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EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms A Agarwal (C1)
Mr R Meshram (C3)

AND

Tata Consultancy Services Ltd
and Others

HELD AT: London Central **ON:** 10 - 12, 15 – 19, 22, 24, 25 July,
29 – 31 July, 1, 2 & 5 August 2019,
6 – 9 & 13 August 2019 (In Chambers)
& 3 October 2019 (In Chambers)

BEFORE: Employment Judge Brown

Ms T Breslin
Mr S Soskin

Representation:

For Claimants: Both appeared in person
For Respondent: Mr A Smith, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The First Respondent subjected Ms Agarwal to sex harassment or sex discrimination by Ms Bhogal and Mr Buckley's treatment of her collective grievances.
2. The First Respondent subjected Ms Agarwal to sex discrimination by Ms Hide's failure objectively to investigate her grievance.
3. The First Respondent victimised Ms Agarwal by putting her at risk of redundancy
4. The First Respondent unfairly dismissed Ms Agarwal.

5. The First and Second Respondents victimised Mr Meshram by Mr Krishnaswami presenting unauthentic communications from team members, December 2017 – February 2018.
6. The First and Third Respondents victimised Mr Meshram by Mr Venkatraman's hostile email threatening disciplinary action against Mr Meshram, which HR then considered.
7. The First and Second Respondents victimised the Claimant by awarding Mr Meshram a D Performance Rating.
8. The First Respondent victimised Mr Meshram by putting him at risk of redundancy.
9. The First Respondent victimised Mr Meshram by not offering Mr Meshram roles of Client Partner for an insurance partner, or Country Head for Ireland.
10. The First Respondent victimised Mr Meshram by terminating his employment.
11. The First Respondent subjected Mr Meshram to protected disclosure detriment when it queried, or failed to approve, Mr Meshram's expenses in July 2018.
12. The First Respondent subjected Mr Meshram to protected disclosure detriment when it put Mr Meshram at risk of redundancy.
13. The First Respondent unfairly dismissed Mr Meshram.
14. The Respondents' unlawful acts of harassment, discrimination, victimisation and protected disclosure detriment were part of a series of linked acts and/or a discriminatory state of affairs which lasted until the Claimants' dismissal. The Claimants' claims were in time.
15. The Claimants' other claims fail.

REASONS

Preliminary

1. The First Claimant, Ms Agarwal, and the Third Claimant, Mr Ravindra Meshram, bring complaints against: Tata Consultancy Services Limited, their former employer; Mr Krishnaswami, the Second Respondent; and Mr Venkatraman, the Third Respondent. The Second and Third Respondents are both senior managers in the First Respondent.

2. Ms Agarwal brings complaints of direct sex discrimination, harassment related to sex, victimisation and ordinary unfair dismissal. Mr Krishnaswami, the Second Respondent, is a Respondent to her complaints of direct sex discrimination, harassment related to sex and victimisation. Mr Venkatraman, the Third Respondent, is not a Respondent to Ms Agarwal's claims.

3. Mr Meshram brings complaints of direct race discrimination, harassment related to race, victimisation, protected disclosure detriment, ordinary unfair dismissal and automatically unfair dismissal under s.103A Employment Rights Act 1996. Messrs Krishnaswami and Venkatraman are both Respondents to Mr Meshram's claims of direct race discrimination, race harassment, victimisation and whistleblowing detriment.

4. The Second Claimant, Ms Oana Cinca, had brought complaints of direct age and race discrimination, victimisation and unfair dismissal against the Respondents. She withdrew her claims during the hearing.

5. In Mr Meshram's race discrimination complaints, he relies on the alleged protected characteristic of "belonging to the State of Maharashtra" as an ethnic origin under s.9 Equality Act 2010. He contends that he was treated less favourably than others who "hail from Southern States of India" and contends that that, too, is an ethnic origin. Mr Meshram also relies on being "lower caste" as an ethnic origin protected characteristic. He compares himself with those of "upper caste" and contends that being upper caste is an ethnic origin.

6. The Respondents do not accept that the Tribunal has jurisdiction to determine the claims against the Second and Third Respondents in their capacity as individual Respondents. They contend that the Second and Third Respondents are employed by a US company, on US contracts, that they live and work in the US and that they very infrequently interacted with the Claimants in the UK.

7. The parties had agreed a list of issues. The issues to be determined by the Tribunal were as follows:

A. Jurisdiction

1. Does the Tribunal have territorial jurisdiction to determine the Claimants' claims against the Second and/or Third Respondent?
2. Which, if any, of the Claimants' specific complaints / claims are *prima facie* out of time, having regard to:
 - 2.1. Ss. 123(1)(a) and 123(3) of the Equality Act 2010 ("**EqA**") and the ACAS Early Conciliation provisions in s. 140B EqA (including consideration of whether any acts or omissions constituted

conduct extending over a period, for the purpose of s. 123(3)(a) EqA); and

- 2.2. In the case of the Third Claimant, ss. 48(3)(a) and 111(2) of the Employment Rights Act 1996 (“**ERA**”) and the ACAS Early Conciliation provisions in s. 207B ERA?
3. In respect of those complaints that are *prima facie* out of time, does the Tribunal nevertheless have jurisdiction to determine them, on the basis that:
 - 3.1. In respect of claims under the EqA, it would be just and equitable to extend time (pursuant to s. 123 (1) (b) EqA); and
 - 3.2. In respect of the Third Claimant's claims under the ERA, (i) it was not reasonably practicable to have presented the complaint within the primary time limit; and (ii) it was presented within such further period as the Tribunal considers reasonable (pursuant to s. 111(2)(b) ERA)?

B. Burden of proof (EqA claims)

4. Have the Claimants (or any of them) proved primary facts from which a reasonable Tribunal could, in the absence of any other explanation, properly conclude that there had been a contravention of the EqA?
5. If so, can the Respondents prove, on the balance of probabilities, that the alleged contravention of the EqA did not take place?

C. Direct sex discrimination

The First Claimant's allegations

6. Did the First and/or Second Respondent, because of the First Claimant's sex, treat her less favourably than it/he treated or would treat a hypothetical comparator, in any of the following alleged respects?
 - 6.1. Failing to promote the First Claimant in 2010, 2013, 2017 and 2018.
 - 6.2. Giving the First Claimant an unfair performance appraisal in 2010 and 2018.
 - 6.3. *[Deleted intentionally.]*
 - 6.4. Refusing to give the First Claimant a pay rise upon her return from maternity leave in 2015.
 - 6.5. Threatening to demote the First Claimant upon her return from maternity leave in 2015.

- 6.6. Threatening the First Claimant with a less favourable performance appraisal upon her return from maternity leave in 2015.
- 6.7. Putting the First Claimant "*in a significant disadvantageous position*" by "*introducing disparity*" in the First Claimant's overall gross compensation when transferring the First Claimant from the India payroll to the UK payroll in 2016.
- 6.8. Refusing to give the First Claimant an "*adequate*" pay rise, or bonus payment, in 2016, 2017 and 2018.
- 6.9. In July 2017, the Second Respondent informing the First Claimant's line manager that the First Claimant's case (in respect of her potential promotion) was "*in the queue*".
- 6.10. In July 2016, the Second Respondent appointing Ganesh Nallasivam to lead the First Claimant's responsibilities on the Jaguar Land Rover account on her behalf and dismissing the First Claimant from her responsibilities on that account.
- 6.11. In or around October 2017, the Second Respondent setting up a "*review meeting*" to discuss the First Claimant's portfolio with her line manager and "*excluding*" the First Claimant from that meeting.
- 6.12. In or around September 2016, the Second Respondent telling the First Claimant that her work in respect of Vodafone was "*a waste of time, and this will fail*".
- 6.13. In the course of a video conference call on 4 October 2017, the Second Respondent acting in the manner described in paragraph 15 of the First Claimant's amended Particulars of Claim (the "**C1 Amended PoC**").
- 6.14. The Second Respondent "*completely ignor[ing]*" the First Claimant from 13 October 2017 onwards, including scheduling meetings without the First Claimant, isolating her, not having conversations about her promotion and failing to respond to her requests for support to resolve non-cooperation from the marketing team.
- 6.15. The First Respondent forcing the First Claimant to be reviewed by the Second Respondent during the performance band disagreement process in April 2018.
- 6.16. "*Randomly unallocating*" the First Claimant from April 2018 and attempting to remove her from the Business Unit in May 2018.

- 6.17. The First Respondent “*taking [the Second Respondent’s] word over [the First Claimant’s]”* and refusing to uphold either of the First Claimant’s grievances.
- 6.18. HR failing properly to deal with the First Claimant’s data subject access requests, raised in December 2017 and July 2018.
- 6.19. The First Respondent terminating the First Claimant’s employment, with effect from 31 August 2018.
- 6.20. The First Respondent not upholding the First Claimant’s grievances raised in October 2017 and November 2017, and in particular:
 - 6.20.1. The First Respondent (Graham Buckley, Nupur Mallick, Priya Bhogal, Gill Hyde, Prashant Vora, Andrew Waterman, Daphna Perry and John Cumming) conducting a flawed and biased grievance process by:
 - 6.20.1.1. Failing to investigate or consider her grievances (or the appeals to those grievances) thoroughly or objectively;
 - 6.20.1.2. Failing to treat her complaints of discrimination, harassment or victimisation with due seriousness;
 - 6.20.1.3. Threatening the First Claimant in October 2017 that if she raised a grievance against the Second Respondent there would be repercussions for her career at the First Respondent;
 - 6.20.1.4. Making insensitive and racial comments to the First Claimant in the formal grievance meeting in November 2017, by saying that (a) the Second Respondent was an “*India boss working in America and they are aggressive and that’s how they are*”, and (b) that the First Claimant needed to learn to “*cope*” with the Second Respondent’s attitude and behaviour;
 - 6.20.1.5. Instructing the First Claimant to improve her active listening and hearing skills, falsely alleging that the First Claimant was instructed to raise a grievance by her Line Manager, labelling the First Claimant as belligerent, and threatening the First Claimant with a “*Change Management*” agenda that could lead to her redundancy in November 2017;

- 6.20.1.6. Making flawed/inadequate findings on the First Claimant's complaints, preferring the evidence of the Second Respondent to the First Claimant without corroborating the evidence, reaching the collective grievance outcome on incorrect and misrepresented information, and on raising the matter, choosing not to act;
- 6.20.1.7. The HR representative named in the grievance primarily running the grievance hearing rather than the nominated Chairperson, and being part of the investigation and signing the outcome letter;
- 6.20.1.8. ~~Breaching the First Claimant's privacy by posting the confidential formal grievance outcome letter to an incorrect address (withdrawn); and~~
- 6.20.1.9. Sharing the copy of the confidential grievance outcome letter with the Second Respondent, contrary to the First Respondent's policy.

6.20.2. The First Respondent failing to record and provide the First Claimant with the complete grievance investigation materials between October 2017 and March 2018.

6.20.3. The First Respondent (Nupur Mallick, Ritu Anand and Ajoyendra Mukherjee) not responding to the First Claimant's request for escalation on the grievance process and concerns on the work environment in January 2018 and March 2018.

D. Harassment related to sex

8. Did the First and/or Second Respondent subject the First Claimant to unwanted conduct related to sex, in any of the following alleged respects?

The First Claimant's allegations

- 8.1. Failing to promote the First Claimant in 2010, 2013, 2017 and 2018.
- 8.2. Giving the First Claimant an unfair performance appraisal in 2010 and 2018.
- 8.3. Refusing to give the First Claimant a pay rise upon her return from maternity leave in 2015.

- 8.4. Threatening the First Claimant with a less favourable performance appraisal upon her return from maternity leave in 2015.
- 8.5. Putting the First Claimant "*in a significant disadvantageous position*" by "*introducing disparity*" in the First Claimant's overall gross compensation when transferring the First Claimant from the India payroll to the UK payroll in 2016.
- 8.6. In July 2016, the Second Respondent appointing Ganesh Nallasivam to lead the First Claimant's responsibilities on the Jaguar Land Rover account on her behalf and dismissing the First Claimant from her responsibilities on that account.
- 8.7. In the course of a video conference call on 4 October 2017, the Second Respondent acting in the manner described in paragraph 15 of the C1 Amended PoC.
- 8.8. The Second Respondent "*completely ignor[ing]*" the First Claimant from 13 October 2017 onwards, including scheduling meetings without the First Claimant, isolating her, not having conversations about her promotion, and failing to respond to her requests for support to resolve non-cooperation from the marketing team. .
- 8.9. In or around September 2016, the Second Respondent telling the First Claimant that her work in respect of Vodafone was "*a waste of time, and this will fail*".
- 8.10. The First Respondent forcing the First Claimant to be reviewed by the Second Respondent during the performance band disagreement process in April 2018.
- 8.11. "*Randomly unallocating*" the First Claimant from April 2018 and attempting to remove her from the Business Unit in May 2018.
- 8.12. HR failing properly to deal with the First Claimant's data subject access request.
- 8.12A The First Respondent (Graham Buckley, Nupur Mallick, Priya Bhogal, Gill Hyde, Prashant Vora, Andrew Waterman, Daphna Perry and John Cumming) conducting a flawed and biased grievance process for the First Claimant's by:
 - 8.12A(i) Failing to investigate or consider her grievances (or the appeals to those grievances) thoroughly or objectively;
 - 8.12A(ii) Failing to treat her complaints of discrimination, harassment or victimisation with due seriousness;

- 8.12A(iii) Threatening the First Claimant in October 2017 that if she raised a grievance against the Second Respondent there would be repercussions to her career in the First Respondent;
 - 8.12A(iv) Making insensitive and racial comments to the First Claimant in the formal grievance meeting in November 2017 that (a) the Second Respondent was an "*India boss working in America and they are aggressive and that's how they are*", and (b) the First Claimant needed to learn to "*cope*" with the Second Respondent's attitude and behaviour;
 - 8.12A(v) Instructing the First Claimant to improve her active listening and hearing skills, falsely alleging that the First Claimant was instructed to raise a grievance by her Line Manager, labelling the First Claimant as "*belligerent*", and threatening the First Claimant with a "*Change Management*" agenda that could lead to her redundancy in November 2017;
 - 8.12A(vi) Making flawed/inadequate findings on the First Claimant's complaints, preferring the evidence of the Second Respondent to the First Claimant without corroborating the evidence, reaching the collective grievance outcome on incorrect and misrepresented information, and on raising the matter, choosing not to act;
 - 8.12A(vii) The HR representative named in the grievance primarily running the grievance hearing rather than the nominated Chairperson, and being part of the investigation and signing the outcome letter;
 - 8.12A(viii) Breaching the First Claimant's privacy by posting the confidential formal grievance outcome letter to an incorrect address;
 - 8.12A(xi) Sharing the copy of the confidential grievance outcome letter with the Second Respondent, contrary to the First Respondent's policy.
- 8.12B The First Respondent failing to record and provide the First Claimant with the complete grievance investigation materials between October 2017 and March 2018.
- 8.12C The First Respondent (Nupur Mallick, Ritu Anand and Ajoyendra Mukherjee) not responding to the First Claimant's request for escalation on the grievance process and concerns on the work environment in January 2018 and March 2018.

Direct race discrimination

The Third Claimant's allegations

12. Is "*belonging to the state of Maharashtra*" an ethnic origin and a protected characteristic for the purpose of s. 9 (1) (c) EqA? If so, is this the Third Claimant's ethnic origin?
- 12A Is "*lower caste*" an ethnic origin and a protected characteristic for the purpose of s. 9 (1) (c) EqA? If so, is the Third Claimant of "*lower caste*"?
13. Is "*hailing from Southern states of India*" an ethnic origin and a protected characteristic for the purpose of s. 9 (1) (c) EqA? If so:
- 13.1. Which of the Third Claimant's named comparators (if any) are of this ethnic origin?
- 13.2. Is the Second Respondent of this ethnic origin?
- 13.3. Is the Third Respondent of this ethnic origin?
- 13A Is "*upper caste*" an ethnic origin and a protected characteristic for the purpose of s. 9 (1) (c) EqA? If so:
- 13A.1 Which of the Third Claimant's named comparators (if any) are of this ethnic origin?
- 13A.2 Is the Second Respondent of this ethnic origin?
- 13A.3 Is the Third Respondent of this ethnic origin?
14. What knowledge, if any, did the First and/or Second and/or Third Respondent have: (a) of the Third Claimant's ethnic origin; and/or (b) of the ethnic origin of the Third Claimant's named comparators: Ramanan T, Ganesh Nallasivam, Aravind Sivakumar, Vinay Chandran and Raghavendran Selvaraj?
15. Did the First and/or Second and/or Third Respondent, because of ethnic origins, treat the Third Claimant less favourably than it/he/they treated or would treat others, in any of the following alleged respects?
- 15.1. Excluding the Third Claimant from any meetings, discussions or official communications with Ericsson, MTI Technologies and IBM, and instead assigning team members of the same ethnicity to those specific clients, namely Ramanan T, Ganesh Nallasivam, Aravind Sivakumar, Vinay Chandran and Raghavendran Selvaraj.
- 15.1A Between October 2017 and May 2018, the Second Respondent blaming the Third Claimant (as the person who (pre-change of ownership) had ultimate responsibility for the Alliance Wave

Programme and under whose leadership the program was created and executed) for the failure of the Alliance Wave Program (post-change of ownership), by sending emails and the following documents to the grievance panel during the grievance process:

- 15.1A.1 Document entitled "105114 Challenges", submitted by the Second Respondent in January 2018 during the Third Claimant's grievance process.
- 15.1A.2 Document entitled "Annexure 4.1", submitted by the Second Respondent in December 2017 during the Second Claimant's grievance process.
- 15.1A.3 Document entitled "Timeline HR-HRGR", pages 3 – 4 of which were submitted by the Second Respondent in December 2017 during the Second Claimant's grievance process.
- 15.1A.4 Collective grievance appeal outcome letter for the First and Second Claimants dated 21 December 2017.
- 15.2. Between September and November 2017, forcing the Third Claimant to hand over the Alliance Wave Program and instead assigning a team of the same ethnicity to that program. Specifically, assigning (a) the overall ownership of the Alliance Wave team to Mamta Pandya; (b) the Vodafone partner to Mamta Pandya; (c) Hitachi Vantara to Ramanan T; (d) Tata Communications to Vinay Chandran; (e) the Europe section of Alliance Wave to Aravind Sivakumar; and (f) Intel Alliance, UK and Europe to Vinay Chandran in November 2017.
- 15.2A In August / September 2017, the Second Respondent threatening the Third Claimant with releasing his entire team if he did not oblige with the transition of the Alliance Wave Program.
- 15.3. In October 2017, the Second Respondent instructing the Third Claimant's team to stop working on the ARISE initiative.
- 15.4. From July 2016, the Second Respondent instructing Ganesh Nallasivam to interfere in business deals under the Third Claimant's jurisdiction and which were being managed by members of the Third Claimant's team.
- 15.5. In October 2017, the Second Respondent reducing the portfolio of two of the Third Claimant's team members (Sachin Sail and Bharat Reddy), thereby reducing the size and value of the Third Claimant's portfolio.

- 15.6. In October 2017, the Second Respondent calling all of the participants in a video conference, including the Third Claimant, unprofessional and non-cooperative.
- 15.7. During a video conference on 4 October 2017, the Second Respondent “yelling” at the Third Claimant and two members of the Third Claimant’s team (the First and Second Claimants) and calling all of them “unprofessional”.
- 15.8. During a video conference in October 2017, the Second Respondent making changes to the appraisal process and portfolio of two of the Third Claimant’s team members (Mr Sail and Mr Reddy), without giving the Third Claimant any prior notice.
- 15.9. In November 2017, the Second Respondent announcing that Aravind Sivakumar would not report to the Third Claimant going forward.
- 15.10. In November 2017, the Second Respondent changing the reporting structure of two Intel Alliance Managers, Sachin Chawla and Murli Krishnan.
- 15.11. In November 2017, the Second Respondent instructing Mr Sivakumar not to respond to the Third Claimant on anything.
- 15.12. In November 2017, the Second Respondent attempting to block the Third Claimant from travelling to attend a CEO level meeting in Madrid.
- 15.13. From November 2017, the Second Respondent forbidding the Third Claimant from engaging on any business activities based in Europe.
- 15.14. In January 2018, the Second Respondent setting the Third Claimant subjective and unrealistic appraisal goals, with an intention to damage his performance rating.
- 15.15. In February 2018, recruiting a new associate (Pawan Goyal) into the Infrastructure Alliances team, without involving the Third Claimant in the recruitment process.
- 15.16. The Second Respondent instructing Mr Goyal not to sit with the Third Claimant’s team or to have any engagement with the Third Claimant.
- 15.17. In March 2018, recruiting a new associate (Raghavendra Selvaraj), without informing the Third Claimant.

- 15.18. The Second Respondent instructing Pavan Goyal not to work with the Third Claimant.
- 15.19. From 2016, the Second Respondent and the Third Respondent setting up meetings with partners whom the Third Claimant was representing in the UK and Europe, without involving him.
- 15.20. Throughout the Third Claimant's tenure in the ATU, the Second Respondent excluding the Third Claimant from any partner meetings and workshops at which UK and European strategies, business plans and business development were discussed.
- 15.21. In or around December 2017, the Second Respondent initiating Mr Sivakumar's promotion without the knowledge or input of the Third Claimant.
- 15.22. On 11 May 2018, the Third Respondent and the Second Respondent demanding that Netapp remove a Netapp Alliance Manager from managing the relationship with the First Respondent.
- 15.23. On 21 May 2018, Daphna Perry and Divya Acharya of the First Respondent's HR department insisting that the Third Claimant look for another role.
- 15.24. In or around October 2016 and April 2017, the Second Respondent retaining two associates (Indrajit Chatterjee and Shipra Jha) in his team, without consulting with the Third Claimant.
- 15.25. Between December 2017 and February 2018, the Second Respondent raising queries about the Third Claimant's expenses including for travel, client entertainment and partner expenses, and labelling some of them as "*personal recreation*".

E. Harassment related to race

16. Did the Second and/or Third Respondent subject the Third Claimant to unwanted conduct related to race, in any of the following alleged respects?

The Second Claimant's allegations

- ~~16.1. In March 2016, in the restaurant and shopping area of Hyderabad Airport, the Second Respondent making the following remarks to the Second Claimant (in the presence of her exclusively male colleagues, and whilst allegedly under the influence of alcohol):~~

~~16.1.1. "Oana, what did you learn until now"; and~~

~~16.1.2. "You immediately set up a video conference once you're back to London, I want to talk to you, I will give you clear feedback".~~

~~16.2. In the course of a video conference call on 4 October 2017, the Second Respondent acting in the manner described in paragraph 32 of the G2 Initial PoG.~~

The Third Claimant's allegations

16.3. During a video conference on 4 October 2017, the Second Respondent "yelling" at the Third Claimant and two members of the Third Claimant's team (the First and Second Claimants) and calling all of them "unprofessional".

16.4. Between December 2017 and February 2018, in the course of the grievance process, the Second Respondent raising queries about the Third Claimant's expenses including for travel, client entertainment and partner expenses, and labelling some of them as "personal recreation"; and the First Respondent accepting this without verification.

16.5. On 11 May 2018, the Third Respondent and the Second Respondent demanding that Netapp remove a Netapp Alliance Manager from managing the relationship with the First Respondent.

16.5A In October 2017, the Second Respondent instructing the Third Claimant's team to stop working on the ARISE initiative.

16.5B In October 2017, the Second Respondent reducing the portfolio of two of the Third Claimant's team members (Sachin Sail and Bharat Reddy), thereby reducing the size and value of the Third Claimant's portfolio.

16.5C In November 2017, the Second Respondent announcing that Aravind Sivakumar would not report to the Third Claimant going forward.

16.5D In November 2017, the Second Respondent changing the reporting structure of two Intel Alliance Managers Sachin Chawla and Murli Krishnia.

16.5E In November 2017, the Second Respondent instructing Mr Sivakumar not to respond to the Third Claimant on anything.

16.5F From November 2017, the Second Respondent forbidding the Third Claimant from engaging on any business activities based in Europe.

16.5G In February 2018, recruiting a new associate (Pawan Goyal) into the Infrastructure Alliances team, without involving the Third Claimant in the recruitment process.

16.5H In March 2018, recruiting a new associate (Raghavendra Selvaraj), without informing the Third Claimant.

17. If so, did such conduct have the purpose or effect of violating the Second and/or Third Claimant's dignity, and/or creating an intimidating, hostile, degrading, humiliating or offensive working environment for the Second and/or Third Claimant, having regard to:
 - 17.1. the perception of the Second and/or Third Claimant;
 - 17.2. the other circumstances of the case; and
 - 17.3. whether it is reasonable for the conduct to have that effect?

F. Victimisation

18. Did the Claimants (or any of them) do a protected act within the meaning of s. 27 (2) EqA? The alleged protected acts are:
 - 18.1. In respect of the First Claimant, her grievances submitted on 10 October 2017 and 30 November 2017 respectively;
 - 18.2. In respect of the Second Claimant, her grievances submitted on 10 October 2017 and 30 November 2017 respectively; and
 - 18.3. In respect of the Third Claimant:
 - 18.3.1.giving evidence in relation to grievances submitted by the First and Second Claimants regarding the Second Respondent's alleged conduct; and/or
 - 18.3.2.submitting a grievance himself, regarding the conduct of the Second Respondent, on 10 December 2017.
19. If so, were the Claimants (or any of them) subjected to a detriment by the First and/or Second and/or Third Respondent because they had done a protected act, in any of the following alleged respects?

The First Claimant's allegations

- 19.1. The Second Respondent refusing to communicate with the First Claimant, or have any contact with her, from 13 October 2017 onwards, including scheduling meetings without the First Claimant, isolating her, not having conversations about her promotion, and failing to respond to her requests for support to resolve non-cooperation from the marketing team.
- 19.2. The Second Respondent refusing to assess the First Claimant's "*promotion case*" in the January 2018 promotion cycle.
- 19.2A In June 2018, the First Respondent and the Second Respondent rejecting the Third Claimant's promotion application.

- 19.3. Giving the First Claimant an unfair performance appraisal in April 2018.
- 19.4. "*Randomly unallocating*" the First Claimant from April 2018 and attempting to remove her from the Business Unit in May 2018.
- 19.5. On or around 17 October 2017, Priya Bhogal saying to the First Claimant "*if you continue with this complaint, you are going to get into troubles*" [sic].
- 19.6. In the grievance outcome letter, threatening the First Claimant with redundancy.
- 19.7. HR delaying the outcome of the First Claimant's grievances and refusing to provide any supporting documents or notes of meetings.
- 19.8. HR failing properly to deal with the First Claimant's data subject access requests submitted in December 2017 and July 2018.
- ~~19.9. Sending a grievance outcome letter (relating to the First Claimant) by post. (withdrawn)~~
- ~~19.10. Copying a formal grievance outcome letter (relating to the First Claimant) to another employee of the First Respondent. (withdrawn)~~
- 19.11. Seeking to blame the First Claimant for the grievance outcome letter being sent to an incorrect address.
- 19.12. Failing to share with the First Claimant the following documents/information in relation to her grievance: notes, transcripts and recordings from grievance meetings, investigation reports and supporting materials, details of individuals or teams interviewed as part of the grievance investigation or with whom the matter was discussed (during or after the process) or those with whom the grievance details or documents were shared, and all communications and information shared (both internally and externally) regarding the grievance, including correspondence with and/or between HR and those who were involved in the process.
- 19.12A The grievance panel not upholding the First Claimant's grievances of October 2017 and November 2017.
- 19.12B The provision by the Second Respondent, to the grievance panel, of incorrect and misrepresented supporting information in relation to the First Claimant's performance, role, responsibilities, alignment, partner agreements and agenda for video conference, specifically:

- 19.12B.1 An incorrect statement in the letter from Priya Bhogal to the First Claimant dated 19 October 2017 that her complaint was part of a "*personal campaign*";
- 19.12B.2 Incorrect facts set out in the collective grievance outcome letter dated 13 November 2017 and the Second Respondent's interview notes regarding the video conference with the Second Respondent on 4 October 2017 and the First and Second Claimants' approach to raising issues informally;
- 19.12B.3 Incorrect facts set out in the collective grievance appeal outcome letter dated 21 December 2017 regarding the video conference with the Second Respondent on 4 October 2017 and the actions proposed by the Third Respondent during his visit on 13 December 2017; and
- 19.12B.4 Misrepresentation of the First Claimant's individual grievance complaints in the individual grievance outcome letter dated 22 January 2018.
- 19.12C In the course of the grievance process, the grievance panel using information provided to them by the Second Respondent.
- 19.13. The marketing team failing to collaborate with the First Claimant.
- 19.14. The First Respondent placing the First Claimant at risk of redundancy in June 2018.
- 19.15. The First Respondent failing to offer the First Claimant alternative employment within the company.
- 19.16. The First Respondent terminating the First Claimant's employment.
- 19.16A The First Respondent (Nupur Mallick, Ritu Anand and Ajoyendra Mukherjee) not responding to the First Claimant's request for escalation on the grievance process and concerns on the work environment in January 2018 and March 2018.

The Third Claimant's allegations

- 19.46 From October 2017, the Second Respondent failing to respond to the Third Claimant's queries regarding his team's "*allocation in the*

19.47 In November 2017, the Third Respondent, on the Second Respondent's instructions, setting up multiple calls with Hitachi in the UK and Europe, without consulting with the Third Claimant.

19.48 During the investigation into the Third Claimant's grievance in December 2017, the Second Respondent fabricating a performance chart regarding the Third Claimant.

19.49 After the Third Claimant had attended a Vodafone event in Singapore in January 2018, the Third Respondent: (a) writing a hostile email to the Third Claimant, querying why he had travelled to the event; and (b) asking the Head of HR in the UK to suggest disciplinary action against the Third Claimant.

19.50 On 20 February 2018, the Second Respondent and the Third Respondent organising a call with Krishna Sirohi from HPE, without inviting, informing or updating the Third Claimant about it.

19.51 On 15 March 2018, the Second Respondent conducting the Third Claimant's appraisal discussion in a hostile and unprofessional manner.

19.52 The Second Respondent, in an "*act of vengeance*" against the Third Claimant and his team, awarding a performance band B to Mr Sail, the First Claimant and the Second Claimant (in respect of their performance for the financial year 2017/18).

19.53 Failing to invite the Third Claimant to the ATUNE annual event in April 2018.

19.54 From April 2018, the Second Respondent failing to respond to "*significant questions*" from the Third Claimant regarding team allocations, the Second Claimant's promotion application, business planning, partner funds and the Second Claimant's existence in the ATU.

