”

154. Mr Pihan did not respond. We do not accept that Mr Pihan did not respond because the Claimant had not provided an agenda he had requested.
155. On a later occasion when discussing Lisbon; it being known that the Claimant wished to visit Lisbon to train the new operations team; Comparator 1 joked that he would also like to go to Lisbon, to which Mr Pihan responded he could go to Lisbon whenever he liked, although neither Comparator 1, nor Mr Pihan thought that there was any need for him to do so. The joke played down the Claimant's concern that she had not had the opportunity to go to Lisbon to do work that was one of her objectives.

4 May 2017 meeting

156. On 4 May 2017 the Claimant met with Samantha Skocypec to discuss her concerns about her remuneration. Ms Skocypec told the Claimant that Comparator 1 was not a peer. After the meeting Ms Skocypec sent an email to the Claimant;

“As a follow up to our meeting this afternoon, please see our Grievance Policy attached.

Do not hesitate to reach out if you have any questions.”

157. The Claimant replied taking up the invitation to ask questions;

“As discussed, could you please also send me written confirmation of why you do not consider Comparator 1 to be my peer so I can review”.

10 May 2017 meeting

158. On 10 May 2017 the Claimant met again with Ms Skocypec and suggested that the matter needed to be raised at a senior level. On 12 May 2017 Ms Skocypec sent an email to the Claimant stating that;

“As a follow up to our meeting this week, Amanda Rajkumar will meet with you to discuss your concerns. She is traveling next week, but her PA will look to schedule an appointment with you when she is back in London.”

25 May 2017 meeting

159. On 25 May 2017 the Claimant met with Ms Rajkumar and raised her concerns about sex discrimination and unequal pay. Ms Rajkumar cut the meeting short and said that there would be a full investigation.

Possible recruitment 2017

160. On 2 June 2017 the Claimant answered Mr Pihan’s telephone while he was away from his desk. The caller was Mr Bebb, who told her that he was returning Mr Pihan’s call as he had left a voicemail message saying that he was looking to recruit. In a grievance interview in December 2017 Mr Pihan was asked whether he was looking to replace the Claimant and stated:

“Well, Stacey is clearly not performing satisfactorily, okay? And I have clearly been told that I need to, you know, step out, and in order to step out I need team members who can fulfil some of the roles that I have around regulatory topics, etc., which Stacey clearly doesn't want to - one, she is not adequate for the role, and two, she's clearly indicated she doesn't want that role.”

Blackberry

161. On 27 June 2017 an email was sent querying why the Claimant did not have a company provided mobile telephone. Most staff had Blackberry devices. Although the Claimant did not have a Blackberry she could be contacted on her personal phone if required urgently.
162. On 20 July 2017 the Claimant sent an email requesting her HR file.
163. On 27 July 2017 the Claimant met again with Ms Rajkumar.

Draft 2017 mid-year assessment

164. On 10 August 2017 Mr Pihan sent Ms Skocypec a draft of the mid-year appraisal for the Claimant stating;

“I have tried to add more colour and examples”

165. The draft appraisal included under the heading “Any Further Comments”;

“Stacey has expressed discontent about her remuneration and there has been an associated reduction in motivation and pro-activeness. As a consequence she is under performing versus expectations”

166. The reference to the Claimant expressing discontent about remuneration was removed from the final version of the appraisal.
167. On 15 August 2017 Mr Pihan spoke again to Mr Bebb about the recruitment of a possible replacement for the Claimant.

2017 annual medical review

168. On 16 August 2017 the Claimant attended an annual medical review. The Claimant was delayed because of an issue that arose during the review. The Claimant was late in returning to work as a result. Mr Pihan was extremely annoyed and recorded the Claimant's absence as annual leave in the Respondent's HR system. There was a drop-down menu on the system on which he could have used to record it as medical leave. After an exchange of emails he changed the recording to medical leave and informed Comparator 1 that he should also record his annual check-up as medical leave.

23 August 2017 DSAR

169. On 23 August 2017 the Claimant sent an email to Ms Rajkumar including a DSAR;

“... I have sought the benefit of independent legal advice in relation to my employment dispute.

As discussed during our last meeting, I will not be submitting a formal internal grievance as I have lost trust in management, HR and the integrity of the process. When I raised my concerns re: equal pay and sex discrimination to management, I was intimidated and bullied. When I raised my concerns to HR, the resulting pay review was a sham with HR claiming there was no pay differential.

Therefore, would you please provide me with a copy of my HR file for which I enclose in internal mail a cheque for £10.

Please also find attached a Data Subject Access Request letter requesting additional information pursuant to Section 7 of the Data Protection Act.”

170. The Claimant alleges that this was a protected act.
171. The Claimant was due to attend her mid-year review but it was postponed because the Claimant was unwell.

Collateral feed project August 2017

172. The Claimant alleges that on 25 August 2017 she was excluded from emails related to the Finance Collateral feed project and was not invited to a meeting about it on 27 August 2017. Mr Pihan stated that the Claimant was not included in some correspondence while on holiday. The matter was not dealt with in any great detail in evidence.

Processing the DSAR request

173. On 30 August 2017 John Burman sent an email to the Claimant informing her that he will be responding to her DSAR. There was extremely lengthy correspondence about how the search could be undertaken and the search terms that would be used. The Claimant was not prepared for there to be any limitation upon the search. This resulted in lengthy correspondence and significant delay in the process being completed.

2017 mid-year review

174. On 11 September 2017 Mr Pihan sought to conduct a mid-year review with the Claimant. The Claimant declined to attend, contending that she had not been given sufficient notice. She raised concerns about the way in which she was being treated; including "sex discrimination and equal pay issues".
175. The mid-year review was rescheduled for 14 September 2017. The Claimant declined the meeting request for the mid-year review and sent an email on 13 September 2017 stating:

"Unfortunately this does not constitute enough time to adequately prepare.

Could you please send me the detailed agenda (ie written report) prior to the meeting.

I will need one week to prepare from the date you send me the written report."

176. On 14 September 2017 Mr Pihan sent an email to Mr Pinnock in which he stated:

"Did not want to spoil your evening

She is clearly showing her unacceptable attitude which is my sole consolation, but surely HR have to act now?"

14 September 2017 meeting

177. On 14 September 2018 Mr Pihan, who was in a meeting, sent the Claimant asking "Where are you ?". The Claimant replied "As discussed, I thought it

was just a meeting between Sandrine and I. We went to buy Sandrine a coffee as it was an early start for her.” We do not accept the suggestion that the Claimant deliberately missed the meeting.

178. On 15 September 2017 Ms Skocypec explained why she would be attending the mid-year review stating;

“I will be attending the mid-year in light of our correspondence to date and the potentially contentious nature of the meeting. It remains a mid-year review, it is not part of any formal process”

September 2017 P&L Control issue

179. On 20 September 2017 the Claimant sent Mr Pihan an email raising potential P&L control issues. The Claimant alleges that Mr Pihan was evasive and refused to respond.

2017 mid-year review

180. The mid-year review was then rescheduled for 26 September 2017. On 25 September 2017 Mr Pihan sent an email to Mr Pinnock stating;

“It would seem Stacey is going to try and inundate us with circumstantial evidence and miss the message entirely as she has in the past.

I propose that we not let ourselves get distracted by this strategy and that we ask her to provide her feedback after the meeting.”

181. On 26 September 2017 the Claimant attended for her mid-year review with her friend Ms Nasmith as a “support person”. Ms Skocypec said that Ms Nasmith could not attend the meeting. The Claimant refused to attend without her even if the meeting was recorded.

DSAR response

182. On 2 October 2017 Hogan Lovells wrote to the Claimant enclosing the Respondent’s response to her DSAR. The Claimant was not satisfied with the responses and there was further detailed correspondence about the possibility of widening search terms. The Claimant continued to argue that the search should not be limited to any extent.

C raises equal pay/sex discrimination 23 October 2017

183. On 23 October 2017 the Claimant sent an email to Ms Skocypec asking her under the heading “Equal pay/sex discrimination” why she did not consider comparator 1 to be a peer; and under the heading “Source of negative feedback” what was the outcome of the full investigation Ms Rajkumar had said would be undertaken.

184. On 31 October 2017 Ms Skocypec sent an email to Mr Pihan at 9.33am asking in respect of the Claimant and Comparator 1;

“please provide me with a few lines surrounding the difference of roles at your earliest convenience.”

185. On 31 October 2017 Ms Skocypec sent an email to the Claimant stating;

“I am arranging the mid-year review to take place on 2 November at 3:30pm. You have been given sufficient notice and documentation to prepare for this meeting and you are required to attend it. Any failure to do so without good reason (i.e., sickness absence or an unavoidable work conflict) will be considered a refusal to follow a reasonable management. If you are unable to attend the proposed date and time, it is imperative that you let me know as soon as possible.”

186. On 31 October 2017 Mr Pihan sent an email to Ms Skocypec at 10.59am stating

“Stacey was employed as product development expert with medium level experience (junior being a graduate).

In certain specific topics, such as client report and Corporate Actions, she has acted as such.

She has deliberately shied away from regulatory topics despite these being part of our mandate at BNPP.

Stacey has also had difficulty outside her comfort zone, for example she will repeatedly come for advice on points which I would expect autonomy from a product expert of medium seniority.

Comparator 1 was employed as a senior product development expert.

Time and again he has shown this to be completely justified as he has acted with the appropriate level of maturity and seniority.

For example, when given complex and intricate projects, he is capable of managing these from start to finish with minimum advice on my part, as appropriate for a senior product expert.

In addition, he is globally responsible for the swap product (since he joined) and has acted for the last few years as the product development coordinator for APAC ... both of these are consistent with the distinction made between Comparator 1 and Stacey.”

187. On 31 October 2017 Ms Skocypec sent an email to the Claimant at 12.31pm stating:

"In respond to your request for comments on why we do not believe Comparator 1 is your peer please see the below.

Annually managers and HR work together to benchmark staff to both internal levels and external surveys. These exercises are performed to review an individual's responsibilities and role, as well as their associated level of experience. These reviews are done in collaboration with management to ensure that teams are reviewed on a holistic approach as well as to identify key differences in roles. During the review process for the past several years, your role has been identified as a product development expert with medium level experience. Compared to Comparator 1 the individual you identified as a peer., there is a difference in the level of autonomy, scope of projects, and regional responsibilities. As a result, we do not view Comparator 1 as your peer"

188. We were not provided with evidence that supported such detailed benchmarking involving review of individual role, responsibilities and experience. Excel sheets of grading were provided but the evidence was that there was only any significant discussion when a person changed grade. Even if there was a code change we were not persuaded that there was a detailed objective assessment of the role.
189. Ms Skocypec stated in evidence that she was not particularly concerned that the job descriptions for the Claimant and Comparator 1 were the same despite them having different McLagan codes and significantly different pay. She said "It is something not that I necessarily think that might be the best practice but that is done".
190. In considering the spreadsheets with the McLagan and internal banding Ms Skocypec did not investigate the any underlying information stating that;

"So the review documents, it would have been a spreadsheet which would have had the updated code. So it would have showed the prior year's code and the updated code if it was updated. So I believe in the case of the claimant, there was no change to the coding, therefore I had no reason to necessarily look further into the information. For me as a business partner, I would only sort of question if maybe -- if for some reason the code changed so maybe the role changed, if it was an increased level or a lower level, which sometimes but not usually happens."
191. Ms Skocypec was asked whether it was appropriate to focus on the statements of the managers who had been accused of discriminating in assessing the reason for the difference of pay. She said that "So that is where the HR business partner would come into consideration because during those McLagan meetings we would question or probe". There was no evidence of any significant questioning or probing during the investigation of the Claimant's pay in comparison with Comparator 1.

192. Ms Skocypec stated that she accepted that the reason for the difference in bonus between the Claimant and Comparator 1 was the higher overall grading of Comparator 1; but she did not investigate why the grading was higher. Ms Skocypec did not check how Mr Pihan came to the overall grade. She said "So I did not ask for the specific method that he used to apply the ratings to all of his staff."

193. In respect of the overall investigation Ms Skocypec stated;

"Again, I can acknowledge that there could have been a more thorough investigation on my end. However, I was comfortable at the time with the information that I had regarding the outcome and I did inform the claimant that she could raise a formal grievance if she was unsatisfied with what I did."

1 November 2017 complaint to Ms Rajkumar

194. On 1 November 2017 the Claimant wrote to Ms Rajkumar stating;

"I am writing this letter, to formalise my concerns on a serious pay disparity between myself and a male comparator and peer (which I have raised to you previously at our meeting dated 10th June 2017).

To summarise, I believe that I continue to be the subject of sex discrimination which is contrary to the Equality Act 2010 in relation to my pay on the basis that a male comparator and peer at the same level is receiving higher pay and bonuses than me. In addition, I believe that BNPP is in breach of the Gender Pay Regulations in allowing this pay gap to continue and its continued failure to rectify this.

As you are aware BNPP as an employer with more than 250 employees, is under a duty to publish gender pay gap disparities. A failure to comply with these Regulations will constitute an unlawful act under Section 34 Equalities Act 2006 which empowers the Equalities and Human Rights Commission to take enforcement action. I would also like to make it clear that I believe that I am being subjected to detriments with the threat of a hostile mid-year review that is imminent and which I believe is going to be negative and which I fear will not focus on any positive contributions that I have made. I have already voiced my concerns about how I feel that I am being set up because I have raised these important issues relating to the disparity in my pay."

195. The Claimant relies upon this as being a protected act.

196. On 2 November 2017 the Claimant wrote to Ms Skocypec stating:

“Please provide the detail to support your analysis:

1. Please provide names of colleague surveyed, date, and what the response was.

2. Please explain why you believe I have (Medium experience' (ie compared to who?)

Please take in to account the following examples (more can be provided if required).

And please note that I am only providing these examples in response to your email below.

Denis has previously said to me "do you think you are better than us'?" to which I replied "no, but I do not think I am any worse".

And for the record I do think Comparator 1 is very good at what he does and I enjoy working with him.”

2017 mid-year review

197. The midyear discussion took place on 2 November 2017. It was recorded and a transcript produced. Mr Pihan raised a number of concerns about the Claimant’s performance. The Claimant was told that she could respond after the meeting and that a follow up meeting would be held.

198. On 3 November 2017 Mr Pinnock sent an email to himself, under the heading “Personnel : ongoing topic” stating;

“Can we give Stacey Macken a 6”

DSAR

199. On 7 November 2019 Erica Moon wrote to the Claimant stating;

“As requested we have reviewed your subject access request and undertaken some further searches using different key words to ensure what has been provided to you is thorough.

In undertaking these searches we have found no mention of the terms: Lesbian, lesbian, Lesbienne, witch, cow, vache or hat. We have however identified a small number of additional emails which contain your personal data. We will send these additional results to you in the next few days via courier to your home address.

We believe this DSAR request is now closed.”

200. On 13 November 2017 Mr Pihan sent the Claimant further feedback about Finance Feeds

6 November 2017 email to Ms Rajkumar

201. On 16 November 2017 the Claimant sent an email to Ms Rajkumar stating;

“After having raised concerns re gender pay disparity, I was subjected to the detriment of a hostile mid-year review on 2nd November 2017 and was treated differently to my male peers who, unlike my mid year review, did not have HR present at their reviews. The review presented an unfair, inaccurate and incomplete reflection of my performance. Management failed to present a balanced perspective by omitting key projects assigned as objectives during the year. Furthermore, aggressive and erroneous statements were made, none of which could be supported when queried. I have made a note of these for my benefit.