19.55 During a meeting with the Third Claimant on 21 May 2018, Ms Perry and Divya Acharya (from the First Respondent's HR department) insisting that the First and Second Claimants seek another role (within the First Respondent).

19.56 During the investigation into the Third Claimant's grievance between December 2017 and February 2017, the Second Respondent fabricating information regarding the Third Claimant by presenting a false performance dashboard and unauthentic communications from team members; and the First Respondent accepting this information without verification.

19.57 In May 2018, the Second Respondent going behind the Third Claimant's back and proposing to one of the TCS Client Partners that he take the Second Claimant into his team.

19.58 On 5 June 2018, as part of the Second Respondent's attempt to "dismantle" the Third Claimant's team, notifying Mr Sail and Mr Reddy that they were being released from the unit with effect from July 2018.

19.59 On 14 June 2018, placing the Third Claimant and his other team members (the First and Second Claimants, Mr Sail and Mr Reddy) at risk of redundancy, as part of the Second Respondent's efforts to diminish the Third Claimant's responsibilities and strip him of his portfolio.

19.59A On 27 June 2018, the Third Respondent awarding the Third Claimant a 'D' performance band rating.

19.60 Selecting the Third Claimant for redundancy.

19.61 Not offering the Third Claimant the roles of (a) Client Partner for Insurance Client, (b) Country Head for Ireland, or (c) Client Partner for Unilever, which the Third Claimant contends were suitable alternative roles.

19.62 Terminating the Third Claimant's employment with effect from 31 August 2018.

Sections 109 -110 EqA

20. Are the First and/or Second and/or Third Respondents liable for any of the conduct complained of, by virtue of ss 109-110 EqA?

21. If the Claimants (or any of them) were subjected to unlawful discrimination, harassment and/or victimisation by the Second and/or Third Respondent or any other colleague of theirs in the course of their employment by the First Respondent, can the First Respondent show that it took all reasonable steps to prevent that person(s):

21.1 From doing that thing; or

21.1 From doing anything of that description?

The Third Claimant's alleged protected disclosures

22. As set out in paragraphs 20(a) to (c) of the Third Claimant's initial Particulars of Claim and/or paragraphs 9.2 and/or 9.4 of the Third Claimant's further Particulars of Claim, did the Third Claimant make a disclosure(s) of information which, in his reasonable belief:

22.1 tended to show that a criminal offence was being committed; and/or

- 22.2 tended to show that a person had failed or was likely to fail to comply with legal obligations to which it was subject; and/or
- 22.3 tended to show that information tending to show any of the above matters had been or was likely to be deliberately concealed; and
- 22.4 was made in the public interest?

The Third Claimant's allegations of whistleblowing detriment

23. If the Third Claimant did make a protected disclosure (s), was he subjected to a detriment on the ground that he had done so? The Third Claimant claims that he was subjected to the following detriments:

- 23.1 Querying, or failing to approve, the Third Claimant's expenses between December 2017 and July 2018 in respect of travel, client entertainment, and partner expenses.
- ~~23.2 Not approving the Third Claimant's leave requests in November 2017 and January 2018. (withdrawn)~~
- ~~23.3 Not approving the Third Claimant's travel requests in respect of: (a) a HPE CEP meeting in Madrid in November 2017, and (b) a Vodaphone event in Singapore in January 2018. (withdrawn)~~
- ~~23.4 Reducing the Third Claimant's portfolio, as alleged in paragraphs 0 and 15.78 of the list of issues above. (withdrawn)~~
- 23.5 On 21 May 2018, Daphna Perry and Divya Acharya of the First Respondent's HR department insisting that the Third Claimant look for another role.
- 23.6 On 14 June 2018, putting the Third Claimant at risk of redundancy.
- 23.7 On 27 June 2018, the Third Respondent awarding the Third Claimant a "D" performance band rating.

Section 47B(1D) ERA defence

24. If the Third Claimant was subjected to unlawful whistleblowing detriment by the Second Respondent, the Third Respondent, or any another colleague in the course of their employment by the First Respondent, can the First Respondent show that it took all reasonable steps to prevent that person(s):

- 24.1 from doing that thing; or

24.2 from doing anything of that description?

The Third Claimant's automatically unfair dismissal claim (s103A ERA)

25. Of the Third Claimant did make a protected disclosure(s), was this the reason or principle reason for his dismissal?

'Ordinary' unfair dismissal claims (both Claimants)

26. Was there a genuine redundancy situation within the meaning of s139 ERA?

27. If so, was redundancy the reason or principal reason for the Claimants' dismissals?

28. Alternatively, was the reason or principal reason for the Claimants' dismissals some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimants respectively held – namely a business restructure?

29. If the Claimants were dismissed for a fair reason, did the First Respondent act reasonably or unreasonably in treating it as a sufficient reason for dismissing the Claimants? In particular, and having regard to the range of reasonableness tests, did the First Respondent:

29.1 act reasonably in relation to "pooling" and the selection of employees at risk of redundancy;

29.2 conduct a genuine meaningful consultation process with the Claimants;

29.3 provide and/or permit the Claimants access to appropriate information;

29.4 act reasonably in relation to the composition of the interview panels for roles within the new structure;

29.5 act reasonably in relation to the possibility of 'bumping';

29.6 act reasonably in relation to potential alternative employment and/or retraining?

8. Mr Krishnaswami, the Second Respondent in both claims was, at the material times, Mr Meshram's line manager. Mr Meshram was Ms Agarwal's line manager. Mr Venkatraman, the Third Respondent, was Mr Krishnaswami's line manager.

9. The Tribunal heard evidence from the following witnesses. The First and Third Claimants. Gopinathan Krishnaswami, Global Head of the First Respondent's Infrastructure Alliances Group "IAG". Raman Venkatraman, the Third Respondent, Vice President and Global Head of the First Respondent's Alliances and Technology Unit and Deputy Head of the HiTech and Professional Services Industry Unit at Tata America International Corporation. Daphna Perry, Head of Employee Relations and Employment Law at the relevant time. Nupur Mallick, Director of Human Resources for UK and Ireland at the relevant time. Ganesh Nallasivam, Global Alliance Director for the Infrastructure Alliances Group at the relevant time. Suprio Choudhury, Global Alliance Manger. Christopher Frampton, Subject Matter Expert for Marketing in Europe. Priya Bhogal, Employee Relations Specialist and Rakesh Dawar, Regional Sales Director and Head of Travel and Transportation, UK and Ireland, and Chief Ethnic Counsellor for the UK and Ireland at the First Respondent.

10. There was a 12-volume bundle of documents, to which documents were added during the hearing. Page numbers in this Judgment refer to page numbers in that bundle. The Claimants made an application for specific disclosure at the start of the hearing, which the Tribunal determined, giving reasons at the time. Both parties made written and oral submissions. The Tribunal reserved its Judgment and set down a provisional remedy hearing for 3 days on 20 – 22 January 2020, with 22 January 2020 to be used as a Chambers day.

11. The Third Claimant withdrew his allegations 23.2, 23.3 and 23.4 during the hearing. The First Claimant withdrew her allegations 19.9 and 19.10 during the hearing.

Findings of Fact

12. Mr Meshram, the Third Claimant, was employed by the First Respondent from 1 December 1995. Mr Agarwal, the First Claimant, joined TCS Limited India on 12 January 2006 and transferred to the UK in August 2008. At that date she was still employed by TCS Limited India, pursuant to Indian standard terms of employment.

13. The First Respondent was incorporated in the UK in 1995 and registered as a foreign company. It is part of Tata Consultancy Services ("TCS"), which is itself part of the Tata Group, one of India's largest conglomerates. TCS is a multinational IT consultancy company, providing IT services, business solutions and consultancy services to a wide range of companies. TCS' Head Offices are based in India. Its website states that, as of 31 March 2019, TCS had approximately 425,000 employees, representing 147 nationalities, across 46 countries. The First Respondent is also a large company in the UK. Its Employee Relations team alone comprises 60 employees.

Ms Agarwal: Pay and Promotion

14. Following Ms Agarwal's transfer to the UK, her manager was Anand Gupta, who was male.

15. The First Respondent has an appraisal system for employees, which is conducted yearly. The system operates as follows. Goals are set, in March each year, by the appraiser, who is normally the employee's line manager. The goals are sent to the employee, who can agree or disagree with them, or add comments. The goals are then recorded on the First Respondent's intranet system called "Ultimatix". At the end of the appraisal year, the appraiser and employee discuss the employee's performance and goals and the appraiser adds comments onto the Ultimatix intranet system for the reviewer, who is normally the appraiser's line manager, to consider. The reviewer can comment on these, but the appraiser can reject the reviewer's comments if they do not agree with them. The appraiser gives the employee scores between 0-5 against each goal or sub-group goal. These scores are weighted by the First Respondent's system, depending on the importance of the goal. The First Respondent's system then generates an Individual Performance Factor or "IPF" score between 0-5. The system also generates a performance band between A and E, with E being the lowest and A the highest. A denotes exceptional performance, B denotes very good or excellent performance. D denotes performance which is not adequate. The reviewer and Human Resources can review and discuss the system-generated performance band and change it, if is considered to be inappropriate.

16. The Business Unit Head and the Business Unit HR compare the employee's performance with the performance of other employees in the same team or cohort. The First Respondent's HR department produces Bell Curves for performance each year, which are applied to particular employee grades or seniorities. The First Respondent requires that, within cohorts and teams, some employees are given band D. This is typically given to the employee with the lowest IPF score. On the Respondents' witnesses' evidence, however, it did not appear that, if there was an exceptionally high-performing cohort, wherein all employees performed exceptionally well, one of those high performing employees would invariably be given either a C or a D. If the employee disagrees with their performance band, there is a formal Band Disagreement Process.

17. It is the Unit Owner or Unit Business Head and the Unit's HR who review the performance of all employees in the Unit in each financial year and award the final individual performance band.

18. Ms Agarwal, the First Claimant, told the Tribunal that, in the 2010 appraisal year, she was given unfair, unrealistic and impractical revenue targets of one million dollars and, then, one hundred million dollars. Mr Gupta awarded Ms Agarwal a band D as her appraiser for the 2010 financial year and Ms Agarwal submitted a Band Disagreement. Pursuant to that, the Unit Owner, Anath Krishnan, who was also the Chief Technology Officer at TCS, spoke to the Global Head of HR, Ajoyendra Mukherjee, who declined to change the First Claimant's band. This was despite Ms Agarwal's reviewer,

Shashi Bhushan, recommending that she be awarded a C grade. In the reviewer's comments, Mr Bhushan said, "... I believe she deserves a C instead of a D. I guess I made a judgment without all facts on her achievements and contributions being available so in all earnest would recommend that we look at reranking her at C".

19. Ms Agarwal's band D was not typical of the performance bands she was awarded between 2006 and 2018. Ms Agarwal had been awarded band B in the two previous years and was subsequently awarded band A in the two following years. In evidence, Ms Mallick, Head of HR, agreed that, in retrospect, Ms Agarwal's band D appeared to be an outlier.

20. Ms Agarwal did not tell the Tribunal who the other members of her team were in 2010. The Tribunal had no evidence about the performance of other team members, nor about their IPF scores, nor their bands. The Tribunal did not have any evidence about how Ms Agarwal's performance compared to other members of her Unit. Ms Agarwal did not compare herself with any actual comparators within her Unit.

21. In 2010 Ms Agarwal had been in her role for three years, but was not promoted that year. Ms Mallick confirmed Ms Agarwal's assertion that, even if an employee met all the eligibility criteria for promotion, it would be almost impossible for them to be promoted if they had been given a band D for performance in that year. Ms Mallick agreed that, while Ms Agarwal had moved to be managed by Mr Meshram in 2010, and he recommended the Claimant for promotion, the promotion was not approved because the Claimant had been given a band D for performance that year.

22. In June 2013, Mr Venkatasamy, who was then Ms Agarwal's manager, recommended her for early promotion. Ms Mallick, Head of HR, wrote to Mr Venkatasamy on 24 July 2013, saying that Ms Agarwal had not been eligible for promotion in the July 2013 cycle and that, after a review with Shankar, Head of TCS for UK and Ireland, promotion had not approved. On 1 August 2013, Mr Venkatasamy wrote back to Ms Mallick, asking which criteria Ms Agarwal had not met for promotion. He said that Ms Agarwal had expressed concerns about her annual pay increment and having missed out on a promotional cycle. Mr Venkatasamy said, "... I feel she is an excellent associate and is performing a role in excess of her grade and compensation so I would like to find some way to address her issues...".

23. Ms Agarwal continued to query why she had not been promoted and was told, on 9 January 2014, that she had not met the baseline criteria of having been in her grade for more than 3 years since her last promotion, Bundle pages 563-564. Ms Agarwal was promoted to grade C3A as soon as she met the "3 years in grade" criteria in 2014, pages 565-566.

24. It was not in dispute between the parties that employees can be promoted early. However, the Tribunal had no evidence of who, when and in what circumstances, anyone was promoted early. Later in the chronology of events in this case, there was evidence that Mr Krishnaswami, the Second

Respondent, recommended Aravind Sivakumar for early promotion in 2017, but that his early promotion was not approved by HR either.

Maternity Leave

25. Ms Agarwal went on maternity leave in 2014 and returned in early 2015. She continued to be employed on Indian terms and conditions; she was “on deputation from TCS India” and was on the Indian payroll. The terms and conditions for employees in India provide that annual pay increments are related to performance bands and that employees who are on leave for more than 60 days in a year are given a “no release rank” (“NNR”) status for performance. This means that they receive no performance band for that year. Employees who receive an NNR performance band are not eligible for an annual compensation increment in that year.

26. On 5 May 2015 Ms Agarwal’s supervisor and Unit Director, Gopalan Rajagopalan, wrote to Nupur Mallick, Head of HR, saying that Ms Agarwal’s last 3 performance rankings, before she went on maternity leave, were A, A and B. He asked for a review of the decision not to give Ms Agarwal a formal performance ranking because she was a good employee and would have received a least a B performance ranking had she worked the full year, page 638. Initially, Ritu Anand, Deputy Head of Global Human Resources, who was based in India, responded by saying that, according to company rules, an employee had to work for a minimum of three months in order to undergo a formal appraisal, page 633. However, Nupur Mallick, Head of HR in the UK, told Ms Anand on 8 May 2015, that the company was required legally to give increments to female employees in such a situation, page 632.

27. It was not in dispute that, as a result of Ms Mallick’s intervention, the First Respondent did change its policy with regard to Indian women on deputation in the UK who took maternity leave, so that the company did give them compensation implements in years when they took maternity leave, even if they had not worked for 60 days in that year. Ms Agarwal did therefore receive a compensation increment in respect of her maternity leave year. She received only a base increment and no bonus increment.

28. Ms Agarwal joined the Infrastructure Alliance group in October 2015.

29. One of the issues in the list of issues was whether Ms Agarwal was threatened with demotion on return from maternity leave. She did not give any evidence about this.

Transfer to UK Payroll

30. Ms Agarwal transferred to become a UK employee of the First Respondent in November 2016, page 452. She accepted a starting salary of £55,000 and bonus of £2,000 when she transferred to the UK payroll. The Tribunal had no evidence of the starting salaries of men transferring from Indian to UK payrolls in the same grade at the same time. Ms Agarwal relied on a Job Requisition Form for a UK Regional Sales Lead at the same job level

- C3, page 553.5. The base salary range for that role was £60,000 - £70,000 per annum, with a bonus target of £25,000 - £30,000 per annum. This was a sales job, rather than an Alliance Manager job. There was no evidence that, if a woman had been appointed to the UK Regional Sales Lead role, they would have been paid less than £60-£70,000 per annum.

31. Ms Agarwal originally brought an equal pay claim against the First Respondent, but withdrew it. Ms Agarwal has not compared her salary with the salary of men doing the same role.

Pay Rise

32. Ms Agarwal contended that the First Respondent failed to give her an adequate pay rise in the years 2016, 2017 or 2018. There was no evidence about the setting of her male colleague's salaries, or about the awarding of bonus payments to them. In her closing submissions, Ms Agarwal compared her bonuses with that of Miss Cinca (the Second Claimant), a woman. Ms Agarwal appeared to suggest that Miss Cinca was paid more because she was recruited in the UK, than Ms Agarwal, who was recruited in India. This appeared to have nothing do with sex.

Jaguar Land Rover

33. Global Alliance Managers decide strategies and business plans on a global basis. Alliance Managers within "geographies", for example UK and Europe, implement those strategies locally in the relevant geography.

34. Ganesh Nallasivan told the Tribunal that, as a Global Alliance Manager, he had particular responsibility for the First Respondent's relationship with DELL EMC. In 2016 Ms Agarwal had local responsibility for the Alliance partnership with Jaguar Land Rover ("JLR"). On 13 August 2016, Duncan Broadbent, Alliance Director of EMC Global Alliances, emailed Ganesh Nallasivan, asking whether Mr Nallasivan or Ms Agarwal was leading on the Jaguar Land Rover engagement, page 734.3. Mr Nallasivan replied the same day, saying that he was running Resale Operations for Americas and Europe, including the UK, and that all EMC transactions and the way that they were transacted were of particular importance to Mr Nallasivan in a global context. He said that, therefore, he would be the single point of contact for any EMC Resale transactions in UK and Europe. He copied his email to Mr Krishnaswami, the Second Respondent, and to Ms Agarwal. Mr Krishnaswami confirmed, the following day, that Mr Nallasivan should have the lead; he asked Mr Meshram to confirm that arrangement with Ms Agarwal, page 734.1. On 14 August Mr Meshram responded to Mr Krishnaswami, saying that it would be good to have clarity regarding whether Mr Nallasivan had the lead for EMC only, for Jaguar Land Rover only, or Resale as a whole, page 734.1. It does not appear there were further discussions on this issue.

35. On 11 October 2017, Satya Mishra, TCS manager for Financial and Banking Services, wrote to Mr Venkatraman, the Third Respondent, congratulating Ms Agarwal and Mr Meshram for the work they had done with Mr Nallasivan to execute a £5.6 million resale transaction with DELL EMC. Mr

Mishra said that Ms Agarwal had worked tirelessly with the account team led by Ganesh to ensure the transaction was completed. That email appeared to refer to the fact that Ganesh Nallasivan was leading the DELL EMC Resale account. Later, on 10 January 2018, Satya Ryali, TCS Jaguar Lane Rover Client Partner, wrote to Mr Venkatraman amongst others, saying that Ms Agarwal and Mr Meshram, along with Ganesh Nallasivan, had been the pillar of support to the JLR account over the previous two years, file 11 page 3890. It appeared from those emails that Ms Agrawal and Mr Meshram continued to work on the JLR account and to work with Mr Nallasivan on DELL EMC Resale transactions in relation to JLR and other partners.

Vodaphone

36. Mr Meshram appointed Ms Agarwal as Global Alliances Manager for Vodaphone in about 2016. During 2016 Ms Agarwal was working towards concluding a Global Alliances agreement with Vodaphone. It was eventually signed on 24 May 2017, bundle 11 page 3863.1. On 12 February 2016, Ms Agarwal wrote to Mr Krishnaswami, thanking him for his input on her Vodaphone plan and for obtaining consent from his Line Manager, Mr Venkatraman, to proceed with an alliance with Vodaphone. On 8 August 2016, Ms Agarwal emailed Mr Krishnaswami, saying that there had been numerous discussions with Vodaphone, that she had started drafting a strategy agreement and would like to share the work in progress with Krishnaswami to get his feedback, bundle 11 page 3830. Mr Krishnaswami replied saying, "Sure please go ahead and set up an invite." Ms Agarwal did set up a meeting which was declined by Mr Krishnaswami. He said, "Can you please move this call to next week I am travelling between 16-19 August", bundle 11 page 3830.1.

37. The parties agreed that Mr Krishnaswami met Ms Agarwal in September 2016. Ms Agarwal told the Tribunal that Mr Krishnaswami told her that her work in respect of Vodaphone was "a waste of time" and that it would fail. She told the Tribunal, in evidence, that Mr Krishnaswami never mentioned Vodaphone as part of his plans and that he was not interested in her work on Vodaphone.

38. Vodaphone was not mentioned as a Key Infrastructure Partner in the proposed Global Operating Model for the Infrastructure Alliance Group 2018-2019, bundle 9, pages 3609 and 3610. Mr Krishnaswami denied in evidence that he said that Ms Agarwal's work on Vodaphone was a waste of time or would fail.

39. Pursuant to the Alliances agreement, Vodaphone provided funding for Ms Agrawal's role as Alliance Manager during the financial year 2017-2018. However, it appeared that, thereafter, no further funding for an Alliance Manager was secured. It did not appear that the Global Alliance agreement with Vodaphone did generate revenue for the First Respondent otherwise. The First Claimant alleged, in her grievance dated 13 November 2017, that every time she approached Mr Krishnaswami for support and direction for her initiative with Vodaphone, he disapproved of her efforts, saying in September

2016, “This is a waste of time; this will fail.” She said that he never advised on how to move ahead with the Alliance. In her grievance, Ms Agarwal described the partnership that she had built with Vodaphone as “an unconventional alliance - the first of its kind in the UK”. Bundle 3, page 1126. Ms Agarwal also told the Tribunal that Mr Krishnaswami had been dismissive of her work with Vodaphone in this manner.

40. From Mr Krishnaswami’s evidence in cross-examination, he knew little of Ms Agarwal’s work with Vodaphone. He agreed, in evidence, that the financial investment for the Vodaphone alliance was tagged to the UK account and, therefore, had no impact on the IAG Unit or the CMA North America Unit, of which Mr Venkatraman was Head. Mr Krishnaswami also told the Tribunal that Vodaphone was already a substantial customer of TCS and that he considered that Vodaphone’s offerings in the future would not bring in revenue to the Business Unit.

41. On the balance of probabilities, on all the evidence, the Tribunal decided that Mr Krishnaswami did say to Ms Agarwal, in September 2016, that her work on Vodaphone was a waste of time and would fail. On Mr Krishnaswami’s evidence also, the Tribunal concluded that he did not see Vodaphone as a strategic partner and did not consider that the Global Alliance agreement with Vodaphone would generate revenue for his business Unit.

Ms Agarwal 2017 Promotion

42. On 9 July 2017, Mr Meshram emailed Mr Krishnaswami, saying that in March 2017 he had initiated Ms Agarwal’s promotion from grade C3A to C3B. Mr Meshram said that Mr Krishnaswami had suggested that he would review her case in the July 2017 promotion cycle. He told Mr Krishnaswami, “The work flow is in your queue”. Mr Meshram stated that Ms Agarwal’s last three years performance bands were B, B and A and set out her achievements since joining the Alliances and Technology Unit. He said that she had signed the Global Alliance with Vodaphone, had generated \$6.8 million Resale revenue, had been instrumental in an initiative with IBM and had been involved in account management of Jaguar Land Rover and Nationwide and had been developing proactive opportunities. Mr Krishnaswami replied on 18 July 2017 saying, “We may have to defer to next cycle I will discuss with you”. Bundle 5, page 2030.

43. Ms Agarwal told the Tribunal that Mr Krishnaswami did not give any reason for his deferral of her promotion at the time. Mr Krishnaswami did not review Ms Agarwal’s promotion in January 2018. However, he did recommend Aravind Sivakumar for promotion in December 2017, after he had changed Mr Sivakumar’s reporting structure from Mr Meshram to himself in November 2017.

44. The Respondent has a promotion policy, bundle 2, page 486. This states, “Role based promotions in TCS – a promotion in TCS means that there is a defined and clear rise in the role and responsibilities of the employee. It also means that there is an extension of the role and span of

activities with perceptible change in the job content. Promotion is dependent on the business head/supervisors' decision and assessment of the employee's potential and/or performance in a higher role." Under the heading, "Process for Recommending Promotions", the policy says that the supervisor may make recommendations for promotion, which would only be effected after an impact analysis and management review at Unit level and centrally, at organisational level. The policy states, "Promotions will be reviewed [based] on the employee's role, competency and ability to take up higher responsibility. Important factors to consider will be: years since last promotion, experience and past performance".

45. In evidence to the Tribunal, Ms Mallick confirmed that the Unit Head, not the supervisor, makes the final decision on promotions.

46. Later, on 16 April 2018, the Unit HR advisor, Shabana Gaffar, sent an email saying that the criteria applied by the corporate team to promotions in July 2017 were that a grade C3A employee had to have 4 or more years in their existing grade and an A/B performance band for the last 3 years. She said that Ms Agarwal had 3 and 1/3 years in her grade and that the Unit did not take forward recommendations for promotion which did not meet the criteria - because such recommendations would not be approved at a corporate level. She said, "In July 2017 only associates who had four plus years in grade were promoted unless there was a very strong business case/justification for an exception." Bundle 6 pages 2138-2139.

47. In evidence, Mr Krishnaswami told the Tribunal that he did not approve Mr Meshram's recommendation for Ms Agarwal's promotion in July 2017 because he considered that there had been no significant change in Ms Agarwal's role and responsibility which justified promotion. On his evidence, Mr Krishnaswami did not rely on the corporate requirement that an employee had to have 4 or more years at grade C3A before being eligible for promotion. Mr Krishnaswami told the Tribunal that he referred to Ms Agarwal's promotion as "being in the queue" to mean that it was his work flow queue on the Ultimatix system, on which all promotion recommendations are listed for consideration.

Mr Meshram – Ethnicity

48. In 2004 Mr Krishnaswami, the Second Respondent, was part of the panel which recruited the Third Claimant, Mr Meshram, into the TCS Alliances Unit in India. Mr Meshram moved to the UK in around August 2004. He was appointed to the position of Director – Infrastructure Alliances UK and Europe in June 2015, replacing Ramanan Therarajan ("Ramanan T") when Ramanan T relocated to the USA. Mr Krishnaswami approved Mr Meshram's appointment into this role 2015, and became Mr Meshram's line manager in July 2015.

49. Mr Meshram told the Tribunal that he and his forefathers come from the Maharashtra, which is a State in India. He contended that coming from that State is an ethnic origin. He sought to compare himself with people of Indian

national origin who come from “the southern States of Indian”. Mr Meshram produced a map for the Tribunal which he said identified the southern States of India, bundle 12, page 4110a. The southern States identified in that map are: Tamil Nadu, Kerala, Karnataka, Andhrapradesh and Telangana.

50. The capital of Tamil Nadu is Chennai. Mr Meshram told the Tribunal that he and Mr Krishnaswami and the comparators had worked together in Chennai at the start of their careers.

51. Mr Meshram told the Tribunal that it is possible to tell from people’s names and surnames whether they come from the southern States of India. He said that, for example, names ending in “an” typically came from the southern States of India.

52. The Respondents’ witnesses denied that there was any ethnicity corresponding with a geographical entity which was the southern States of India. They also said that, because of widespread movement of people in India, it was not possible to tell whether someone came from the southern States of India from their name. Mr Krishnaswami, somewhat reluctantly, eventually did agree that his name was a typical name from the southern States of India. He also agreed in evidence that the states which Mr Meshram highlighted were the southern Indian States.

53. Mr Krishnaswami was born in Tamil Nadu, but later grew up in Northern India. He told the Tribunal that he did not recognise himself to be part of an ethnic group. He said that he did not know where Mr Venkatraman, Ganesh Nallasivan, Ramanan T, Aravind Sivakumar or Vinay Chandran hailed from. Mr Krishnaswami said that his own first language was Tamil and that he had spoken to Ramanan T and Ganesh Nallasivan, away from the office, in Tamil.

54. Mr Venkatraman said that, in some classifications, the States highlighted by Mr Meshram would be considered to be the southern States and, in others, not. He said that he would not know from people’s names from where they came from, but that he knew that Ramanan T’s native language was Tamil. He agreed that the names Ramanan, Ganesh and Raghavendra might be associated with the southern States of India, because he would have heard those names more often, in particular, in the southern States. Mr Venkatraman said that his grandparents were from Tamil Nadu and his parents lived in Andhrapradesh. He agreed that some of the names of the vey senior officers in the First Respondent, for example, Rajesh Gopinathan (CEO) and Mr Ramanan Krishnan (CMO) had names that looked like southern Indian names.

55. Mr Venkatraman said that he had only known Mr Meshram by his first name until about 3 years ago. He said that he did not know that the name Meshram did not come from a southern Indian State.

56. Mr Meshram provided the official languages of various States to the Tribunal; for example, Tamil being the state language of Tamil Nadu, Telugu

the official language of Andhrapradesh and Malayalam the official language of Kerala.

57. Mr Meshram did not provide evidence to the Tribunal of the shared history or customs of the southern States of India, or the cultural traditions of that area, nor did he give evidence about the common ancestors of those living in the southern States of India, or the literature peculiar to that area, or the common religion of those States, as distinct from other religions in India or countries surrounding it. He did not give evidence of shared beliefs, traditions and characteristics derived from a common or presumed common past in the southern States of India. He did not give evidence, other than assertion, about any historically determined social identity of people from southern States of India, as viewed from the point of view of the people who lived in those States and also the point of view of the people who were not from those States. While, in his submissions, the Claimant said that he had learnt about his history and traditions, he did not tell the Tribunal about the history and traditions of Maharashtra or his forefathers, during his evidence.

58. Mr Meshram also relied on caste as an ethnic origin. He produced a print-out from the Anti Caste Discrimination Alliance which quoted the Explanatory Notes in the *Equality Act 2010* defining caste as, “A hereditary endogamous (marrying with the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity... it can encompass the four classes (Varna) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as Jatis; and groups amongst South Asian Muslims called Biradaris ...”, Bundle 11 pages 4103-4019.

59. Mr Meshram told the Tribunal that he is from the Shudra community. He said that his comparators were from either the Brahmin or the Kshatriya communities.

60. Mr Krishnaswami said, in evidence, that he was not even aware of what caste he was until he asked his mother recently and learnt that he was from the Kshatriya, or warrior, caste. Mr Venkatraman confirmed that he is of the Brahmin caste.

61. Again, Mr Meshram did not produce evidence of the shared history and traditions of the various castes. Mr Venkatraman said that caste may have been relevant 40 or 50 years ago, amongst his father’s generation, but it was not relevant now and that there had been much intermarriage.

62. The Tribunal was surprised by the tenor of the Respondents’ evidence with regard to caste and origin. The Respondents witnesses appeared to deny that the caste system operated in any significant way in India at all. Apart from conceding that some jobs are still reserved for people of a certain caste, Mr Krishnaswami and Mr Venkatraman appeared very reluctant to give any evidence about caste. They were also apparently reluctant to give any evidence about their knowledge of languages or names associated with

particular geographical areas of India. The Tribunal found it very difficult to believe that, in a large continent such as India, there are not recognisable differences between names or surnames associated with different regions in a country which has many languages. From the Tribunal's general knowledge of everyday life, it is relatively easy to discern, from European people's names, accents and languages, which country or region they hail from in Europe. This remains the case, despite the right of free movement within the EU, and that fact that European countries are comparatively wealthy and that people are therefore likely to have the means to travel.

Changes to Marketing

63. The Tribunal accepted Mr Krishnaswami's evidence that, in the early part of 2017, the newly appointed Chief Marketing Officer of the First Respondent, Ravi Viswanathan, carried out a restructuring of the marketing Unit of TCS. It accepted Mr Venkatraman's evidence that, pursuant to this, all marketing activities were to be handled centrally, by a single corporate marketing arm (ATU Marketing), to be led by Mamta Pandya, who was based in the US.

64. On 31 July 2017 Mr Krishnaswami emailed Mr Meshram to inform him that Mr Venkatraman had instructed that there would no longer be separate marketing teams in each of the sub units, Bundle 3 page 910. Mr Venkatraman had emailed on 25 July 2017, making clear that he did not have budgets to have independent marketing teams in every sub unit, bundle 3 page 819. Mr Krishnaswami gave Mr Meshram two options with regard to his existing marketing team: one, that they would become part of ATU Marketing, reporting to Mamta Pandya and Mr Venkatraman; or, that Mr Meshram could retain his team to do other work and any marketing contracts would simply be transferred to Mamta Pandya's team to execute.

65. Mr Meshram did not welcome the change, which he considered would be detrimental to the Alliance Wave Programme that he was operating, bundle 3 pages 937-9378. Mr Krishnaswami made clear, however, that the reporting structure had to be changed and that Alliance Wave needed to be handed to the ATU Marketing team, page 937. Mr Meshram accepted that the centralisation of marketing functions was a corporate decision. He decided that his marketing interns would move to ATU Marketing and that Oana Cinca would move to Alliance and Business Development in Mr Meshram's team. He said this in blunt terms to Mr Krishnaswami on 22 August 2017, commenting that he was "done with it" and that there appeared to be no real interest in continuation of Alliance Wave. Bundle 3, page 935.

66. On 23 August 2017 Mr Krishnaswami sent an abrupt reply to Mr Meshram saying, "I am not surprised you are not able to understand it is about working with a team not reporting to you and getting done what needs to be achieved, please release the team...". Bundle 3, page 942.

67. The Tribunal found that there was tension between Mr Meshram and Mr Krishnaswami about the handover of the Alliance Wave Marketing activities to

the ATU marketing team, from the tone and content of the emails between them.

4 October Video Conference

68. On 29 September 2017 Mr Agarwal emailed a Marketing Associate in Mamta Pandya's marketing team, asking that the Associate complete activity reports for the Alliance Wave Vodaphone activities. She said it had been pending for quite a while, bundle 3, page 948. The Marketing Associate replied, saying that she was not aware of the activity and that she would do it as soon as possible.

69. Following those emails, Mamta Pandya emailed Ms Agarwal and Mr Meshram, referring to the change in management of the Alliance Wave Marketing activities, and asking them to reach out to Ms Pandya and the marketing team in the UK. She asked that Ms Agarwal find time to have a telephone call which Miss Pandya had been requesting for a week, so that they could coordinate what needed to be done. Ms Pandya also commented that Oana Cinca had been unavailable and that Mamta Pandya also hoped to speak to her in the following week, bundle 3 page 947.

70. Mamta Pandya forwarded her email to Mr Krishnaswami, who promptly emailed Mr Meshram, asking that he made sure that the marketing transition was smooth and that there were "NO ISSUES AT ALL" with it; he capitalised his instruction to emphasise it. Mr Krishnaswami said that he was getting the impression that there was total lack of cooperation and asked Mr Meshram to set up a video conference on about 4 October and ensure that the entire UK Europe team was present, bundle 3 page 947.

71. On 2 October 2017 Mr Meshram replied to Mr Krishnaswami, saying that, from his perspective, he had handed over and had not heard anything back from Mamta Pandya. Mr Meshram asked Mr Krishnaswami to encourage the marketing team to contact Mr Meshram first, rather than Mr Krishnaswami, because he said that this risked wasting Mr Krishnaswami's time. He concluded by saying, "I still hold my personal views that this operating model is detrimental for the programme ...". Bundle 3 page 946. Again, Mr Krishnaswami responded briefly saying he disagreed with most of the points that Mr Meshram had raised and that he strongly believed that cooperation in spirit was missing. He specifically took issue with Mr Meshram's statement that Mr Meshram believed that the operating model was detrimental, bundle 3 page 946.

72. On 4 October 2017 Mr Krishnaswami held a video conference with Mr Meshram and his team. In the video conference, Mr Krishnaswami asked each of the participants to state their name and describe their role. After all team members had done so, Mr Krishnaswami emphasised to the team that they were all employees of TCS and part of the Alliances and Technology Unit and that they were not working for themselves, or for a small UK unit.

73. Mr Krishnaswami then asked Ms Agarwal, Miss Cinca and Mr Meshram to stay behind while the other team members left. In this part of the meeting,

Mr Krishnaswami asked about the Vodaphone reports which Ms Agarwal had reminded Mamta Pandya's team to complete. He said that Ms Agarwal should have prepared the reports instead. He said that the team was not collaborating with the marketing team; he insisted that one of them prepare the required report by the next day.

74. Ms Agarwal told the Tribunal, which Mr Meshram corroborated, that Mr Krishnaswami shouted at the team members, banged the table and accused them of being unprofessional, unethical and uncollaborative. Mr Krishnaswami agreed that he raised his voice, although he said he could not remember the exact words that he used. On all the evidence, the Tribunal found that Mr Krishnaswami became irate with Mr Meshram, Ms Agarwal and Miss Cinca, shouted at them and demanded that Ms Agarwal, Mr Meshram or Miss Cinca prepare the report for the marketing team immediately. The Tribunal accepted Ms Agrawal's evidence that Mr Krishnaswami banged the table whilst shouting at them. Ms Agarwal told the Tribunal, and the Tribunal accepted, that she was reduced to tears by Mr Krishnaswami's behaviour. Ms Agarwal told the Tribunal that, when Mr Meshram said to Mr Krishnaswami during the telephone conference, "Sure, Gopinathan, we can do it for this instance," Mr Krishnaswami became even further aggravated and screamed, "What, this instance?"

75. During Ms Agarwal's evidence, she told the Tribunal that, when all team members were present, including the male junior members of the team, Mr Krishnaswami built an intimidating atmosphere in the room and that, when Miss Cinca asked for an explanation about his statement that they were not collaborating with the overall Unit, Mr Krishnaswami raised his voice and spoke about ethics and professional behaviour expected of them. Ms Agarwal said that the whole team was taken aback and confused about the statements being made.

Complaint to Priya Bhogal

76. Following the video conference, Ms Agarwal and Miss Cinca were very upset about Mr Krishnaswami's behaviour and decided to go to Human Resources. They approached Priya Bhogal, Employee Relations Specialist in the HR team. After meeting her, they put their concerns in writing, giving a detailed account of the video conference, pages 980 and 987. In Ms Agarwal's email of 10 October 2017, she said, "Please regard this as a formal grievance against Gopi." Ms Agarwal said that the first 40 minutes of the video conference were attended by the entire team, including their manager, and constituted a long, one-sided aggressive conversation. She said that Mr Krishnaswami had made allegations of unprofessionalism and non-collaboration to the team and that his tone throughout was harsh and insulting. She recounted that Mr Krishnaswami had asked Miss Cinca, Mr Meshram and her to stay behind and started shouting and banging on the table about them not collaborating in producing a Vodaphone Alliance Wave report. Ms Agarwal said that she was not given a fair chance to speak, that Mr Krishnaswami was yelling non-stop and that she did not know the reason for the harassment towards her, Bundle 3 page 981.

77. Ms Agarwal confirmed, in evidence to the Employment Tribunal, that she did not allege, in this grievance, that Mr Krishnaswami had discriminated against her because of sex.

78. Ms Bhogal told her line manager, Graham Buckley, about her conversation with Ms Agarwal and Miss Cinca. He suggested that she speak to Nupur Mallick, Head of HR. Ms Bhogal followed this advice because Mr Krishnaswami was a senior person and based in the US, which was outside Ms Bhogal's remit. When she explained to Ms Mallick what Ms Agarwal had described of Mr Krishnaswami's behaviour, Ms Mallick responded that, if Mr Krishnaswami had shouted at Ms Agarwal and Miss Cinca, that would be unacceptable and she would ask him to apologise.

79. Ms Mallick called Mr Venkatraman, Mr Krishnaswami's line manager, on 12 October 2017 and told him about the complaints which had been made against Mr Krishnaswami. She suggested that Mr Krishnaswami apologise. Mr Venkatraman told Mr Krishnaswami that he should apologise and he agreed to do so.

80. Mr Krishnaswami arranged for a further video conference to take place on 13 October 2017. Human Resources did not attend this video conference. Ms Bhogal had also forwarded the formal grievances from Miss Cinca and Ms Agarwal to Ms Mallick on about 11 October 2017, who forwarded them to Mr Venkatraman.

81. Furthermore, on 12 October 2017, Ms Mallick called Mr Meshram. She had known Mr Meshram for a long time and had discussed many work-related matters with him over the years. She had previously found Mr Meshram to be accepting of her advice and guidance. On this occasion, she found Mr Meshram to be very upset and resistant to her encouragement to smooth and calm matters with Miss Cinca and Ms Agarwal. Mr Meshram told her that Mr Krishnaswami had been very unprofessional during the video conference and had screamed and shouted at his team.

82. The further video conference took place on 13 October 2017 between Mr Krishnaswami, on the one hand, and Ms Agarwal and Miss Cinca and Mr Meshram, on the other. Mr Krishnaswami did apologise during this video conference. However, Ms Agarwal also sought to explore with him the matters which had led to his comments on 4 October 2017. Mr Krishnaswami did not want to engage with that. Miss Cinca and Ms Agarwal raised other issues, such as career progression and promotions. Mr Krishnaswami told them that the purpose of the video conference was for him to apologise, not to discuss other matters.

83. After the video conference, Miss Cinca and Ms Agarwal felt that their issues had not been resolved. They remained very distressed. On 16 October 2017, Ms Agarwal emailed Ms Bhogal concerning the video conference on 13 October. She acknowledged that Mr Krishnaswami had made an apology, but said that he had had no intention to address the issues which had led to him

making the allegations against them. She said that it appeared that the underlying judgment remained the same and that she feared that this would impact on her future, bundle 3 page 982. On 17 October 2017 Ms Bhogal replied to Ms Agarwal, saying that she was happy to speak face to face about the matter, but that her advice was that, since Ms Agarwal had received an apology, she should close the matter and move forward.

84. Ms Agarwal told the Tribunal that she also met Ms Bhogal on 17 October 2017 to pursue her complaint against Mr Krishnaswami. She told the Tribunal that Ms Bhogal emphasised the high-profile status of Mr Krishnaswami and said, "You have done well in this organisation until now, but if you don't settle this I don't know how your future in this organisation is going to be".

85. Ms Agarwal told the Tribunal that she was emotional whilst speaking to Ms Bhogal and that she spoke about how her promotion had been put "in a queue" by Mr Krishnaswami previously.

86. In her witness statement to the Tribunal, Ms Bhogal denied that she had said anything like Ms Agarwal had done well in the organisation until now, but if Ms Agarwal did not settle the matter then her future might be in doubt.

87. On 19 October 2017, Ms Bhogal wrote to Ms Agarwal, saying that she was setting out, for the record, what had transpired and the actions which the First Respondent, "as a reasonable employer", had taken to address the matter and also to comment about Ms Agarwal's "behaviour witnessed thereafter", bundle 3 page 1035. She said in the letter, "You accepted that the complaint raised was against a very senior resource of the company". In the letter, Ms Bhogal said that, during the conference on 13 October 2017, Mr Krishnaswami had put forward "his sincere apologies for his behaviour". Ms Bhogal said that the company had taken "all reasonable steps to suitably address" Ms Agarwal's concerns by arranging for this video conference apology. She said that she had met with Ms Agarwal on 17 October 2017 for a debrief, but that during the meeting, "I found it extremely disappointing that despite the company's best efforts to deal with this matter in an appropriate way as above you continued to talk over me and refused to listen yet kept raising concerns about Gopinathan's behaviour...". Ms Bhogal said that Ms Agarwal's concerns that Mr Krishnaswami had a premeditated judgment on her performance were unfounded, Ms Bhogal said "... we will not allow this to be continued as an endless personal campaign by you, Gopinathan or anyone else and must draw a line to its end..".

88. She then went on to say that Mr Venkatraman was coming to the UK in the following month and would arrange a face to face meeting with Ms Agarwal "... to quell any misconceived perceptions you may have". She further said, "We will not however allow an elongated never-ending complaint to be continued post its closure regardless as to whether you like the answers that have been provided or not ...". Ms Bhogal said that the Claimant was free to escalate matters through the company's formal grievance process, however, it was important for Ms Agarwal to realise that, as the company had suitably addressed her concerns, for Ms Agarwal to continue to pursue the

matter in such a way might result in “unnecessary accusations” being made against Ms Agarwal of “unreasonable conduct”. She then commented, “Whilst I am sure you will not kindly to the contents of this letter, it is presented with factual undertakings ...”.

89. The Employment Tribunal found that, the objective interpretation of Ms Bhogal’s letter was that Ms Bhogal was criticising Ms Agarwal for wishing to pursue her complaint. Ms Bhogal inappropriately characterised Ms Agarwal’s complaint, which had been raised only 9 days previously, as an “endless personal campaign”. Ms Bhogal threatened Ms Agarwal that, if she did pursue a formal grievance, it would be seen as unreasonable conduct. Ms Bhogal described the apology from Mr Krishnaswami, during which Ms Bhogal had not been present, in glowing terms, including “sincere apologies”.

90. The Employment Tribunal found the contents of the letter to be extraordinary and, in its experience, very unusual. This was particularly so where Ms Agarwal, a junior employee, had raised legitimate concerns about Mr Krishnaswami’s unacceptable behaviour, which included shouting and banging a table at her during a video conference.

91. Ms Bhogal told the Tribunal that, when she spoke to Ms Agarwal on 17 October, Ms Agarwal continued to remain concerned, in particular about future performance appraisals. Ms Bhogal’s advice was that Ms Agarwal should speak to her line manager. Ms Bhogal said that she felt that Ms Agarwal was pre-empting something that might happen in the future and that it would be difficult for a grievance panel to make any judgment about things which had not yet transpired. She said, however, that she would certainly not have “warned Ms Agarwal off” regarding her future at the company. She also said that she would not have described Ms Agarwal as “belligerent”, but that she felt that the conversation with Ms Agarwal was frustrating, in that Ms Agarwal was not listening to the advice Ms Bhogal was giving her.

92. On 24 October 2017 Ms Agarwal responded to Ms Bhogal’s letter, saying that, during their debrief, Ms Bhogal had said that Mr Krishnaswami was a high profile employee. Ms Agarwal said that she was asking for an independent panel to review the case. She said that the video conference on 13 October had not ended well and that Mr Krishnaswami still held the same view about her role and Ms Agarwal being in the wrong, bundle 3 page 1054. The next day Ms Bhogal replied saying, “I am not quite sure what it is you want to achieve out of raising you concerns again ... we have found that the company have taken reasonable steps to close on this matter,” Bundle 3 page 1053.

93. On all the evidence, the Tribunal found that Ms Bhogal did say to Ms Agarwal that she had done well in the company until now, but that if Ms Agarwal proceeded with her grievance, she did not know how Ms Agarwal’s future in the organisation would be. Given the tone of Ms Bhogal’s letter of 19 October, wherein she effectively threatened the Claimant about the consequences of pursuing a formal grievance, the Tribunal considered that it

was likely that Ms Bhogal did make such a comment face-to-face with Ms Agarwal.

Collective Grievance

94. On 27 October 2017 Ms Agarwal emailed Ms Bhogal, saying that she and Miss Cinca would like to continue with the formal grievance in a collective manner, given that the outcome of the informal procedure had been inconclusive, bundle 3 page 1075. Ms Bhogal responded on 27 October, asking Ms Agarwal to send the formal grievance directly to Mr Buckley, bundle 3 page 1073. Ms Bhogal told the Tribunal that she had been keeping Mr Buckley updated throughout the course of the grievance, which she had, up to this point, been treating as an informal grievance.

95. On 30 October 2017, Ms Agarwal emailed Mr Buckley concerning Mr Krishnaswami's behaviour in the 4 October video conference. She said that accusations and false allegations had been made against Miss Cinca and her, including yelling, pointing fingers and banging on the table. She said that, despite Mr Krishnaswami briefly apologising for his behaviour, he had avoided discussing anything. She also said that there had been historical and ongoing behaviour and, therefore, that they wanted to pursue it as a formal matter, bundle 3 pages 1083-1084.

Changes to Mr Meshram's Team

96. Mr Meshram alleged that he was excluded from meetings, discussions and official communications with Ericsson, MTI Technologies and IBM and that Mr Krishnaswami and Mr Venkatraman assigned team members from southern India to those specific clients, namely Ramanan T, Ganesh Nallasivan, Aravind Sivakumar, Vinay Chandran and Raghavendra Selvaraj.

97. Mr Krishnaswami told the Tribunal that IBM, MTI and Ericsson were not part of Mr Meshram's portfolio. He said that IBM had been managed by Satadru Chattopadhyay, a Global Alliance Manager in India, since 2010. Mr Krishnaswami said that Mr Chattopadhyay had an Alliance Manager in London reporting directly to him, managing the IBM relationship in the UK. Mr Krishnaswami also said that MTI is a customer and vendor to TCS, but not an Alliance Partner and that the relationship with MTI is managed by Ganesh Nallasivan. He also said that the Ericsson relationship had been managed by Chitti Reddy, a Director of Global Alliances in Hyderabad in India, but that that relationship had been inactive for some time.

98. The Tribunal accepted Mr Krishnaswami's evidence about the responsibilities of these managers for those clients. It accepted that those companies were not part of Mr Meshram's portfolio. Mr Krishnaswami had a detailed knowledge of the structure of the Unit and the responsibilities of the various people within it.

99. On 21 October 2017 Mr Krishnaswami emailed Mr Meshram, asking him to set up video conference meetings with him to include Mr Meshram and some male members of his team, to discuss Alliance Partnerships with various clients including DELL, EMC, CISCO, NETAPP and Vodaphone. On 25 October 2017 he emailed Mr Meshram, asking him to send Mr Krishnaswami the Vodaphone business plan and the progress so far, bundle 3 page 1040.

100. It appeared, from these emails, that Mr Krishnaswami scheduled video conferences with male employees in Mr Meshram's team in October 2017, but not with Miss Cinca and Ms Agarwal – bundle 3 page 1040.

101. On 7 November 2017 Mr Meshram wrote to Mr Krishnaswami, noting that Mr Krishnaswami had spent 6 hours in video conference in the last two weeks discussing the goals of two of Mr Meshram's team members, Mr Reddy and Sachin Sail, and had sought another 3 hours of video conference. He said that he did not think that that was necessary because Mr Meshram was their appraiser, and their goal setting was his responsibility. He also said that he had learnt that Mr Krishnaswami had set up another review for Sachin Chawla and Murli Krishnan from Mr Meshram's team and that Mr Meshram had been kept out of it. He said that Mr Krishnaswami had not yet set Mr Meshram's goals and that Mr Meshram's team's goals should be a cascade of his own. Mr Meshram's tone in the email was forceful, angry and critical. For example, he said, "It is good to see you taking so much interest in the associates' goals for the first time". Mr Meshram copied this email to Mr Krishnaswami's manager, Mr Venkatraman, to the Unit HR adviser Shabana Gaffar and to Nupur Mallick, Head of Human Resources. Ms Mallick forwarded the email to Shankar Narayanan, Head of UK and Ireland saying, "There is something going on here .. Oana and Ankita have refused to resolve their grievance informally and have gone ahead with a formal grievance hearing ...", bundle 3 pages 1144-1145.

102. In January 2017 representatives from one of the First Respondent's partners, CISCO, had engaged in an argumentative exchange of emails with Miss Cinca and Mr Meshram. These included an email from a CISCO representative to Miss Cinca on 12 January 2017 which said, "We will not be bullied on this plus I have still not received this plan or the agenda ... if this is offered to another competitor then you can expect an extremely serious escalation and an impact on this relationship ..." bundle 3 pages 1157-1158. There was a further email from the same CISCO representative to Mr Meshram on the same date, complaining that Miss Cinca had threatened that, if CISCO did not arrange for CISCO representatives to attend an event which CISCO had paid for, but were not aware of, then the First Respondent would give the slot to a competitor and would not reschedule it, bundle 3 pages 1166-1157. That email had been copied to Mr Krishnaswami at the time. He had intervened to arrange a conference call to resolve the matter, bundle 3 pages 1155-1154.

103. On 8 November 2017 Mr Venkatraman forwarded the email exchange from January 2017 to Nupur Mallick. Ms Mallick replied the same day, saying

that the emails were 10 months old and that, if there had been a performance issue, the First Respondent could have taken the matter up at that time. She said that if there was any recent issue, then Mr Venkatraman should let her know, bundle 3 page 1154. Ms Mallick copied her response to Shankar Narayanan, Head of UK and Ireland, and to Mr Buckley.

104. On 8 November 2017 Mr Meshram emailed Mr Krishnaswami, saying that Mr Meshram had been informed by Aravind Sivakumar the previous day that Mr Sivakumar would not attend any business discussions and reviews with Mr Meshram, as instructed by Mr Krishnaswami. Mr Meshram said that Mr Sivakumar had said that he had been told to drop all the tasks assigned by Mr Meshram and not to line up meetings for Mr Meshram. Mr Meshram said, "As a fellow professional I am sure that you will never do anything as above without discussing with me, hence I am treating this as some misunderstanding and not an act of insubordination by Aravind on this instance". Mr Meshram copied Aravind Sivakumar into the email, bundle 3 page 1170.

105. It appears that Mr Krishnaswami responded to that email, although the email response was not in the Tribunal bundle. Mr Meshram replied to Mr Krishnaswami saying, "You also did not involve me or even mention the Europe changes until my travel request was raised. Clearly keeping me out deliberately, until Ramanan responded ...", bundle 3 page 1159. Mr Krishnaswami replied further on 11 November saying, "My instruction in this matter is simple. I repeat the same below. Please stop any activities related to Europe until Ramanan or I revert to you. Aravind will move to different role and is no longer part of your team, Murali and Sachin Chawla are part of the Intel Relationship and will report to Vinay. They are also no longer part of your team. There is no ambiguity on this matter". Bundle 3 page 1169.

106. On 3 November 2017 Mr Krishnaswami had written to Mr Venkatraman about issues in Mr Meshram's UK Infrastructure Alliances team. He said, "A critical challenge is the lack of willingness to work in sync with Global Infra Alliance Managers and extended teams". He said that activities which he had discouraged for partner solutions in retail were still being pursued. He then went on to set out changes that he would like to make. He said that UK and Europe would be separate regions, with separate teams, and that Mr Sivakumar would be groomed to lead Europe. With regard to the UK team, he proposed that Sachin Sail be moved offshore, that Raghavendran would be a partner-funded head count for the client CISCO. He said that Ms Agarwal could continue to manage Vodaphone until the budget was provided by Vodaphone, Mr Reddy would continue to manage HPE and Sachin Chawla could continue, funded by Intel until budget was available. He said that he was in the process of developing the Europe plan, bundle 3 page 1120.

107. It appeared that, at this point, Mr Krishnaswami had already decided to split up Mr Meshram's UK and Europe team and to appoint Mr Sivakumar as head of the Europe team. Mr Krishnaswami was also apparently intending to change the UK team and reduce it in size, with Sachin Sail being moved offshore, for example.

108. Mr Krishnaswami told the Tribunal that he had established, in the 4 October video conference, that Sachin Chawla and Murali Krishnan, although funded by a customer, Intel, were not focusing Intel activities. Mr Krishnaswami said that he had therefore decided to change their line management from Mr Meshram to Vinay Chandran, the Global Alliance Manager for the Intel initiative. He also told the Tribunal that Mr Meshram had been instructing Aravind Sivakumar to focus on activities which were not in line with the agreed objectives for the financial year. Mr Sivakumar's reporting line became direct to Mr Krishnaswami when he was moved into the Head of Europe role.

109. Whether or not Mr Krishnaswami had legitimate business reasons for wanting to change the reporting structures in Mr Meshram's team, the Tribunal found that he told Mr Sivakumar about the change in Mr Sivakumar's role and reporting line without having told Mr Meshram about it. He also changed Murali Krishnan and Sachin Chawla's reporting line without discussing this with Mr Meshram.

110. On 7 November 2017 Mr Krishnaswami emailed Mr Venkatraman further, summarising what he said were challenges in the UK. He said that, since Mr Meshram had moved into his role in July 2015, there had been had been significant team turnover and the major feedback from the associates who had left was of rude, inconsiderate and unreasonable treatment. He said that this continued, irrespective of guidance. Mr Krishnaswami said that Mr Meshram was not communicating global plans, targets and priorities to his team and that there had been a significant dip in revenues committed to relevant partners. He said of Mr Meshram, "Given the attitude and refusal to change, I suggest we release him from the unit as per process" bundle 11 pages 2914-3915.

111. Mr Meshram told the Tribunal that Mr Krishnaswami had reduced the portfolio of two of Mr Meshram's team members, Sachin Sail and Bharat Reddy. Mr Krishnaswami told the Tribunal that he had discovered that these employees, who were supposed to be working on UK relationships, were also working on European relationships. He said that Aravind Sivakumar had complained about this. It appeared from Mr Krishnaswami's email of 3 November 2017, bundle 3 page 1120, that Mr Krishnaswami did make decisions about Sachin Sail and Bharat Reddy's future roles, proposing that Sachin Sail would be moved offshore and that Mr Reddy would manage the partner HPE.

112. It is clear that Mr Krishnaswami appointed Mr Sivakumar as Head of European Activities. Mr Meshram had previously been head of UK and Europe.

Indrajit Chatterjee and Shipra Jha

113. In about October 2016 and April 2017, Mr Meshram had released two employees, Indrajit Chatterjee and Shipra Jha, from his team, because he

believed that they were performing poorly. Mr Meshram contended that Mr Krishnaswami retained them in his own team, without consulting Mr Meshram, which undermined Mr Meshram.

114. Mr Krishnaswami told the Tribunal, however, that, after Indrajit Chatterjee was released from Mr Meshram's team on 31 December 2016, Mr Chatterjee had approached Mr Krishnaswami for a role. Mr Krishnaswami knew that there was a position open in the Intel Relationship team and Mr Krishnaswami passed Mr Chatterjee's candidature to Vinay Chandran. Mr Chatterjee interviewed for a role with another sub unit and was successful, but the role was in the USA and he could not get a visa. Mr Krishnaswami told the Tribunal that Mr Chatterjee then returned to India to a role in TCS India, outside the Alliance and Technology Unit. Mr Krishnaswami also told the Tribunal that Shipra Jha interviewed for, and was offered, an alternative position with the IBM relationship, reporting to Satadru Chattopadhyay. Mr Krishnaswami said that he did not retain either of those employees to work in the UK, or to report to him. The Tribunal accepted Mr Krishnaswami's evidence on this; he had an extremely detailed knowledge of those employees' employment by the First Respondent after they left Mr Meshram's team.

Collective Grievance Meeting – Mr Buckley

115. Ms Agarwal and Miss Cinca attended a collective grievance hearing with Graham Buckley on 6 November 2017. Only very brief handwritten notes were taken of this meeting. The notes record that Ms Agarwal and Miss Cinca had been in Mr Krishnaswami's team since January 2016 and October 2015 respectively, that conversations with Mr Krishnaswami had been mostly negative, very critical and unappreciative, that Ms Agarwal's promotion had been pending with him for two cycles and that Mr Krishnaswami had made false accusations against them of not doing their jobs and duties, bundle 3 page 1123.

116. Ms Agarwal told the Tribunal that, during the collective grievance hearing with Mr Buckley on 6 November 2017 Mr Buckley commented that Mr Krishnaswami was, "an Indian boss working in America and they are aggressive and that's how they are". She told the Tribunal that Mr Buckley also suggested to her that she should cope with Mr Krishnaswami's ongoing attitude.

117. Ms Bhogal told the Tribunal that she had heard, from Mr Buckley, that he denied making those comments and that Mr Buckley's version of events was that Ms Agarwal referred to Mr Krishnaswami as being aggressive.

118. The Tribunal found Ms Agarwal to be credible on this issue. Given that the First Respondent did not minute or record the meeting, and that Mr Buckley did not come to the Tribunal to give evidence, the Tribunal accepted Ms Agarwal's account of what Mr Buckley said in the meeting.

119. On 13 November 2017 Mr Buckley wrote to Ms Agarwal and Miss Cinca, providing them with a formal outcome to their collective grievance. He said that, while Mr Krishnaswami had acted in a completely unacceptable way, Mr Meshram - Ms Agarwal and Miss Cinca's line manager - should have taken the matter forward for appropriate resolution on their behalf. He said, "For his and your unknown reasons this unfortunately did not take place". Mr Buckley said that Ms Bhogal had picked up Ms Agarwal's concerns without delay and, as a result, Mr Krishnaswami had apologised for his behaviour. He said that Ms Bhogal had met Ms Agarwal again for a debrief, "So that all parties could draw a line in the sand... for all to move forwards in a professional, dignified and collaborative manner ...". He said that he found that Ms Bhogal's approach had been entirely appropriate, but that during one of the debrief sessions, "... one of you (it was not in dispute that this referred to Ms Agarwal) seemed to be displaying a belligerent attitude and was not attempting to hear or listen to what was being spoken but talked over Ms Bhogal on numerous occasions regarding events that from the company's perspective had been dealt with appropriately." He continued, ". not satisfied with Priya's response the action that had been implemented ... you decided to raise on the same complaint again" (sic).

120. Regarding Ms Agarwal's promotion, Mr Buckley said, "There is no divine right for the company to either accept or decline on such a recommendation...". He then went on to say that, regarding future tenure and growth, it would be wrong for him to assure anyone that their current role would remain intact. He said that, if any change was proposed, a "comprehensive formal change management programme" would be undertaken. In his recommendation section, Mr Buckley said that Ms Agarwal needed to look beyond how Mr Krishnaswami had spoken and take his apology "in good grace". He then went on to give a lengthy explanation about the difference between "hearing" and "listening"; for example, he said, "Hearing is simply the act of perceiving sound by the ear ... listening however, is something you consciously choose to do. Listening requires concentration so that your brain processes meaning from words and sentences". He said, of Ms Agarwal, "You were not listening or concentrating to such words but were preoccupied with your own thought processes and agenda...".