I would also draw your attention to the fact that HR has advised that they do not consider Comparator 1 and myself to be peers, despite the fact that we do the same role, I have more experience, have better qualifications, and I have worked at BNPP longer. As a result, BNPP as my employer is in breach of its legal duties and obligations, and I am concerned that if BNPP is treating me in this manner, then there may also be many other women who are also being treated detrimentally.”

202. The Claimant relies upon this a protected act.

2017 mid-year review continued

203. On 16 November 2017 the Claimant met with Mr Pihan and Ms Skocypec to continue with the mid-year review. The Claimant provided a 35 page table responding to the written comments made by Mr Pihan in the draft review and orally at the meeting on 2 November 2017. The Claimant relies upon this as protected act. The Claimant talked through her response. Mr Pihan said relatively little and stated that he might have some supplementary question but would get back to the Claimant the next week.

Grievance meeting 20 November 2017

204. On 20 November 2017 Ceri Lawrence, Senior Employee Relations Advisor, and Fiona Cosham, Chief Operating Officer CCFA and CTTS UK Business Management held a meeting with the Claimant that they stated was held under the Respondent’s grievance procedure. Amongst other things, the Claimant complained about unequal pay with Comparators 1, 2 and 3. She alleged that she had been bullied by Mr Pinnock.
205. After the hearing the Claimant stated that she was surprised that her whistle blowing email was being treated as a grievance.

206. On 22 November 2017 Ms Lawrence sent an email to the Claimant explaining why she considered it was appropriate to deal with the matter under the Respondent's grievance procedure rather than the whistle blowing policy; stating that the policy provided that it "should not be used for complaints that relate to an individual's personal circumstances". However, she stated that Compliance had been informed of the complaint.

207. The Claimant responded stating that she had not "formally complained to raise a Grievance" and stated;

"BNPP is in breach of its legal obligations regarding gender pay disparity and this is a serious complaint which has to be brought to the FCA attention. It is in the public interest to do so. I believe that I have been marked down in the HR system to justify the pay differential between genders. And I suspect that there may be many other women working at BNP Paribas in the same situation."

208. On 23 November 2017 Ms Lawrence replied, stating;

"As explained in my email yesterday, Compliance have been notified of your complaint and are tracking it appropriately. They have also confirmed that, in accordance with the Bank's Whistleblowing Policy, it is appropriate for your concerns to be investigated under the Bank's Grievance Procedure.

23 November 2017 complaint to the Information Commissioners Office

209. On 23 November 2017 the Claimant states that she did a protected act by making a complaint to the Information Commissioners Office about the Respondent's alleged failure to deal with her DSAR in a timely and efficient manner.

30 November 2017 the Claimant alleges excluded from meeting

210. The Claimant alleges that on 30 November 2017 Mr Pihan excluded her from a Client Service meeting organised by Ms Gurr.

4 December 2017 Mr Pihan attended a grievance investigation meeting

211. On 4 December 2017 Mr Pihan attended a grievance investigation meeting. He was asked about the reasons for the difference in pay between the Claimant and Comparator 1. He stated;

"They do not have the same level of seniority and that was understood and documented, I believe. We can probably go back to the original - try to find the original transcripts of recruitment. But when Stacey was on-boarded it was clearly identified that her - her level of seniority was not the ideal level we were actually looking for but we were in a very difficult situation and needed to have more people on the team because I

was the only person left in Europe to cover Europe and Asia. Very difficult times at the time. We'd just had a significant roll-down that had its issues, and I just couldn't face all the problems myself.

So we effectively were looking for - we were effectively looking for someone to come in to fulfil that role, and initially Stacey was not going to be retained as the candidate because it was thought that she was too junior for the role. I was then allowed to have a second headcount and the understanding was that Stacey would join us as a more junior product developer and I was still allowed to go and recruit a more senior product developer."

212. Mr Pihan was asked the basis on which the Claimant was considered to have less experience. He stated;

"It has to do with both the roles that she has had in the past, so I guess one-word answer is that it has to do with her CV, okay, and the roles that she had in the past. And it also has to do with an assessment made during the interview in the quality of the depth of the answers made by the candidates."

213. However, Mr Pihan did not specifically state what it was about the roles the Claimant had held in the past or what questions she had failed to give sufficiently in depth answers to. He did not explain what relevant experience she lacked that made her "junior". There are no contemporaneous documents that show that the Claimant answered specific questions in a manner that lacked depth.

214. Mr Pihan said of Comparator 1;

"So right from the outset for example, Comparator 1 was given global responsibility for our swap products. So just to take a step back, at the time PB had two elements, what was known as cash PB and what was known as synthetic PB or swaps. And right from the outset Comparator 1 was identified as being the global person responsible for synthetics/swaps. Okay, so, I mean, he clearly had a role right from the outset which was identified as more senior than Stacey Macken who was on the cash PB side, but was clearly working for me as I kept the direct responsibility of the cash PB product given the sophistication of the product."

215. This considerably over-emphasised the role that Comparator 1 held when he first joined the bank. In particular he was not from the outset the "global person responsible for synthetics/swaps". However, Mr Pihan emphasised the suggestion that he was;

"Okay. But that's not the same level of seniority as being completely responsible for a product."

216. Mr Pihan was questioned about the Claimant's allegation that he had said "We don't think this is the right bank for you and what do you want to do about it". He said;

"So somewhat out of context. I - I do admit and I did admit this, you know, to Matt and to HR, that I probably should have expressed myself differently. But it wasn't an open conflict at the time between Stacey and well, myself and her hierarchy. So effectively I was more familiar than I would have been. Of course, if I'd been more aware of, you know, where this was going so, you know, that's my poor judgement and I recognise that. Now the intent of that conversation is that Stacey had prior to that clearly, you know, expressed discontent, had seemed very stressed, not very happy and it was more in a very much an informal conversation as to, you know, "Well, how are you going? Do you really think this is the role for you?' That's more the informal feedback I was - I was giving her."

217. Mr Pihan said in evidence that he found the allegation made against he in the grievance "very disturbing".

13 December 2017 re assessment of performance and no-follow up meeting re mid-year performance assessment

218. On 13 December 2017 Mr Pihan sent an email to the Claimant stating:

"As a follow up the mid-year review that took place on 2 November and 16 November, I write to remind you of the points that you should be focusing on, in order to achieve the level of performance expected. These are all set out in the document which has been shared with you and has now been discussed at some length.

At this time we will not schedule a subsequent follow up meeting as initially thought, as I understand that the issues you raised during the second meeting are being handled through a different channel. Our assessment of your performance to date is not open for further discussion and, while I recognise there is not much time until the end of year appraisal process, I look forward to working with you to achieve the standards expected."

219. Mr Pihan stated that the Claimant's detailed response to the concerns that he had raised would not be discussed further as had previously been agreed. He also suggested that the Claimant was subject to some form of performance management as she was failing to work to the "standards expected". This had not been suggested before.

First claim to ET

220. On 19 December 2017 the Claimant presented her first Claim Form, complaining of direct sex discrimination, harassment related to sex, victimisation and public interest disclosure detriment. This is alleged to be a protected act.

Further exchanges about performance and 2017 mid-year

221. The Claimant responded to Mr Pihan's email of 13 December 2017 on 21 December 2019 stating:

"... I am concerned that you are now suggesting that I am under-performing in my role which I do not agree with. I also note that you have not raised any issues during our 1:1 meetings in November/December.

Given the direction HR has taken this in, and for record keeping purposes, could you please clarify in writing by return email, being very specific and very clear, what is expected in terms of standards and where you believe that I am specifically under-performing. It is important that I understand these alleged under performance issues so that I can properly consider them and challenge them.

Please could you also set out in writing what the outcome of the review was, as this is not at all clear to me. ...

I am concerned that the performance review was completely negative and that management and HR's intention was to deliberately present a false picture without including the many positive contributions that I have made and which have been backed up during this period."

222. On 2 January 2018 Mr Pihan sent an email to the Claimant;

"As previously mentioned, at this time the content and feedback from the mid-year review is not open for further discussion. The document you have been given sets out the position clearly and in significant detail (certainly it provides much more information than would be standard as part of the mid-year review process). The outcome of your mid-year review was that your performance, up until that point, almost meets expectations. We will have an opportunity to discuss your 2017 overall performance during your formal year--end appraisal which will be scheduled in due course, You will, of course, have an opportunity to comment on your formal end of year performance assessment and rating as part of that appraisal.

Please note that I do not intend to engage in further discussion on the content of the mid-year review, particularly given the formal end-of.-year appraisal we will be conducting shortly."

223. On 3 January 2018 the Claimant sent an email to Mr Pihan

"1 . I have never agreed with or accepted my 2017 mid year review, and I have not signed it off

2. I do not agree with your assessment of underperformance when I have achieved more than other members of the team

4. It' s not my fault that:

a. You badly designed a platform that is full of flaws which we are still discovering issues with and fixing 5 years later

b. You irresponsibly launched the platform in September 2012 without adequate testing

c. You did not advise senior management of the full extent of the issues

d. You did not adequately resource the business to be able to fix the issues on the basis of cost saving and your fear that as you said "they might shut us down"

e. The business has been built on extremely low budgets consistent with simple custodian banks (and not the much higher budgets required for the complexities of investment banking prime brokers)

...

Per my response to my mid year review, I will continue to question your judgement, integrity and management capability in writing the unfair and unsubstantiated review. This is very career damaging and is not ok. To date, you have not answered or addressed any of my queries raised during the mid year review and have merely swept them all under the carpet. And HR has allowed you to do this. This is very underhanded and yet another reason why this needs to be examined by an independent external body.

...

If you are continuing down the same unfair route with the year end review that you did with the mid year review, please provide the following before I sit down with you:

1 . Full agenda in advance

2. One week's notice to adequately prepare

3. Confirmation that the Year End will be recorded and a transcript will be promptly provided to me for record keeping purposes

4. Transcript of the mid year follow up meeting which I still have not been provided with

5. All evidence and answers to the questions I raised during my mid year”

It is disappointing that you have put me in this position and I believe that you are not acting in my best interests as my manager. Therefore I will have to continue to challenge you in the kindest possible way.”

224. On 4 January 2018 Mr Pihan had a one to one meeting with the Claimant.

15 January 2018 the Claimant alleges excessive workload

225. On 15 January 2018 the Claimant sent an email to suggesting that she was being given an excessive amount of work on a project and questioning the speed with which it was required, stating;

“Is it because you are planning retrenchments like what happened to Comparator 3? Are you trying to get the information and benefit of all my experience before making me redundant or managing me out: under the guise of poor performance?”

18 January 2018 Mr Pinnock grievance investigation meeting

226. On 18 January 2018 Mr Pinnock was interviewed as part of grievance investigation on his last working day with the Respondent. When asked about the comparison between the Claimant and Comparator 1 he said;

“Absolutely, so the difference in the role - well, there's a couple of differences. So firstly, the role is very different. Secondly, the competence requirements are very different, and experience levels are very different. And the - when you look at the background and experience of them, I think that that shows, and it also shows in previous - if you look at compensation history, there is - it's not - there's not just been a difference of being [inaudible], there's a difference a long way. So, in my mind, yes, the roles are very different.”

227. His comments were extremely vague and not supported to any significant degree by the contemporaneous documents from the time of the recruitment of the Claimant and Comparator 1. If Mr Pinnock’s evidence was correct one would have expected to see different job descriptions and person specifications for the Claimant and Comparator 1.

228. When asked whether he had told the Claimant that she had been given a pay rise to “close the gap between genders” he said;

“I’m - I can 100% categorically say I wouldn’t because that phrase, it’s just not what I would say. ...

Period. It’s nothing to do with the - it’s just that I wouldn’t use an expression like that because it’s just not in my DNA. So, no, 100% not, I wouldn’t ...

But what we said is exactly what we were advised to say by HR, which is that - which was very public, that we looked at equal opportunity pay across a number of spectrums. And it wasn’t just gender, there was junior talent, because there was - you know, we consistently - and this is no shock, it’s public information, I’m sure - received feedback that there were gaps in salaries and you know the - I mean, it’s very interesting to share, and this is just my personal feedback, that in every organisation I’ve worked at previously we’ve just had grids[?].

So I never discussed pay, it was easy, right?” ...

But no, look, it’s actually, to be clear, and I know this is taped, I’m not that stupid. I wouldn’t - I’m not that stupid, right? So you cannot say something like that, so why would you? Could we have said that we are looking at equal opportunities and then shared what that may consist of? Of course. But that’s not - I don’t believe there’s anything wrong with saying that. But it’s always on McLagan anyway. I mean, we didn’t - and to be clear, we didn’t decide what pay rises to give to people in that process. It was done by HR.”

229. His answer was unclear and unconvincing, but he was not challenged on it.

230. He was asked about the Claimant not having a Blackberry and stated;

“An example of that, is Stacey gave her BlackBerry away years ago because she says she refused to do work outside working hours. You know what, Stacey, that’s fine. Guess what? That’s okay. But you can never be expected to be viewed as someone that goes above and beyond when you’ve given away the only form of communication that we have with you outside of working hours. So - and by the way, to be clear, Stacey will attest to this, at no point did we go to Stacey and say, ‘You have to have a Blackberry, you have to take this back.’ We totally acknowledged the fact she didn’t want to work outside of working hours.”

231. This contrasts with the emphasis that the Respondent’s witnesses placed on the Claimant not having a Blackberry in their witness statements.

232. He commented about the Claimant's views about work/life balance and said

"She made a comment that, 'I want to go to gym in the morning, I want to cook nice food in the evening, so therefore I won't be in the office before 08.30 and I want to leave at 17.30 because I want something nice for dinner. 'Guess what, I'd love to have something nice for dinner, I leave my house at 04.55 every morning and I don't walk in the door before 20.00. It's my choice, 100% my choice. That's her choice and we respect that."

233. Mr Pinnock emphasised on a number of occasions that he does not micro-manage so had limited knowledge of the day-to-day working of the office.

234. Mr Pinnock commented on the allegation that the Claimant was making stating;

"No, no, look, the thing that I find more intriguing, personally, this is my personal view - because this is not a good situation for anybody, right? It's not good for Stacey, it's not good for Denis, it's not good for team morale. She's shared information with other people about you know, all these different kind of things, that is not good for anybody. And what I fail to understand is, what does she want? I don't get it, I really don't get it, because the - it's - you know, at no point has she said, 'Well, I'm super pissed off, I want to get paid X, I want to do this, I want to do that.' It's just -and I don't understand what the end goal is. Because for me, you know, it's just not the - we don't operate like she's suggesting, that people are discriminated against. It's just not - it just doesn't happen. So that's what I - but that's what I don't understand and all I know from Denis's perspective, I mean, this is, personally taken a massive toll on him. You know, a huge - it's having a huge impact on him personally and emotionally. And the way that Stacey's operating now, is totally unprofessional. I don't mind saying that on record and I have spoken to HR about it. The things that she's sending emails on and the allegations she's making, factual allegations, I'm happy to go on record and say that when this process is finished, HR need to investigate that, because it's totally inappropriate."

235. This demonstrates how angry he was about the allegations that the Claimant was making.

2017 end of year performance appraisal

236. On 22 January 2018 the Claimant attended her End of Year Performance Appraisal which was conducted by Mr Pihan. Ms Skocypec attended again. The meeting continued on 25 January 2018 and was concluded on 29 January 2018. Mr Pihan raised issues about the Claimant's performance that she sought to answer as best she could.