121. Mr Buckley said, "I will also ask that Gopinathan is to be given some effective UK people management familiarity training...". Mr Buckley referred to Mr Venkatraman coming to the UK and said that face to face the meetings would be held with Ms Agarwal and Miss Cinca at that time. He said, "I would suggest that you make use of this meeting and use it for good and proper purposes and not regurgitate the concerns that you have presented ... if you however do decide to bring up the same subject matter at the meeting, please do not be offended if Ramanan does not wish to entertain on the same, as will be my advice to him ...".

122. Mr Buckley told Ms Agarwal and Miss Cinca that they had the right to appeal against Mr Buckley's decision, bundle 3 pages 1174-1177.

123. Mr Buckley did not give evidence to the Tribunal.

124. Mr Krishnaswami confirmed that he had not been given any people management training as a result of this letter. This was despite Ms Mallick telling the Tribunal that she was convinced that it would have happened, given that Mr Buckley ran many such training programmes in the UK.

125. The Tribunal noted Mr Buckley's reference to UK people management training and considered that it supported Ms Agarwal's statement that Mr Buckley commented on Mr Krishnaswami being an Indian boss in America and, therefore, his attitude being culturally different. Ms Daphna Perry did later advise Mr Krishnaswami in his ongoing interactions with the Claimants, and on their change management process, but Mr Krishnaswami did not undergo any specific training programme as had been implied by Mr Buckley's letter.

126. Ms Bhogal gave evidence about her interactions with Ms Agarwal. As stated in these reasons, she said that she would not have used the word "belligerent" to describe Ms Agarwal's approach. Ms Bhogal said that she recalled Ms Agarwal being upset and distressed. She said that the conversation had become quite frustrating and that it had got to the point that Ms Bhogal felt that Ms Agarwal was not listening to the advice that she was giving her. She said that she felt that Ms Agarwal was worried about future matters which had not yet happened. Ms Bhogal said that she felt that Ms Agarwal had become paranoid. Ms Bhogal later said that Ms Agarwal had not been angry towards her, had not raised her voice, that she considered that Ms Agarwal was understandably irate about the situation.

127. The Tribunal found, from the wording of Mr Buckley's letter, that he was critical of Ms Agarwal and Miss Cinca for having pursued their complaint. He implied that their pursuit of the grievance was not professional, dignified or collaborative. He said that they had pursued the grievance "for unknown reasons" and that they had declined to move forward in a professional, dignified or collaborative manner as suggest by Ms Bhogal. The Tribunal considered that Mr Buckley's lengthy description of the difference between listening and hearing was patronising and humiliating. The Tribunal concluded that the use of the word "belligerent" was not an accurate reflection of Ms Agarwal's approach to Ms Bhogal. The adjective was unduly critical of her. The Tribunal considered that Mr Buckley's description of Mr Agarwal as belligerent was hostile towards her. While Mr Agarwal and Miss Cinca had raised concerns about the future, the Tribunal concluded that Mr Buckley's lengthy paragraph about the functioning of the Alliance Partnership Unit and potential change in it, and change management programmes, did raise the spectre of them being subjected to a redundancy process. In the context of the whole of the letter, which was critical and hostile in tone, this could reasonably be seen as a threat. Although Ms Agarwal and Miss Cinca had raised concerns about Mr Krishnaswami's behaviour towards them and his future impact on their career, there was no evidence that Ms Agarwal and Miss Cinca raised concerns about change management processes and redundancy. Therefore, Mr Buckley's unilateral introduction of this into the grievance outcome letter was discordant.

128. The Tribunal concluded, from both Ms Bhogal and Mr Buckley's letters that the First Respondent was putting excessive pressure on Ms Agarwal not to pursue a complaint. It was clear from Mr Buckley's letter that he intended to prevent Ms Agarwal from raising her concerns with Mr Venkatraman when she met him. The Tribunal concluded that neither Ms Bhogal nor Mr Buckley's approach was objective. The approach was very largely one of attempting to suppress Miss Cinca and Ms Agarwal's formal complaint.

Collective Grievance Appeal

129. On 17 November 2017, Ms Agarwal wrote to Ms Mallick, appealing the formal outcome of the collective hearing, bundle 3 page 1210. She said that Mr Krishnaswami had made unsubstantiated accusations against Miss Cinca and her. She said that Ms Bhogal had tried to evoke fear in Ms Agarwal and Miss Cinca by emphasising the high profile and senior status of Mr Krishnaswami and saying to them that, if they continued with the complaint they would get in trouble and Ms Bhogal did not know how their future in the organisation would be. Ms Agarwal said that she had told Ms Bhogal that this was worrying, but that Mr Buckley had described Ms Agarwal's reaction as a belligerent attitude, which was alarming in itself. Ms Agarwal said that she felt ridiculed by Mr Buckley's description of the difference between hearing and listening. Ms Agarwal also said, with regard to Mr Krishnaswami's apology, that it did not appear to be sincere, because the abusive and intimidating communication in the first video conference went on for over an hour, whereas the apology was for a few seconds. She said that Mr Krishnaswami said that he would not communicate with Miss Cinca or Mr Agarwal going forward and that, since the apology, his reviews of Vodaphone and Hitachi were conducted without them. Ms Agarwal said that HR had advised the Unit head, Mr Venkatraman, not to entertain Ms Agarwal's issues, whereas she and Miss Cinca had raised multiple concerns which remained unaddressed, bundle 3 pages 1210-1213.

130. This grievance appeal letter, sent on behalf of both Ms Agarwal and Miss Cinca, did not mention sex discrimination.

131. On 25 November 2017 Mr Buckley emailed Mr Venkatraman, copied to Ms Mallick, saying that Ms Agarwal and Miss Cinca had formally appealed against Mr Buckley's formal grievance outcome which came "as no surprise" to him "although it was their right to do so". He said that the appeal repeated what had been addressed twice and that he did not know what they were trying to achieve, ".. other than their apparent unwillingness to hear, listen or accept on what is being presented as ... a way forwards ... all rather amateurism and unnecessary of them both ..." (sic). Bundle 3 page 1219. Mr Buckley proposed that he meet Mr Venkatraman when Mr Venkatraman came to the UK in order to "give you a debrief of how to handle these two".

Ms Agarwal – Individual Grievance. Allegation of Sex Discrimination

132. On 30 November 2017 Ms Agarwal submitted a formal grievance to Nupur Mallick, bundle 3 page 1225. She set out a brief history of her employment by TCS. She said that Mr Krishnaswami had questioned her travel, but that there were multiple incidences where her male colleagues were travelling in pairs for international visits, without being subject to scrutiny. She said that Mr Krishnaswami had created unnecessary interference by assigning a male employee, Mr Nallasivam, to communicate regarding on of her accounts, which caused immense confusion. Ms Agarwal also said that Mr Krishnaswami had looked at her alliance with Vodaphone sceptically saying, "This is a waste of time this will fail"; yet that at the same time he had supported forming the Intel Alliance which was being operated by a male Alliance Manager. Ms Agarwal said that, while her promotion had not been approved, male colleagues had been promoted. She said that Mr Krishnaswami had made it clear that he would not communicate with her anymore. Ms Agarwal further said that HR had been intimidating her regarding all her concerns and had raised a change management procedure in one of its formal outcomes. In conclusion she said, "I have and continue to be discriminated because I am a woman and a mother ... my performance and success are not appreciated in this organisation". Miss Cinca also submitted a grievance on 30 November 2017, alleging discrimination because of gender, age and race, bundle 3 page 1230.

133. The Tribunal found that Ms Agarwal's grievance was a protected act. She genuinely believed the allegations she made.

134. Mr Buckley responded to Ms Agarwal's new grievance the same afternoon. He said that the HR team had not intimidated her and said, "Just because you did not get the answers that you were looking for ... does not in my view in any way constitute you having been intimidated...". He said that she had "completely twisted" the conversations she had had with Mr Buckley to suit her agenda and that that was "most disappointing". He said, "I am sure you will understand that the right of reply applies to everyone ...". Mr Buckley copied in Nupur Mallick to this email. Bundle 3 pages 1234-1235.

Collective Grievance Appeal Meeting

135. Ms Agarwal and Miss Cinca attended a collective grievance appeal hearing on 6 December 2017. The panel comprised Gill Hide and Sandra Faron, bundle 3 page 1243.1. On 21 December 2017 Ms Hide and Ms Faron wrote to Ms Agarwal and Miss Cinca, notifying them of the outcome to the collective grievance appeal hearing. They said that the reason that Mr Krishnaswami had asked Ms Agarwal and Miss Cinca to stay back in 4 October video conference was to address his concerns that there was a lack of collaboration regarding the transition of marketing activities. They said that it was possible that Mr Krishnaswami would not be the reviewer for Ms Agarwal in future and that this point would be addressed by Mr Venkatraman, either in his scheduled meeting on 13 December 2017, or at a follow up meeting specifically to address that matter. They did not uphold Ms Agarwal and Miss Cinca's concerns about Ms Bhogal and Mr Buckley's approach; they said that those individuals had not intended to invoke fear, or to come across

in a derogatory or unhelpful manner. Ms Hide and Ms Faron said that Mr Buckley had been helpful and proactive in arranging for Mr Venkatraman to come to the UK and that they hoped that any concerns would have been dealt with when he visited on 13 December 2017, bundle 4 pages 1332-1337.

136. Ms Hide and Ms Faron interviewed Ms Bhogal and Mr Krishnaswami as part of their investigation into the collective grievance appeal, but did not interview Mr Meshram, Ms Agarwal's line manager. They did not ask Ms Agarwal for any supporting evidence in relation to her grievance.

Mr Meshram's Individual Grievance. Allegation of Race Discrimination

137. Mr Meshram submitted a grievance to Ms Mallick on 10 December 2017, complaining of race discrimination on the basis of ethnicity by Mr Krishnaswami and victimisation for supporting two female colleagues in their discrimination complaints him, page 1244.

138. The Tribunal found that this was a protected act. Mr Meshram had a genuine sense of grievance and was sincere in the allegations he was making.

Mr Buckley's Actions following Individual Grievances

139. Mr Venkatraman did visit the UK on 13 December 2017 and met with Ms Agarwal and Miss Cinca. In advance of the meeting, Mr Buckley emailed Mr Venkatraman, copied to Ms Mallick, arranging to meet Mr Venkatraman early on the morning of 13 December. Mr Buckley said that Mr Meshram, Ms Agarwal and Miss Cinca had raised formal serious discrimination allegations. He said, "I am aware that all have taken external legal advice and are intent in pursuing their agendas as far as they possibly can through the court system". Bundle 4 page 1259.

140. As Mr Buckley did not give evidence to the Tribunal, Ms Daphna Perry was asked about Mr Buckley's email. She said that she had heard from various people in the organisation that the Claimants were saying that they had taken legal advice and intended to bring Employment Tribunal proceedings. Ms Perry was questioned about this assertion. She could not recall who had told her this. She confirmed that the Claimants had never said this directly to her.

141. Ms Mallick was asked, in evidence, to comment about Mr Buckley's email. Ms Mallick said that her interpretation of it was that Mr Buckley was reinforcing to Mr Venkatraman that this was a serious matter.

142. Mr Venkatraman did meet Ms Agarwal and Miss Cinca on 13 December 2017. He told the Tribunal that they raised various issues with him that day and that he listened to what they had to say. He told the Tribunal that there were formal grievance processes in place and that it would not have been appropriate for him to go outside the formal grievance procedure by responding directly to them, separately from it.

Mr Krishnaswami's Actions December 2017

143. Around 18 December 2017 Mr Krishnaswami started to collect evidence of criticisms of Mr Meshram from his former team members. On 18 December 2017 Mr Sivakumar emailed Mr Krishnaswami sending "discussion points as discussed earlier". He attached a document which was ostensibly dated 7 September 2017. It contained criticisms of Mr Meshram under headings such as, "Misplaced Credit", "Dilution of my Role" and "Misplaced Focus". From the document's metadata, however, the document was created on 18 December 2017, not on 7 September 2017, Bundle 4, page 1299.1.

144. Also on 18 December 2017, Ramanan T sent Mr Krishnaswami "as discussed earlier" a written account of his experience with Mr Meshram's UK team and Mr Meshram. In it, he said that Mr Meshram had asked the UK team not to interact with the global team for Alliance planning and governance "since he had his own agenda". The document addressed Mr Meshram's commencement in the UK and Europe Alliance role in June 2015 and thereafter. The latest specific date referred to was June 2017, bundle 4 page 1301.

145. Mr Nallasivan emailed Mr Krishnaswami on 18 December, bundle 4 page 1303, saying that he was resending a copy of feedback sent in April 2017. The document attached was dated 20 April 2017, but the document's metadata showed that the date of its creation in UK time was 06:23 on 19 December 2017. The document was then sent by email at East Coast American time 10:30pm on 18 December 2017; that is, 11 minutes after its creation. The document referred to a reporting period of July 2015 to May 2016. Mr Nallasivan made criticisms of Mr Meshram under three headings, Politiking, Extreme Stress and Managerial Ability, Bundle 4 pages 1304-1305.

146. On 19 December 2017 Shipra Jha emailed Mr Krishnaswami saying that she was resending a copy of a letter she had written in March 2017, following which Mr Krishnaswami had intervened and corrected her appraisal. The relevant letter was dated 20 March 2017 and complained about Mr Meshram's appraisal of Ms Jha. It also criticised Mr Meshram's management and behaviour over a 15-month period ending in March 2017, bundle 4 pages 1306-1309.

147. Indrajit Chatterjee also emailed Mr Krishnaswami on 19 December 2017, attaching a feedback document relating to Mr Meshram's management of Mr Chatterjee until 31 December 2016. In it, he said that, despite his seniority, Mr Meshram was not capable of leading a team of senior employees and building a positive working atmosphere, bundle 4 pages 1310-1312. It appears that Ramanan T also forwarded an email from an employee called Debashis Pal, recounting that employee's experience of Mr Meshram for two weeks in 2016. Debashis Pal's email described Mr Meshram as excessively arrogant and lacking an understanding of market dynamics. He described the working environment in Mr Meshram's team as hostile and demotivating, bundle 4 pages 1313-1315.

148. It was clear from the contents of the emails that these various employees had sent their feedback on Mr Meshram, having been prompted to do so in conversations with Mr Krishnaswami.

149. On 19 December 2017 Mr Krishnaswami sent Gill Hide a document setting out a chronology / sequence of events, bundle 4 page 1350. It appears that he copied it to Mr Venkatraman, who then replied on 21 December 2017 saying, "Also need to send the corporate credit card activities of Ravi for misuse". Mr Krishnaswami replied further to Mr Venkatraman on 21 December, saying that he had had a call related to Miss Cinca's new grievance the previous day. He said, "The allegations were completely baseless". He also said that, on 21 December, he had had another call with a different team from the UK, related to the new grievance from Mr Meshram and Ms Agarwal. He said, "I would like to mention that we should consult with HR to start a formal investigation with respect to this team. They are colluding and conspiring during TCS paid work time bringing false allegations, disrupting others and my work ... there are many disciplinary and policy violation activities that are coming to light ...". Bundle 4 page 1350.

150. Mr Venkatraman replied further, saying that, following the closure of the grievances, he would have a call with Ms Mallick, bundle 4 page 1349.

151. In evidence to the Tribunal, Mr Krishnaswami confirmed that, at this date, he was aware that the Claimants had brought discrimination allegations in their grievances. He was aware that they had alleged discrimination on the basis of ethnicity. He said, however, that caste had only been mentioned in the Employment Tribunal proceedings. Mr Krishnaswami was cross-examined about this email and his statement that company should initiate a formal investigation against Mr Meshram, Miss Cinca and Ms Agarwal. Mr Krishnaswami told the Tribunal that he believed that the first grievance was related to the video conference and the way that he had spoken and that the subsequent grievances were about him discriminating against them. He said, "Which is what drove me to write this." He said that the allegations were totally baseless and that what the employees had raised related to discriminatory activities by Mr Krishnaswami - with which he strongly disagreed. He told the Tribunal that their appointments had been approved by Mr Krishnaswami in the first place.

152. It appears that, on 30 December 2017 and 2 January 2018, Mr Krishnaswami collated documents relating to Mr Meshram and his alleged lack of management capabilities, bundle 4 pages 1380-1394.

153. He sent these to the grievance investigators. The documents included statements he had gathered from people who had previously been in Mr Meshram's team. They also included figures which Mr Krishnaswami said showed a revenue dip in relation to partners in Mr Meshram's region, bundle 4 page 1382. The documents set out what Mr Krishnaswami described as challenges in relation to Mr Meshram under the headings, "Team Attrition",

“Isolation from Global Priorities”, “Partner Revenue” and “Overall Performance and Attitude and Compliance Challenges”.

154. At the Tribunal, Mr Meshram challenged the validity of the figures that Mr Krishnaswami had included in the documents. In evidence, Mr Meshram conceded that the data which Mr Krishnaswami had used in this document was data taken from the First Respondent’s systems. He said that Mr Krishnaswami had used the data to portray him in a negative light.

155. In the documents, Mr Krishnaswami said that KPIs and targets from global plans had not been implemented and that associates had been asked by Mr Meshram to focus on activities that were not priorities. He gave the example of employees who were part of an Intel-funded team being assigned to tasks not directly linked to the Intel initiative, despite Mr Meshram being reminded not to do this. Mr Krishnaswami said that, as a corrective measure, the Intel team reporting had been moved to Vinay Chandran, the reviewer for Sachin Sail and Bharat Reddy was changed to Ramanan T and Mr Meshram had been asked to disengage from Europe activities until the Europe plan and way forward was discussed with the global head of the ATU, bundle 4 page 1381. Mr Krishnaswami also said that recently it had come to his attention that several travels undertaken by Mr Meshram and his team were without mandatory approval and that the TCS corporate credit card had been used indiscriminately for non-permissible expenses, bundle 4 page 1383.

Ms Agarwal - Individual Grievance Hearing and Outcome

156. Ms Agarwal attended an individual grievance hearing on 20 December 2017, bundle 4 page 1331.1. Mr Meshram also attended an individual grievance hearing that day, bundle 4 page 1331.19. The panel for the individual grievances comprised Andrew Waterman, HR representative, and Prashant Vora. Mr Vora was a senior manager in the First Respondent. In both meetings, Mr Waterman primarily asked questions and conducted the discussion.

157. On about 18 January 2018 Mr Vora and Mr Waterman sent a formal grievance outcome to Ms Agarwal, bundle 4 pages 1552-1555. In conclusion, they said that her grievances were unfounded and that there had been no discrimination or victimisation. They rejected Ms Agarwal’s complaint that she had been discriminated against when she was not promoted in 2010 and had been awarded a band D in her performance appraisal. They rejected all her allegations of discrimination with regard to her pay and performance grade following her return from maternity leave. They said that there had been no deviation from policy or process with regard to the 2017 promotion initiation, other than they acknowledged that TCS could provide clearer feedback on reasons for a promotion not being accepted. Regarding Ms Agarwal’s statement that, since her video conference call with Mr Krishnaswami in October and the grievance raised, she had been victimised, they said, “You gave no evidence of this other than some emails between you and Mamta Pandya”.

158. Prashant Vora and Andrew Waterman sent their individual grievance written response to Mr Meshram on 22 January 2018 pages 1594.1-1594.5. They did not uphold Mr Meshram's grievance.

Ms Mallick - Grievance

159. On 11 January 2018, Ms Agarwal wrote to Ms Mallick on behalf of Miss Agarwal and Miss Cinca, saying that they had received no clear outcome or action towards resolution and that their grievance had not been addressed. She set out criticism of Gill Hide's outcome. She said that she and Miss Cinca understood that the process was closed, but wanted to know Ms Mallick's views, bundle 4 page 1509. Ms Mallick told the Tribunal in evidence that she forwarded this email on to members of her team who she considered were responsible for handling the Claimants grievances.

160. On 23 January 2018 Daphna Perry, Head of Employee Relations UK and Ireland, responded to Ms Agarwal and Miss Cinca's email sent to Nupur Mallick on 11 January 2018 raising concerns and criticisms about the grievance appeal outcome, bundle 4 page 1595.

161. Ms Agarwal submitted an individual grievance appeal on 31 January 2018, bundle 5 page 1677.

Grievance Outcome Letters

162. Ms Agarwal alleged in the proceedings that the First Respondent had shared a copy of a confidential grievance outcome letter with the Second Respondent, contrary to the First Respondents policy. In evidence at the Employment Tribunal, Mr Krishnaswami told the Tribunal that he had not been provided with a copy of grievance outcome letters. The Tribunal accepted Mr Krishnaswami's evidence on this.

163. Ms Agarwal confirmed, during her evidence, that she was not pursuing any complaint of victimisation in relation to delay in the outcome of her grievances. She withdrew her allegation that sending a grievance outcome letter to the wrong address for Ms Agarwal was an act of sex discrimination and of victimisation. Ms Agarwal said that, when the First Respondent said that it had sent the outcome letter to the wrong address because she had not updated her address in it system, the First Respondent was blaming her and that this was a matter of victimisation. Ms Agarwal appeared to accept that the reason that the letter was sent to the wrong address was because the address had not been updated. Ms Agarwal had updated her address in June 2017 for payroll purposes, but not on the Ultimatix intranet.

Transcripts and Evidence in Grievances

164. In absence of clear evidence to the contrary, the Tribunal accepted Ms Agarwal's evidence that the First Respondent failed to provide Ms Agarwal with transcripts her grievance and that, further, when outcome letters were sent out, they did not attach records of interviews with various witnesses or

other supporting information. However, on 8 January 2018, Ms Agarwal emailed Priya Bhogal, Gill Hide and Sandra Faron, asking that they provide all the information they had referred to during the collection grievance process. A CD of all the relevant evidence was sent to Miss Cinca not later than 8 January 2018. In cross examination, Ms Agarwal agreed that she received this CD but said that she was not given any evidence collected by Graham Buckley, bundle 4 pages 1444-1447.

Senior HR Representatives – Grievance

165. On 3 March 2018, Ms Agarwal and Miss Cinca emailed Ritu Anand, TCS Global Deputy Head of HR and Head of Diversity and copied the email to Ajoyendra Mukherjee, TCS Global Head of HR, saying that they had raised grievances concerning harassment and discrimination on the grounds of gender, nationality and age, but that the situation had deteriorated thereafter and that they had lost faith in the process, bundle 5 pages 1874-1875. Ms Agarwal and Miss Cinca did not specifically ask that Ms Anand or Ms Mukherjee take any action. It does not appear that Ms Anand or Miss Mukherjee responded to this email.

166. The Claimants had raised grievances which were not upheld. They were given the right to appeal, but the appeals were not upheld either. Ms Agarwal and Miss Cinca had written separately to Ms Mallick to question the process which had been adopted and Ms Perry had responded on behalf of Ms Mallick, in a detailed way, to those further queries.

Travel and Expenses: Late 2017 – Early 2018

167. In November 2017 Mr Meshram asked Mr Krishnaswami to approve his travel request for an event in Madrid, bundle 11 page 3894. Mr Meshram then sent a reminder, saying that he would be attending an executive round table with the Managing Director of the client, and a further reminder, saying that another member of his team was unable to travel. He said that he had confirmed meetings at an executive level, including the CEO's roundtable for key partners. Mr Krishnaswami told the Tribunal that this event related to European business and, as Mr Meshram was no longer engaged on European business, there was no business reason for Mr Meshram to attend. He said that Mr Sivakumar's travel request was approved because he was working on European business.

168. Despite Mr Krishnaswami not approving Mr Meshram's travel request, Mr Meshram brought a last-minute plane ticket to Madrid using his corporate credit card. Mr Krishnaswami said that he eventually approved a £300 expense allowance for Mr Meshram in relation to this trip, albeit that Mr Meshram's travel claim was for £900. Mr Krishnaswami told the Tribunal in oral evidence that this was a global event, but that Mr Meshram was not attending a 1:1 meeting with the relevant CEO and that Mr Krishnaswami and other senior managers were regularly invited to such events, but did not always go.

169. On 26 January 2018 Mr Meshram wrote to Mr Venkatraman, saying that Vodaphone had invited Mr Meshram to present at their event in Singapore about TCS' alliance with Vodaphone. He said that his travel and travel accommodation costs would be covered by Vodaphone. Mr Venkatraman replied the same day, saying that Mr Meshram had given less than a week's notice for international travel, so that it would not be approved under policy. Mr Meshram further replied, saying that the tickets and the accommodation had already been provided by Vodaphone and, therefore, there was no need for a travel request through Ultimatix, the First Respondent's intranet system, bundle 5 page 1689. Mr Venkatraman responded once more, saying that it could not be done like that and that every business travel had to be raised through Ultimatix. Mr Venkatraman said that it was not about cost, but about compliance and the Ultimatix travel team captured it for many reasons including tax and compliance. He said that even Unit Heads could not approve travel ad hoc, and that he was surprised that Mr Meshram was raising it.

170. On 2 February 2018 Mr Venkatraman further emailed Mr Meshram, saying that, despite Mr Venkatraman having mentioned that business travel could not be undertaken without formal request and approval, Mr Meshram had travelled to Singapore and represented TCS. He said, "This is a serious violation of compliance and cannot be tolerated". Bundle 5 page 1688. Mr Meshram responded the same day, saying that the request from Vodaphone had come at short notice and it was too late for him to cancel it, as they had issued tickets for him. He said he had tried to put the travel details on Ultimatix, which had not allowed him to do this, but that he had raised a Global Helpdesk ticket to that effect. He said that he was representing TCS and that TCS were the only ones invited. Mr Meshram also said that he had met various very senior representatives of Vodaphone during his visit, including one who was involved in a large deal for which TCS was contending, bundle 5 page 1688. Mr Meshram copied his reply to Nupur Mallick, who sent it on to Daphna Perry and Joanna Cowie, an Employment Law advisor. Miss Cowie responded to Nupur Mallick, saying that she believed that Mr Meshram's explanation and mitigating circumstances sounded plausible and that disciplinary action might therefore be unreasonable in the circumstances. Daphna Perry also commented that she believed that it was not a "black and white situation" and that she agreed with Miss Cowie's approach. She also asked who Nupur Mallick would recommend bringing in, to do work towards fixing the relationship between Mr Meshram and Mr Krishnaswami, bundle 5 page 1687.

171. Mr Venkatraman told the Tribunal that there was a policy requirement, throughout TCS, that one weeks' notice needed to be given for travel. He said that travel requests needed to be raised through Ultimatix for tax and compliance reasons. The Tribunal accepted that, in general, there is a rule in TCS that travel requests should be made 7 days before the relevant trip. Clearly the Ultimatix system did not accept Mr Meshram's travel request made with less than 7 days' notice. Mr Meshram did not query the existence of the rule in his email exchange with Mr Venkatraman; he said that he had made a request to the Global Helpdesk to address it.

172. However, Ms Mallick, Head of HR, told the Tribunal that, whenever senior managers or clients needed travel to be booked at short notice, this was possible through the centralised Travel Desk. She said that she had, herself, travelled at short notice and arranged her travel through the centralised Travel Desk. Ms Mallick suggested to the Tribunal that TCS, in general, disapproved of clients paying for travel and accommodation. However, it was clear from Mr Venkatraman's emails to Mr Meshram that Mr Venkatraman was not relying on that as the reason for refusing Mr Meshram's travel.

173. Mr Meshram told the Tribunal that, previously, both he and other employees had travelled at short notice.

174. On all the evidence, the Tribunal accepted Ms Mallick and Mr Meshram's evidence that it is possible to travel in TCS at short notice - with less than 7 days' notice. It did not accept Mr Venkatraman's evidence that travel could only be booked with 7 days' notice, nor did it accept his statement that it was a serious violation to travel having given less than 7 days' notice. Mr Venkatraman did nothing in his emails to alert Mr Meshram to the possibility that he could book travel at short notice through the centralised Travel Desk. The Tribunal concluded that Mr Venkatraman, as a very senior manager, must have been aware of the centralised Travel Desk and the possibility of arranging travel through it.

175. In evidence to the Tribunal, Mr Venkatraman was questioned about his statement that Mr Meshram's travel to Singapore at short notice was a serious violation and could not be tolerated. He denied that he meant that disciplinary action should be taken against Mr Meshram. The Tribunal rejected his evidence on this. It was clear, from Ms Cowie and Ms Perry's emails, that they had understood that Mr Venkatraman meant that disciplinary action should be taken. Furthermore, the Tribunal found, the words used - "serious violation" of policy which "cannot be tolerated" - would, in ordinary language, be understood as describing something which merited disciplinary action.

176. On 27 January 2018 Mr Krishnaswami emailed Mr Venkatraman saying that, further to his note dated 7 November, wherein he had raised issues with Mr Meshram and suggested that he be released from the Unit, other issues regarding marketing expenses had come to light during the transition of UK marketing activities to the ATU marketing team. Mr Krishnaswami said that forged invoices had been raised to conduct a UK team offsite meeting and that forged documents had been submitted as part of corporate credit card settlements. He said that many marketing events expenses were paid for using corporate credit cards and were wrongly tagged as training and conference expenses. Mr Krishnaswami also said that the corporate credit card had also been used for purchasing air tickets with no travel request or approval. He said, "I have lost trust and confidence in this associate Ravindra Meshram to carry out his role and responsibilities adhering to Tata code of conduct ... request you to please escalate to senior management for appropriate action". Bundle 11 pages 3912-3913.

177. Mr Krishnaswami told the Tribunal, in his witness statement, that the issue regarding invoices had come to light in September 2017. Mamta Pandya and Mr Krishnaswami had been trying to establish how much had been spent by way of expenses against a particular work order number. Mr Krishnaswami said that he spoke to UK Finance about the issue on 4 January 2018. In oral evidence, Mr Krishnaswami said that the issue arose on a review at the conclusion of all marketing contracts. Mr Krishnaswami told the Tribunal that when he raised the matter with Mr Venkatraman at the end of January 2018 and that Mr Venkatraman said that he would take it up with HR and the Chief Security Officer. Mr Krishnaswami also said that he shared the details with the UK Head of Finance.

178. Mr Venkatraman told the Tribunal that he sent the relevant invoices and other information from Mr Krishnaswami to the Corporate Security Officer. Mr Krishnaswami said that he had told that the security team had not taken action. He did not know why; he did not even know if there had been any investigation. He said that, normally, he would be concerned to know the outcome of such a matter but, in this instance, he felt it was best to let HR handle it.

179. Mr Dawar, Chief Ethics Counsellor for UK and Ireland at the First Respondent, told the Tribunal that issues of financial misconduct would be raised directly to Finance and he would expect Finance to revert to him, at the latest, within a week.

180. On all the evidence, the Tribunal considered that it was notable that Mr Krishnaswami did not raise the issue about the alleged forged invoices until January 2018, albeit that he told the Tribunal in his witness statement that the issue had first arisen in September 2017. Furthermore, the Tribunal did not accept Mr Venkatraman's evidence that he did not know what had happened regarding the allegations once they had been raised with the Finance Department. The Tribunal accepted Mr Dawar's evidence that the Finance Department would revert promptly with its conclusions on such matters. Mr Venkatraman's evidence regarding the travel and invoices investigation was unsatisfactory and unreliable.

First Claimant's Data Subject Access Request

181. Ms Agarwal sent a Data Subject Access Request to the First Respondent on 20 December 2017, page 1318.

182. The First Respondent uses a forensic analysis tool called NUIX to conduct data subject searches. It is a well-known application for data extraction and is admissible in court for litigation purposes. It can search live mail boxes and find data across electronic filing systems, active mail system and mail archives. The First Respondent also carries out additional local searches from personnel files and by running search terms across HR electronic records. The First Respondent further carries out a validation exercise and asks senior employees to provide it with any personal data of the

data subject in their mail boxes, so that NUIX is supplemented by individual manual searches.

183. Pursuant to Ms Agarwal's first Data Subject Access Request ("DSAR") on 20 December 2017, the First Respondent provided a response on 30 January 2018, bundle 4 page 1659. This was within the statutory deadline of 40 days applicable at the time. Ms Agarwal was provided with files of her personal data and was told that 15 people had searched their electronic documents and relevant filing systems and that IT had conducted searches of 5 more individuals' email accounts.

184. Ms Perry had written to Ms Agarwal on 23 January 2018 because initial searches had resulted in over 160,000 items, bundle 4 pages 1609-1612. Ms Perry invited Ms Agarwal to provide comments on the DSAR search approach, but Ms Agarwal did not do so at the time.

185. Ms Agarwal sent an email on 7 March 2018 raising concerns with the DSAR process.

186. Mr Frampton joined TCS on 19 February 2018 and spoke to Ms Agarwal by telephone on 12 March and 14 March 2018. On 14 March 2018 he suggested that the First Respondent re-run the DSAR search with any specific search terms which Ms Agarwal suggested. The following day, Mr Frampton conducted a new series of searches against the NUIX data pool, to validate the search term outcomes. He found that the results were the same as those provided by Daphna Perry to the Claimant on 30 January 2018, bundle 5 page 2298.

187. On 11 April 2018 Ms Agarwal emailed Mr Frampton to say that she was awaiting a further response to her DSAR. On 17 April 2018, Mr Frampton agreed to re-run Ms Agarwal's additional search terms, using an updated process which the First Respondent was introducing to ensure compliance with the *General Data Protection Regulation EU 2016/679*, bundle 6 page 2296. Mr Frampton asked the security team to re-run the DSAR following the implementation of the updated GDPR compliance process. The First Respondent found that the results actually decreased. The Tribunal accepted Mr Frampton's evidence about all of this.

188. Ms Agarwal submitted a second Data Subject Access Request on 6 July 2018, bundle 7 pages 2714-2720. Mr Frampton and Daphna Perry reviewed the second DSAR and decided that, as the second DSAR had been submitted just over 6 months after the first, they would only provide new or updated personal data which was not within the scope of the first DSAR. Mr Frampton emailed Ms Agarwal on 18 July 2018, setting out the proposed methodology for her second DSAR, bundle 8 page 3224. As had been explained to Ms Agarwal by Miss Perry on 23 January 2018, they excluded pre-2016 backed up emails from the search entirely, because it would have taken at least one year to restore and search them and Mr Frampton did not consider that that was reasonable or proportionate. Ms Agarwal responded to the proposed methodology on 26 July 2018, disagreeing with Mr Frampton's proposal to

narrow the scope of the search, bundle 7 page 3223. Mr Frampton offered to meet with Ms Agarwal and Ms Perry to discuss the DSAR approach, bundle 8 page 3222. He scheduled a meeting on 14 August 2018, but Ms Agarwal was unable to attend due to sickness.

189. Mr Frampton told the Tribunal that there were delays in responding to Ms Agarwal's second DSAR for a number of reasons. He said that the scale of the search meant that he was cross-validating data across two pools of data representing Ms Agarwal's first and second DSAR, which was a time-consuming process. He also spent a long time working with Joanna Cowie, Employment Counsel, and Daphna Perry, to establish which documents would be exempt from the DSAR. There was a redaction process which needed to be applied in relation to privileged matters. He said that there were five other DSARs which were being conducted at the time, which was more than normal, and the searches were using up all the NUIX memory. Lastly, Mr Frampton said that, when the results of the second DSAR were available, they did not receive consent from Ms Agarwal to send the data to her personal email address. He said that the First Respondent was not therefore able to provide Ms Agarwal with the results of her DSAR within the statutory deadline.

190. Ms Agarwal complained to the Information Commissioners Office ("ICO") on 3 September 2018, bundle 9 page 3462. In a letter dated 19 November 2018 the ICO notified Ms Agarwal and the First Respondent that it had found that the First Respondent had not complied with its data protection obligations, bundle 9 page 2463. Mr Frampton told the Tribunal that the ICO case officer had not contacted TCS to seek its response to the complaint before it provided its conclusion. Daphna Perry arranged to meet Ms Agarwal and external legal counsel on 13 December 2018 to discuss the DSAR. Mr Frampton informed the ICO of the proposed meeting, bundle 9 page 3533.1. The ICO responded on 18 December 2018 stating that they would step back and let both parties reach an agreeable outcome, bundle 9 page 3535.7.

191. There was no evidence before the Tribunal about which documents ought to have been disclosed on Ms Agarwal's DSAR, but were not. There was no evidence that, had Ms Agarwal been a man in the same situation, the DSAR process would have been conducted any differently. Ms Agarwal did not give evidence about these matters and she did not cross examine the First Respondent's witnesses about them, or suggest to them that, had she been a man, the process would have been conducted differently.

192. The Tribunal accepted Mr Frampton's evidence that delays by the First Respondent in responding to the second DSAR request were caused by the fact that it was the second DSAR request by Ms Agarwal, so there needed to be a check as to which documents had already been disclosed on the first DSAR and that there had to be a review of the documents which were produced, so that privileged material was not disclosed to Ms Agarwal. The Tribunal accepted that that exercise, in itself, was bound to take additional time. The Tribunal also accepted that there were some delays caused by the volume of DSARs which the First Respondent was handling at the time. Ms Agarwal's claim in this respect, at the latest, was dated 17 September 2018,

bundle 1 page 49. The Tribunal accepted that delays until 17 September 2018 were caused by the matters that Mr Frampton had explained.

Promotion 2017 – 2018. Aravind Sivakumar

193. Mr Aravind Sivakumar was recommended by Mr Krishnaswami for promotion in late 2017, bundle 5 pages 1995.3-1995.4. In the promotion recommendation, Mr Krishnaswami wrote that Mr Sivakumar had had a responsibility change, to include independently managing alliances in Europe. He described this as “regional management of alliances”. He said that Mr Sivakumar had very good sales and alliance management skills and was aggressive and focussed to achieve the desired results, he also had very good relationship skills. Mr Sivakumar had only been in his current grade of C3A for 2.2 years.

194. On 26 March 2018 Mr Meshram emailed Mr Krishnaswami, querying Ms Agarwal’s promotion, which he said had been pending for over 1 year. Mr Meshram said that he noted that there were two promotion recommendations through Mr Meshram’s queue; Ms Agarwal’s and Mr Sivakumar’s. Mr Meshram said that Mr Krishnaswami had recommended Mr Sivakumar after his change of reporting from Mr Meshram in November 2017, but that Ms Agarwal’s case had not been reviewed by Mr Krishnaswami for over a year. He said that while Mr Sivakumar had reported to Mr Meshram until November 2017, but that no input had been sought from him on the recommendation for promotion, bundle 5 page 1995.1.

195. Mr Krishnaswami gave evidence to the Employment Tribunal and said that Mr Sivakumar had proactively presented a business plan, setting out what he would like to achieve in Europe, comprising investment and the building of a team for which he would be responsible. He said that Ms Agarwal had not done this.

196. Mr Sivakumar was not, in fact, promoted in 2018. He continued to be employed at the same grade as Ms Agarwal for the remainder of her employment by the First Respondent.

197. Ms Agarwal contended, at the Tribunal, that she had had a change in role, because she had been appointed as a Global Alliance Manager for Vodaphone.

198. However, Mr Meshram did not state that Ms Agarwal had been appointed to a Global Alliance Manager role in his justification for her promotion in 2017.

Individual Grievance Appeals and Mr Meshram’s Protected Disclosures

199. Ms Agarwal sent an individual grievance appeal to Daphna Perry on 31 January 2018, bundle 5 page 1678.

200. Mr Meshram submitted his individual grievance appeal on 26 February 2018, bundle 5 pages 1815-1827.

201. Ms Agarwal attended an individual grievance appeal meeting with John Cuming on 22 February 2018. Mr Cuming sent an outcome to her on 5 March 2018, bundle 5 pages 1866-1870. Mr Cuming did not speak to Mr Krishnaswami as part of the grievance appeal process, nor did he speak to Mr Meshram. Mr Cuming recommended that Mr Krishnaswami be given extensive management training, to avoid any recurrence of the video conference incident in the future, bundle 5 page 1869. As the Tribunal has found, Mr Krishnaswami was not given any management training specifically to address this.

202. In Mr Meshram's appeal against his grievance outcome dated 26 February 2018, bundle 5 page 1815, he said that all partner funds and rebates for the UK and Europe were consumed by Mr Krishnaswami and his team, that Mr Meshram had not had any visibility into it, which was strange and suspicious, since those were funds invested by partners across all the geographies, bundle 5 page 1816. Mr Meshram had mentioned, in his original grievance, that Mr Krishnaswami had regularly met an MTI partner in the UK during his UK visits and had not included Mr Meshram in those meetings. He did not say, in the original grievance, that that was suspicious from a compliance standpoint, bundle 4 page 1245. In fact, Mr Meshram's mention of the MTI partner in his original grievance was as a particular of alleged less favourable treatment on the basis of ethnic origin, bundle 4 page 1244.

203. In his grievance appeal, Mr Meshram said that he suspected that the transactions executed through MTI may not comply with revenue accounting requirements and the Tata Code of Conduct. He said it might amount to a breach of TCS legal obligations. He alleged that the arrangement with MTI was set up to tag UK-based revenue to the US (CMI North America) and said that this "malpractice" needed to be seriously investigated under TCS' whistleblowing process, page 1819.

204. Mr Meshram had an individual grievance appeal hearing on 16 March 2018 with Sunil Chropa, bundle 5 page 1920. In it, he said that his team was allocated on IBM work order numbers, which was not correct business practice as the Alliance Managers managed different alliances which were in direct competition with IBM. He said that, for example, it would mean that IBM funds were being utilised to manage SISCO, Hitachi and Intel relationships, which would be a conflict of interest, page 1921.

205. Mr Venkatraman and Mr Krishnaswami explained to the Tribunal that revenues may be appointed to different "verticals" for business reasons, compared to the way they are accounted for, for accounting purposes. They said that Mr Meshram would have been aware of this.

206. Mr Meshram was cross-examined at some length about his alleged protected disclosures. He explained to the Tribunal why he felt, at the time, that Mr Krishnaswami and the ATU were breaching obligations and conflict of

interest rules in relation to their utilisation of alliance partner funds. He also explained why he considered that funds were not be properly accounted for, in that UK revenue was being used to boost the revenue of other geographies. Mr Meshram sought disclosure in the Employment Tribunal proceedings, which he then pointed to, to show that his allegations were justified. Mr Meshram was cross-examined extensively regarding the truth of his allegations and regarding his genuine belief in them at the time he made them.

207. While the Employment Tribunal did not reject Mr Venkatraman and Mr Krishnaswami's explanations as to why funds for MTI, for example, had been accounted for correctly; equally, the Tribunal accepted that Mr Meshram honestly believed his allegations that partner funds were being wrongly allocated and, therefore, accounted for and that partner funding was not being allocated in accordance with agreements, so that funds from particular partners were being used to promote other partners in breach of legal obligations. The Tribunal did not consider that there was any convincing evidence that Mr Meshram did not believe what he said at the time. Mr Meshram made clear, at the time, that he believed that contractual legal obligations to partners were being breached and that legal obligations with regard to accounting were being breached.

Mr Meshram's Team: February – March 2018

208. In February 2018 Pawan Goyal was recruited into the Infrastructure Alliances team. Mr Meshram told the Tribunal that Mr Krishnaswami instructed Pawan Goyal not to report to Mr Meshram, despite Mr Meshram being Head of Infrastructure Alliances in the UK. Mr Meshram told the Tribunal that Sachin Sail had learnt from Mr Goyal that Mr Krishnaswami had told Mr Goyal not to sit with Mr Meshram's team, or to have any engagement with Mr Meshram.

209. Mr Krishnaswami told the Tribunal that Mr Goyal was a technician who had been appointed to support the relationship with client CISCO and that Mr Goyal reported to Ramanan T. In Mr Meshram's oral evidence to the Employment Tribunal, he agreed that technical resources did report direct to the USA. It appeared from the evidence, however, that Mr Krishnaswami have not even told Mr Meshram that Mr Goyal would be starting work in a technical support function for the CISCO partnership. Mr Meshram was Alliance Director for UK and Europe and had responsibility overall for the CISCO alliance.

210. Mr Krishnaswami told the Tribunal that his interaction with Mr Goyal was minimal and that Mr Goyal did not report to him. He therefore said he would have had no standing to instruct Mr Goyal to do, or not do, anything. The Tribunal found that Mr Goyal was recruited without Mr Meshram's involvement, but it accepted Mr Krishnaswami's evidence that he did not give any instructions to Mr Goyal. It was logical, given that Mr Krishnaswami was not his manager, that Mr Krishnaswami would not have been in a position to

give any instructions to Mr Goyal about how he interacted with other members of the team.

211. In about March 2018 Raghavendra Selvaraj was recruited as “Director Niche Partner Alliances” to work in the UK. Mr Meshram told the Tribunal that he was not involved in the recruitment and was not even informed about it.

212. Mr Krishnaswami told the Tribunal that Mr Selvaraj was recruited to work for Suprio Choudhury and that Mr Meshram was responsible for a particular set of partners, which did not include the partners that Mr Selvaraj was recruited to manage.

213. Mr Choudhury gave evidence to the Employment Tribunal. He agreed that, in early 2017, he and Mr Meshram had jointly prepared a business plan for the alliance partners whom Mr Selvaraj was recruited to manage in 2018. Mr Choudhury told the Tribunal that, after around 9 months, he had discovered that Mr Meshram’s team was not, in fact, managing those partners, and that Meshram and his team had not been managing those partners for about 8-9 months before Mr Selvaraj was appointed. Mr Choudhury was asked why he did not go back to Mr Meshram to ask why he was not following the business plans and managing the partners. Mr Choudhury said that he thought it was better to talk to Mr Krishnaswami, who was his supervisor. He said that Mr Krishnaswami and he had together agreed to bring in Mr Selvaraj.

214. It was apparent from Mr Choudhury’s evidence that Mr Krishnaswami had authorised the recruitment of Mr Selvaraj. The Tribunal considered that Mr Krishnaswami was economical with the facts, when he told the Tribunal that he had not recruited Mr Selvaraj. From Mr Choudhury’s evidence, Mr Krishnaswami and Mr Choudhury had jointly decided that Mr Selvaraj should be recruited. Mr Krishnaswami, as supervisor, must have authorised it.

215. The Tribunal considered that, in February and March 2018, Mr Krishnaswami did not inform Mr Meshram about new recruits to the UK team. It was clear that, before Mr Selvaraj’s appointment, Mr Meshram had, at one point, had responsibility for managing the relevant partner relationships.

216. Mr Meshram was not being included by Mr Krishnaswami in decision-making regarding the UK business as would have been expected given Mr Meshram’s position as Head of the UK team.

217. In March 2017 Mr Krishnaswami and Mr Meshram had agreed Mr Meshram’s goals for the financial year 2017 to 2018. These goals were not altered on the Respondent’s Ultimatix system when Mr Meshram’s responsibilities for Europe were removed in November 2017. Mr Krishnaswami told the Tribunal that the removal of European activities from Mr Meshram was taken into account during the performance appraisal exercise in March 2018. There was no record of this.

218. Mr Meshram told the Tribunal that Mr Krishnaswami conducted his appraisal review discussion in March 2018 in a hostile and unprofessional manner. Mr Krishnaswami told the Tribunal that there had been a healthy discussion between Mr Meshram and he during the meeting. Daphna Perry was also part of that telephone call in March 2018. The Tribunal concluded that given that Ms Perry was included in this telephone call, it was unlikely that the exchange between Mr Meshram and Mr Krishnaswami went beyond the bounds of a robust exchange of views.

Mr Meshram's Performance Band 2018

219. In March and April 2018 Mr Krishnaswami completed Mr Meshram's appraisal document, bundle 6 pages 2231-2239. He awarded scores for each goal set for Mr Meshram. Regarding Personal Development, Mr Krishnaswami said, "Scope for improvement", page 2233. With regard to Corporate Governance and Reporting, Mr Krishnaswami awarded a score of 3 and said that he would like to highlight two incidences of non-compliance with TCS travel processes. Mr Krishnaswami gave Mr Meshram a 4 for Personal Development. He gave him a 4 for Effectively Influencing Others positively; he said there was scope for improvement. He also gave him a 4 for Team Skill, Ability to Create an Environment of Trust and Cooperation Through an Open Exchange of Ideas Towards Achieving Goals; he said there was scope for improvement in this regard. Mr Krishnaswami also awarded the Claimant a 4 regarding Change Management; he said that there was scope for improvement. He specifically referred to the transitioning of market activities to ATU marketing.

220. In evidence, Mr Krishnaswami was asked what was in his mind when he gave scores of 4 and said there was scope for improvement regarding Personal Development, Effectively Influencing Others Positively and Creating an Environment of Trust and Cooperation. Mr Krishnaswami said that he could not remember what was in his mind at the time.

221. Mr Krishnaswami scores produced an IPF of 3.8 for Mr Meshram. He recommended that Mr Meshram be given performance band D. There was some discussion between Mr Krishnaswami and Ms Perry about whether the band should be D, file 6 pages 2334-2336. While Ms Perry advised that it would be best for the performance band to be C, the band recommendation went forward to Mr Venkatraman as a D. On 30 April 2018 Mr Krishnaswami emailed Shabana Gaffar, Unit HR Head, saying that Mr Meshram's performance band should be D. He gave justifications for this including a significant drop in performance, lack of focus and poor management. He also said ".. refusal to comply with TCS process, refusal to comply with supervisor and ATUs Head directions, overall change in attitude in last fiscal year—autocratic style of operations, inability to work harmoniously with global team and refusal to comply with instructions in general", bundle 6 page 2308.

222. While Mr Krishnaswami said that he could not recall what was in his mind when he awarded the grades for particular goals, it appeared from the email that what was in Mr Krishnaswami's mind included the Claimant's travel

to Singapore contrary to Mr Venkatraman's instructions and also evidence that Mr Krishnaswami had gathered from previous employees who had worked for Mr Meshram. Those employees, however, had predominantly provided documents to Mr Krishnaswami about the Claimant's conduct and management style over periods which ended before March 2017.

223. Mr Venkatraman told the Tribunal, and the Tribunal accepted, that only employees at Mr Meshram's grade SP1 who received an IPF score of 4.5 or more were given a performance grade A in 2018. Mr Venkatraman told the Tribunal, and the Tribunal accepted, that Mr Meshram also received the lowest IPF score of that cohort of SP1 employees. The IPF score was generated from Mr Krishnaswami's inputs into the First Respondent's performance appraisal system, bundle 9 pages 3395-3396.

224. Mr Meshram attended a Band Disagreement Discussion with Mr Venkatraman on 17 August 2018. Mr Venkatraman did not alter the performance grade D following that meeting, bundle 9 page 3439. Mr Venkatraman wrote to the Claimant on 20 August 2018, saying that his performance grade had not been altered because there had been a comparison of same grade associates in the Unit. He said that he had double-checked the Claimant's goals and achievements and compared his IPF with those of other employees of the same grade in the Unit and had decided that there was no justification for changing the Claimant's band, bundle 9 page 3439.

225. In Mr Venkatraman's witness statement, he said that Mr Krishnaswami and he had jointly made the decision to award Mr Meshram a performance band D. He said that, when they compared Mr Meshram's rating with other senior employees in the ATU, he came lowest and so he got a D.

226. Mr Ganesh Nallasivam, who is employed by TATA America International Corporation in Santa Clara as Global Head of its NextGen Technology Group told the Tribunal that he did feel, when he worked in Mr Meshram's team, that Mr Meshram was deviating from the company's global strategy and that Mr Meshram's management style was claustrophobic.

ATUNE

227. ATUNE is TCS' Alliance and Technology Units' annual networking event. Mr Meshram attended the ATUNE event in 2016 and 2017. The 2018 ATUNE event took place on 3-5 April 2018. In 2018 the Infrastructure Alliances Group, which had about 100 team members, was allocated 9 passes, compared to 14 in 2017. When Mr Meshram emailed Mr Krishnaswami to ask what was happening about attendance at the 2018 ATUNE event, Mr Krishnaswami told him on 29 March 2018 that 9 passes had been allocated to their sub-Unit, of which 4 had been categorised as conditional (new participant) passes and 4 as "no conditions". Mr Krishnaswami said that the 4 non-conditional passes had been nominated based on criteria including direct

contribution to revenue. He said that passes were not available for 7 of Mr Krishnaswami's direct reports, including Mr Meshram.

228. Mr Krishnaswami told the Tribunal that the 5 conditional passes had been given to 3 female associates and 3 male associates who had never previously attended the event. The Tribunal accepted Mr Krishnaswami's evidence that Mr Meshram was one of a number of Mr Krishnaswami's direct reports who did not attend the ATUNE conference in 2018.

Ms Agarwal Performance Appraisal and Promotion Decision - 2018

229. On 14 March 2018 Shabana Gaffar, Unit Head of HR, sent an email to managers, including Mr Venkatraman, saying that, in the 2018 promotion cycle, employees at grade C1 and C2 could be looked at. She asked for recommendations by 26 March 2018. Mr Krishnaswami forwarded that email to Mr Meshram on 26 March 2018, bundle 5 pages 2004-2005. Mr Meshram responded on 26 March 2018, saying that Ms Agarwal's promotion had been pending for over one year and that it looked like Mr Krishnaswami had recommended Mr Sivakumar for promotion after his change of reporting from Mr Meshram in November 2017. He said that he believed that Ms Agarwal's promotion had been delayed and ignored and it was unfair, bundle 5 pages 2002-2003.

230. Mr Krishnaswami replied on 27 March 2018, saying that there were guidelines to be followed in relation to promotions, including that there should be a defined and clear rise in the role and responsibilities of the employee, bundle 5 page 2002. Mr Meshram replied further on 28 March 2018, copying Daphna Perry, Mr Venkatraman and Shabana Gaffar, saying that Ms Agarwal's role, responsibilities and performance had more than justified her case for promotion. He said that, after joining the ATU, Ms Agarwal had worked as a public sector BDM for the first year and created a global alliance with Vodaphone which had been signed in July 2017 and had performed well. He said that she had created another initiative which had generated significant top line revenue at JLR and Nationwide, bundle 5 page 2000.

231. Shabana Gaffar replied to Ms Perry and Mr Krishnaswami on 16 April 2018, saying that, when Ms Agarwal's promotion was recommended in July 2017, the criteria defined by the corporate team was "more than 4 years in grade" for associates who were at grade C3A and above and had an A/B combination of performance bands in the last three years. Ms Gaffar said that, at that time, Ms Agarwal had 3.33 years in grade. She said that, as a Unit, they did not take recommendations forward which did not meet the criteria because they knew it would not be cleared. She said that, in July 2017, only associates who had 4 or more years in grade were promoted unless there was a very strong business case or justification for an exception, bundle 6, pages 2138-2139. Ms Perry asked whether, from an employee relations perspective, there was a point when the window closed on a promotion recommendation. On 17 April Ms Gaffar replied, saying that the window did not close after one cycle, but the recommendation would be active

on the system for 1 ½ - 2 years, after which a promotion recommendation needed to be initiated afresh, bundle 6 pages 2136-2137.

232. Ms Perry wrote to Mr Meshram on 13 April 2018, saying that she had looked into the history of Ms Agarwal's promotions and that of her peers, and had found that Ms Agarwal was "on track", bundle 6 page 2133. On 20 June 2018 Mr Meshram also recommended Sachin Sail and Miss Cinca for promotion, bundle 7 page 2606.

233. On 26 June 2018 Mr Krishnaswami emailed Ms Perry, rejecting all the promotion recommendations by Mr Meshram. Nevertheless, he also proposed that the recommendations be resubmitted to him with information relating to accomplishments and clear articulation of the proposed role and enhanced responsibilities and, if those details were not available, to provide them as soon as they were available, bundle 7 page 2606.

234. On 11 July 2018 Mr Meshram emailed Ms Agarwal, advising her of Mr Krishnaswami's decision, bundle 7 page 2813.1. In her evidence to the Employment Tribunal, Ms Agarwal accepted that she did not meet the guidelines for promotion in 2017 and 2018, but said that she was an exception.

235. Mr Meshram was Ms Agarwal's appraiser and Mr Krishnaswami was her secondary reviewer under the First Respondent's performance appraisal process. In 2018 Ms Agarwal's final IPF score was 4.714. The First Respondent's automatic system generated a band A for her performance based on that score. Her final band was B. Ms Agarwal compared her treatment with Aravind Sivakumar who received an IPF of 4.937 and an initial band of A, but also a final band of A.

236. On 9 May 2018 Mr Krishnaswami sent comments on Ms Agarwal's performance in 2017 – 2018, bundle 6 page 2369. He said that no actual revenue had been generated for Vodaphone and 50% of the contracted activities had not been completed under the Vodaphone contract at the time of expiry.

237. The Tribunal was given a table showing the initial, system-generated band and final bands for employees in Ms Agarwal's sub Unit, bundle 12, pages 4110.3-4110.7. Mr Selvaraj, who was also employed at C3A, had an initial A band recommendation, but a final band of B. He had a higher IPF score of 4.9167 than Ms Agarwal. Other male employees also had their initial A band modified to B; Bharat Parvata, Ritesh Kumar, Sachin Sail and Vinay Chandran. Mr Krishnaswami told the Tribunal that a grade B, being the second highest grade, equated to "very good or excellent" performance, while grade A was for "exceptional performance".

238. Sachin Sail was awarded a performance band of B in 2018. He was unhappy and consulted HR, saying that he had been awarded a B the previous year but, in 2017-2018, he had overachieved against his financial targets and had addressed the previous year's feedback, building strong

relationships with CISCO and Net App and showing marked improvement, bundle 7, page 2505.

239. Ms Agarwal initiated a formal Band Disagreement process in April 2018. Ms Agarwal objected to having a Band Disagreement discussion with Mr Krishnaswami, in light of her previous grievances and other concerns about his treatment of her. On 7 June 2018, Shabana Gaffar, Unit HR head, emailed Ms Agarwal, saying that HR would be part of the meeting with Mr Krishnaswami and would ensure that conversations were relevant and professional. Ms Gaffar said that HR would look at Mr Venkatraman intervening if it felt it was appropriate, bundle 7 page 2500.

240. Ms Agarwal did not proceed with her Band Disagreement meeting with Mr Krishnaswami. As a result, there was no outcome to that meeting.

241. The Tribunal noted that Ms Agarwal was still working in Mr Krishnaswami's Unit and that, while Ms Agarwal had raised grievances, they had not been upheld. The Tribunal did not have any evidence about whether, on other occasions, HR had allowed employees to be reviewed by alternative reviewers if they had raised grievances which had not been upheld against their existing reviewer.

242. The pay and bonuses of employees are affected by their performance grade in any one year.

Miss Cinca and Sachin Sail's Performance

243. Mr Meshram contended that Mr Krishnaswami had, as an act of vengeance, awarded a performance band B to Sachin Sail, Ms Agarwal and Miss Cinca in 2018. The Tribunal heard very little evidence about the performance of Miss Cinca and Mr Sail during the relevant year. As the Tribunal has previously found, there were a number of other employees whose performance was downgraded on review from A to B. Band A was appropriate for exceptional performance performers; band B was appropriate for very good or excellent performers. Mr Meshram asserted that Mr Sail and Miss Cinca's performance had been exceptional, but there was no evidence to corroborate this.

2018 – Ms Agarwal, Mr Krishnaswami and Mamta Pandya

244. In early January 2018 Ms Agarwal sent several emails to Mamta Pandya about marketing activities with Vodaphone. She said that Vodaphone was complaining about the fact that workshops had not been delivered as contracted for under the agreement with Vodaphone, bundle 4 page 1583. Ms Pandya replied, saying that the marketing activities should have been completed within the legal contract period, but the UK Alliance Wave team had failed to do this. She suggested that the sessions could be conducted at the TCS London office.

245. Mr Krishnaswami was copied into this exchange of emails, which continued for the next few weeks at least, bundle 4 pages 1579-1582.

246. Ms Agarwal told the Tribunal that the outstanding Vodaphone workshops had been delayed, but that Vodaphone had agreed to this. The Tribunal accepted Mr Krishnaswami's evidence that the problems arose because the events which had been delayed were not budgeted for at the time they later came to be delivered. This clearly caused disagreement and misunderstanding between Ms Agarwal and the marketing team. The Tribunal did not find that the marketing team was failing to cooperate with Ms Agarwal. The circumstances gave rise to difficulties delivering the Vodaphone events. Ms Agarwal and the marketing team, particularly Mamta Pandya, were not able to resolve their differences.

247. Ms Agarwal did not specifically request Mr Krishnaswami's intervention to help solve the disagreement. Ms Agarwal did not copy Mr Krishnaswami into an email that she sent to Mr Venkatraman asking for help on 19 January 2018, bundle 4 page 1579.