237. On 30 January 2018 the Claimant sent an email to Ms Skocypec setting out the alternative grades which she believed she should have received in her end of year Performance Appraisal.

238. On 5 February 2018 the Claimant sent an email to Ms Skocypec stating;

“As you know, I have raised issues relating to my pay disparity (and BNPP's breach of its associated legal duties and obligations), and that I have been treated differently to my male peers, and have been subjected to a hostile review which was unduly negative and did not focus on the positive contributions that I have made. I have provided 300 pages of factual evidence in support of this. By contrast., Denis Pihan has not supplied any factual evidence to support his erroneous and unfair claims. In fact Denis has said he does not have time to provide any evidence and he will not change his 'opinion' on me.”

5 February 2018 deadline will not be extended

239. On 5 February 2018 the Claimant sent an email to Ms Skocypec asking whether in the light of all the information she had provided there would be an extension of the deadline for completing the appraisal. Ms Skocypec replied that there would not be an extension and stated;

“We will not be extending the deadline for your appraisal. While I can appreciate that you have spent a considerable amount of time to provide documentation to support your view, as mentioned below, it is apparent that you do not agree with the ratings that Denis has awarded you, but that the evidence we've considered so far during the three appraisal meetings did not result in Denis changing his mind about your performance. Therefore it would not be productive to have any further meetings regarding this topic.

This issue of your performance in your current role is not one that I can assess as an HR professional, however as mentioned to you numerous times during the year-end discussions, there is a divergence between your view and what Denis has written and discussed with you during your year-end review. From an HR perspective, I consider that Denis has provided sufficient 'evidence' to support the grades he has awarded you and his assessment appears fair and well-founded.”

2017 year end review

240. The Claimant's year-end review for 2017 included the following comments;

“The break down in communication with Stacey has been caused by her refusal to accept feedback and lead to behaviour and unfounded accusations which are unacceptable.”

241. The Claimant was given a performance rating of 6 "Significantly below expectations". It was noted;

"Stacey's inability to accept constructive feedback, rejecting the fault on others has led to a cascade of comments, accusations and recriminations which has led to the breakdown of her Relationship with the management of the bank."

242. The Claimant did not receive a bonus.

243. Comparator 1 received a rating of 3 and a bonus of £70,000.

Complaints about 2017 year-end review

244. On 8 February 2018 the Claimant sent an email to Ms Skocypec and Ms Cosham complaining about her year end review stating that;

"As you know, I have raised issues relating to pay disparity and being treated differently to my male peers, and have been subjected to a hostile review which was unduly negative and did not focus on my positive contributions. As I strongly disagree with the review, and the way I have been treated, I have noted the points of disagreement with 300 pages of detailed factual examples to support my opinion, and to provide a balanced perspective I have also included all key projects assigned to me as objectives during the year. By contrast, Denis Pihan has not supplied any factual evidence to support his erroneous and unfair claims. Denis has said on recorded tape that he does not have time to provide any evidence and he will not change his 'opinion' on me.

245. On 9 February 2018 the Claimant complained to the HR department and Raphael Masgnaux about her alleged differential treatment and hostile performance review. She again alleged that Mr Pihan had repeatedly lied and said;

"I have raised issues relating to pay disparity and being treated differently to my male peers, and have been subjected to a hostile review which was unduly negative and did not focus on my positive contributions."

246. This is relied upon as a protected act.

13 February 2018 grievance outcome

247. On 13 February 2018 the Claimant was sent the outcome of her grievance. The grievance was summarised as follows;

"In summary and as you have set out in detail in your grievance email dated 1 November 2017, your grievance relates to your compensation

and you allege that you are being paid less than a male comparator employed in the same role in relation to both salary and bonus”

248. In respect of the concerns that the Claimant had raised about her performance appraisal it was stated;

“In addition, you provided some detailed information about your mid-year performance appraisal. As discussed when we met, in so far as the information you provided to us relates to your grievance allegations then Fiona and I have considered this in detail. However, for clarification, the purpose of the grievance procedure is not to re-assess your performance appraisal and any comments you have about feedback on particular projects should be addressed within the appraisal process.”

249. On the issue of disparity in pay it was recorded;

“As we understand it, Comparator 1's role from the outset involved him having global responsibility for the end to end "synthetic prime brokerage/swaps" business from pre-trade to accounting for the entire chain of swaps. It was also explained to us that Comparator 1's role involves organising, chairing and defining the content of the various global steering committees on the entire product whereas on the cash side of the business, this role is not carried out by you but is carried out by your manager, Denis Pihan. By contrast, you were employed to carry out a role in the cash prime brokerage business but Denis Pihan retained direct global responsibility for this business. It was also explained to us that while both you and Comparator 1 report in to Denis Pihan, Comparator 1 is more autonomous and has more individual responsibility whereas your role requires more day to day supervision from Denis Pihan. One example of this is that you would complete the required regulatory reporting for his side of the business but you would defer to Denis Pihan and he would oversee this process for the cash side of the business.

In order for Fiona and I to check the explanations being given to us about the roles carried out by you and Comparator 1, we requested further information from HR and from the Recruitment team. In particular, we referred to the shadow banding structure put in place by Global Markets in or around 2010/11 and reviewed annually to assess the level of each role within the overall structure of Global Markets. The annual banding review also takes into account the Mclagan levels and role analysis for the roles within Global Markets along with an external salary survey in order to assist with the banding exercise. It is evident from this banding information that your role and Comparator 1's role have never been considered to be at the same level and, in fact, Comparator 1 's role is identified as being two levels higher than your role. Further, the roles do not have the same Mclagan code.

We questioned your managers about your recruitment and Comparator 1's recruitment in order to understand your roles further. It was explained to us that at the time of your recruitment process, it was clearly recognised that you were a more junior candidate than had initially been envisaged for the role. However, while the recruitment process was ongoing, it was decided that an additional headcount could be included in the team which enabled your managers to appoint you to a more junior product developer role while continuing to recruit for someone to carry out the more senior role. You were offered your role on 6 December 2012 and commenced your employment with the Bank on or around 14 January 2013 and Comparator 1 was offered the more senior role on 27 March 2013 and took up his role on or around 8 July 2013.

Fiona and I investigated this further by referring to the recruitment documentation relating to your recruitment and Comparator 1's recruitment. It is evident from the interview notes from your interview that you were seen as more junior to other candidates being considered for the role and there is a comment that you, *"would need support and management and [doesn't] yet have the breadth of experience to be the lead"*. However, the Interview notes also include a comment that if a senior person could also be hired, you would be a strong addition and *offer* support to drive projects forward. Fiona and I have also reviewed the approval documentation for both your appointment and Comparator 1's appointment and it is clear from the two approval summaries that your roles are considered to be at a different level of seniority.

Having reviewed all the information relating to your role and Comparator 1's role in detail, Fiona and I have concluded that Comparator 1's role is more senior than your role and, as such, he is not a valid comparator in terms of remuneration."

250. The other specific allegation raised by the Claimant were rejected. For example it was held that;

"You have also alleged in your grievance that Matthew Pinnock commented to you In previous years that you were given a pay rise "to close the gap between genders". Mathew Pinnock has categorically denied this allegation. Matthew Pinnock explained to us that salaries were reviewed across the spectrum and the issue of equality is also assessed within the salary review process along with other identified aims, for example, rewarding junior talent within the business."

251. It was also held in respect of the allegation the Claimant had made that that Mr Pihan had questioned whether the Respondent was the right bank for her;

"We discussed this with Denis Pihan and he confirmed that he did have an informal discussion with you approximately 18 months ago in which

he queried with you whether you thought your current role was the right role for you. Denis explained that his comments were within the context of you expressing discontent and exhibiting signs of stress and that he was querying with you whether an alternative role within the Bank may be more suitable. Denis stated that he did not think that you reacted negatively to this comment at the time and it was only at the end of year review that you referred to the comment again. Denis has confirmed that the comment was entirely undocumented and did not affect your appraisal or compensation process in any way. ...

Fiona and I have considered the evidence in relation to this allegation and we recognise that it is not a particularly constructive comment for a manager to make. However, we cannot identify that this comment has had any effect on your appraisal or compensation process and Denis has explained that he made the comment informally as he was concerned that you were not happy in your role. For these reasons, we do not consider that this comment amounts to a detriment but we recognise that if Denis did have concerns about your feelings about your role, he should have addressed these within a more positive framework and we will provide him with feedback on this point and make recommendations accordingly.”

252. The grievance concluded;

“As set out above, we confirm that we do not consider that you are suffering from a pay disparity as a result of your gender in relation to your fixed pay or your bonus and this aspect of your grievance is not upheld. Further, we do not consider that you have suffered a detriment or been victimised as a result of raising your concerns or been treated less favourably in other ways because of your gender or any other protected characteristic. Our comments on the other matters you have raised are addressed in detail above.

We do, however, recognise that there are clearly difficulties in your relationship with your line manager, Denis Pihan and these must be addressed. In addition to the recommendations we refer to above, we propose that mediation should be arranged for you and Denis in order to reset your working relationship and we also recommend individual coaching for you both to focus on how you raise and resolve any work related matters. We will ask your HRBP to make the necessary arrangements in this regard.”

4 February 2018, 2017 year-end appraisal closed

253. On 14 February 2018 Ms Skocypec wrote to the Claimant in respect of her annual appraisal stating;

“The issues and complaints you mention below have been covered in numerous emails and discussions, as part of your grievance and the

mid- and year end- appraisal processes. I have explained several times that the appraisal process is closed: it does not require agreement between the parties. Management's assessment of your performance is complete and final.

All relevant documents and confirmations have been provided to you, and at this stage I do not consider any further correspondence on these points is necessary or appropriate."

5 February 2018 complaint

254. The Claimant alleges that on 15 February 2018 she complained to the HR department and Mr Masgnaux about her alleged differential treatment and hostile performance review. The Claimant relies on this as a protected act.

21 February 2018 "without prejudice" conversation with Amanda Rajkumar

255. On 21 February 2018 the Claimant alleges that she had a "without prejudice" conversation with Amanda Rajkumar who told her that litigation against the Respondent would be a long and drawn out process.

27 February 2018 grievance appeal

256. On 27 February 2018 the Claimant appealed against the grievance outcome. The Claimant set out in enormous detail the reason why she challenged the grievance outcome. This is relied upon as a protected act.
257. On 22 March 2018 the Claimant attended a Grievance appeal meeting.
258. On 12 April 2018 Mr Pihan met with the Claimant to set her 2018 objectives.
259. On 21 May 2018 the Claimant commenced a period of annual leave.

11 April 2018 re logging of alleged protected disclosures

260. On 11 April 2018 the Claimant sent an email to Franools Regnier asking whether her protected disclosure had been logged with Compliance and the FCA.
261. He responded on 17 April 2018.

"In relation to your complaints about equal pay and the Bank's gender pay gap reporting, these have rightly been investigated by HR and I understand you have been provided with a response as part of a grievance process. It is entirely appropriate for such matters to be investigated by HR rather than Compliance.

The Bank is not obliged to log all whistleblowing disclosures or concerns raised by its employees to the FCA. We have a general obligation to

deal with the FCA in an open and cooperative way, and to disclose anything which they would reasonably expect to be informed of. As a result, we inform the FCA of whistleblowing disclosures when necessary, and we keep them updated on our investigations and findings if appropriate. However, we do not consider your disclosures contain the type of concerns or issues the regulator would expect to be informed of. As such, we have determined that no referral will be made to the FCA.”

24 May 2018 grievance appeal outcome

262. On 24 May 2018 Danielle Taylor sent the Claimant the grievance appeal outcome, rejecting her appeal. They concluded;

“Following consideration of all the evidence, I confirm that we do not uphold your appeal. In particular, we have not found any evidence that corroborates your equal pay allegation, nor do we find that you have been subjected to detriments as a result of the equal pay concerns you raised prior to your grievance process.

In our view, a large part of your appeal was raised because you did not agree with the grievance outcome: against your 112 points of appeal, for the majority you allege that the grievance outcome did not adequately (or at all) investigate or address your allegations, and that you provided factual evidence which was ignored. However, we do not recognise much, if any, of your evidence as factual and unbiased support of your allegations. From our review, it is your representation of incidents, perception of treatment that you feel you have received, or emails that relate to day-to-day work. We have noted that particularly in relation to your equal pay claims, there is contemporaneous documentary evidence (i.e. emails, Global Markets shadow banding and Mclagan data) that firmly supports the fact you are not considered to be a peer to Comparator 1. As such, there is no evidence to support your persistent belief that you are not paid fairly for the role you perform.

We have found that the grievance panel conducted a thorough and fair investigation. However, given the number of your allegations and volume of information that they had to take into consideration throughout the grievance process between November 2017 and February 2018, they had to exercise judgment over what level of investigation was proportionate and reasonable. From hearing your appeal, we have found that the amount of information that we had to take into consideration and review, and the number of individual appeal allegations you made, were not in line with the main focus of your grievance, i.e. that you felt you were not paid equally to those you viewed as peers and that you had been subjected to detrimental treatment as a result of raising these concerns.”

263. For the purposes of the appeal Ms Taylor had not interview a witness that could comment on the comparison of the work done by the Claimant and Comparator 1 who had not been involved in their recruitment or setting their pay; such as Comparator 1. When asked whether she had thought about interviewing such a person she said “no”. Ms Taylor stated they did not investigate specifically how the McLagan code was fixed. She was questioned about the fact that the job descriptions were the same and whether that had rung an alarm bell because they had different McLagan coding. She stated “I honestly can’t recall that discussion. Sometimes you can have a job description, but you do more than is just on your job description.” Ms Taylor did not investigate the number of projects the Claimant was engaged on in comparison to Comparator 1. When asked about who had the final say for the McLagan band she stated “ultimately the manager, but certainly with the Business Partner challenge”. When asked about whether they had job descriptions from the time of recruitment she stated “We didn’t look at the job description at the point of recruitment. I think, as I’ve explained, we have certainly had a look at a number of sources of information, but, yes, perhaps that’s something that we should also have reviewed, but we didn’t deem that to be necessary at the time.” Ms Taylor stated that she was not given the emails of 13 March 2013 in which reference was made to promotion to director being a driver for Comparator 1 and Mr Pinnock referring to “we will not be able to hire a £125k person at anywhere near £175”.

10 June 2018 holiday handover email

264. On Sunday 10 June 2018 Mr Pihan sent an email to the Claimant criticising her about her holiday handover stating, for example;
- “Client Service stream: Technology seem to be floundering on the list of development items for the CSW, this is disappointing given that I had requested you take care of Client Service back in Q1. Furthermore neither BRO v2 nor v3 contain the last version of the specifications of CSW we discussed at length before your holidays. The BRO belongs to product development so please add the specifications yourself and not ask Drive to do it for you. The BRO is also missing client billing and client query specifications that I asked you to add.”
265. Mr Pihan accepted that he could have waited until the Monday when the Claimant returned to work to send the email and could have had a discussion with her about the issues. He stated that he had a habit of finishing of issues on Sunday afternoon. He stated “In context, the relationship was already difficult and I wanted to make sure there was a written trace.”
266. We accept the Claimant’s oral evidence that;
- “He is holding me to standards that he doesn’t hold to others. He doesn’t write emails on holiday handover to any of the others. He has

never, ever written me a holiday handover email before in his life and I've worked there for six years."