248. The Tribunal concluded that Ms Agarwal did not want Mr Krishnaswami to intervene in the matter at that time.

Allocation

249. The Tribunal accepted Mr Krishnaswami's description of the process of Allocation within the Respondent. At the beginning of each Quarter, employees are allocated to different budgets for accounting purposes. Being unallocated means that an employee is not allocated to any particular budget for accounting purposes. At any one time, there may be many employees who are unallocated. If an employee is unallocated, their subsequent allocation will be backdated. There was evidence in the Tribunal bundles that many employees are unallocated at beginning of each Quarter and that this monitored and addressed by the First Respondent. It is not desirable, from an accounting point of view, for employees not to be allocated to budgets which will support their salary, bundle 2 page 763.

250. During the financial year 2017/2018 Ms Agarwal had been allocated to work order numbers pursuant to the Vodaphone alliance agreement. The funding came to an end in March 2018. While Mr Meshram and Ms Agarwal continued negotiations with Vodaphone about future funding, there was no funding agreed by April 2018. Ms Agarwal was therefore not allocated to a budget in April 2018, bundle 6 pages 2346-2347. Mr Meshram then allocated Ms Agarwal to a different budget while the negotiations with Vodaphone continued.

Mr Meshram's Queries

251. Mr Meshram alleged that Mr Krishnaswami failed to respond to Mr Meshram's queries regarding his team's allocation in the system. During April and May 2018 Mr Meshram and Mr Krishnaswami corresponded about Ms

Agarwal's unallocated status, bundle page 2346. Mr Krishnaswami asked for further information regarding the Vodaphone contract and the status of the negotiations. He said that once he had more details, he would be able to identify possible solutions. It appeared that Mr Krishnaswami was responding to Mr Meshram's queries about allocations and suggesting possible solutions. 252.

ARISE

253. Mr Meshram devised an Arise initiative with Bharat Reddy. In these proceedings, Mr Meshram alleged that the Second Respondent instructed Mr Meshram's team to stop working on the Arise initiative. Mr Meshram had received support and commendations from partners of TCS in relation to this initiative. Mr Krishnaswami told the Tribunal that, while he considered that the Arise initiative was not in accordance with Mr Krishnaswami's instructions and would take considerable time and cost, he nevertheless gave Mr Meshram the option to continue with the initiative if Mr Meshram was assured of the Industry Solutions Unit's support and financial backing, Mr Krishnaswami told the Tribunal that, unfortunately, Mr Meshram's team were not able to obtain this support, or funding from the Industry Solutions Unit and, therefore, the ARISE initiative had come to an end. On 3 November 2017, in his email to Mr Venkatraman, Mr Krishnaswami had said that the partner solution for retail (Arise) had been discussed from July 2017, but that there had not been any success with the Retail Industry Solutions Unit. He said that, given that background, he had discouraged that line of activity but that it was still being pursued, bundle 3 page 1120. The Tribunal concluded that Mr Krishnaswami's evidence about Industry Solution Unit funding not being available for the ARISE initiative was correct and accepted his evidence that this is why ARISE did not proceed.

NetApp

254. Mr Meshram alleged that Mr Krishnaswami asked that a manager from NetApp be replaced. Mr Krishnaswami told the Tribunal that there were issues with the Alliance Manager from NetApp working with his counterpart at TCS and that Ramanan T made a request for the NetApp Alliance Manager to be replaced. The Tribunal heard little evidence from Mr Meshram with regard to this. It accepted Mr Krishnaswami's explanation of how the NetApp manager came to be replaced.

Telephone Call 20 February 2018

255. Mr Meshram alleged that he was excluded from telephone calls with various relevant partners, including Hitachi and HPE. He did not provide details of the dates on which he was excluded from calls, save that he said that, on 20 February 2018, Mr Krishnaswami and Mr Venkatraman organised a call with Krishna Sirohi from HPE, without inviting or informing Mr Meshram. Mr Meshram told the Tribunal that Krishna Sirohi asked him why he had not

been included in the call. Mr Krishnaswami told the Tribunal that HPE is both an alliance partner and a customer of TCS; the call on 20 February 2018 was organised by Ramanan T in relation to HPE as a customer, not in relation to the alliance function. He said that, therefore, there was no reason for Mr Meshram to join this call or to be told about it. The Tribunal accepted Mr Krishnaswami's evidence with regard to this. He knew the details about who attended the call and why it was made.

Whistleblowing Investigation

256. John Cuming was appointed to investigate Mr Meshram's whistleblowing allegations. Rakesh Dawar was the Chief Ethics Counsellor for the UK and Ireland for TCS and would normally investigate whistleblowing complaints. On 3 May 2018 Daphna Perry emailed Mr Dawar, sending parts of Mr Meshram's grievance appeal which she said needed to be investigated as whistleblowing allegations. She asked whether Mr Dawar would be able to investigate personally, or would need to delegate, because a conclusion was required within two weeks, bundle 6 pages 2366-2367. Mr Dawar considered that he would not be able to complete the investigation within two weeks and agreed with Miss Perry that John Cuming, who had previously assisted Mr Dawar with ethics investigations, should be pointed to investigate Mr Meshram's whistleblowing allegations.

257. On 17 May 2018 Ms Perry sent Mr Krishnaswami and Mr Venkatraman the content of Mr Meshram's whistleblowing allegations against them, bundle 6 pages 2405-2406. Mr Krishnaswami responded the next day, asking why no one had checked if the allegations were valid before launching an investigation. He said that, if the complaint was completely unfounded, then there might be consequences to Mr Meshram for having raised it. He said, "Overall this is taking just too long ... I have three associates doing absolutely nothing constructive and also eating into my productivity! ..." Bundle 6 page 2403.

258. Ms Perry responded, saying that now the grievances had concluded HR was recommending, based on what Mr Krishnaswami had raised in his email, to move all 3 associates out of his team. Ms Perry said that they had all rejected the company procedure outcomes and had strong feelings against Mr Krishnaswami and it was not advisable for them to continue to work with him. Ms Perry said that she would explain this to Mr Meshram on Monday, with an explanation about "the upcoming change". She went on to say, "If he is in agreement to move we will hold off on the formal consultation re change, but if he objects then we will commence consultation immediately and conclude after 30 days". Bundle 6 page 2403.

259. Ms Perry gave evidence to the Tribunal about this email. She said that, when she met with Mr Meshram on 21 May 2018, she was honest with him and said that it was not healthy for Mr Meshram and Mr Krishnaswami to continue to work together.

260. Ms Perry told the Tribunal that, if Mr Meshram, Ms Agarwal and Miss Cinca had moved out of the Unit, then she and Mr Krishnaswami would have reassessed whether change management was required. If they had Business Development Manager roles for the other employees then change management would not be relevant.

261. Mr Krishnaswami also gave evidence about this. He said that if the three Claimants had been agreeable to moving out of the Unit, then the change process would not have happened in the UK; it would probably have gone the same way as it had in the US.

262. It was not in dispute that, in the US, the existing team members had slotted into the new BDM roles and none were made redundant.

263. On 21 May 2018 Ms Perry did meet with Mr Meshram to discuss Mr Meshram, Ms Agarwal and Miss Cinca moving out of Mr Krishnaswami's team. Ms Perry wanted Mr Meshram to encourage Miss Cinca and Ms Agarwal to move in their own interests. She followed this up with an email to Mr Meshram on 31 May 2018, saying that Mr Meshram had been offered the possibility of alternative roles in the company as an opportunity, given the negativity he felt towards Mr Krishnaswami, even after the grievance and appeal procedures had not been upheld and given the global changes expected. She recorded that Mr Meshram had made it clear that he did not wish to explore this possibility.

264. Mr Meshram responded on 1 June 2018, bundle 11 pages 3972-3973. He said that he would not recommend or insist that Miss Cinca or Ms Agarwal move out of his team; it would be their decision. He said that he did not see why he should opt for a change in role and that the proposal appeared to penalise him while offering a clean bill of health to his manager. He said that the ethics investigation was still on going.

265. The Tribunal found that Ms Perry did not insist that Mr Meshram move out of Mr Krishnaswami's team. It was a suggestion, which he turned down. Ms Perry accepted his decision.

266. Mr Cuming asked to speak to Mr Meshram. He did not tell him why he wanted to speak to him and arranged to meet him in a canteen. Mr Cuming did not ask Mr Meshram to provide any supporting documentation in relation to his whistleblowing allegations. Mr Meshram told the Tribunal - and the Tribunal accepted - that Mr Meshram did not understand this to be the formal meeting in respect of his whistleblowing allegations, given the informal circumstances. Nevertheless, Mr Cuming did not meet with Mr Meshram again.

267. Having met Mr Meshram on 11 May 2018, Mr Cuming met with Rajar K, a Global Partner Lead, on 11 May 2018. He met Mr Krishnaswami, Mr Venkatraman and Ramanan T also on 1 June. On 4 June 2018, he emailed his report to Ms Perry and Mr Dawar, bundle 7 page 2471.

268. Mr Cuming said that, in summary, he could find no basis for any of the allegations that Mr Meshram had made. He also said that he had discussed with Mr Krishnaswami the possible reasons behind the grievance complaint allegations, and that Mr Krishnaswami had told him that Mr Meshram and his team had not reacted well to marketing activities being managed centrally and that Mr Meshram's team had been acting in autonomously, without approval. Mr Cuming also reported Mr Krishnaswami saying that "A lot of marketing activity including the purchase of gifts for partners from Amazon and some rather lavish and expensive marketing activities such as executive dinners were funded by unapproved use of individuals corporate credit cards." Mr Cuming said, "It could well be the case that this activity once uncovered has led them to make grievance complaints based on their perceived victimisation and the allegations about poor ethical conduct", bundle 7 page 2473.

269. Mr Cuming sent his report to Mr Venkatraman and Mr Krishnaswami at 9:03am on 4 June 2018, bundle 7 pages 2475.1-2475.3. Mr Cuming met with Daphna Perry that day. Mr Cuming had told her that, during her investigation, he had come across concerns regarding alleged misuse of corporate credit cards by Mr Meshram, and that Mr Dawar might want to initiate a separate investigation regarding those concerns, bundle 7 page 2469. Mr Cuming also emailed Ms Perry, saying that he had come across concerns that TCS corporate credit cards allocated to Mr Meshram had been used for unauthorised spending and that he referred to that briefly in his report. Mr Cuming sent his outcome to Mr Dawar on 4 June at 08:23am. Mr Dawar said that he was satisfied with the outcome and was happy to have a call to discuss the next course of action. Miss Perry replied within five minutes saying, "From what I read below I understand you would want to initiate a new ethics investigation – or perhaps refer this to internal audit – to investigate the corporate credit card misuse..." bundle 7 pages 2476-2477. Mr Dawar responded saying he did not think that there was a rush.

270. On 12 June 2018 Miss Perry advised Mr Dawar that there was no need to give Mr Meshram a detailed outcome to his whistleblowing complaints because he was not a victim as in a grievance investigation. She advised Mr Dawar to meet with Mr Meshram and verbally convey the investigation findings. Mr Dawar did meet with Mr Meshram that day, but Mr Meshram told him that he was not convinced by the findings and wanted to take the matter further. Ms Perry told Mr Dawar, however, that Mr Meshram had already taken the matter further.

271. Mr Dawar gave evidence to the Employment Tribunal. He told the Tribunal that Mr Cuming should not have included Mr Krishnaswami's allegations against Mr Meshram in his whistleblowing report. Under the First Respondent's Whistleblowing Policy, the identity of the whistle blower shall be kept confidential to the extent possible, bundle 2 page 506. Mr Dawar also said that it was inappropriate for Mr Cuming to have sent the outcome to Mr Krishnaswami and Mr Venkatraman. Mr Dawar told the Tribunal that he did not want to investigate Mr Meshram's expenses any further but that Ms Perry had suggested it and wanted to do so. He said he did not take it any further. Ms Perry told the Tribunal that she merely asked Mr Dawar whether he would

investigate himself, or refer it to internal audit. It was not clear to the Tribunal what actions were undertaken as a result of this. However, in July 2018, Mr Meshram was asked to provide missing receipts in relation to his credit card expense claims submitted 31 December 2017, bundle 7 pages 2747-2748. Mr Meshram agreed that these were legitimate enquiries. Mr Meshram asked for Shankar Narayan's approval for the expenses. Mr Narayan asked why the matter was being raised in July 2018. Mr Meshram said that there had been a few clarifications on other receipts and that perhaps finance could explain why Mr Narayan's approval was required, bundle 7 page 2746.

272. The Tribunal concluded that, in July 2018, there was further scrutiny of Mr Meshram's expenses. Given that the relevant expenses had been claimed in December 2017, the Tribunal concluded that this additional examination of the expenses was likely to have resulted from Mr Cuming raising the matter of expenses again in his ethics investigation and Ms Daphna Perry suggesting that a further investigation was required.

273. The Tribunal did not hear evidence of any specific training that Mr Krishnaswami or Mr Venkatraman had undertaken about whistleblowing, or the protection of whistleblowers from detriment. Furthermore, it appeared that Mr Meshram's identity was not protected as required under the whistleblowing policy. Clearly, Mr Cuming sent the outcome of the whistleblowing investigation to Mr Venkatraman and Mr Krishnaswami.

274. The Tribunal had no evidence from the Respondents regarding what was done to prevent the Second and Third Respondent from subjecting Mr Meshram to detriments as a result of having made protected disclosures. Indeed, it appeared that the First Respondent did not give Mr Meshram the protections that were required under its policy.

ATU Restructure

275. In January 2018 there was a senior management review of the Alliance and Technology Unit by Rajesh Gopinathan, the Chief Executive of TCS, and Raman Venkatraman. They decided that the ATU would change from being a "support" Unit into a "revenue generating" Unit. The Infrastructure Alliances Group was a large sub Unit within the Alliance and Technology Unit. Mr Krishnaswami and Mr Venkatraman decided that the IAG would be the first sub Unit to align with the new profit and loss strategy.

276. Mr Krishnaswami told the Tribunal that, during February to March 2018, it was proposed that the whole of the ATU would be transformed from a support function to a profit and loss unit. He said that the transformation of the ATU into a P&L unit began around 1 April 2018, which was the start of the 2018/19 financial year. The Infrastructure Alliances Group had 109 employees working in it, including 8 Alliance Managers in the UK.

277. On 17 February 2018 Ms Perry wrote to Mr Krishnaswami saying, "I am still thinking about the approach" ... note that there are no names/positions mentioned in this email (winking smiley face)", bundle 5 page 1802.

278. On 14 February 2018 Mr Waterman had written to Mr Krishnaswami, copied to Ms Perry, telling him that HR had concluded the outcome of Mr Meshram's grievance and that one outcome was that there had been a breakdown in the relationship between Mr Krishnaswami and Mr Meshram, mainly down to communication issues, bundle 5 page 1757. There followed some correspondence about setting up a video conference. On 19 February 2018, bundle 5, page 1801, Ms Perry further emailed Mr Krishnaswami saying that the direction that she was leaning in was to tell Mr Meshram that her role would be to help both Mr Krishnaswami and Mr Meshram move beyond the grievance. She said that she would update him on the fact that there was a reorganisation in the making and that responsibility for European support would be dealt with within the wider business change. She asked that Mr Krishnaswami keep her updated about the business change rationale options, timelines, affected teams on a global level. She said that she understood that the plan was in its initial stages, but that sooner, rather than later, they would need to start a formal consultation process in the UK.

279. On 13 April 2018 Ms Perry emailed Mr Krishnaswami, summarising a discussion they had had a couple of days previously. She said that they had discussed change in the global team involving alliance management being offshored, but business development and sales remaining in the geographies. She said that the reason for the change was that the current structure was not adding enough value and that alliance management could be done effectively offshore. She said that the Alliance Managers would be based in India, with the only exception being those dedicated to the client IBM. Ms Perry went on specifically to deal with Mr Meshram, Ms Agarwal and Miss Cinca. With regard to Mr Meshram, she said that his role would change, in that business development and sales was a small part of his current role, but would become a major part after the offshoring of alliance management. With regard to Ms Agarwal, she was working on the Vodaphone account and Mr Krishnaswami was verifying whether the contract had been renewed; if the contract was discontinued, a potential alternative role could be business development of services for partners, bundle 6 pages 2125-2126. Mr Krishnaswami replied, saying that Ms Agarwal's role managing Vodaphone would become redundant if the contract was not renewed, so the role would not move offshore. He said that it appeared from the system that the contract had not been renewed, but he needed to confirm that. He said that there were two ex-pats (employees working under Indian terms and conditions), Sachin Sail and Bharat Reddy, who could either move offshore per TCS policy, or, if they wanted to remain in the UK and found alternative roles there, they could be released from the ATU, bundle 6 page 21215.

280. Ms Perry further replied, asking where Alliance Managers were based, other than in the UK, and whether their roles would be affected in the same way as Mr Meshram's. She said that, if the only places that TCS had Alliance Managers were India and the UK, the potential exposure was, "that this is a targeted change". Ms Perry commented that, on the other hand, it might justify the move to India, in that if other geographies could be supported from India, then so could the UK, bundle 6 page 2124.

281. Ms Perry and Mr Krishnaswami continued to discuss the proposed restructure. On 24 April 2018 Ms Perry asked Mr Krishnaswami and Ms Gaffar to copy in Joanna Cowie, Employment Counsel, to ensure that the correspondence was privileged.

282. The First Respondent produced document entitled, "UK Organization Structure and Proposed Changes for FY 19", Bundle 6, page 2323. It addressed the members of Mr Meshram's team. Of Sachin Sail, Bharat Reddy and Aravind Sivakumar, who were all Alliance Managers under the existing structure. The document said, "Role moved to India". The document proposed that Mr Sail and Mr Reddy be given the option of performing the same role in India. Of Mr Sivakumar, the document said, "Option given to perform business development role in EU for ATU." In respect of Mr Meshram, the document said, "All alliance management roles moved to India. To be released to RMG or option to move to India." Of Ms Agarwal, who was described as Alliances Manager for Vodaphone, JLR, Nationwide, the document said, "Role to exist 'till contract validity. Contract has not been renewed as on date. To be released to RMG." Of Miss Cinca, who was described as a trainee, the document said, "No role. To be released to RMG."

283. Ms Perry emailed Mr Krishnaswami on 30 April 2018 saying, ".. the IBM and Intel alliances that are funded by the customer and therefore unaffected: who are the associates that will get to stay?" Bundle 6, page 2310. Mr Krishnaswami replied giving the names of associates he said were part of IBM and Intel: Shipra Jha, Mangesh Poddar, Raghavendran Selvaraj and Sachin Chawla. All reported to managers in India or the US. Mr Krishnaswami also said that Pavan Goyal Kumar was a technical solution architect paid for by CISCO.

284. Ms Perry told the Tribunal that this correspondence reflected preparatory discussions and not the final restructuring proposal.

Ms Agarwal's ET Claim

285. On 26 March 2018 Ms Agarwal contacted ACAS in respect of her claims against Mr Krishnaswami and on 28 March she contacted ACAS in respect of her claims against the First Respondent. Ms Agarwal's ACAS Early Conciliation Certificates were issued in respect of both Respondents on 19 April 2018. Ms Agarwal presented her claims against the First and Second Respondents on 30 April 2018.

Ms Agarwal's Potential Move from the Unit

286. In early May 2018 Vijay BS, Head of CMI UK & Ireland, who was responsible for the Vodaphone account (as a customer) proposed to Mr Meshram that Ms Agarwal move to the CMI Unit as part of the Vodaphone account, to continue to work as an Alliance Partner there and to be part of a project which Vodaphone had recently won. Mr Krishnaswami and Mr

Venkatraman indicated to HR that they would agree to Ms Agarwal moving to the CMI Unit and Vodafone account, bundle 6, page 2370. Mr Venkatraman was Business Head for CMI North America.

287. On about 21 May 2018 Ms Perry met with Ms Agarwal to discuss her transferring to another team. Ms Agarwal declined to do so because the promotion recommendation made by Mr Meshram would not transfer to a new role in the CMI Unit. In cross-examination, Ms Agarwal agreed that, where there is disaffection in a workplace team, it is reasonable for an HR Officer to raise the possibility of an internal move to another team.

Mr Meshram's ET Claim

288. On 21 May 2018 Mr Meshram contacted ACAS in respect of his claim against Mr Krishnaswami. On 23 May 2018 Mr Meshram's Early Conciliation Certificate regarding Mr Krishnaswami was issued, Bundle 6, page 2454. On 18 June 2018 Mr Meshram presented his claim against the First and Second Respondents. His ACAS EC certificates in respect of the First and Third Respondents were issued on 19 October 2018, the same day he contacted ACAS in that regard.

Redundancy Process

289. On 14 June 2018, 2 days after Mr Meshram was informed of the whistleblowing investigation outcome, the First Respondent sent "At Risk" letters to Mr Meshram, Ms Cinca and all 8 UK Alliance Managers in the UK IAG team, Bundle 7, page 2523. The letter said that all those roles would change and that, instead, 3 Business Development Manager ("BDM") roles would be created in the UK and 2 in the EU. The letter said that the number of roles available in the UK would therefore reduce and that redundancies were envisaged. The letter said that no final decisions had been made. All those put "at risk" were invited to a first formal consultation meeting with HR on 18 June 2018, bundle 7, page 2523.

290. On the same day, 14 June 2018, Mr Venkatraman held a meeting with all the affected employees. He gave a PowerPoint presentation with slides, Bundle 5, pages 2010 – 2017. He explained that it was proposed that Partner Management would take place from India but that Business Development roles would exist in the UK and EU, responsible for generating revenue. The roles which were said to be at potential risk of redundancy were: Mr Meshram's Infrastructure Alliances Director role, Ms Cinca's trainee role and all the Alliance Manager roles in the UK IAG team, including Aravind Sivakumar (Alliances Manager (EU)), Sachin Chawla (INTEL Alliances Manager), Murlu Krishnan (INTEL Alliances Manager), Raghavendran Selvaraj (Niche Alliance Manager (UK)) and Shipra Jha (IBM Alliance Manager (UK)).

291. Mr Sail and Mr Reddy's positions were also proposed to be removed, although they were "ex-pat" employees, on Indian terms and conditions, and were not included in the UK IAG structure chart.

292. Pavan Goyal (CISCO Architect) and Mangesh Podar (IBM Architect) were not said to be at risk. It was not in dispute that their roles were technical roles funded by the relevant customer.

293. Ms Perry told the Tribunal that the change management proposal explained at the 14 June 2018 collective consultation meeting was the final version. She said that any other proposals or suggestions, explored by Mr Krishnaswami and her in the preceding months, did not represent the final proposed change management process for the UK IAG sub Unit.

294. The slides described the new BDM roles and said that the Job Description would include experience and understanding of “relevant partner solutions”. The relevant partners were listed as IBM, Intel, Commvault, Citrix, Nutanix and PureStorage. Vodaphone was not listed as a relevant partner, Bundle 5, pages 2017.

295. Mr Venkatraman left the meeting shortly after presenting the slideshow and employees were allowed to ask HR questions about the proposals.

296. On 18 June 2018 Divya Acharya, HR Manager, told Mr Krishnaswami that a query had been raised at the 14 June meeting about why the job description for the BDM role included the names of only a few strategic partners. She asked what was proposed regarding the larger UK based partners and said that there was a feeling at the meeting that these partners were the ones which were, “being handled by the people who raised the grievance and hence have been deliberately left out.” Bundle 7, page 2538.

297. Mr Krishnaswami replied, saying that the partner solutions mentioned were “the initial ones”. He said that, in general, “offerings around Data center technologies, End-User-Computing technologies, IT IS Operations Automation, Networking and IBM” would be advantageous, Bundle 7, page 2537.

298. Ms Perry passed on Mr Meshram’s concerns about the same matter to Mr Krishnaswami on 29 June 2018, bundle 7, page 2648. She said that the new UK Infrastructure Alliance Group structure had 3 BDMs under “niche technologies”, IBM, Intel, Commvault, Citrix, Nutanix and PureStorage, but no rationale had been given as to why those partners were considered “niche technologies”. She said that those partners were currently managed by Shipra Jha and Raghavendra Selvaraj, and Mr Meshram felt that 2 of the BDM roles would be given to those employees. Ms Perry commented that she thought that having the current relationship with the partner would indeed be an advantage, but that ultimate hiring decisions would be based on overall qualifications.

299. Mr Ganesh Nallasivam told the ET that he had been performing the BDM role in the US for a year before the ATU IAG restructure. He said that he considered that it was fair for him to be part of the panel interviewing candidates for the new UK BDM roles. He told the Tribunal that he was one of very few employees in the Company with more than 10 years’ sales

experience in various capacities. He confirmed, in evidence, that knowledge of the partner offerings of IBM and other named strategic partners would be an advantage during the interview process, but not determinative of the outcome. He said that interviewees could demonstrate relevant skills and knowledge, including through their work on other partner solutions.

300. Mr Suprio Chowdhury was also on the BDM interview panel. He told the Tribunal that it would have been important for candidates to have knowledge of the strategic partners' technologies.

301. Ms Agarwal attended redundancy consultation meetings on 25 June 2018, 2 July 2018, 6 July 2018, 20 July 2018 and 23 August 2018. She was provided with letters summarising discussions and responding to particular queries as follows: first consultation meeting, letter of 26 June 2018 bundle 7, page 2577; second consultation meeting, letter of 5 July 2018, bundle 7, page 2726; third consultation meeting, letter of 17 July 2018, bundle 8, page 2884; fourth consultation meeting, letter of 23 July 2018, bundle 8, page 3133; fifth consultation meeting, letter of 31 August 2018, bundle 9, page 3452.

302. Ms Agarwal was given notice of redundancy by the letter of 31 August 2018, bundle 9, page 3452.

303. Mr Meshram attended redundancy consultation meetings on 25 June 2018, 2 July 2018, 6 July 2018 and 23 August 2018. He was also provided with letters summarising discussions and responding to particular queries as follows: first consultation meeting, letter of 26 June 2018 bundle 7, page 2581; second consultation meeting, letter of 5 July 2018, bundle 7, page 2730; third consultation meeting, letter of 17 July 2018, bundle 8, page 2889; fourth consultation meeting, letter of 31 August 2018, bundle 9, page 3456.

304. Mr Meshram complained, during the consultation process, that he had never been consulted about the proposed restructuring of his team, while the proposal was being formulated. In the outcome letter from the third consultation meeting, the First Respondent told him that it did not consider that it was required to consult with him before putting his team "at risk", Bundle 8, page 3181.

305. In the same letter, Mr Meshram was told that, as of 1 April 2018, ATU started being measured by Profit and Loss and that, in due course, all sub Units would be required to submit a change proposal to demonstrate alignment with P&L.

306. Ms Agarwal was encouraged, during her consultation meetings, to apply for the BDM roles in the UK. She decided not to do so. She objected to Messrs Ganesh Nallasivam and Arun Kumar being part of the interview panel, because she considered that they were Alliance Managers like she was and who should be being required to apply for the new BDM roles in the US, so that it was inappropriate for them to be on the interview panel.

307. On 31 July 2018, Divya Acharya, HR manager, emailed Ms Agarwal, saying that Messrs Nallasivam and Kumar had been piloting the BDM roles in the US for a year and were the 2 employees who had been confirmed in those roles. She said that it was appropriate for them to be on the interview panel for the UK BDM roles because they had experience in the BDM role.

308. Messrs Nallasivam and Kumar were not employed in the UK and were not subject to the UK change management process.

309. The 5 other UK-based employees who were at risk of redundancy all applied for the new BDM roles. Of these, Ms Jha, Mr Reddy and Mr Selvaraj were appointed, while Mr Sail and Mr Chawla were not.

310. The BDM role was at a lower level in the organisation than Mr Meshram's role and he confirmed during the consultation process that he was not interested in it, Bundle 7, page 2560.

311. Other sub Units of the UK ATU did not undergo a redundancy process at the same time as Mr Meshram's Infrastructure Alliance Group team: the Field Alliance Team and the Enterprise Alliance Team were not included in the restructure process.

312. In the US, existing Alliance Managers were slotted into new BDM roles without a redundancy process being undertaken. On 26 June 2018 Ms Perry asked Mr Krishnaswami, on behalf of Ms Agarwal, about all available roles in the Alliances and Technology Unit. Mr Krishnaswami confirmed that there were 10 BDM positions in the US but that associates for those roles had already been identified, Bundle 7, page 2588.

313. During the redundancy process, the Claimants asked about the redundancy processes which were being followed in other EU countries regarding the Alliance Managers there. They were told that local redundancy laws would be complied with.

314. The Claimants raised the possibility of "bumping" during the redundancy consultation exercise. In the letter sent to Mr Meshram following his third consultation meeting, the First Respondent said that it had considered the issue of bumping but had not identified any position currently held by another employee which it would be appropriate to offer to him, Bundle 8, pages 3182. In his Notice of Redundancy letter, sent on 31 August 2018, Mr Meshram was told that the First Respondent had not been able to identify any position currently held by an "ex-pat" which Mr Meshram would be able to perform, bundle 9, page 3457.

315. During the Tribunal hearing, the Claimants did not identify any roles into which they should have been placed, by bumping the employee who held that role.

316. On 13 July 2018 Ms Acharya wrote to Ms Agarwal, saying that the consultation process would not end until the First Respondent had addressed all the points that she had raised, bundle 7, page 2829.

Alternative Employment

317. The First Respondent's Ultimatix intranet system had a vacancies portal. The Claimants were advised to look at it by the 14 June 2018 letters putting them at risk of redundancy, bundle 7 pages 2527 and 2533.

Alternative Employment – Ms Agarwal

318. On 26 June 2018 Ms Agarwal was given a copy of the BDM job description, bundle 7, page 2577. Also on 26 June 2018 Divya Acharya sent Ms Agarwal a list of all the available positions in the ATU globally, bundle 7, page 2570.

319. On 31 July 2018, Lauren Eley sent Ms Agarwal a job description for an Infrastructure Account Manager – Banking, bundle 8, page 3089. Ms Agarwal replied, asking Ms Eley to set up a call with the hiring manager, bundle 8, page 3179. On 6 August 2018 Ms Eley was told that the candidate would need to have Infrastructure Services experience and the role was the lead role. The job description for the role required experience of growing IT infrastructure services in a top-tier UK financial services environment, bundle 8, page 3151. It did not appear that Ms Agarwal had that experience.

320. On 1 August 2018, Ms Eley sent details of a "Jiles Sales BDM" role, page 3088. Ms Agarwal was potentially interested and Ms Eley sent her profile to the hiring manager, Adam Suleman. He replied on 8 August 2018 saying that, while Ms Agarwal's profile had good Alliance Management experience, he was looking for someone with 4 years' new business sales experience, which Ms Agarwal's profile did not match.

321. On 13 July 2018 Ms Agarwal was sent an up to date vacancy list, bundle 7, page 2843.

322. Ms Agarwal did not apply for any of the roles on the generic vacancy list; she told the Tribunal that they were not related to her skills and experience.

323. Ms Agarwal drew the Tribunal's attention to an email sent by Lauren Eley to Basileia Paul on 13 July 2018, asking Basileia Paul to send out an email to managers giving the details of all local employees available to take up challenging roles in their teams, bundle 11, page 4029. Ms Eley specifically said that Mr Meshram, Ms Agarwal and Ms Cinca should not be included on the list of employees who were available to take up challenging roles.

324. However, on the same day, Ms Agarwal had been sent an up to date vacancy list.

325. The First Respondent's Resource Management Group ("RMG") assists employees who are displaced in the organisation to identify alternative positions which are available.

Alternative Employment – Mr Meshram

326. On 27 June 2018 Ms Acharya sent Mr Meshram's profile to the First Respondent's RMG Head of Sourcing and Staffing, Vishal Gandhi, "for consideration towards role in various business verticals/horizons in TCS", asking that it be treated as a priority.

327. Mr Gandhi responded, saying that Mr Meshram was a senior and respected leader in TCS who knew more people in the leadership team than RMG. He said that Mr Meshram should connect with his contacts, Bundle 7, page 2619.

328. On 28 June 2018, Lauren Eley, from RMG, emailed Mr Gandhi saying that RMG only had more junior roles which were not suitable for Mr Meshram and asking who she should contact about more senior roles, bundle 7, page 2618.

329. On 5 July 2018 Mr Gandhi suggested 7 roles to Mr Meshram, which he said were in line with Mr Meshram's past experience. He also advised Mr Meshram to connect with his contacts to explore more options, bundle 7, page 2722. Mr Meshram rejected all the roles, saying that they represented a demotion to a lower level. Mr Gandhi replied further, asking him to look at the job content, scope of work, and business criticality, not just the job title. He said that all the roles were critical for the business and strategic in nature, bundle 7, page 2721.

330. The First Respondent had recently instituted a portal containing vacancies for more senior managers in the business, called "Lead". It appears that Ritu Anand, Deputy Head of Global HR, was responsible for the new "Lead" initiative.

331. On 5 July 2018, Ms Acharya advised Mr Meshram to use the "Lead" portal to identify and apply for senior positions in TCS, bundle 7, page 2740.

332. On 28 June 2018 Mr Meshram had written to Ritu Anand, saying that he and his team had been put at risk of redundancy. He said that he was following the organisational change process and asked Ms Anand to consider him for leadership openings through her LEAD initiative. He attached his profile, bundle 7, page 2740.

333. Ms Anand replied on 5 July 2018 saying, "While I am aware of some discussions going on about the issues emanating from some disagreements involving you, I am not very aware of the complete background so will not be able to comment... about your role, my team .. will try to suggest your profile for openings, but you should also look at job postings on Lead. ..", bundle 7, page 2740.

334. The Tribunal observed that Ms Anand said that she was aware of “issues” emanating from “disagreements” involving Mr Meshram. This was not obviously relevant to Mr Meshram’s request for Ms Anand to consider him for sales leadership positions in LeaD. The Tribunal considered that the likely interpretation of Ms Anand’s email was that she was aware of Mr Meshram’s grievances and that she considered that the fact that he had raised grievances was indeed relevant to his ability to further secure senior positions in the Company.

335. Mr Meshram told the Tribunal that Ms Anand did not contact him again about any leadership roles available on LeaD.

336. On 12 July 2018 Mr Gandhi asked Mr Meshram whether he would be interested in a Senior Sales Director role in Singapore which the Company had an urgent need to fill and which Mr Gandhi suggested would fit with Mr Meshram’s experience and aspirations, bundle 7, page 2820. Later that day, Mr Meshram replied, saying that he was interested in Client Partner positions in the UK and was not keen on positions outside the UK, bundle 7, page 2819.

337. On 13 July 2018 Mr Meshram was sent an up to date vacancy list, bundle 7, page 2843.

338. On 17 July 2018, Mr Gandhi sent Mr Meshram a further 3 roles which he said had been “handpicked” to match his seniority and experience, bundle 8, pages 2898 – 2899.

339. On 20 July 2018 Mr Kletos Paul, from RMG, asked Mr Meshram if he would be interested in a Program Manager role with Diligenta, a TCS subsidiary, bundle 8, page 2914. Mr Meshram responded that he was not interested because he was interested in Sales Leadership roles, page 2915.

340. A Client Partner role at Centrica was advertised during the redundancy process but the client, Centrica, subsequently confirmed that their requirement was for a Digital Consulting Partner with utilities domain experience, rather than a general Client Partner. Mr Meshram accepted this in evidence and agreed that the changed role would not have been suitable for him, bundle 8, page 3265.

341. Mr Meshram also accepted, in evidence, that a client partner role at Thompson Reuters was sought at C4 grade, which was lower than Mr Meshram’s grade and therefore was not suitable for him, bundle 9, page 3322.1.

342. Mr Meshram told the Tribunal that managers at his level in the Respondent company would be approached by Unit / Business leaders and encouraged to apply for senior jobs for which they were considered appropriate candidates. He said that it was not usual for managers at his level in the organisation to apply competitively for jobs without having been first approached by a business Head. Mr Meshram said that, before the

redundancy process had started, he had told Shankar Narayan, UK & Ireland Country Head, that he was looking for alternative roles, but that Mr Narayan had never approached Mr Meshram about senior roles which became available thereafter.

343. Mr Venkatraman was asked how senior managers obtain new jobs in the Tata Group. He told the ET that there are very few SP1 grade (senior) managers in the organisation. He agreed that, typically, Unit Heads would make enquiries about available senior managers when recruiting and that SP1s would reach out to other senior executives about available roles. He also said that Ritu Anand, head of LeaD would make sure that all senior executives were made aware of the roles that were available.

344. Mr Venkatraman was also asked what he had done in relation to Mr Meshram's job search. He said that he did not do anything. He had received a few queries from Unit Heads and said that Mr Meshram was available but beyond that, he had not taken an active interest.

345. Ms Perry agreed in evidence that senior roles are recruited to differently in the First Respondent's organisation. Senior manager roles would not be handled by the Resource Management Group, but would be recruited through personal approach.

346. Ms Perry and Miss Mallick both told Mr Meshram, during the redundancy process, that he should approach Unit Heads.

347. The Tribunal concluded, from all the evidence, that very senior roles in the First Respondent were typically filled by way of individual approach to preferred candidates, following informal soundings, rather than through a competitive recruitment process.

348. Two very senior roles were available during the redundancy exercise – Ireland Head and Client Partner for AVIVA.

349. Mr Meshram told the Tribunal that, given that Mr Narayan did not approach him about the Head of Ireland Role, Mr Meshram knew that he was not seen as a desirable candidate and, therefore, he did not apply.

350. There was no evidence that Unit Heads had approached Mr Meshram about available roles during the redundancy exercise, although some apparently spoke to Mr Venkatraman about Mr Meshram. There was no evidence that Ms Anand did anything to assist Mr Meshram in his job search, despite him asking her for such assistance.

351. Mr Meshram was given notice of redundancy by the letter of 31 August 2018, bundle 9, page 3456.

Appeals

352. On 6 September 2018 Ms Agarwal and Mr Meshram both appealed against their dismissals, bundle 9, pages 3472 and 3474.1.

353. Mr Meshram attended an appeal hearing conducted by Ramkumar Chandrasekaran, HR Director TCS UK and Ireland, on 11 September 2018 and Ms Agarwal attended an appeal hearing with Mr Chandrasekaran on 13 September 2018. No notes were kept of either meeting. The Claimants told the Tribunal that their appeals were not discussed in any detail at all, but that Mr Chandrasekaran merely wished to discuss settlement of their claims.

354. Mr Chandrasekaran sent appeal outcomes to both Claimants on 24 September 2018, dismissing their appeals and addressing the points they had raised in their letters of appeal, bundle9, pages 3497 and 3491.

Relevant Law

355. By *s39(2)(c)&(d) Equality Act 2010*, an employer must not discriminate against an employee by dismissing him or subjecting him to a detriment.

356. By *s39(4)(d) Equality Act 2010*, an employer must not victimize an employee by subjecting him to a detriment.

357. By *s40(1)(a) EqA 2010* an employer (A) must not, in relation to employment by A, harass a person (B) who is an employee of A's.

358. Direct discrimination is defined in *s13 EqA 2010*.

359. Harassment is defined in *s26 Eq A* and victimisation is defined in *s27*.

360. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010*.

Direct Discrimination.

361. Direct discrimination is defined in *s13(1) EqA 2010*:

“(1) 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.”

362. Race and sex are each a protected characteristic, *s4 EqA 2010*.

Race

363. By *s9 EqA 2010*, race includes colour; nationality; ethnic or national origins.

Ethnic Origins

364. In *Mandla v Dowell Lee* [1983] IRLR 209, [1983] ICR 385, HL: the House of Lords considered the meaning of 'ethnic origins'. Lord Fraser, giving the leading speech, said:

'For a group to constitute an ethnic group in the sense of the 1976 Act, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community.

The conditions which appear to me to be essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups ...

In my opinion, it is possible for a person to fall into a particular racial group either by birth or by adherence, and it makes no difference, so far as the 1976 Act is concerned, by which route he finds his way into the group."

365. In his speech in *Mandla v Dowell Lee*, Lord Fraser quoted with approval the judgment in the New Zealand case of *King-Ansell v Policy* [1979] 2 NZLR 531, NZCA, where it was said:

"[A] group is identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological terms is a common racial stock."

Caste as Ethnic Origins

366. By *EqA 2010 s 9(5)*, a Minister of the Crown may amend the definition by Order to expressly add 'caste' to the meaning of 'race'. *The Enterprise and Regulatory Reform Act 2013*, amended the section, to provide that caste 'must' (rather than 'may') be added as an aspect of race. The Explanatory Notes to the Equality Act 2010 define 'caste' as denoting: "a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia

particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed “untouchable”) are known as Dalit.'

367. In a response to a Parliamentary Question in the House of Lords, the government said that it had no immediate plans to amend the law to expressly include caste.

368. It may be that the current definition of 'race' is already sufficiently wide to encompass caste.

369. In *Tirkey v Chandhok* [2015] IRLR 195, the EAT (Langstaff P) rejected the argument that *EqA 2010 s 9(5)* – by providing that caste might be added to the definition of 'race' – meant that caste must be excluded from the definition until such time as specific legislation was introduced, partly because there was no formal definition of 'caste' for these purposes. The EAT ruled that the function of s 9(5) was to supplement the definition of race under s 9(1), not to limit it. The EAT observed that cases such as *Mandla v Dowell Lee* and *R (on the application of E) v The Governing Body of JFS and ors* [2009] UKSC 15, [2010] IRLR 136 sanctioned a wide approach to 'ethnic origins' and permitted consideration of questions of descent, to which caste might be a contributory factor. Langstaff P said:

"...there may be factual circumstances in which the application of the label “caste” is appropriate, many of which are capable – depending on their facts – of falling within the scope of section 9(1), particularly coming within “ethnic origins”, as portraying a group with characteristics determined in part by descent, and of a sufficient quality to be described as “ethnic”."

Direct Discrimination: Comparison

370. In case of direct discrimination, on the comparison made between the employee and others, “there must be no material difference relating to each case,” s23 *Eq A 2010*.

Victimisation

371. By 27 *Eq A 2010*,

“ (1) 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 A (c) doing any other thing 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.”

372. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

373. There is no requirement for comparison in the same or nor materially different circumstances in the victimization provisions of the EqA 2010.

Causation

374. The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator's reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase "by reason that" requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?." Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

375. If the Tribunal is satisfied that the protected characteristic is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, *per* Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. "Significant" means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

376. In order for a disadvantage to qualify as a "detriment", it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to "detriment". However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Harassment

377. s26 Eq A provides "

(1) A person (A) harasses another (B) if— (a) A engages in unwanted 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.

.....

(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."

378. In *Richmond Pharmacology Ltd v Dhaliwal* [2009] IRLR 336 the EAT held that there are three elements of liability under the old provisions of s.3A RRA 1976: (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's race.

379. Element (iii) involves an inquiry into perpetrator's grounds for acting as he did. It is logically distinct from any issue which may arise for the purpose of element (ii) about whether he intended to produce the proscribed consequences.

380. This guidance is instructive in respect of harassment claims under s26 EqA, albeit under the EqA, the conduct must be for a reason which relates to a relevant protected characteristic, rather than on the grounds of race or sex. There is no requirement that harassment be "on the grounds of" the protected characteristic – *R(EOC) v Secretary of State for Trade and Industry* [2007] ICR 1234.

Burden of Proof

381. The shifting burden of proof applies to claims under the *Equality Act 2010*, s136 EqA 2010.

382. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

383. In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865, and confirmed that the burden of proof does not simply shift where M proves a difference in sex and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

Unfair Dismissal

384. By s94 *Employment Rights Act 1996*, an employee has the right not to be unfairly dismissed by his employer.

385. s98 *Employment Rights Act 1996* provides it is for the employer to show the reason for a dismissal and that such a reason is a potentially fair reason under s 98(2) ERA," or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held." Redundancy and "some other substantial reason" are both potentially fair reasons for dismissal.

386. It is generally not open to an employee to claim that his dismissal is unfair because the employer acted unreasonably in choosing to make workers

redundant, *Moon v Homeworthy Furniture (Northern) Ltd* [1976] IRLR 298, *James W Cook & Co (Wivenhoe) Ltd v Tipper* [1990] IRLR 6. Courts can question the genuineness of the decision, and they should be satisfied that it is made on the basis of reasonable information, reasonably acquired, *Orr v Vaughan* [1981] IRLR 63.

Redundancy

387. Redundancy is defined in s139 *Employment Rights Act 1996*. It provides so far as relevant, “ ..an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to— ... (b) the fact that the requirements of that business— (i) for employees to carry out work of a particular kind,, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

388. According to *Safeway Stores plc v Burrell* [1997] IRLR 200, [1997] ICR 523, 567 IRLB 8 and *Murray v Foyle Meats Ltd* [2000] 1 AC 51, [1999] 3 All ER 769, [1999] IRLR 562, there is a three stage process in determining whether an employee has been dismissed for redundancy. The Employment Tribunal should ask, was the employee dismissed? If so, had the requirements for the employer's business for employees to carry out work of a particular kind ceased or diminished or were expected to do so? If so, was the dismissal of the employee caused wholly or mainly by that state of affairs.

389. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under s98(4) *Employment Rights Act 1996*. In doing so, the Employment Tribunal applies a neutral burden of proof.

390. *Williams v Compair Maxam Ltd* [1982] IRLR 83, set out the standards which guide tribunals In determining the fairness of a redundancy dismissal. The basic requirements of a fair redundancy dismissal are fair selection of pool, fair selection criteria, fair application of criteria and seeking alternative employment, and consultation, including consultation on these matters.

391. In *Langston v Cranfield University* [1998] IRLR 172, the EAT (Judge Peter Clark presiding) held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case, they will be treated as being in issue in every redundancy unfair dismissal case.

Consultation

392. “Fair consultation” means consultation when the proposals are still at the formative stage, adequate information, adequate time in which to respond, and conscientious consideration of the response, *R v British Coal Corporation ex parte Price* [1994] IRLR 72, Div Ct per Glidewell LJ, applied by the EAT in

Rowell v Hubbard Group Services Limited [1995] IRLR 195, EAT; *Pinewood Repro Ltd t/a County Print v Page* [2011] ICR 508.

Pool

393. There is no principle of law that redundancy selection should be limited to the same class of employees as the Claimant, *Thomas and Betts Manufacturing Co Ltd v Harding* [1980] IRLR 255,. In that case, an unskilled worker in a factory could easily have been fitted into work she had already done at the expense of someone who had been recently recruited. Equally, however, there is no principle that the employer is never justified in limiting redundancy selection to workers holding similar positions to the claimant (see *Green v A & I Fraser (Wholesale Fish Merchants) Ltd* [1985] IRLR 55, EAT.

394. In *Taymech v Ryan* [1994] EAT/663/94, Mummery P said, "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind the problem.

Alternative Employment.

395. In order to act fairly in a redundancy dismissal case, the employer should take reasonable steps to find the employee alternative employment, *Quinton Hazell Ltd v Earl* [1976] IRLR 296, [1976] ICR 296; *British United Shoe Machinery Co Ltd v Clarke* [1977] IRLR 297, [1978] ICR 70.

Protected Disclosure

396. An employee who makes a "protected disclosure" is given protection against his employer subjecting him to a detriment, or dismissing him, by reason of having made such a protected disclosure.

397. Protected disclosure is defined in s 43A ERA 1996: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

398. "Qualifying disclosures" are defined by s 43B ERA, which provides,

"43B Disclosures qualifying for protection

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

399. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR [24] – [25]; *Kilraine v LB Wandsworth* [2016] IRLR 422. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance, *Fincham v HM Prison Service* EAT 19 December 2002, unrep; *Western Union Payment Services UK Limited v Anastasiou* EAT 21 February 2014, unrep.

400. Protection from being subjected to a detriment is afforded by s47B ERA 1996, which provides:

"47B Protected disclosures

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."

401. A "whistleblower" who has been subjected to a detriment by reason of having made protected disclosures may apply for compensation to an Employment Tribunal under section 48.

402. "Detriment" has the meaning explained by Lord Hope in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at 34.

Protected Disclosure Detriment – Causation

403. In *Fecitt v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, "the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower." Per Elias J at para [45].

404. The making of a protected disclosure cannot shield an employee from disciplinary action, including dismissal, which is taken for reasons other than the fact that the employee has made a protected disclosure, *Bolton School v Evans* [2007] ICR 641.

Automatically Unfair Dismissal

405. A whistleblower who has been dismissed by reason of making a protected disclosure is regarded as having been automatically unfairly dismissed (see section 103A):

"103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason)

for the dismissal is that the employee made a protected disclosure."

406. In order for an employee to have been automatically unfairly dismissed under s103A ERA, the reason or principal reason for dismissal must be that the Claimant had made one or more protected disclosures.

Discussion and Decision

407. The Tribunal took into account all its findings of fact, and the relevant law, when reaching its decision. For clarity, it has stated its conclusion on individual allegations separately.

Sex Discrimination and Sex Harassment: Ms Agarwal

Appraisal and Promotion. Issues 6.1, 6.2, 6.9; 8.1, 8.2

408. **Performance and Promotion 2010:** While Ms Agarwal's performance Band D in 2010 was an outlier, the Tribunal had no evidence about her actual performance in that year. Ms Agarwal raised a Band disagreement, but this was not successful. The Tribunal had no evidence about the performance of other team members, nor about their IPF scores, nor their bands. The Tribunal did not have any evidence about how Ms Agarwal's performance compared to other members of her Unit.

409. The Tribunal did not have sufficient evidence to conclude that the Band D was awarded contrary to with the appraisal process or guidance. There was no evidence that, if Ms Agarwal had been a man, who had performed in the same way that year, that she would not have been awarded a D grade. There was no evidence of less favourable treatment than an actual or hypothetical comparator.

410. In 2010 Ms Agarwal had been in her role for three years, but was not promoted that year. Ms Mallick confirmed Ms Agarwal's assertion that, even if an employee met all the eligibility criteria for promotion, it would be almost impossible for them to be promoted if they had been given a band D for performance in that year.

411. The Tribunal concluded that Ms Agarwal was not promoted because she had been given a Band D, not because of, or for a reason related to, her sex. It also concluded that Ms Agarwal had not shown evidence from which the Tribunal could decide that the Band D grading was because of sex, or related to sex.

412. **Promotion 2013:** In June 2013, Mr Venkatasamy, who was then Ms Agarwal's manager, recommended her for early promotion. Ms Mallick, Head of HR, wrote to Mr Venkatasamy on 24 July 2013, saying that Ms Agarwal had not been eligible for promotion in the July 2013 cycle and that, after a review with Shankar, Head of TCS for UK and Ireland, promotion had not approved.

413. As soon as Ms Agarwal met the 3 years in grade criteria, she was promoted.

414. It was not in dispute between the parties that employees can be promoted early. However, the Tribunal had no evidence of who, when and in what circumstances anyone was promoted early.

415. Mr Krishnaswami, the Second Respondent, recommended Aravind Sivakumar for early promotion in 2017, but that his early promotion was not approved by HR either.

416. The Tribunal decided that there was no evidence from which it could conclude that Ms Agarwal had been treated less favourably than a man would have been treated in the same circumstances. The First Respondent applied its policy to her, as it did to others. There was no connection with sex for the purposes of a harassment claim.

417. **Promotion 2017 and 2018.** The criteria applied by the corporate team to promotions in July 2017 were that a grade C3A employee had to have 4 or more years in their existing grade. Ms Agarwal had 3 and 1/3 years in her grade and did not meet the criteria.

418. Early promotion could be awarded where there was a very strong business case/justification for an exception, Bundle 6 pages 2138-2139. Mr Meshram's justification for Ms Agarwal's early promotion related entirely to strong performance in her existing role. He did not say that she had been promoted to a more senior role, or had adopted greater responsibilities.

419. By contrast, when Mr Krishnaswami recommended Mr Sivakumar for early promotion in 2017, Mr Sivakumar had been appointed to be Head of Europe. Even then, Mr Sivakumar was not promoted, which was in accordance with the relevant corporate criteria at the time.

420. Ms Agarwal contended that Mr Krishnaswami's description of her promotion being "in the queue" was evidence of a dismissive and discriminatory attitude towards her. However, the Tribunal accepted Mr Krishnaswami's evidence that "in the queue" referred to Mr Krishnaswami's workflow queue. The Tribunal noted that Mr Meshram, who Ms Agarwal did not allege discriminated against her, used exactly the same terminology.

421. The Tribunal concluded that there was no evidence that Ms Agarwal had been treated less favourably than a man in the same circumstances when she was not promoted in 2017. She was treated in accordance with corporate guidelines. Mr Meshram provided no business case for an exception being made in her case. Mr Sivakumar, a man, was not promoted either.

422. There was no connection with sex for the purposes of a harassment claim, either.

423. **2018 Promotion.** On 26 June 2018 Mr Krishnaswami emailed Ms Perry, rejecting all the promotion recommendations by Mr Meshram. Nevertheless, he also proposed that the recommendation regarding Ms Agarwal be resubmitted to him with information relating to accomplishments and clear articulation of the proposed role and enhanced responsibilities, bundle 7 page 2602. There is no evidence that Mr Meshram ever did resubmit the recommendation, addressing the criteria that Mr Krishnaswami had specified.

424. In her evidence to the Employment Tribunal, Ms Agarwal accepted that she did not meet the guidelines for promotion in 2017 and 2018, but said that she was an exception.

425. Mr Krishnaswami rejected all Mr Meshram's recommendations – both for male and female employees. Mr Meshram never provided Mr K with information which would have justified Ms Agarwal's early promotion.

426. The Tribunal concluded that there was no evidence that Mr Krishnaswami treated Ms Agarwal less favourably than he did treat or would have treated a man in the same circumstances.

427. There was no evidence that the treatment related to sex in any way, for the purposes of a harassment claim.

Return from Maternity Leave. Issues 6.4, 6.5, 6.6; 8.3, 8.4

428. Ms Agarwal did not bring a claim of maternity discrimination; she relied on sex discrimination only. Ms Agarwal was employed on Indian Terms and Conditions at the time of her maternity leave in 2015. She was treated in accordance with TCS India policy that employees who had worked less than 60 days' in one year were not given a performance appraisal band and not given a pay increment. She was not treated less favourably than men, on the same terms and conditions, who had been away from work for the same period.

429. Ms Mallick intervened and, eventually, Ms Agarwal was given a pay increment. She was treated more favourably than men on Indian terms who had been away from work. Her claim of sex discrimination in this regard therefore failed.

430. There is a causative link between a woman being on maternity leave and her sex. However, in reality, this was a claim arising from the Claimant taking maternity leave, rather than arising from her sex. Maternity is not a protected characteristic in relation to a harassment claim under *s26 EqA 2010*. In any event, treating the Claimant in accordance with the terms and conditions applied to all Indian employees did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. She was not singled out, she was treated equitably according to those terms, which she had agreed to work under.

431. One of the issues in the list of issues was whether Ms Agarwal was threatened with demotion on return from maternity leave. She did not give any evidence about this. Her sex discrimination and sex harassment claims failed in this regard.

Transfer from Indian Payroll. Issue 6.7; Issue 8.5

432. Ms Agarwal transferred to become a UK employee of the First Respondent in November 2016, page 452. She accepted a starting salary of £55,000 and bonus of £2,000 when she transferred to the UK payroll. The Tribunal had no evidence of the starting salaries of men transferring from Indian to UK payrolls, in the same grade, at the same time.

433. Ms Agarwal compared her salary to the salary of a different, sales job, rather than an Alliance Manager job. There was no evidence that, if a woman had been appointed to the UK Regional Sales Lead role, they would have been paid less than £60-£70,000 per annum.

434. Ms Agarwal originally brought an equal pay claim against the First Respondent, but withdrew it. Ms Agarwal has not compared her salary with the salary of men doing the same role.

435. There was no evidence of less favourable treatment of Ms Agarwal, compared to a man in the same circumstances. There was no link between her sex and her agreed pay for the purposes of a harassment claim.

Performance Band. Issue 6.2; Issue 8.2

436. **2018:** In 2018 Ms Agarwal's final IPF score was 4.714. The First Respondent's automatic system generated a band A for her performance, based on that score. Ms Agarwal compared her treatment with Aravind Sivakumar who received an IPF of 4.937 and an initial band of A, but also a final band of A.

437. The Tribunal was given a table showing the initial, system-generated band and final bands for employees in Ms Agarwal's sub Unit, bundle 12, pages 4110.3-4110.7. Mr Selvaraj, who was also employed at C3A, had an initial A band recommendation, but a final band of B. He had a higher IPF score of 4.9167 than Ms Agarwal. Other male employees also had their initial A band modified to B; Bharat Parvata, Ritesh Kumar, Sachin Sail and Vinay Chandran.

438. Mr Krishnaswami told the Tribunal that a grade B, being the second highest grade, equated to "very good or excellent" performance, while grade A was for "exceptional performance".

439. Mr Krishnaswami's commented on Ms Agarwal's performance in 2017 – 2018 on 9 May 2019, bundle 6 page 2369. He said that no actual revenue had been generated for Vodaphone and 50% of the contracted activities had not been completed under the Vodaphone contract at the time of expiry. The

Tribunal found that these comments were accurate. They indicated that an “exceptional” rating was not appropriate for Ms Agarwal.

440. Ms Agarwal did not proceed with her Band Disagreement meeting with Mr Krishnaswami. As a result, there was no outcome to that meeting.

441. Given that numerous male employees also had their performance bands altered from A to B, including Mr Selvaraj, who had a higher IPF score, the Tribunal concluded that the burden of proof did not shift to the Respondent to show that sex was not the reason for, or related to, the treatment.

Failing to Give Ms Agarwal an Adequate Pay Rise or Bonus Payment. Issue 6.8

442. On the evidence, pay rises and bonus payments in the First Respondent’s business are determined by an employee’s performance band in any year. The Tribunal has not found that there was sex discrimination towards Ms Agarwal regarding appraisals and performance bands. Ms Agarwal’s claims in this regard fail.

Ganesh Nallasivam. Issue 6.9; issue 8.6

443. Mr Nallasivan had responsibility for Resale Operations, including the UK, and therefore wanted to be the single point of contact for any EMC Resale transactions in UK. Mr Krishnaswami confirmed, in August 2016, that Mr Nallasivan should have the lead on the JLR account because of this.

444. Nevertheless, the Tribunal has found that Ms Agrawal and Mr Meshram continued to work on the JLR account and to work with Mr Nallasivan on DELL EMC Resale transactions in relation to JLR and other partners in 2017 and 2018. Their work on the JLR account was praised in 2017 and 2018, Bundle 11, page 3890.

445. On the facts, Ms Agarwal was not removed from her responsibilities on the JLR account.

Vodaphone “Will Fail”. Issue 6.12; issue 8.9

446. The Tribunal decided that Mr Krishnaswami did say to Ms Agarwal, in September 2016, that her work on Vodaphone was a waste of time and would fail. The Tribunal accepted Mr Krishnaswami’s evidence that he did not consider that the Global Alliance agreement with Vodaphone would generate revenue for his business Unit.

447. The Tribunal concluded that the reason that Mr Krishnaswami was unenthusiastic about Ms Agarwal’s work on Vodaphone was that he did not view it as a good business prospect, not because of Ms Agarwal’s sex, or for a reason related to sex.

4 October Video Conference. Issue 6.13; issue 8.7

448. In 2018 the First Respondent decided to centralise marketing activities. Mr Meshram was required to hand over his team's marketing activities to Mamta Pandya's ATU marketing team. From the tone and content of the emails between Mr Meshram and Mr Krishnaswami, the Tribunal concluded there was tension between them about this handover.

449. At the end of September 2017 Mamta Pandya emailed Ms Agarwal and Mr Meshram, asking that Ms Agarwal find time to have a telephone call which Miss Pandya had been requesting for a week, to coordinate marketing activities. Ms Pandya also commented that Oana Cinca had been unavailable to discuss reports, bundle 3 page 947. Mamta Pandya forwarded her email to Mr Krishnaswami, who promptly emailed Mr Meshram, asking that he made sure that the marketing transition was smooth and that there were "NO ISSUES AT ALL" with it; he capitalised his instruction to emphasise it.

450. Mr Krishnaswami said that he was getting the impression that there was total lack of cooperation and asked Mr Meshram to set up a video conference on about 4 October and ensure that the entire UK Europe team was present, bundle 3 page 947.

451. The Tribunal decided that the relevant background to the 4 October video conference was that Mr Krishnaswami believed that Mr Meshram's team were not cooperating with Mamta Pandya. Mamta Pandya had copied him into correspondence which indicated that Ms Agarwal and Miss Cinca had not been available to speak to her. Further, there was an outstanding Vodaphone marketing activity report which Ms Agarwal had asked Ms Pandya's team to compile, but which Ms Pandya's team knew nothing about.

452. On the Tribunal's findings of fact, when all team members were present, including the male junior members of the team, Mr Krishnaswami built an intimidating atmosphere in the room, raised his voice and spoke about ethics and professional behaviour expected of them.

453. On the Tribunal's findings, Mr Krishnaswami asked Mr Meshram, Ms Agarwal and Miss Cinca to stay behind and became even more irate and abusive towards them. However, he shouted at all 3, including Mr Meshram, who was a man.