June 2018 Claimant further complains about treatment

267. On 13 June 2018 the Claimant complained to Ms Rajkumar that she viewed the above email as ongoing harassment;

"I have just returned from three weeks out of office. Unfortunately on my return I came back to the below email. from my manager Denis Pihan. I believe this email constitutes further evidence of the ongoing harassment I have had to endure."

268. On 14 June 2018 the Claimant raised concerns with Louise Fitzgerald - Lombard.

269. On 19 June 2018 the Claimant sent an email to Mr Pihan alleging that he was trying to "shame" her and that this amounts to "ongoing harassment". This alleged to be a protected act.

July 2018 desk move

270. On 7-8 July 2018 there was a desk move over the weekend. The plan had been to move the Claimant away from Mr Pihan. In error she was moved to a location closer to Mr Pihan.

271. On 9 July 2018 the Claimant sent an email to Ms Turner complaining that she has been moved closer to Mr Pihan. This is alleged to have been a protected act. Ms Turner responded apologising and stating it was a mistake.

272. On 11 July 2018 Emma Turner sent an email to the Claimant confirming that a request for her desk to be moved again has been submitted.

21 July 2018 the Claimant is signed off work with depression and anxiety

273. On 21 July 2018 the Claimant was signed off work with depression and anxiety

Job roles of the Claimant and Comparator 1 at the time the Claimant went off sick

274. At the time the Claimant went off sick the most recent job descriptions for the Claimant and Comparator 1 were set out in their year-end appraisals. They were in identical terms. The wording had changed slightly from the original job descriptions;

"The role of Product Management team for the Prime Brokerage business is to:

- Provide front office leadership to all Technology and Operations infrastructure related projects for the business.
- The role includes driving client revenues by assuring that the most valuable projects are prioritized and advanced with urgency and effectiveness.
- The job requires close relationships across the front office and the corresponding Technology, Operations and other support groups across the organization.
- Members of the Product Management team have the following key duties and responsibilities:
 - Identify opportunities to improve the capabilities of the Prime Brokerage business and lead the projects to completion
 - Coordinate with management and stakeholders to prioritize projects (based on revenue potential and risk mitigation to business)
 - Develop strategies for discussing projects with members of the sales teams and internal support groups
- Business building
 - Build relationships with front office partners to enhance revenue production and drive business development
 - Coordinate and build strong working relationships with all Support Functions
 - Build relationships with key support partners
 - Create efficient process for managing projects
 - Present information to support partners and create consensus on approach
 - Document project, its progress and any related policies or procedures
- Organizational responsibilities Direct contribution to BNPP operational permanent control framework”

275. As stated above we were sceptical about the information provided by the parties in the tables produced after the event; albeit at our request. In the Respondent’s table the following “Core Responsibilities” for the products that make up the platform were set out;

Product development:

- Build, or improve existing, products/processes/systems;
- Use past experience/market knowledge to generate new ideas /opportunities;
- Investigate, design and assess products, processes, systems.

Project management:

- gather and document business requirements and get sign off;
- maintain project lists;
- co-ordinate prioritisations from key stakeholders;

Product launch:

- conduct product development testing, including getting business users to test and sign off;
- monitor production launch;
- be the main point of contact for any production issues and related fixes, or any further requests for system improvements, in relation to the specific product area.

IT liaison:

- walk IT through the business requirements and answer questions;
- review IT functional specifications document and gather sign offs;
- be the point person for IT during the development (build) phase;
- progress of projects and priorities;
- fixing any bugs with the Product/Platform as and when required;
- interface between business users and IT.

276. It was accepted that both the Claimant and her comparators carried out these tasks. These are similar to those set out in the job description.
277. The Respondent had a section of the table headed Platform Responsibilities. Next to the heading "Responsibility / Accountability for the platform" it was stated that the Claimant did not have this responsibility whereas her comparators did. That was not reflected in the job descriptions.
278. There was a further section "Platform management" as follows;

Platform management:⁴

- review technical and operational setup and request required changes to manage legal, financial, regulatory and tax risk; and
- provide strategy analysis for Heads of Business on the Platform, including advising (with the help of the functions) on the legal, financial, tax and regulatory risk involved.

279. That was not reflected in the job descriptions. It was contended that the Claimant did not have these responsibilities whereas Comparators 1, 2 and 4 did. In a footnote responsibility for the platform was described as follows "The management of the Platform requires that the Platform owner works with all of the Bank's Business, Compliance, Finance, Legal, Operations, Tax and Technology functions."

280. This was expanded upon in a section headed “Additional Responsibilities” with the following entries for the Claimant and comparator 1.

Responsibilities	Claimant	1
Legal liaison: 1. Interacting with Legal to gather information for a product. 2. Liaise with Legal team to review client documentation and ensure that product/platform is in line with client’s contract.	1 only	1 and 2
Regulatory liaison: <ul style="list-style-type: none"> Review regulations to ensure the Platform is in compliance with regulations; Responsibility for adapting the Platform to ensure it is in compliance with changes to regulations. Liaise with external regulatory auditors to report on/check the regulatory compliance of the Platform with local regulators; Speak to local regulators as a representative of the Bank with Legal and/or Compliance, in order to report on the regulatory compliance of the Platform. 	NO	✓
Tax liaison: 1. Interacting with Tax to gather information for a product. 2. Review the operation of the product/Platform with the Bank’s Tax team to ensure it operates with optimum tax efficiency both for the Bank and for the Bank’s clients.	1 only ⁶	1 and 2
Finance liaison: 1. Interacting with Finance to gather information for a product. 2. Review the financial operation of the product/Platform with the bank’s Finance team, as well as the Bank’s management and Sales team, to ensure that the product/Platform is running: <ul style="list-style-type: none"> In accordance with what was contractually agreed with the Bank’s clients; With optimum financial efficiency for the Bank. 	1 only	1 and 2

281. These were not included in the job descriptions.
282. Against a heading Line Management Responsibilities it was recorded that the Claimant had none whereas Comparator 1 had 2 – with the footnote that “Comparator 1 has had line management responsibility for Matthew Nicholls since his hire in April 2018 and he has had line management responsibility for the contractor Athos Tzouves since Q4 2017 “.
283. In his oral evidence Mr Pihan accepted that the bulk of the activities of the Claimant and Comparator 1 were those set out as Core Responsibilities and were equivalent. He was asked about the amount of time he contended Comparator 1 spent on additional platform responsibilities;

“Going back to the questions you were asked by Dr Weerasinghe, can you, please, go back to your document where you summarise the differences between the different roles. And it was put to you that the tasks that the claimant and Comparator 1 do form the bulk of what they do on a day-to-day basis. You agreed with that. You may not be able to answer this but if you can, if you look at the differences between the claimant and Comparator 1, so obviously Comparator 1 having platform responsibilities and platform management, and then Comparator 1 having additional responsibilities under legal liaison, regulatory liaison,

tax liaison and finance liaison, are you able to give the tribunal an idea of how much of Comparator 1's time is spent on tasks that relate to those responsibilities?

A. It would depend -- clearly when we are implementing MiFID II or EMEA, it was a non-negligible fraction of his time, maybe 25 per cent. Under the normal course of business, if there is no change in regulation, which is rare today, it would be less than 5 per cent.

Q. So if you averaged it across the year, what would you say?

A. It would depend -- I would say at the moment it's still roughly a -- a little bit less than 10 per cent, I would say, in terms of both follow-up of pre-existing regulations and new regulations which are still coming.

Q. And the maximum you said was about 25 per cent and that would be when?

A. That's peak season when we really have to put all hands on deck for a major regulatory topic.

Q. Okay. And in terms of the platform responsibilities, how would they impact in terms of the day-to-day tasks, as opposed to in terms of the ultimate accountability that you've spoken about?

A. So my assessment is that Comparator 1 has sufficient knowledge today to be really held accountable because he has a sufficiently wide view of the platform he is now responsible for. It has grown over the years, admittedly, but I think, you know, for example, already in 2015 I would hold him very definitely accountable and senior management would know that he was implementing a regulation for the platform. So in that sense it was a very visible responsibility and accountability that he would have. I mean, if there was a major issue -- on occasion there were some issues -- then management would still come and hold me accountable but I would feel very much comfortable holding Comparator 1 accountable for any mishaps on the swaps platform that he would have. I would feel uncomfortable holding the claimant accountable for the same level of overview of responsibility. so I will hold the claimant accountable for a given project but not for an overall platform -- implementation, sorry, or something which impacted the whole platform per se."

284. It appears that Mr Pihan's answers focused on regulatory work. He did not give any figures for the other alleged additional duties. He also suggested that Comparator 1 had responsibility and accountability from 2015, rather than from the outset.

285. We consider that the additional responsibilities of Comparator 1 were exaggerated. The global meetings Comparator 1 attended were mainly about

IT and operations, rather than strategic planning for the platform. Comparator 1 did not go to the Core Committee that had oversight of the synthetics platform. The example given of legal liaison was in relation to some drafting of documentation only a few months before the hearing. Mr Pihan accepted that Comparator 1 would obtain advice from experts on legal, regulatory and tax matters. He did not have overall responsibility for such matters.

The Law

Gender Discrimination

Detriment

286. Sex is a protected characteristic for the purposes of the Equality Act 2010 ("EqA").
287. Discrimination during employment is rendered unlawful by section 39(2) EqA;
- (2) An employer (A) must not discriminate against an employee of A's (B)—
 - (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
288. The Employment Appeal Tribunal in the **Law Society v Bahl** [2003] IRLR 640, made this simple point, at paragraph 91:
- "It is trite but true that the starting point of all tribunals is that they must remember that they are concerned with the rooting out certain forms of discriminatory treatment. If they forget that fundamental fact, then they are likely to slip into error".
289. The provisions are designed to combat discrimination. It is not possible to infer unlawful discrimination merely from the fact that an employer has acted unreasonably: see **Glasgow City Council v Zafar** [1998] ICR 120.
290. Tribunals should not reach findings of discrimination as a form of punishment because they consider that the employer's procedures or practices are unsatisfactory; or that their commitment to equality is poor; see **Seldon v Clarkson, Wright & Jakes** [2009] IRLR 267.

291. Detriment involves treatment of such a kind that a reasonable worker would or might see as being to their detriment, amounting to something more than an unjustified sense of grievance; there is no need for the disadvantage to have physical or economic consequences; **Shamoon v Chief Constable of Royal Ulster Constabulary** [2003] ICR 337.

Equal Pay

292. The Claimant claims equal pay in relation to her salary on the basis that she undertook “like work” to Comparators 1, 2 and 3 within the meaning of section 65(1)(a) of the Equality Act 2010 (“**EA**”).
293. Section 65 provides, in so far as is relevant:
- “(2) A’s work is like B’s work if –
- A’s work and B’s work are the same or broadly similar, and
Such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person’s work with another’s for the purposes of subsection (2), it is necessary to have regard to –
- (a) the frequency with which differences between their work occur in practice, and
- (b) the nature and extent of the differences.”
294. We accept that the focus is on what the Claimant and her Comparators actually did, rather than what they might in theory be required to do under the contract of employment: **Capper Pass Ltd v Allan** [1980] ICR 194 per Slynn J at 196F-G.
295. The Respondent relies **Dorothy Perkins Ltd v Dance** [1977] IRLR 266 or the proposition that the job description may be of no relevance. If the job description does not reflect the job that is done that is possible. However, the job description often reflect the work that was actually done. Similarly, the contract of employment does not necessarily accurately reflect the work that was done; **Waddington v Leicester Council for Voluntary Service** [1977] ICR 266.
296. Exercise of responsibility may be a factor in determining whether work is like work; **Waddington; Eaton Ltd v Nuttall** [1977] ICR 272
297. If a Claimant is able to establish “like work” to any of her Comparators, a sex equality clause applies to her terms and conditions. Section 66 of the EA provides:

“(1) If the terms of A’s work do not (by whatever means) include a sex equality clause, they are to be treated as including one.

(2) A sex equality clause is a provision that has the following effect –

(a) if a term of A’s is less favourable to A than a corresponding term of B’s is to B, A’s term is modified so as not to be less favourable ...”

298. However, even if “like work” is established, the equality clause will not operate if the employer can establish a material factor defence. Section 69 of the EQA provides:

“69(1) The sex equality clause in A’s terms has no effect in relation to a difference between A’s terms and B’s terms if the responsible person shows that the difference is because of a material factor reliance on which –

(a) does not involve treating A less favourably because of A’s sex than the responsible person treats B, and

(b) if the factor is within (2), is a proportionate means of achieving a legitimate aim.

(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A’s are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A’s.”

299. In ***Glasgow City Council v Marshall [2000] ICR 196*** Lord Nicholls considered the approach to a material factor under the Equal Pay Act at 202F-203C:

““The scheme of the Act is that a rebuttable presumption of sex discrimination arises once the gender-based comparison shows that a woman, doing like work ... to that of a man, is being paid or treated less favourably than the man ... The burden passes to the employer to show that the explanation for the variation is not tainted with sex. In order to discharge this burden the employer must satisfy the tribunal on several matters. First, that the proffered explanation, or reason, is genuine, and not a sham or a pretence. Second, that the less favourable treatment is due to this reason. The factor relied upon must be the cause of the disparity. In this regard, and in this sense, the factor must be a ‘material’ factor, that is, a significant and relevant factor. Third, that the reason is not ‘the difference of sex.’ ... Fourth, that the factor relied upon is ... a significant and relevant difference between the woman’s case and the man’s case. ... an employer who satisfies the third of these requirements is under no obligation to prove a ‘good’ reason for the pay disparity. In order to fulfil the third requirement he must prove the absence of sex discrimination, direct

or indirect ... But if the employer proves the absence of sex discrimination he is not obliged to justify the pay disparity.”

300. The Equality Act makes it clear that a reliance on a “material factor” must not “involve treating A less favourably because of A’s sex”; i.e. involve direct sex discrimination. In determining whether there is direct sex discrimination the tribunal will have regard to the provisions as to the burden of proof and note that sex need only be a factor in order to establish direct sex discrimination. It is only in a case of disparate impact/indirect discrimination that one goes on to consider where reliance on the factor is “a proportionate means of achieving a legitimate aim”.
301. Section 79 of the EA defines relevant comparators for an equal pay claim:
- “(2) If A is employed, B is a comparator if subsection (3) or (4) applies.
- (3) This subsection applies –
- (a) B is employed by A’s employer or by an associate of A’s employer, and
- (b) A and B work at the same establishment.
- (4) This subsection applies if –
- (a) B is employed by A’s employer or an associate of A’s employer,
- (b) B works at an establishment other than the one at which A works, and (c) common terms apply at the establishments (either generally or as between A and B).”
302. Where the terms and conditions at two establishments are (or may be) determined centrally, “common terms” may apply: see **Asda Stores Ltd v Brierley [2019] EWCA Civ 44**.

Direct sex discrimination

303. Under section 13 of the EA,
- “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
304. Section 23 EQA provides that a comparison for the purposes of Section 13 must be such that there are no material differences between the circumstances in each case. In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** Lord Scott noted that this means, in most cases, the Tribunal should consider how the Claimant would have been

treated if she had not had the protected characteristic. This is often referred to as relying upon a hypothetical comparator.

305. Since exact comparators within the meaning of section 23 EQA are rare, it is may be appropriate for a Tribunal to draw inferences from the actual treatment of a near-comparator to decide how an employer would have treated a hypothetical comparator: see **CP Regents Park Two Ltd v Ilyas** [2015] All ER (D) 196 (Jul).

Harassment

306. Harassment is defined in section 26 of the EA as follows

“(1) A person (A) harasses another (B) if –

(a) A engages in conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of –

(i) violating B’s dignity, or

(ii) creating an intimidating, hostile, degrading humiliating or offensive environment for B.

(2) A also harasses B if – (a) A engages in unwanted conduct of a sexual nature, and (b) the conduct has the purpose or effect referred to in subsection (1)(b) ...

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.”

307. In considering whether conduct “*related to*” the claimant’s sex, the tribunal must consider the motivation of the alleged harasser and whether, from an objective standpoint, that related to or was associated with the claimant’s sex: see **Unite the Union v Nailard** [2019] ICR 28 per Underhill LJ at [95]-[98].

308. In **Richmond Pharmacology v. Dhaliwal** [2009] ICR 74 the Underhill P held when considering harassment claims:

“while it is very important that employers, and tribunals, are sensitive to the comments or conduct on other grounds covered by ...the legislation,

it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase”

Victimisation

309. Victimisation is defined in section 27 of the EA as follows:

“(2) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act; (c) doing anything for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

Burden of Proof

310. The Courts have long been aware of the difficulties that face Claimants in bringing discrimination claims and of the importance of drawing inferences: **King v The Great Britain-China Centre** [1992] ICR 516. Statutory provision is now made by Section 136 EQA:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

But subsection (2) does not apply if A shows that A did not contravene the provision.

311. Guidance on the reversal of the burden of proof was given in **Igen v Wong** [2005] IRLR 258. It has repeatedly been approved thereafter: see **Madarassy v Nomura International Plc** [2007] ICR 867¹. The guidance may be summarised in two stages: (a) the Claimant must establish on the totality of

¹ The Court of Appeal confirmed in **Ayodele v Citlink Ltd v Napier** [2017] EWCA Civ 1913 that **Efobi v Royal Mail** UKEAT/0203/16/DA was wrongly decided on the section 136 issue.

the evidence, on the balance of probabilities, facts from which the Tribunal 'could conclude in the absence of an adequate explanation' that the Respondent had discriminated against her. This means that there must be a 'prima facie case' of discrimination including less favourable treatment than a comparator (actual or hypothetical) with circumstances materially the same as the Claimant's, and facts from which the Tribunal could infer that this less favourable treatment was because of the protected characteristic; (b) if this is established, the Respondent must prove that the less favourable treatment was in no sense whatever on the grounds of race or gender.

312. In **Dresdner Kleinwort Wasserstein Ltd v Adebayo** [2005] IRLR 514, Mrs Justice Cox noted that where the burden has shifted;

"... the evidence required to discharge the burden of proving the explanation advanced will normally be in the possession of an employer, who will be expected to adduce it. The shifting of the burden to employers means that tribunals are entitled to expect employers to call evidence which is sufficient to discharge the burden of proving that the explanation advanced was non-discriminatory and that it was the real reason for what occurred.

We consider that ... failures to follow recommendations in relevant codes of practice, or the failure to call as witnesses those who were involved in the events and decisions about which complaint is made, will all properly assume a greater significance in future, in cases where the burden of proving that no discrimination has occurred is found to have passed to the employer."

313. To establish discrimination, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a significant influence: see Lord Nicholls in **Nagarajan v London Regional Transport** [1999] IRLR 572 at 576.
314. There may be circumstances in which it is possible to make clear determinations as to the reason for treatment so that there is no need to rely on section 136 EqA: see **Amnesty International v Ahmed** [2009] ICR 1450 and **Martin v Devonshires Solicitors** [2011] ICR 352 as approved in **Hewage v Grampian Health Board** [2012] ICR 1054. However, if this approach is adopted it is important that the Tribunal does not fall into the error of looking only for the principal reason for the treatment but properly analyses whether discrimination was to any extent an effective cause of the reason for the treatment.
315. The tribunal's focus "must at all times be the question whether or not they can properly and fairly infer... discrimination.": **Laing v Manchester City Council**, EAT at paragraph 75.

316. In considering what inferences can be drawn, tribunals must adopt a holistic approach, by stepping back and looking at all the facts in the round, and not focussing only on the detail of the various individual acts of discrimination. We must “see both the wood and the trees”: **Fraser v University of Leicester** UKEAT/0155/13 at paragraph 79.

Codes of Practice

317. Section 15 of the Equality Act 2006 in relation to the statutory Codes of Practice issued by the EHRC;

(4) A failure to comply with a provision of a code shall not of itself make a person liable to criminal or civil proceedings; but a code—

(a) shall be admissible in evidence in criminal or civil proceedings, and

(b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

318. We found the following paragraphs of the Employment Statutory Code of Practice to be of assistance [with emphasis added];

“16.5 **Job descriptions should accurately describe the job** in question.

16.10 Person specifications describe various criteria – including skills, knowledge, abilities, qualifications, experience and qualities – that are considered necessary or desirable for someone fulfilling the role set out in the job description.

16.32 An employer must not discriminate through the **application process. A standardised process**, whether this is through an application form or using CVs, **will enable an employer to make an objective assessment** of an applicant’s ability to do the job and **will assist an employer in demonstrating that they have assessed applicants objectively**.

16.43 Arrangements for deciding to whom to offer employment include shortlisting, selection tests, use of assessment centres and interviews. An employer must not discriminate in any of these arrangements

An employer should ensure that these processes are fair and objective and that decisions are consistent. Employers should also keep records that will allow them to justify each decision and the process by which it was reached and to respond to any complaints of discrimination. **If the employer does not keep records of their decisions, in some circumstances, it could result in an Employment Tribunal drawing an adverse inference of discrimination.**

In deciding exactly how long to keep records after a recruitment exercise, employers must balance their need to keep such records to justify selection decisions with their obligations under the Data Protection Act 1998 to keep personal data for no longer than is necessary.

The records that employers should keep include

- any job advertisement, job description or person specification used in the recruitment process;
- the application forms or CVs, and any supporting documentation from every candidate applying for the job;
- records of discussions and decisions by an interviewer or members of the selection panel; for example, on marking standards or interview questions;
- notes taken by the interviewer or by each member of the panel during the interviews
- each interview panel member's marks at each stage of the process; for example, on the application form, any selection tests and each interview question (where a formal marking system is used);
- all correspondence with the candidates.

16.57 An employer must not discriminate at the interview stage. In reality, this is the stage at which it is easiest to make judgements about an applicant based on instant, subjective and sometimes wholly irrelevant impressions. **If decisions are based on prejudice and stereotypes and not based on factors relating to the job description or person specification, this could lead to unlawful discrimination. By conducting interviews strictly on the basis of the application form, the job description, the person specification, the agreed weight given to each criterion and the results of any selection tests, an employer will ensure that all applicants are assessed objectively, and solely on their ability to do the job satisfactorily.**

319. We found the following paragraphs of the Equal pay Statutory Code of Practice to be of assistance [with emphasis added];

162. Employers are responsible for providing equal pay for equal work and for ensuring that pay systems are transparent. Where a pay system lacks transparency the employer must be able to prove there is no sex

discrimination behind a pay differential.

Pay arrangements are often complicated and the features that can give rise to discrimination in pay are not always obvious. A structured pay system, based on sound, bias-free job evaluation, is more transparent and more likely to provide equal pay than a system that relies primarily on managerial discretion.

164. A number of common pay practices, listed below, pose risks in terms of potential non-compliance with an employer's legal obligations:

- lack of transparency and unnecessary secrecy over grading and pay
- discretionary pay systems (for example, merit pay and performance-related pay) unless they are clearly structured and based on objective criteria
- ...
- managerial discretion over starting salaries
- market-based pay systems or supplements not underpinned by job evaluation
- job evaluation systems which have been incorrectly implemented or not kept up to date

Protected disclosure detriment

320. A person makes a protected disclosure when he discloses to his employer information "which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show ... (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject": see sections 43B and 43C of the Employment Rights Act 1996 ("**the ERA**").

321. By section 47B(1) of the ERA, 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.

Time limits

322. The time limit in which complaints of discrimination should be brought is set out in Section 123 of the EqA:

"(1) ... proceedings on a complaint ... may not be brought after the end of—

the period of 3 months starting with the date of the act to which the complaint relates, or

such other period as the Employment Tribunal thinks just and equitable.

...

(3) For the purposes of this section—

conduct extending over a period is to be treated as done at the end of the period;”

323. The time limit is adjusted to take account of pre-claim conciliation.
324. Conduct continuing over a period is treated as done at the end of period. When there are a number of incidents occurring over a period of time they may in appropriate circumstances be considered as being part of a continuing act in the sense of a continuing state of affairs pursuant to which discriminatory acts occurred from time to time; **Hendricks v Commissioner of Police of the Metropolis** [2003] ICR 530.
325. A distinction is to drawn between conduct extending over a period and a one off act that has continuing consequences: **Barclays Bank v Kapur** [1991] 2 A355, [1989] ICR 753; **Owusu v London Fire and Civil Defence Authority** [1995] ICR 574 c.f. **Sougrin v Haringey Health Authority** [1992] 650.
326. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. Extension of time should be the exception, although the Tribunal has a broad discretion to extend time when there is a good reason for so doing: **Robertson v Bexley Community Centre (t/a Leisure Link)** [2003] IRLR 434. The fact that an employee is pursuing an internal grievance or other procedures is a factor that may be taken into account in determining whether time should be extended: **Apelogun-Gabriels v Lambeth London BC** [2002] ICR 713.
327. A complaint of whistleblowing detriment must be presented to the tribunal within three months of the act in question, or, where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months, within such further period as the tribunal considers reasonable: see section 48(3) of the ERA.

Analysis

328. Despite the enormous amount of evidence and extremely detailed, and excessively subdivided, allegations and responses; the core of this case is relatively straightforward. The Claimant contends that she and Comparator 1 were employed with the same job title, the same contract and the same job descriptions, because they were doing the same job; it was like work and there was no material factor to explain the difference in pay between them.
329. This was the position shown on the Respondent’s organisational charts. It was believed to be the case by both the Claimant and Comparator 1. Neither were told that the Claimant was viewed as junior and Comparator 1 as senior.

When Comparator 1 undertook a job matching exercise he did not distinguish between himself and the Claimant. Comparator 1 was supportive of the Claimant when she first suggested, in winter 2014, that she thought there was a difference in pay and bonus between herself as a woman and Comparator 1 as a man. Comparator 1 did not suggest that he was doing a job that was more senior than the Claimant. On occasions he jovially chanted "equal pay and equal rights". The Claimant's contention is that there is no proper basis for her having had an annual salary of £120,000, rising to £125,000; in comparison with Comparator 1, who was paid £160,000 per annum throughout the relevant period.

330. The Claimant further contends that she was subject to sex discrimination in that greater bonuses were paid to Comparator 1. In their first year working together, 2013, despite receiving the same overall performance grading, Comparator 1 received a bonus over twice that paid to the Claimant. Thereafter the Claimant's bonuses stagnated while Comparator 1's skyrocketed. The Claimant contends that this was sex discrimination
331. The Claimant's contention is that when she raised her concerns about the difference in pay and bonus between herself, a woman, and Comparator 1, a man; first, in winter of 2014; and then in much greater detail from March 2017 her relationship with Mr Pihan gradually deteriorated. He was increasingly negative in his performance reviews of the Claimant and subjected her to various other detriments.
332. The Respondent's defence is at core similarly straightforward. They contend that when the Claimant was initially interviewed it was decided that she lacked the experience to replace Comparator 2. She was recruited as a comparatively "junior" hire; as an extra headcount. Comparator 1 was recruited at a more "senior" level and from the outset had responsibility and accountability for the synthetics platform. His autonomy steadily increased over time. They were doing jobs at a different level of seniority which were not like work. In addition, it was necessary to pay Comparator more to prise him away from his existing employer; where he was on a promise that he would be promoted to director. This was a material difference between his case and that of the Claimant. Comparator 1 received bigger bonuses than the Claimant because he performed better. The deterioration in the relationship between Mr Pihan and the Claimant started in about 2016, it worsened when she read confidential information about her year-end performance appraisal for 2016. The Claimant would not accept negative feedback, produced excessive detail in responding to genuine concerns about her performance and made unfounded allegations alleging unequal pay and discrimination in the setting of bonus and other matters. The Respondent allege that the Claimant became unmanageable.
333. While their documentation might not be all that could be desired; the Respondent contends that pay practices that may pose risks in terms of potential non-compliance with legal obligations, including lack of transparency as to grading and pay and discretionary pay schemes, remain commonplace,

particularly in the financial services sector. Lack of compliance with the Codes of Practice should not be seen as significant as the Respondent has been able to provide cogent evidence to support its defence.

334. These are the core disputes in the case. We have tried not to lose sight of them in dealing with the plethora of individual allegations set out in the list of issues. Some of the allegations were necessarily dealt with relatively briefly and might best be seen as examples of the general deterioration in the relationship between the Claimant and Mr Pihan, rather than distinct complaints.
335. In considering this case; particularly the treatment of the Claimant in comparison to Comparator 1; we have stood back and taken an overview of the evidence. We have considered whether there are facts that could lead to the drawing of an inference of discrimination; particularly in respect of salary and bonuses; and of victimisation after the Claimant made allegations about unequal pay and sex discrimination.
336. The Respondent keeps very limited records about recruitment, setting salaries and bonus awards. They contend that some of the documents they do have do not reflect the reality of the jobs of the Claimant and Comparator 1. We consider that the Codes of Practice are of real significance. We reject the Respondent's implicit suggestion that banks are somehow in a special position and that we should accept as a fact of life that they have opaque pay structures. The Respondent accepts that their practices increase the risk of discrimination. It is the Respondent that chose to maintain these practices and put themselves at risk.
337. Paragraph 16.5 of the Employment Statutory Code provides that job description should accurately describe the job. The Respondent's contention is that the job descriptions do not accurately describe the jobs. They contend that despite having the same job descriptions Comparator 1 was recruited at a more senior level than the Claimant. What is more the job descriptions of the Claimant and Comparator 1 remained the same (with some minor amendment) in the documentation for each of their annual appraisals.
338. Paragraph 16.10 sets out the criteria that might be expected in a person specification, including experience. There were no person specifications to explain the differences of the allegedly "junior" and "senior" roles.
339. Paragraph 16.32 suggests a standard process for applications. Again, there is no clearly documented application process. There is no evidence of a properly documented objective assessment process. The codes notes that that adopting such a process may assist an employer to demonstrate that they have assessed applicants objectively.
340. Paragraph 16.43 emphasises the importance of maintaining records. The absence of records may in some circumstances result in the drawing of inferences of discrimination. The record keeping of the Respondent includes

no detailed records of the interviews or assessment of candidates against objective criteria (which did not occur). It is woefully inadequate. Of the types of records specifically referred to in the Code;

- 340.1 There are no job advertisements;
 - 340.2 It far from clear that we have any job descriptions that were actually used in the recruitment process (Mr Pihan did not share the “junior” and “senior” job descriptions he saved on his computer; the first job descriptions we have are from the appraisal documents after recruitment);
 - 340.3 There are no person specifications;
 - 340.4 The respondent has kept CVs but not the notes Mr Pihan said he wrote on them;
 - 340.5 There are no records of discussions and decisions by the interviewers about how to assess candidates and there was no formal selection panel. There are no records of marking standards or interview questions as these were not standardised;
 - 340.6 There are no notes taken by the interviewers;
 - 340.7 There was no formal marking scheme at any stage of the recruitment process;
 - 340.8 In its favour, the Respondent does appear to have retained correspondence with the candidates and internal email exchanges about them.
341. Paragraph 16.57 suggests that interviews should be conducted strictly on the basis of the application form, job description, person specification; with an agreed weight given to each criterion, to ensure that the candidates are assessed objectively. This was not done by the Respondent.
342. Paragraph 64 of the Equal Pay Code of Practice refers to “common pay practices that pose risks in terms of potential non-compliance with an employer’s legal obligations”;
- 342.1 Lack of transparency and unnecessary secrecy over grading and pay; there was unnecessary secrecy about the grading of the Claimant and Comparator 1. They were not told that they had been put on different McLagan codes. They were not told that one was seen as “senior” and the other as “junior”. As far as they were aware they were doing the same job, having the same job title and the same job descriptions in their annual appraisals. The Claimant and Comparator 1 were deliberately misled if there really were the alleged significant differences in their roles.

- 342.2 Discretionary pay systems unless they are clearly structured and based on objective criteria; we consider that the evidence establishes that the reality was that the recruiting managers had the primary role in determining what salary was to be offered. Human resources then assisted the manager in justifying the rate they wished to pay. They ensuring that a McLagan coding was applied that would justify the salary. The coding was designed to fit with the salary rather than there being a detailed assessment of job descriptions before the code was fixed. There were no person specifications that could justify the allegedly different “junior” and “senior” roles.
- 342.3 Managerial discretion over starting salaries; there was a very high degree of managerial discretion over starting salaries, with inadequate records kept of how that discretion was exercised; and no suggestion that it was by application of objective criteria.
- 342.4 Market-based pay systems or supplements that are not unpinned by job evaluation; that occurred in this case. The pay was set in discussions with Mr Bebb, the Head-hunter without any rigorous underlying job evaluation. The management took the lead in determining what they thought was an appropriate market rate.
343. We consider that the very limited, and entirely unsatisfactory, records of the recruitment process for the Claimant and Comparator 1 is significant evidence that could lead to the drawing of inferences of discrimination.
344. We consider that some of the terminology used about the Claimant as compared to Comparator 1, particularly in circumstances where it is not supported by objective record-keeping, is relevant to the possibility of drawing an inference. There is no detailed assessment of why the Claimant was considered to be “too light” or to lack “gravitas”. Looking for a person with gravitas is not necessarily objectionable, if there is some specification of the specific attributes sought and proper recording keeping. Here the terms were used in a much more subjective manner and gave rise to the risk that those recruiting might, consciously or unconsciously, be looking for those that looked like themselves, rather than carrying out an objective assessment of the candidates ability to interact with people at a senior level.
345. It is notable that Mr Pihan stated that he had previously interviewed over 12 women for the team but that the Claimant was the first he recruited; albeit as an allegedly “junior” resource. All the men in the team were at director level. The Claimant, the only woman, was at the level below; vice president.

346. In contrast to the Claimant being dismissed as “too light” there are repeated subjective positive references to Comparator 1’s personality;
- 346.1 On 21 February 2013 Mr Pihan refers to feedback about Comparator 1 from other interviewers, referring to his experience, knowledge and “personality”
- 346.2 On 13 November 2013 Ms Bennett refers to Comparator 1 being a “good cultural fit”
- 346.3 Mr Bebb made a similar comment on 19 March 2013 adopting the terminology used by the Respondent
- 346.4 In the appraisals for 2015 and 2016 Mr Pihan referred to Comparator 1 as a “pleasure to work with”
347. Such a subjective comments could demonstrate a tendency for people to be recruited who are seen as likely to “fit in” and demonstrates the risk that the male managers who had the final say in recruitment might be looking for someone who looked like themselves or their assumption of what a “senior” manager should look like.
348. In October 2013 a witches’ hat was left on the Claimant desk. While the evidence is insufficient to identify who left the hat on her desk, the overwhelming likelihood is that it was one of her colleagues. Leaving a witches’ hat on a female employees desk, in a predominantly male working environment, was an inherently sexist act that potentially reflects on the nature of working environment for the Claimant and the approach that was taken to women.
349. The positive comments made about personality of Comparator 1 contrasts with Mr Pihan regularly saying to the Claimant, “Not now. Stacey”. This was a demeaning comment that was made so regularly that it was a source of comment by the Claimant’s colleagues. When Mr Pihan made this comment he was belittling the Claimant in a way he did not nearly so often do to her male colleagues. Mr Pihan accepted in evidence that may have said “Not now. Stacey” to her on a couple of occasions when he was having a social conversation with another member of the team.
350. We also consider it is significant that after the Claimant had first raised her concerns it was suggested that the Respondent might not be the right bank for her. We do not accept Mr Pihan’s evidence that he only suggested that it might not be the right role for the Claimant. This was a very negative and belittling comment that suggested Mr Pihan hoped the Claimant would leave the Respondent.
351. This contrasts with Mr Pihan stating on 6 January 2017 that Comparator 1 was “worth the time I will invest in him to see him grow”.

352. We also think it is of some significance that when the Claimant was given a pay rise in 2015 she was told that it was something to do with narrowing the “gender pay gap”. On the face of it, that involves an implicit acceptance that there was a gender pay gap that needed to be narrowed. It also emphasises that the concern that the Claimant raised in the winter of 2014 was that there was a difference in pay and bonus between herself and Comparator 1 because she is a woman and he is a man; and that is how the complaint was taken by the Respondent.
353. We also consider it is significant that Comparator 1 was never told that he was in a more “senior” role. He believed he was in a role equivalent to that of the Claimant; otherwise he would not have charted “equal pay and equal rights” from time to time in 2014.
354. We also consider that it is relevant to the possibility of drawing inferences that two potentially very important witnesses were not called by the Respondent. Mr Pinnock, was very much involved at the recruitment stage, in setting salary and fixing bonus, had a role in the management of the Claimant and was involved after she complained about her pay and bonus. The fact that has left the Respondent did not preclude the Respondent from calling him. A number of specific criticisms were made against him that have not been answered.
355. The Respondent did not call Comparator 1. He would have been best placed to say what work he did and how it compared to the work done by the Claimant. He could have given evidence about whether he thought that there was some real difference in seniority between the his role and that of the Claimant. The contemporaneous evidence is that he thought they were doing the same job and supported the Claimant in her contention that they should be paid the same.
356. Taking an overview we consider there is ample evidence that could lead to a conclusion that the Claimant has been subject to gender discrimination. The burden shifts to the Respondent. We are required to look to them for explanations that establish that the treatment if the Claimant was, in no sense whatsoever, because of her sex.
357. We first consider the question of like work in comparison with Comparator 1. We considered that the Respondent has been disingenuous when setting out the comparison of the work done by Claimant and Comparator 1; in particular, by not focusing sufficiently on the position at the time of the recruitment of Comparator 1, and the months thereafter. It is important to remember that Comparator 1 was recruited at a salary of £160,000 which did not increase over the relevant period. If at the time of the recruitment Comparator 1, and the months immediately thereafter, the Claimant was entitled to an equality clause because her work was like work with that of Comparator 1, and there was not a material factor that explains the difference in pay, she is entitled to equal pay with Comparator 1, even if subsequently took on additional responsibilities.

358. We do not accept the Respondent's contention that no significant weight should be given to their job descriptions. The job descriptions were incorporated into each and every annual appraisal. They set out the core responsibilities. Further, in Mr Pihan's table the core responsibilities, that he accepted made up the bulk of the work, were the same for the Claimant and Comparator 1. The Respondent has sought to rely on a number of additional duties/responsibilities that were given by Mr Pihan to Comparator 1 over time. There is relatively little hard evidence about the precise nature of these additional duties and precisely how much time Comparator 1 spent on them. We consider the additional duties/responsibilities have been substantially exaggerated. If they were nearly as significant as the Respondent contends we would have expected them to be reflected in amendments to the job description and an increase in salary.
359. However, our initial focus must be at around the time of the recruitment of Comparator 1. We do not accept, as a matter of fact, that Comparator 1 had overall responsibility and accountability for the synthetics platform from 2013. At the time of Comparator 1's recruitment Mr Pihan had overall responsibility both the cash and synthetic platforms. The Claimant and Comparator 1 carried out the more day-to-day roles working on projects that might improve the platform. If anything, the Claimant had rather more responsibility than Comparator 1, retaining some responsibility for synthetics. We reject the contention that Comparator 1 had significantly greater "responsibility, seniority and accountability" from the time of his appointment.
360. The Respondent alleges that the Claimant had a more limited range of tasks than Comparator 1. We do not accept that that was the case in 2013. The Respondent seeks to rely on additional duties passed to Comparator 1, including product development in Hong Kong in Q1, 2014; allegedly being assigned responsibility for prime brokerage product development globally in Q3 2014, and "being put in at the deep end" in the EMEA project in 2015. We consider that these additional duties are overemphasised. In any event, they are not duties that were undertaken at the beginning of the Comparator 1's employment and so not cannot be relevant to the issue of like work at that stage.
361. Next it suggested that the Claimant did not at work autonomously as much as Comparator 1. We do not accept that Comparator 1 was working autonomously shortly after his recruitment in 2013. We also consider the extent to which he works in a more autonomous fashion than the Claimant has been significantly overemphasised.
362. We do not accept that than the Comparator 1 had a significant responsibility for legal liaison in the period after his recruitment in 2013. The examples given by the Respondent are very limited in number and relate to much later on in his employment. We do not accept that Comparator 1 was involved in significant regulatory liaison to an extent beyond the Claimant in the period after his recruitment in 2013. We do not consider that Comparator 1 was

involved in significant tax and finance liaison in 2013. Finally, the Respondent seeks to rely on line management. That only applied to Comparator 1 from 2018. We do not accept that from the outset Comparator 1 had significantly more responsibility and accountability than the Claimant.

363. We consider that the Respondent has overemphasised certain limited additional duties and responsibilities that Mr Pihan granted to Comparator 1 over time, without going through any formal procedure. They do not reflect any real and significant difference in the duties at the time Comparator 1 was recruited and in the months thereafter. We consider that the job descriptions do provide a reasonable overview of the responsibilities the Claimant and Comparator 1; which were essentially the same. If that had not been the case Comparator 1 would not treated himself in the same way as the Claimant in the job matching exercise and would not have been so sympathetic to the Claimant when she started to contend that she was entitled to equal pay. If there was a significant difference in seniority Comparator 1 would have been told so.
364. We consider that a key component of the decision making that resulted in Comparator 1 being paid so much more than the Claimant was the fact that Mr Pihan treated the Claimant as if she was “junior” hire whereas Comparator 1 was treated as if he was a “senior” hire. We consider that their previous experience was reasonably well set out in their CVs. The Respondent sought to play down the similarities between the CVs of the Claimant and Comparator 1; suggesting that the CV did not play a very important to role in recruitment. They allege that what came out during the interview was much more important. However, they gave very little hard evidence of what it was that Comparator 1 said that interview that suggested that he was more “senior” to the Claimant. The Respondent faces a real difficulty in suggesting that the CV was much less important than the interview process in circumstances where they kept no records of what was said during the interviews and there was not objective assessment against set questions arising from the job description and a properly devised person specification.
365. The experience of Comparator 1 was substantially overestimated and that of the Claimant downplayed. Mr Pihan accepted that Comparator 1 did not have any significant previous experience in Product Development for the Synthetic Prime Brokerage product prior to joining the Respondent. The Claimant, in contrast, had 8 years’ experience in prime brokerage. The Respondent has not been able to explain, with supporting evidence; particularly with such poor record-keeping; why they treated the Claimant as if she was “junior” and Comparator 1 as if he was “senior”. In light of the factors that we have out above, which we consider could lead to an inference of discrimination, we consider that there is sufficient evidence to infer that a substantial factor in the Claimant being treated as if she was “junior” and Comparator 1 being treated as if he was “senior” to her was the difference in their gender.

366. To establish the material factor defence the Respondent must show that reliance on any material factor does not involve direct sex discrimination. The burden is on the Respondent. We do not consider that the Respondent has established our satisfaction a material factor that explains the difference in pay.
367. The Respondent alleges that the material factors that explain the difference in pay are the fact that “the Claimant was unemployed” at the time that her salary was negotiated. whereas Comparator 1 “was in employment with Bank of America Merrill Lynch, a Tier 1 firm, and needed to be enticed away”. Further it is contended that “it would appear that Comparator 1 had been given an assurance at BAML that he would be promoted to Director”. Further it is alleged that there were differences in their pay at their previous employers in that “In the two previous years, Comparator 1’s compensation at BAML had been £151,856 and £138,428 (1/122). By contrast, the Claimant’s at DB had been £125,000 and £118,000.”. It is also contend that “The Claimant herself proposed her salary of £120,000 by way of a counteroffer” in the negotiation process.
368. While these may have been factors in the determination of salary we do not consider that they were the main factors in the difference of the salaries. The key factor was that the Claimant being treated as if she was “junior” while Comparator 1 was treated as if he was more “senior”. The Claimant’s gender was a significant factor in that difference of treatment.
369. We note that a very different approach was taken that to the negotiation of salaries for the Claimant and Comparator 1. In the case of the Claimant the overall approach was to try and minimise her salary; partly so that recruiting a further headcount might be permitted by reason of her being treated as if she was a “junior” resource. In the case of Comparator 1 the Respondent went out its way to support his desire for higher remuneration. They were prepared to change the McLagan coding, not because there had been an assessment of the role at and a new job description devised which showed that he would be undertaking a senior role, but to justify paying him a higher rate of pay, at director level. The Respondent’s witnesses accepted this was not the basis on which McLagan coding should be fixed. The coding should reflect the duties of the job as set out in a job description, rather than being used as a method to justify paying someone more. Comparator 1s “personal driver” of wishing to obtain director level salary was not a matter that should be reflected in an increase in the McLagan code. It might potentially give rise to a sign-on bonus. As the jobs were the same they should have had the same McLagan coding. There is no contemporaneous documentation to show that an objective assessment was undertaken to justify the difference in the coding.
370. The Respondent was prepared to accept at face value Comparator 1’s comments about the possibility of promotion at Bank of America Merrill Lynch. He was not challenged.

371. Mr Pinnock having initially said “We will not be able to hire a £125k person at anywhere near £175k” was swiftly persuaded to move to £160,00. He was not called to give evidence to explain his decision.
372. The difference in the way salaries were negotiated for the Claimant and Comparator 1 fits with the comments made about Comparator 1’s “personality”, him being “good cultural fit” and subsequently a “pleasure to work with” that suggests that a subjective view was formed of his personality that involved the Respondent benefiting someone that looked like themselves; particularly in circumstances in which Mr Pihan despite having interviewed 12 women had previously never previously appointed a woman to a role in the Department, and was reluctant to appoint the Claimant unless she was treated as if she was a “junior”. We consider that the evidence leads to an inference that the difference in approach taken to negotiating salary for the Claimant and Comparator 1 involved treatment of the Claimant that was less favourable because of her gender, in the sense that her gender was a significant factor. Alternatively, the Respondent has not adequately explained the difference in treatment and established to our satisfaction that it was not the difference in sex.
373. The Respondent also seeks to rely on higher performance ratings given to Comparator 1 from 2014. However, that cannot be relevant to the negotiation of salary at his recruitment and seeking to establish there is a material factor justifying the difference in salary.
374. We consider that there was an exaggeration of additional duties given to Comparator 1. In any event, to the extent that additional duties were given to Comparator 1 there was an element of that being favouring of Comparator 1 as against the Claimant because he was treated as if he was more “senior” which we have found involved sex discrimination. As time went by the Claimant also was involved, to an extent, in similar additional duties.
375. We do not accept that the Respondent has established a material factor, or material factors, for the difference in pay that do not involve treating the claimant less favourably because of her sex. As with direct sex discrimination a person is treated less favourably because of her sex if her gender is a significant factor in the difference of treatment.
376. We consider the position in respect of the other comparators is relatively straightforward. Comparator 2 worked with Mr Pihan in setting up the prime brokerage business, as opposed to operating it. He was at a level more equivalent to that of Mr Pihan. His work in setting up the platform was fundamentally different to that of Comparator 1 and the Claimant, who were both mainly engaged in undertaking projects to improve the platform once it went “live”. We are not persuaded that they were engaged in like work

377. Comparator 3 worked for a US company in a different division of the bank. We were not show evidence that supported there being common terms between those divisions. In any event, the different country with a different job market and pay negotiations provides a material factor for the difference in pay that does not involve any sex discrimination.
378. Comparator 4 received a sign-on bonus. This was because he was being attracted away from existing employment. The Claimant was not in employment at the time of her recruitment and therefore that that is a material factor that justifies the fact that the Claimant did not receive a sign-on bonus. It does not involve any discrimination because of sex. Comparator 4 can be seen as an example of how the fact that someone is in employment at the time of recruitment should be dealt with, rather than by awarding a higher salary as was alleged to have been the case for Comparator 1.
379. We now move on the allegations of direct sex discrimination, harassment and victimisation.
380. The first alleged detriment is alleged to be Mr Pihan writing two job descriptions; one senior and one junior. The job descriptions were provided during the course of the hearing; having been saved only in one of Mr Pihan's personal computer folders. It was as a result of an enquiry from the panel that a decision was taken to apply to amend to add this is a separate detriment. That application was granted. Mr Pihan explained that the jobs the job descriptions were never used. They were not relied upon by the Respondent. While we have found that there was discrimination in the Claimant being treated as if she was "junior" in comparison with Comparator 1 being treated as if he was "senior" which was of considerable significance to the equal pay claim, on reflection we do not consider that there was a separate detriment in respect of the drafting of the job descriptions as they were never used.
381. The Claimant raised an allegation that she was told that there were no corporate titles in Europe whereas this was not true. This was not pursued in evidence and, in any event, there were not specific individual corporate titles of VP, Director etc. Further, there is nothing to suggest that this issue had anything to do with the gender of the Claimant.
382. The next alleged detriment is the leaving of a witches' hat on the Claimant's desk. While we consider that this was relevant to the drawing of inferences of discrimination in respect of the environment in the team that the Claimant worked in, and we are satisfied that it was done by a team member, we do not know who left the hat on the Claimant's desk. In such circumstances, where the allegation is so out of time, and we do not consider it to be part of an act continuing over a period together with the other specific detriments claimed, we consider it would not be just and equitable to extend time in respect of the incident as a separate individual detriment.

383. The next alleged detriment is that Mr Pinnock would occasionally say when speaking to friends in or about 2014 “hey sexy” or “hey fuckface”. The allegation is very substantial out time. We do not consider it part of an act continuing of a period with the other specific detriments claimed and do not consider it would be just and equitable to extend time.
384. The Claimant contends that she did a protected act in or about September 2014 when she raised her concerns that she was not being paid equally to Comparator 1 and not receiving equal bonus. We accept that the Claimant did make a complaint of lack of equal pay and sex discrimination and it was understood by the Respondent as such. The fact that it was understood that the Claimant was alleging gender discrimination is emphasised by Comparator 1 thereafter jovially chanting “equal pay and equal rights” and the reference to the 2015 pay increase being to decrease the “gender pay gap”. We accept that the Claimant did a protected act.
385. We note that the Claimant was not told that she was seen as a “junior” and Comparator 1 as “senior”. She was not told the differential in pay. No steps were taken to investigate the matter.
386. We consider that the Claimant raising this issue, particularly when Mr Pihan knew that the Claimant was being paid so much less than Comparator 1 on the basis of the supposed difference in their level of seniority without having been told, resulted in an increasingly difficult working relationship between the Claimant and Mr Pihan. Mr Pihan must have realised that he would not be able to provide significant evidence to support the difference in treatment. He must have appreciated that the Claimant was unlikely to let the matter lie. He was aware of her attention to detail and tenacity. This was a problem that was unlikely to go away. She believed, correctly, that she had received a smaller bonus than Comparator 1. Mr Pihan appreciated that the Claimant took the issue very seriously as is demonstrated by his reference in the end of year appraisal to “her clear disappointment during the bonus exercise in 2014”.
387. In 2014 or 2015 it is alleged that Mr Pinnock told a story about friend who engage in a prostitution role-play with his wife. Again, this is a one-off incident that we do not consider forms a part of an act continuing over a period with any detriment in respect of which we find in favour of the Claimant hereafter. It is substantially out of time and we do not consider it would be just and equitable to extend time over so long period.
388. It is alleged that when discussing a project that the Claimant had assisted Comparator 1 with, Mr Pihan said the Claimant “do you think you're better than us. This is alleged to be direct discrimination and/or harassment related to sex. We do not consider that the evidence established any basis, considering that this was done because of the Claimant's sex or that the comment was related to the Claimant sex.

389. There are a number of alleged detriments in respect of the Claimant's treatment in August 2016, particularly around her appraisal. We consider that from when the Claimant had first raised the issue of the comparison of her pay and bonus with that of Comparator 1, her relations with Mr Pihan deteriorated. While we appreciate that there is a gap of two years from the first protected act to this detriment, we conclude that the Claimant's contention about discriminatory treatment in pay was a matter that continued to fester over this lengthy period as is evidence to an extent by Mr Pihan reference to the Claimant's disappointment with her bonus in the year end appraisal for 2014.
390. It is alleged that on 12 August 2016 Mr Pihan began the midyear appraisal performance review by stating "we do not believe this is a right bank for you, what do you want to do about it". Mr Pihan contends that he merely asked whether it was the right "role" for the Claimant. He alleges that he had noticed that the Claimant seemed to be feeling stressed. We rejected his evidence. In our findings of fact we held that he did ask whether it was the right bank for the Claimant. This involved a suggestion that the Claimant should consider leaving the Respondent's employment. That was an extremely undermining comment to make to the Claimant. Mr Pihan has not been able to explain it adequately. We consider that the inference to be drawn is that the Claimant's doing a protected act by alleging that she was being discriminated against in comparison to Comparator 1 in respect of pay and bonus resulted in increasingly hostile treatment in performance reviews. This constituted detrimental treatment done because Claimant had done a protected act.
391. The Claimant next alleges that negative feedback was sought by Mr Pinnock. In fact, the feedback was sought by Mr Pihan. We do not accept that he sought only negative feedback. However, he did focus on the negative feedback provided at the expense of the positive feedback for the purpose of the review. We consider that led to further detriment in the hostile manner in which the appraisal was conducted. That was, at least in significant part, because the Claimant had done a protected act.
392. The doing of the protected act had a material effect on the overall marking in the appraisal. Mr Pihan has told us that he determined the overall grading in a non-arithmetical manner. This subjectivity allowed the opportunity for the protected act to be taken into account when the overall assessment was reached. We consider that Mr Pihan failed to include positive feedback in part as a result the Claimant having done the protected act.
393. Next it is alleged that there was a failure to inform the Claimant that responsibilities had been reassigned to Antoine L'Huilier. That was not a matter that was explored to a significant extent during evidence or cross examination of Mr Pihan. We do not consider we have a sufficient evidential basis upon which we could conclude this was direct sex discrimination, harassment or victimisation.

394. It is alleging that in January 2017 Mr Pihan set the Claimant unachievable objectives and projects with no budget, including training staff at the new location in Lisbon. We do not consider that was sufficient evidence before us to form hold that the objectives were unachievable. The Claimant was not initially able to go to Lisbon because of personal reasons. We do not consider she was blocking from going to Lisbon. We do not accept that this detriment was made out on the evidence.
395. The Claimant alleges that she did a protected act in a meeting with Mr Pinnock on 13 February 2017 that when she alleged that Mr Pihan had admitted positive feedback from the 2016 performance review. While we accept that she made this allegation she did not contend that it was because of her gender. We do not accept that she did a protected act in the meeting.
396. The Claimant next alleges that Mr Pinnock failed to discuss her bonus before she went on holiday. We do not consider that the evidence suggests that this was because of her gender, was related to sex or was victimisation. There was some delay because there were ongoing discussions about the Claimant's bonus and her contention that positive feedback had been excluded.
397. The Claimant alleges that in March 2017 she was told in respect of her increased workload "cover all projects and lower your standards". We do not consider that there is a proper basis upon which we could conclude this comment was direct sex discrimination, harassment or victimisation.
398. Although not relied upon as a protected act, the Claimant had a conversation with Denis Pihan about her salary and bonus on 14 March 2017. There were various email exchanges in the days thereafter set out in our findings of fact. On 17 March 2017 Mr Pinnock wrote "don't worry, I have your back and trust you fully - I've been through this numerous times in my career and have seen lots of games, spinning and behaviour ... Most importantly, we will fix this." This did not bode well for how seriously the Claimant's complaints would be taken and what the consequences would be for the Claimant of having made the allegations.
399. We accept that on 20 March 2017 the Claimant raised her contention that there was a disparity in pay between her as a woman and Comparator 1 as a man. She alleged she was entitled to equal pay. She thereby did a protected act. There is some implicit acknowledgement of her contention when Mr Pinnock referred to the pay rise in 2015 having been to close the gender pay gap. His attempt to explain these comments in the grievance was wholly unconvincing.
400. The next detriment alleged is that during the meeting it was said to the Claimant that she was untrustworthy. This was a reference to the fact that the Claimant had read the documentation Mr Pihan had left on his desk. The documentation established that Mr Pihan had failed to include positive comments about the Claimant. We consider that the extremely angry

response was, at least in part, due to the fact that the Claimant had raised allegations that she was not being granted equal pay. It was again suggested in the meeting and that the Claimant was “unhappy at the bank”. That again involved a suggestion that the Claimant might leave the bank. We consider that it was at least in part as a result of the allegations of lack equality of pay and bonus and constituted victimisation.

401. The Claimant alleges she did a protected act on 28 March 2017 when she raised her contention that she was not receiving equal pay with Comparator 1 in a meeting with Emma Turner. We accept that she did a protected act.
402. The Claimant alleges that she was excluded from a meeting on the Roxbury project by Mr Pihan 5 April 2017. Although we accept that there were increasingly poor relations between Mr Pihan and the Claimant, this was not a matter considered in significant detail in the evidence, or put in any detail to Mr Pihan in cross-examination. We do not consider that there is sufficient evidence us to conclude that the Claimant was subject to detriment in this regard.
403. The Claimant next alleges that on 27 April 2017 that she was blocked from going to Lisbon, having been assigned the objective of training the new Lisbon operations team. She alleges that Comparator 1 was subsequently told that he could go to Lisbon at any time he wanted. We do not consider that the evidence establishes that the Claimant was blocked from going to Lisbon. There were occasions on which she could not go for personal reasons. Thereafter, her work commitments did not permit a visit. She was not blocked from going. The comments made to Comparator 1 was supposedly humorous. It does demonstrate the increasingly poor working relationship between the Claimant and Mr Pihan. The joke was made at the Claimant’s expense as Comparator 1 did not have any reason to go to Lisbon for work reasons. Mr Pihan’s comment was a dig at the Claimant that reflected the increasingly strained working relationship. However, we do not consider there is evidence to establish that it could have been because of her sex, related to her sex or victimisation.
404. On 4 May 2017 the Claimant alleges that she was subject to detriment when she met with Ms Skocypec to discuss remuneration. She alleges that a one-sided pay investigation was conducted. We accept that there were significant failings in the way in which the comparison of the pay of the Claimant and Comparator 1 was investigated. Ms Skocypec failed to properly reflect on the fact that they had the same job descriptions. She failed to investigate the reason why different McLagan banding had been provided. She failed to consider whether any objective assessment process had been carried out in setting the different bands. She was ready to accept the word of those who had recruited the Claimant and Comparator 1 when there was little convincing contemporaneous documentation to support it. She did not conduct a detailed assessment of the Claimant's role in comparison to Comparator 1. Ms Skocypec also failed to investigate how the overall appraisal ratings were an determined despite the fact it had such a significant

effect on the final bonus awarded. Overall, the exercise was used to justify the Respondent's position rather than genuinely investigate whether there might be discrimination. We consider that, at least in part, this was because the Claimant was alleging and lack of equality of pay and sex discrimination in bonuses. Ms Skocypec wished to close down the allegation. The inadequate investigation constituted victimisation.

405. On 10 May 2017 the Claimant again met again with Ms Skocypec and again raised concerns about equal pay and discrimination. We accept that this was another protected act.
406. On 25 May 2017 the Claimant met with Miss Rajkumar and again raised concerns about equal pay. This is another protected act. It is alleged that there was a one-sided investigation. We will return to this when considering the grievance investigation that was conduct.
407. The extent of the deterioration in the relationship after the Claimant started to allegation discrimination is demonstrated by the fact that Mr Pihan started to look for a possible replacement as was demonstrated by the call that 2 June 2017 took from Mr Bebb who said that Mr Pihan was looking to recruit. Mr Pihan accepted in the grievance that he was looking for someone as the Claimant was not "not adequate for the role". We do not accept that this alleged inadequacy is supported by the evidence.
408. The Claimant alleges that she was subject to detriment by the delay in her HR file being sent to her after it was requested on 20 July 2017. We do not consider there is anything evidence to suggest that this was done because of her gender, was related to her sex or was done because she had done protected acts.
409. We consider that Mr Pihan reaction to the Claimant's challenging inequality in pay and bonus with Comparator 1 is demonstrated by his original draft 2017 mid year appraisal in which he recorded "Stacey has expressed discontent about her remuneration and there has been an associated reduction in motivation and pro-activeness. As a consequence she is under performing versus expectations". This demonstrates that Mr Pihan linked his perception of underperformance with the Claimant raising issues about her pay. The comment was removed from the later versions.
410. On 16 August 2017 Mr Pihan recorded an absence when the Claimant attended her annual medical assessment as annual leave. The Claimant had returned late because she had to have further tests. Mr Pihan was extremely annoyed about this. While we consider that this is an element of the increasingly deteriorating relationship, we do not consider the evidence suggests that this was because of the Claimant's sex, was related to sex or was because she had done protected acts.

411. The Claimant alleges that she did a protected act when she submitted a data subject access request on 23 August 2017. This did not include an allegation of discrimination. We do not accept that it was a protected act.
412. The Claimant alleges she was subject to detriment because of a seven-month delay and the Respondent failing to respond properly to a data subject access request. We do not accept that is made out. The Claimant took a very intransigent approach during the data subject access request, refusing to agree to appropriate limitations to search terms that would have resulted in an appropriate level of documentation being produced. We do not consider there is any reason to consider that the treatment was because of her sex, related to sex or was because she had done a protected acts.
413. The Claimant alleges that on 25 August 2017 she was excluded from emails related to the finance collateral feed project. The Claimant was not included in some correspondence as she was on absent on holiday. This was another matter that was not really investigated in the evidence before us. We do not accept that the alleged detriment is made out; or that there is evidence to suggest the treatment was sex discrimination, harassment or victimisation.
414. The Claimant contends that on 27 August 2017 she was excluded from a meeting with Finance to discuss the collateral feed project. This was an urgent meeting and there was insufficient time to include the Claimant. We do not accept that she was subject to detriment in this regard or there is any reason to believe there was direct sex discrimination, harassment or victimisation.
415. The Claimant alleges that on 11 September 2017 the midyear review was fixed without her being given sufficient time to prepare for the meeting. We do not accept that lack of notice was itself sex discrimination, harassment or victimisation. We will come on to consider the detail of what happened at the review meeting.
416. However, Mr Pihan's reaction in his email of 14 September 2017 again evidences the extent of the breakdown in relations since the Claimant started to raise serious concerns about inequality in pay and bonus. He said to Mr Pinnock "She is clearly showing her unacceptable attitude which is my sole consolation, but surely HR have to act now?".
417. The Claimant alleges that on 15 September 2007 she was informed that the forthcoming midyear review might potentially be contentious. We do not consider that was a separate detriment. However, we will consider in detail what happened at the midyear review.
418. The increasingly hard line that the Respondent adopted to the appraisal process and a refusal to engage with the Claimant when she challenged criticisms of her performance and sought to put forward examples of good performance is underlined by the email Mr Pihan sent to Mr Pinnock on 25 September 2017 in which he said "It would seem Stacey is going to try and

inundate us with circumstantial evidence and miss the message entirely as she has in the past. I propose that we not let ourselves get distracted by this strategy and that we ask her to provide her feedback after the meeting." An appraisal should be two way process but the Respondent increasingly treated it as one way; being little more than an opportunity to raise criticisms of the Claimant while her (admittedly increasingly detailed) responses and alternative examples were not considered in any detail.

419. The Claimant alleges that on 20 September 2017 Mr Pihan was evasive and failed to respond to the Claimant raising red flags about opaque profit and loss practices and dividend enhancements. This matter was not considered in any detail in the evidence. We do not consider there is the evidence to establish the Claimant was subject to a specific detriment in this regard.
420. On 30 October 2017 the Claimant was informed by Ms Skocypec why it was contended that Comparator 1 was not at a similar level to her. We do not consider that the delay in providing that information was itself a separate detriment but have already found that the way in which the comparison of the pay of the Claimant and Comparator 1 was investigated, and the way in which Ms Skocypec largely relied on what she was told by those who were responsible for deciding the difference in pay, itself constituted victimisation.
421. The next Claimant alleges that on 1 November she did a protected act when she wrote to Amanda Rajkumar, Paul Reynolds and others alleging that she had been paid less than a male comparator in the same role. We accept that the Claimant did a protected act.
422. The Claimant alleges that the grievance investigation was one sided. We consider that there was a failure to get to grips with the real complaint during the grievance process. Far too little regard was given to the fact that the Claimant and Comparator 1 had exactly the same job descriptions. There was insufficient challenge of the very limited documentary evidence from the recruitment exercise. The evidence given by Mr Pihan and Mr Pinnock was taken at face value without being challenged to any significant extent. Other, potentially witnesses who had not been involved in setting the pay but could objectively comment on the respective job roles were not interviewed. Comparator 1 was not asked about the comparative level of the roles. There was no real investigation of how the McLagan banding had been determined. While there were spreadsheets that showed that there had been some oversight of the McLagan banding the evidence was that any detailed consideration was only given when there was a change in the banding. That there was no convincing evidence to suggest that Comparator 1 had ended up a band higher than the Claimant at the time of his recruitment for good reason. We consider that the grievance process was really designed to reject the Claimant's complaint. No proper and rigorous investigation of why there was a differential in pay was conducted. We consider that was, at least in part, because the Claimant had raised allegations of inequality of pay and bonus. There was a determination to defend the Respondent against the allegations rather than investigate them properly. This was victimisation.

423. On 2 November 2017 Claimants claims that she did a protected act by updating her protected disclosure letter. We accept that that letter involved allegations of sex discrimination and lack of equal pay. It was a protected act.
424. The Claimant next raises a series of allegations about the way in which her midyear review was dealt with. We consider that an extremely hostile approach was adopted. Mr Pihan went out of his way to mark the Claimant down. The Claimant disputed what was being said about her performance and provided considerable detail to support her argument. In the end her documentation and comments were not considered despite Mr Pihan having stated that there would be a further meeting to discuss them. The Claimant asked for an agenda so that she would know what was to be discussed. Mr Pihan failed to provide it. The Claimant was unjustifiably marked down in respect her presentations to the monthly client service meetings.
425. Mr Pinnock sent an email to himself on 3 November 2017, stating inverted "can we give Stacey McCann a six". This is two grades below the previous year. The evidence does not support a contention that the Claimant's performance genuinely merited such a negative marking. It again demonstrates the fundamental change in attitude to the Claimant after she raised her complaints about inequality in pay and bonus. We had not evince from Mr Pinnock to explain what he meant by this comment.
426. The process adopted in the 2017 midyear review involved Mr Pihan raising his concern concerns about the Claimant's performance at the first meeting on 2 November 2017. The Claimant was told that she would be able to respond and a follow-up meeting would be held. At the next meeting on 16 November 2017 the Claimant provided a 35 page table responding to the criticisms made by Mr Pihan. Mr Pihan said relatively little in response but stated that he might have some supplementary questions and that he would get back Claimant. On 13 December 2017, not having responded to the points the Claimant made in her 35 page table, he wrote setting out areas of performance that is was contended the Claimant should concentrate on. He stated that they would not schedule a follow-up meeting. While the Claimant provided somewhat excessive detail in her responses to the criticisms made about her, Mr Pihan's approach was simply to ignore what she said and stick with his assessment. That was part of his now increasingly negative assessments of the Claimant's performance. The evidence does not suggest a sufficiently significant tailing off in her performance that merits such negative comments. We consider that the increasing dispute about the lack of equality in pay between the Claimant and Comparator 1 was a significant reason for the approach that was adopted to the midyear review, which constituted further victimisation.
427. The Claimant alleges that on 3 November 2017 Mr Pihan failed to verbally remind her to attend conference. We do not consider there is evidence to establish that this was because Claimant's gender, constituted harassment or was because of the doing of the protected acts

428. On 16 November 2017, the Claimant sent an email to Ms Rajkumar, again setting out her allegations about her treatment. This included allegations that she been treated differently to her male peers. We accept that it constituted a protected act.
429. On 16 November 2017 the Claimant produced an 825 page document in support of her grievance. This included allegations of lack of equal pay and of discrimination. It was a protected act.
430. On 23 November 2017 Claimant complained to the information Commissioner about her data subject access requests. We do not accept this was a protected act.
431. The Claimant alleges that she was excluded from client service meeting on 30 November 2017. We do not consider there is sufficient evidence to suggest that this was done because of her gender, was related to her sex or was done because she had done protected acts.
432. The Claimant next relies on an email of 13 December 2017 as a detriment. Mr Pihan explained that there would be no further meeting in respect of the Claimant's midyear performance review and suggested that there needed to be an improvement in her performance level. We consider that Mr Pihan suggested in this letter that the Claimant's performance was at an unacceptable level. That is not something that had been previously raised with her. We consider that that was part of the continuing breakdown in relations that occurred because the Claimant was alleging that she had not been given equal pay and bonuses as Comparator 1 and was part of the act of victimisation.
433. On 19 December 2017 the Claimant presented her first Claim Form to the Employment Tribunal. We accept that that was a protected act.
434. The Claimant next contends that on 9 February 2018 she wrote complaining to about alleged differential treatment and a hostile performance review. This letter included allegations of discrimination was a protected act.
435. The Claimant alleges that she complained about the issue again on 15 February 2017. We accept that was a further protected act.
436. On 27 February 2018 the Claimant appealed against the grievance outcome. The letter included allegations of discrimination. It was a protected act.
437. The Claimant alleges as a detriment that there was a one-sided grievance appeal. As with the grievance, we consider that there was a failure to properly investigate the very serious complaint that the Claimant was raising. There was a failure to investigate how the McLagan code was fixed. There was a failure to interview witness who not been involved in setting pay. The was a failure to investigate the number of projects Claimant was undertaking in comparison with Comparator 1. There was no consideration of what job

descriptions were in place at the time of recruitment. Ms Taylor said it was “not deemed necessary”. Again, we consider that the grievance appeal was dealt with in a way that was designed to justify the bank’s position rather than rigorously investigate why there was a difference in pay between the Claimant and Comparator 1, particularly in circumstances where they had the same job title and job description; and had not been told that there was a junior and a senior role. We considered that the bank’s approach in seeking to justify its position was because the Claimant was making allegations of lack of equal pay and sex discrimination. It constituted victimisation.

- 438. The Claimant contends that she complained to the Head of Compliance regarding misreporting the gender pay gap on 11 April 2018. We accept that this was a protected act.
- 439. The Claimant alleges that she subject to detriment because of a delay in setting her objectives. We do not consider that this is a separate detriment, although it followed from the difficulties that arose in the midyear and final review 2017 and the an end of year review for 2017.
- 440. The Claimant contends that Mr Pihan’s holiday handover email on 10 June 2017 was detrimental treatment. The Claimant had been away on holiday. Mr Pihan went out of his way to criticise her in an email that she would receive the day she returned to work. They were at daggers drawn mainly because of the Claimant’s complaints about unequal pay and sex discrimination. Mr Pihan suggested that he would often deal with such matters on a Sunday evening. However, we accept the Claimant’s evidence that he had not previously sent such a handover email. It was aggressive, particularly in circumstances in which the grievance outcome had suggested mediation between the Claimant and Mr Pihan. It was unnecessarily aggressive and we consider it was an act of victimisation.
- 441. The Claimant alleges that she did a protected act on 13 June 2018 when she raised further concerns. There were no alleged detriments after that date.
- 442. We do not consider that Ms Rajkumar pointing out to the Claimant that litigating her complaints would be a long and drawn out process was harassment. It was not related to her sex.
- 443. We do not consider that the Claimant’s desk being moved next to Mr Pihan’s was harassment. It was a genuine mistake and was not related to the Claimant’s sex or, indeed, because of her sex or because she had done protected acts.
- 444. We do not consider that the installation of video cameras had anything to do with the Claimant doing protected acts.
- 445. We finally deal with the issue of bonuses. As we have set out above. Mr Pihan was not able to give an adequate explanation of the methodology by which the overall grading is reached. The overall grading had a significant

influence in determining the bonus paid to employees and allowed for a substantia element of subjectivity. In 2013 the Claimant and Comparator 1 had relatively similar qualitative comments made about them, which was reflected in them both receiving the same performance grade. However, Comparator 1 received double the bonus that was awarded to the Claimant. We do not consider that the Respondent has adequately explained why this was the case. We consider a significant factor in that determination was the treatment of the Claimant as if she was “junior” and Comparator 1 as if he was “senior”, which we have found involved sex discrimination. That false distinction between senior and junior continued to effect ongoing performance reviews and had a significant effect on the bonuses that were awarded thereafter. Therefore we consider that the Claimant's sex was a factor in the determination of all the bonuses that she was awarded. In addition, because Comparator 1 had unjustifiably been treated as senior to the Claimant, he had from the outset received higher pay which also to have then been reflected in him receiving consistently higher bonuses. This again rests on the discriminatory treatment of that Claimant as if she was junior.

446. Furthermore, after the Claimant's first raised her complaint that there was inequality in pay, in about September 2014, there was a deterioration in her relationship with Mr Pihan. We consider that was also a factor in her gradually deteriorating performance reviews, and therefore that her allegations of discrimination were a factor in the setting of her bonuses, and therefore there was an element of victimisation after September 2014.
447. This became much more extreme when the Claimant raised much more focused and serious allegations of sex discrimination from March 2017. After the Claimant made her allegations of inequality in pay and sex discrimination from March 2017 there was a very rapid deterioration in her relationship with Mr Pihan and Mr Pinnock. A very negative approach was adopted to the mid-year appraisal and end of year appraisals. We consider that a significant factor in the over critical appraisal of the Claimant was the fact that she had made allegations of discrimination.
448. Indeed in the year end appraisal for 2017 comments are made that come close to admitting that the Claimant having raised complaints of discrimination had resulted in a breakdown in relations and resulted in the unsatisfactory performance grading of 6;

““The breakdown in communication with Stacey has been caused by her refusal to accept feedback and lead to behaviour and unfounded accusations which are [u]nacceptable ...

Stacey's inability to accept constructive feedback, rejecting the fault on others has led to a cascade of comments, accusations and recriminations which has lead to the breakdown of her Relationship with the management of the bank.”

449. There was a specific reference in justifying the performance rating to “unfounded accusations” which are unacceptable. It was suggested that the Claimant would not listen to feedback. The reality was that the Claimant did listen to feedback and produced detailed (on occasions excessively detailed) responses. It was the Respondent that would not respond her comments. They did not conclude the midyear performance review as they had suggested they would by coming back with a response to the written comments that the Claimant had made. The yearend performance review was not properly completed. We consider that the doing of the protected acts alleging inequality of pay was a factor in the gradings that the Claimant received in her performance appraisals which reduced her bonus (to nil for 2017) and that this constituted further victimisation.
450. The evidence the Respondent produced about forced rankings was not sufficient to persuade us that the Claimant’s gender played no part in the setting of her bonuses. It was not supported by detailed objective assessment and we consider that the line manager played the key role in fixing bonus. There is ample evidence to infer discrimination on their part that the Respondent has failed to rebut to our satisfaction.
451. We consider that the victimisation of the Claimant for raising complaints of discrimination is an act extending over a period involving the hostility of Mr Pihan and Mr Pinnock to the Claimant raising the complaint and those involved in investigating the Claimant complaints shutting them down and failing to properly investigate her core complaints of unequal pay and sex discrimination in bonus payments. We also consider that the discrimination and victimisation of the Claimant in her bonus awards is also an act extending over a period, involving the same discriminators acting for similar reasons from year to year. In any event, the Claimant has tried to resolve matters internally and remains an employee. The Respondent has been able to respond fully to the claim. There is nothing to suggest that the lack of documentation arises from the fact that documents have been destroyed; they can’t be found because they were never produced. If necessary, we would apply a time limit in respect of the complaints we have found in favour of the Claimant in excess of 3 months so that the complaints are in time as we consider it is just and equitable to do so.

452. The only alleged protected disclosure in the list of issues was a disclosure about the “duty to publish Gender Pay Gap disparities”. It was not put to the Respondent witnesses that this specific alleged protected disclosure resulted in the Claimant suffering the particular detriments alleged. In the Claimant’s closing submission it was suggested that there were protected disclosures in respect of general gender inequality of pay. This was not the way the case was set out in the agreed list of issues or put to the Respondent’s witnesses. In any event, the allegation does not add anything of real significance to the victimisation claim. The Claim of protected disclosure detriment fails and is dismissed.

Employment Judge Tayler

30 August 2019

Judgment and Reasons sent to the parties on
2 September 2019

For the Tribunal Office