454. The Tribunal decided that the reason that he singled these 3 employees out was that Mamta Pandya had drawn Mr Krishnaswami's attention to difficulties she was having contacting Ms Agarwal and Miss Cinca. Mr Krishnaswami believed that these 3, in particular, were not cooperating with the marketing handover.

455. Mr Krishnaswami's treatment of Ms Agarwal in the 4 October video conference was nothing to do with her sex. His behaviour, although ill-tempered and unreasonable, was because entirely because he was angry about her perceived lack of cooperation with Mamta Pandya.

Excluding Ms Agarwal from Review Meeting. Ignoring Ms Agarwal. Issues 6.11 and 6.14; Issue 8.8

456. The Tribunal has found that, after the 4 October video conference, Mr Krishnaswami did hold meetings and reviews with male members of Mr Meshram's team, but not with Ms Agarwal and Miss Cinca.

457. However, it is clear from the Tribunal's findings of fact that Mr Krishnaswami excluded and sidelined Mr Meshram, too. Mr Krishnaswami appointed Mr Sivakumar as Head of European Activities, when Mr Meshram had previously been head of UK and Europe. He did not tell Mr Meshram in advance.

458. Mr Krishnaswami also reduced the portfolio of two of Mr Meshram's team members, Sachin Sail and Bharat Reddy. He proposed that Mr Sail be moved offshore.

459. The Tribunal concluded that Mr Krishnaswami sidelined Mr Meshram as well as Ms Agarwal. Mr Krishnaswami was very critical of Mr Meshram, in particular, around this time. The Tribunal decided that Mr Krishnaswami's treatment of Ms Agarwal was a continuation of his treatment of her on 4 October. It was not related to sex, but because he viewed her as uncooperative. He treated her in the same way as he treated Mr Meshram, who he also viewed as uncooperative. He did not treat her less favourably than a man in the same circumstances.

460. Mr Krishnaswami was copied an exchange of emails between Ms Agarwal and Ms Pandya in January 2018, bundle 4 pages 1579-1582. Ms Agarwal did not specifically request Mr Krishnaswami's intervention to help solve the disagreement. Ms Agarwal did not copy Mr Krishnaswami into an email that she sent to Mr Venkatraman asking for help on 19 January 2018, bundle 4 page 1579. The Tribunal concluded that Ms Agarwal did not want Mr Krishnaswami to intervene in the matter at that time. It also concluded that Mr Krishnaswami did not intervene because he was not asked to do so. This had nothing to do with sex.

Forcing Ms Agarwal to be Reviewed by Mr K in Band Disagreement 2018. Issue 6.15; Issue 8.10

461. Ms Agarwal was working in Mr Krishnaswami's Business Unit in 2018 and, under the Band Disagreement process, he was her reviewer. While Ms Agarwal had raised grievances regarding Mr Krishnaswami, they had not been upheld.

462. The Tribunal did not have any evidence about whether, on other occasions, HR had allowed employees to be reviewed by alternative reviewers, if they had raised grievances which had not been upheld against their existing reviewer.

463. The Tribunal concluded that the First Respondent applied its usual Band Disagreement process to Ms Agarwal. There was no evidence that she was treated less favourably than a male comparator in the same circumstances. The First Respondent's actions were not related to sex in any way.

“Randomly Unallocating” Ms Agarwal from April 2018 and Attempting to Remove her from the Business Unit May 2018. Issue 6.16; Issue 8.11

464. At the beginning of each Quarter, employees are allocated to different budgets for accounting purposes. Being unallocated means that an employee is not allocated to any particular budget for accounting purposes. At any one time, many employees are unallocated. It is not desirable, from an accounting point of view, for employees not to be allocated to budgets which will support their salary, bundle 2 page 763.

465. During the financial year 2017/2018 Ms Agarwal had been allocated to work order numbers pursuant to the Vodaphone alliance agreement. The funding came to an end in March 2018. Although Mr Meshram and Ms Agarwal continued negotiations with Vodaphone about future funding, there was no funding agreed by April 2018. Ms Agarwal was therefore not allocated to a budget in April 2018, bundle 6 pages 2346-2347. Mr Meshram then allocated Ms Agarwal to a different budget while the negotiations with Vodaphone continued.

466. Ms Agarwal's non-allocation was because the Vodaphone alliance agreement funding had come to an end. It was nothing to do with her sex.

HR Failing to Deal Properly with Ms Agarwal's DSAR Requests. Issue 6.18; Issue 8.12

467. Pursuant to Ms Agarwal's first Data Subject Access Request (“DSAR”) on 20 December 2017, the First Respondent provided a response on 30 January 2018, bundle 4 page 1659. This was within the 40-day statutory deadline applicable at the time. Ms Agarwal was provided with files of her personal data and was told that 15 people had searched their electronic documents and relevant filing systems and that IT had conducted searches of 5 more individuals' email accounts.

468. There was no evidence before the Tribunal about which documents ought to have been disclosed on Ms Agarwal's DSARs, but were not. There was no evidence that, had Ms Agarwal been a man in the same situation, the DSAR process would have been conducted any differently. Ms Agarwal did not give evidence about these matters and she did not cross examine the First Respondent's witnesses about them, or suggest to them that, had she been a man, the process would have been conducted differently.

469. The Tribunal accepted Mr Frampton's evidence that delays in responding to the second DSAR request were caused by the fact that it was the second DSAR request by Ms Agarwal, so there needed to be a check as to which documents had already been disclosed on the first DSAR and that

there had to be a review of the documents which were produced, so that privileged material was not disclosed to Ms Agarwal. The Tribunal accepted that that exercise, in itself, was bound to take additional time. The Tribunal also accepted that there were some delays caused by the volume of DSARs which the First Respondent was handling at the time. Ms Agarwal's claim in this respect, at the latest, was dated 17 September 2018, bundle 1 page 49. The Tribunal accepted that delays until 17 September 2018 were caused by the matters that Mr Frampton had explained.

470. The First Respondent's treatment of Ms Agarwal's DSAR requests was in no way related to sex.

First Respondent taking Second Respondent's Word over Ms Agarwal's issue. Not Upholding Grievances. Not investigating Properly. Issues 6.17 & 6.20. Issue 8.12A

471. **Ms Bhogal.** The Tribunal found that Ms Bhogal's letter, responding to Ms Agarwal's formal grievance, criticised Ms Agarwal for wishing to pursue her complaint. It inappropriately characterised Ms Agarwal's complaint, which had been raised only 9 days previously, as an "endless personal campaign". Ms Bhogal also threatened Ms Agarwal that, if she did pursue a formal grievance, it would be seen as unreasonable conduct. Ms Bhogal described the apology from Mr Krishnaswami, during which Ms Bhogal had not been present, in glowing terms, including "sincere apologies". The Employment Tribunal found the contents of the letter to be extraordinary and, in its experience, very unusual. This was particularly so where Ms Agarwal, a junior employee, had raised legitimate concerns about Mr Krishnaswami's unacceptable behaviour, which included shouting and banging a table at her during a video conference.

472. The Tribunal also found that Ms Bhogal said to Ms Agarwal, face-to-face, that she had done well in the company until now, but that if Ms Agarwal proceeded with her grievance, she did not know how Ms Agarwal's future in the organisation would be.

473. The Tribunal concluded that Ms Bhogal had treated Mr Krishnaswami, a man, more favourably than Ms Agarwal, a woman, in the same or not materially different circumstances. They were, respectively, the subject of, and the complainant in, the same complaint. Ms Bhogal described Mr Krishnaswami's apology in glowing terms, when she had not attended the video conference meeting and did not know what he had said. By contrast, she was unreasonably harsh and critical of Ms Agarwal, a woman, who had legitimate grounds for complaint against Mr Krishnaswami, a man. She was not objective. She implied Ms Agarwal's future at the company might be at risk.

474. The burden of proof shifted to the First Respondent to show that sex was not part of the, or related to the reason, that Ms Bhogal acted as she did. The Tribunal concluded that the First Respondent did not discharge the burden of proof. It rejected Ms Bhogal's evidence that she did not make threatening

comments about Ms Agarwal's future. The Tribunal was not satisfied by Ms Bhogal's explanation for her unreasonable treatment of Ms Agarwal, compared to her more supportive attitude towards Mr Krishnaswami in the context of the grievance.

475. In relation to Ms Agarwal's sex harassment claim, the Tribunal concluded that Ms Bhogal's letter and comments were unwanted by Ms Agarwal; she complained about them in her later, individual, grievance. Further, they did have the effect of creating an intimidating environment. This was their objective effect in all the circumstances; it was also Ms Agarwal's perception. In her collective grievance appeal, she said that Ms Bhogal had attempted to evoke fear in her. The First Respondent subjected Ms Agarwal to sex harassment by Ms Bhogal's treatment of her grievance. If the Tribunal is wrong in that, it has decided that the First Respondent discriminated against Ms Agarwal because of sex in Ms Bhogal's treatment of her grievance.

476. **Mr Buckley.** Mr Buckley's collective grievance outcome letter was also critical of Ms Agarwal and Miss Cinca for having pursued their complaint. He implied that their pursuit of the grievance was not professional, dignified or collaborative. Mr Buckley's lengthy description of the difference between listening and hearing was patronising and humiliating. The Tribunal concluded that the use of the word "belligerent" was not an accurate reflection of Ms Agarwal's approach to Ms Bhogal. The adjective was unduly critical of and hostile towards her. Mr Buckley's lengthy paragraph about the functioning of the Alliance Partnership Unit and potential change in it could reasonably be seen as a threat to Ms Agarwal's continued employment.

477. The Tribunal concluded, from both Ms Bhogal and Mr Buckley's letters, that the First Respondent put excessive pressure on Ms Agarwal not to pursue a complaint. It was clear from Mr Buckley's letter that he intended to prevent Ms Agarwal from raising her concerns with Mr Venkatraman when she met him. The Tribunal concluded that Mr Buckley's approach was not objective, but was largely one of attempting to suppress Ms Agarwal's formal complaint against Mr Krishnaswami.

478. Again, the Tribunal concluded that Mr Buckley was unduly supportive of Mr Krishnaswami, apparently trying to protect him from further investigation. In his outcome letter, he briefly acknowledged that Mr Krishnaswami's conduct had not been acceptable. However, he spent much longer criticising Ms Agarwal's conduct. In the meeting itself, he was dismissive of Ms Agarwal's complaint, telling her that Mr Krishnaswami was, "an Indian boss working in America and they are aggressive and that's how they are".

479. In his outcome letter, he threatened and belittled Ms Agarwal, a more junior, female member of staff, who had at least some legitimate grievances against Mr Krishnaswami.

480. Mr Buckley did not investigate Ms Agarwal's grievance, other than holding a meeting with her and sending her a humiliating and threatening outcome letter.

481. The burden of proof shifted to the First Respondent to show that sex was not part of the reason for, or related to, this less favourable treatment.

482. Mr Buckley did not give evidence to the Tribunal. On Ms Bhogal's evidence, Mr Buckley's description of Ms Agarwal as belligerent was not accurate or fair. In his outcome letter, Mr Buckley, a man, patronised and belittled a female employee who had come to HR for a fair resolution of her grievance.

483. The First Respondent did not discharge the burden of proof on it to show that sex was not part of the reason for Mr Buckley's treatment of Ms Agarwal.

484. The Tribunal found that Mr Buckley's conduct of the grievance was unwanted; again, Ms Agarwal complained about it in her later, individual grievance. Further, his conduct did have the effect of violating the Ms Agarwal's dignity and creating a hostile, humiliating and intimidating environment. This was its objective effect in all the circumstances. Mr Buckley was dismissive of Ms Agarwal's concerns in the meeting itself. His outcome letter was humiliating and demeaning. The Tribunal found that the letter's effect was heightened because it came from an HR manager who was supposed to determine the grievance objectively. Ms Agarwal's perception was that the letter was humiliating. The First Respondent subjected Ms Agarwal to sex harassment by Mr Buckley's treatment of her grievance. It the Tribunal is wrong in that, it has decided that the First Respondent discriminated against Ms Agarwal because of sex in Mr Buckley's treatment of her grievance.

485. Ms Agarwal's allegations 6.20.1.1 – 6.20.1.6 and 8.12A(i) – 8.12A (i) – 8.12A (vi) all succeed insofar as they relate to Ms Bhogal and Mr Buckley.

486. **Gill Hyde.** Ms Hide and Ms Faron interviewed Ms Bhogal and Mr Krishnaswami as part of their investigation into the collective grievance appeal, but did not interview Mr Meshram, Ms Agarwal's line manager. They did not ask Ms Agarwal for any supporting evidence in relation to her grievance.

487. Ms Hide did not uphold Ms Agarwal's concerns about Ms Bhogal's and Mr Buckley's approach, despite the demeaning and threatening tone of their letters. She said that those individuals had not intended to invoke fear, or to come across in a derogatory or unhelpful manner.

488. The Tribunal concluded that Ms Hide did not attempt to undertake an objective investigation. She sought no supporting evidence from Ms Agarwal by way of documentation, or a statement from Mr Meshram. It appears that she only sought an explanation from the subjects of Ms Agarwal's complaints.

489. Against the background of Ms Bhogal and Mr Buckley's previous sex harassment or sex discrimination of Ms Agarwal during the collective grievance process, the Tribunal concluded that there was evidence from

which it could conclude that Ms Hide also treated Ms Agarwal less favourably because of sex by not objectively investigating her grievance appeal.

490. Ms Hide did not give evidence to the Tribunal.

491. In the absence of an explanation from Ms Hide, the Tribunal decided that the First Respondent had not discharged the burden of proof on it to show that sex was not part of the reason Ms Hide failed objectively to investigate the collective grievance appeal.

492. While Ms Hide's failure to properly investigate was unwanted by Ms Agarwal, the Tribunal concluded that it did not have the purpose or effect of violating Ms Agarwal's dignity or create the prohibited environment under s26 EqA 2010. She did undertake some investigation and the tone of her letter was not offensive in itself. She failed to correct the environment created by Ms Bhogal and Mr Buckley, rather than adding to it. She did not herself harass Ms Agarwal.

493. However, the Tribunal concluded that failing objectively to investigate a grievance appeal did amount to a detriment within the meaning in *Shammoon*. Employees would reasonably feel disadvantaged in a workplace if their grievances were not properly addressed.

494. Ms Hide subjected Ms Agarwal to sex discrimination. Ms Agarwal's allegation 6.20.1.1 succeeded in relation to Ms Hide.

495. **Mr Waterman and Mr Vora.** Ms Agarwal attended an individual grievance hearing on 20 December 2017, bundle 4 page 1331.1. Mr Meshram also attended an individual grievance hearing that day, bundle 4 page 1331.19. The panel for the individual grievances comprised Andrew Waterman, HR representative, and Prashant Vora. Mr Vora was a senior manager in the First Respondent. In both meetings, Mr Waterman primarily asked questions and conducted the discussion.

496. Mr Vora and Mr Waterman rejected both Ms Agarwal and Mr Meshram's individual grievances. Mr Waterman primarily conducted the hearings. On the facts, there was no difference between their approach to the respective grievances. There was no evidence from which the Tribunal could conclude that they treated Ms Agarwal differently because of, or for a reason related to, sex.

497. **Nupur Mallick and Daphna Perry.** On 11 January 2018, Ms Agarwal wrote to Ms Mallick, saying she had received no clear resolution to her grievance. She set out criticism of Gill Hide's outcome and said she wanted to know Ms Mallick's views, bundle 4 page 1509. Ms Mallick told the Tribunal in evidence that she forwarded this email on to members of her team who she considered were responsible for handling the Claimants' grievances.

498. On 23 January 2018 Daphna Perry, Head of Employee Relations UK and Ireland, responded to Ms Agarwal's email of 11 January 2018, bundle 4 page 1595.

499. Ms Agarwal received a considered response to her letter, albeit not from Ms Mallick directly. There was no evidence that a man would have been treated differently.

500. **Mr Cuming.** Mr Cuming heard both Ms Agarwal and Mr Meshram's individual grievance appeals. The Tribunal did not have evidence that he treated Ms Agarwal's grievance differently to Mr Meshram's. There was nothing to link Mr Cuming's actions to sex.

501. Ms Agarwal's allegations 6.20 and 8.12A fail in relation to Ms Mallick, Ms Perry, Mr Vora, Mr Waterman and Mr Cuming.

Grievance Outcome Letter Issue 6.20.1.9; 8.12A (xi)

502. Ms Agarwal alleged that the First Respondent had shared a copy of a confidential grievance outcome letter with the Second Respondent, contrary to the First Respondent's policy. In evidence at the Employment Tribunal, Mr Krishnaswami told the Tribunal that he had not been provided with a copy of grievance outcome letters. The Tribunal accepted Mr Krishnaswami's evidence on this. This allegation failed on its facts.

Grievance materials Issue 6.20.2 , 8.12B

503. The Tribunal accepted Ms Agarwal's evidence that the First Respondent failed to provide Ms Agarwal with transcripts her grievance and that, further, when outcome letters were sent out, they did not attach records of interviews with various witnesses or other supporting information. However, on 8 January 2018, Ms Agarwal emailed Priya Bhogal, Gill Hide and Sandra Faron, asking that they provide all the information they had referred to during the collection grievance process. A CD of all the relevant evidence was sent to Miss Cinca not later than 8 January 2018. In cross examination, Ms Agarwal agreed that she received this CD, but said that she was not given any evidence collected by Graham Buckley, bundle 4 pages 1444-1447.

504. The Tribunal has already found that Mr Buckley failed to investigate Ms Agarwal's collective grievance objectively. Failing to collect evidence was part of this failing.

505. However, Ms Agarwal was provided with evidence by the other investigators.

Senior HR Representatives – Grievance Issue 6.20.3, 8.12C

506. On 3 March 2018, Ms Agarwal emailed Ritu Anand, TCS Global Deputy Head of HR and Head of Diversity, copied to Ajoyendra Mukherjee, TCS Global Head of HR. She said that she had raised discrimination grievances

but had lost faith in the process, bundle 5 pages 1874-1875. Ms Agarwal did not specifically ask that Ms Anand or Ms Mukherjee take any action. Ms Anand and Miss Mukherjee did not respond to this email.

507. The Claimants had raised grievances which were not upheld. They were given the right to appeal, but the appeals were not upheld either. Ms Agarwal had written separately to Ms Mallick to question the process which had been adopted and Ms Perry had responded on behalf of Ms Mallick, in a detailed way, to those further queries.

508. There was no evidence that the First Respondent's Senior HR representatives would have intervened in a man's discrimination grievance which had already gone through the grievance process. There was nothing from which the Tribunal could conclude that the Senior HR representatives' failure to intervene was related to sex in any way. The Tribunal decided that their failure to intervene was because the First Respondent had already undertaken the grievance process and it would not have been appropriate for other HR representatives, who had no knowledge of the grievance, to become involved.

509. Allegation **6.20.3, 8.12C** fails.

Mr Meshram – Race and Caste Discrimination and Harassment. Issues 12 - 17

510. The Tribunal has made clear, in its findings of fact, that it did not consider the Respondents' evidence on race or caste to be credible.

511. Mr Meshram provided the official languages of various States to the Tribunal; for example, Tamil being the state language of Tamil Nadu, Telugu the official language of Andhrapradesh and Malayalam the official language of Kerala.

512. Nevertheless, Mr Meshram did not provide evidence to the Tribunal of the shared history or customs of the southern States of India, or Maharashtra, or the cultural traditions of that area, nor did he give evidence about the common ancestors of those living in the southern States of India, or Maharashtra, or the literature peculiar to that area, or the common religion of those States, as distinct from other religions in India or countries surrounding it. He did not give evidence of shared beliefs, traditions and characteristics derived from a common or presumed common past in the southern States of India. He did not give evidence, other than assertion, about any historically determined social identity of people from southern States of India, or Maharashtra, as viewed from the point of view of the people who lived in those States and also the point of view of the people who were not from those States.

513. While, in his submissions, the Claimant said that he had learnt about his history and traditions, he did not tell the Tribunal about the history and traditions of Maharashtra or his forefathers, during his evidence.

514. Mr Meshram also relied on caste as an ethnic origin. He produced a print-out from the Anti Caste Discrimination Alliance which quoted the Explanatory Notes in the *Equality Act 2010*, Bundle 11 pages 4103-4019.

515. Mr Meshram told the Tribunal that he is from the Shudra community. He said that his comparators were from either the Brahmin or the Kshatriya communities.

516. Again, Mr Meshram did not produce evidence of the shared history and traditions of the various castes.

517. While the Tribunal considered that it was possible that people from the Southern states of India might constitute an ethnic group and that members of a particular caste might also constitute an ethnic group, it simply did not have the evidence which would enable it to find that they did.

518. It took into account the definition of ethnic group in *Mandla v Dowell Lee* [1983] IRLR 209, [1983] ICR 385, HL: and the judgment in the New Zealand case of *King-Ansell v Policy* [1979] 2 NZLR 531, NZCA. The Tribunal did not have evidence that “hailing from the Southern States of India” satisfied the definition in *Mandla v Dowell Lee*, or came anywhere near doing so.

519. The Tribunal took into account *Tirkey v Chandhok* [2015] IRLR 195, “...there may be factual circumstances in which the application of the label “caste” is appropriate, many of which are capable – depending on their facts – of falling within the scope of section 9(1), particularly coming within “ethnic origins”, as portraying a group with characteristics determined in part by descent, and of a sufficient quality to be described as “ethnic”.”

520. Again, however, the Tribunal was not able to find facts – other than Mr Meshram being of one caste and the Second and Third Respondents being of different castes – which enabled it to find that Mr Meshram was of a member of an ethnic group which was different to that of the Respondents or his comparators.

521. That being the case, Mr Meshram’s race discrimination case fails.

522. Nevertheless, on all the facts that the Tribunal found, the Tribunal decided that the genesis of the breakdown in the relationship between Mr Krishnaswami and Mr Meshram was Mr Krishnaswami’s belief that Mr Meshram was not cooperating with Ms Pandya and not following Mr Krishnaswami’s instructions.

Victimisation – both Claimants

523. Ms Agarwal’s first protected act was her individual grievance dated 30 November 2017, wherein she made allegations of sex discrimination She repeated those allegations in subsequent grievance meetings and appeals.

524. Mr Meshram's first protected act was his grievance dated 10 December 2017, wherein he made allegations of race discrimination based on his South Indian origins. Again, he repeated those allegations in subsequent grievance hearings.

525. The Respondents denied that the Tribunal had jurisdiction to hear claims against Mr Krishnaswami and Mr Venkatraman because they were US employees, working in the US with limited interaction with the Claimants.

526. The Tribunal decided that Mr Krishnaswami and Mr Venkatraman were responsible for taking important decisions in respect of Mr Meshram and Ms Agarwal's UK employment. These decisions included changing the roles of Mr Meshram's team members, deciding on Mr Meshram and Ms Agarwal's performance grades, either as line manager or reviewer, deciding to commence change management / redundancy processes and approving or denying requests to undertake travel on behalf of the company. The Respondents cited no caselaw on which they relied in contending that the Tribunal had no jurisdiction in these circumstances.

527. The Tribunal decided that it did have jurisdiction to hear claims of victimisation against Mr Krishnaswami and Mr Venkatraman individually.

**Ms Agarwal – Mr K Refusing to Communicate after 13 October 2017.
Issue 19.1**

528. Mr Krishnaswami's actions in not scheduling meetings with, and otherwise isolating, Ms Agarwal predated protected act. They could not amount to victimisation.

529. Ms Agarwal – Mr K Refusing to Assess Promotion Case in January 2018. Issue 19.2

530. Mr Aravind Sivakumar was recommended by Mr Krishnaswami for promotion in late 2017, bundle 5 pages 1995.3-1995.4. In the promotion recommendation, Mr Krishnaswami wrote that Mr Sivakumar had had a responsibility change, to include independently managing alliances in Europe. He described this as "regional management of alliances". Mr Sivakumar had only been in his current grade of C3A for 2.2 years.

531. Mr Krishnaswami gave evidence to the Employment Tribunal and said that Mr Sivakumar had proactively presented a business plan, setting out what he would like to achieve in Europe, comprising investment and the building of a team for which he would be responsible. He said that Ms Agarwal had not done this.

532. Mr Sivakumar was not, in fact, promoted in 2018. He continued to be employed at the same grade as Ms Agarwal for the remainder of her employment by the First Respondent.

533. Ms Agarwal contended, at the Tribunal, that she had had a change in role, because she had been appointed as a Global Alliance Manager for Vodaphone.

534. However, Mr Meshram did not state that Ms Agarwal had been appointed to a Global Alliance Manager role in his justification for her promotion in 2017.

535. Neither Mr Sivakumar nor Ms Agarwal met the requirements for promotion set by corporate HR in July 2017 - January 2018. However, the Tribunal accepted Mr Krishnaswami's evidence that he recommended Mr Sivakumar for promotion because he had had a change in role and had taken on more responsibility. Mr Sivakumar had been appointed Head of Europe Alliance Management. Even if Ms Agarwal had had a change in role, Mr Meshram had not proposed her promotion on that basis.

536. There was therefore no reason for Mr Krishnaswami to review Ms Agarwal's promotion in January 2018, whether within the First Respondent's ordinary guidelines, or as an exception. His actions had nothing to do with the fact that Ms Agarwal had done a protected act.

Ms Agarwal – Mr K and Mr Venkatraman Rejecting Promotion June 2018 – Issue 19.2A

537. On 26 June 2018 Mr Krishnaswami emailed Ms Perry, rejecting all the promotion recommendations by Mr Meshram. Nevertheless, he also proposed that the recommendations be resubmitted to him with information relating to accomplishments and clear articulation of the proposed role and enhanced responsibilities and, if those details were not available, to provide them as soon as they were available, bundle 7 page 2606.

538. In her evidence to the Employment Tribunal, Ms Agarwal accepted that she did not meet the guidelines for promotion in 2017 and 2018, but said that she was an exception.

539. While Mr Krishnaswami rejected Ms Agarwal's promotion, he invited it to be resubmitted addressing the criterion he had used to justify Mr Sivakumar's promotion recommendation – "proposed role and enhanced responsibilities". Mr Krishnaswami was treating Ms Agarwal consistently with other employees. His actions were nothing to do with the fact that Ms Agarwal had done a protected act.

Performance Appraisal 2018 – Issue 19.3

540. As the Tribunal has found, Mr Krishnaswami also treated Ms Agarwal consistently with many other male and female employees in relation to her performance appraisal in 2018. Another male employee, Mr Selvaraj, who was also employed at C3A, had a higher IPF score than Ms Agarwal, but had his initial performance band reduced from A to B, like Ms Agarwal.

541. There was no basis for concluding that Ms Agarwal's reduction in performance band from A to B was because she had done a protected act.

Randomly Unallocating Ms Agarwal – Issue 19.4

542. Ms Agarwal's non-allocation was because the Vodaphone alliance agreement funding had come to an end. It was nothing to do with her protected act.

Ms Bhogal 17 October 2017 – Issue 19.5

543. This allegation predates Ms Agarwal's protected act. It cannot amount to victimisation.

Mr Buckley's Grievance Outcome Letter - Issue 19.6

544. Mr Buckley's collective grievance outcome letter was sent on 13 November 2017. This allegation predates Ms Agarwal's protected act. It cannot amount to victimisation.

HR Delaying Outcome of Grievances and Not Providing Supporting Documents or Notes Issues 19.7 and 19.12

545. This allegation can only relate to Ms Hide's collective grievance appeal hearing and the individual grievance hearings, which came after the protected acts.

546. Ms Agarwal confirmed, during her evidence, that she was not pursuing any complaint of victimisation in relation to delay in the outcome of her grievances. In any event, the Tribunal did not find there was any significant delay in the outcomes of the grievances being provided. Ms Agarwal was provided with a CD of the evidence gathered Ms Hide. In cross examination, Ms Agarwal said that her complaint was that she was not given any evidence collected by Graham Buckley. Mr Buckley's hearing and outcome predated the protected act.

Data Subject Access Request Issue 19.8

547. There was no evidence before the Tribunal about which documents ought to have been disclosed on Ms Agarwal's DSARs, but were not. The first DSAR was responded to within the statutory time frame. The Tribunal refers to its findings of fact. The Tribunal concluded that, as a matter of fact, Ms Agarwal's first DSAR request was dealt with properly.

548. The Tribunal accepted that delays until 17 September 2018 were caused by the matters that Mr Frampton had explained. These had nothing to do with the fact that Ms Agarwal had done a protected act.

Seeking to Blame Ms Agarwal for Grievance Letter Being Sent to Incorrect Address Issue 19.11.

549. Ms Agarwal said that, when the First Respondent said that it had sent the outcome letter to the wrong address because she had not updated her address in its system, the First Respondent was blaming her and that this was a matter of victimisation. Ms Agarwal appeared to accept that the reason that the letter was sent to the wrong address was because the address had not been updated. Ms Agarwal had updated her address in June 2017 for payroll purposes, but not on the Ultimatix intranet.

550. Ms Agarwal had changed her address on one system and not on another. That was a fact. Stating a fact is not a detriment and not an act of victimisation.

Not Upholding Grievances October 2019 and November 2019 Issue 19.12A

551. This could only relate to Ms Hide's and later hearings.

552. There was nothing to indicate that Ms Hide, Mr Vora, Mr Waterman or Mr Cuming acted any differently in respect of the grievances than they would have done if Ms Agarwal had not done a protected act. There was no evidence on which the Tribunal could conclude that their failure to uphold the grievances were acts of victimisation.

Issues 19.12B.1 and 19.12B.

553. These issues predate the protected act.

"Incorrect Facts" in Collective Grievance Appeal Outcome Letter. Issue 19.12B.3

554. There was no evidence that Ms Hide knew of Ms Agarwal's sex discrimination grievance. Ms Hide was dealing with a complaint which was not a protected act.

555. There was no evidence that Ms Hide's outcome letter would have been put in different terms had Ms Agarwal not done a protected act. There was no evidence on which the Tribunal could conclude that Ms Hide's letter was affected by victimisation.

Individual Grievance Outcome Letter. Issue 19.12B.4

556. There was no evidence that the individual grievance outcome letter would have been put in different terms had Ms Agarwal not done a protected act. There was no evidence on which the Tribunal could conclude that that letter was affected by victimisation.

Grievance Panel Using Information Provided by Mr K. Issue 19.12C.

557. Any grievance panel will naturally look at, and rely on, information provided by relevant witnesses. Unless there is compelling evidence that such

information is unreliable, doing so could not fulfil the definition of a detriment in *Shamoon*. It is standard process, which an employee could not reasonably feel disadvantaged by. This allegation did not constitute victimisation.

Marketing Team Not Collaborating. Issue 19.13

558. The Tribunal did not find, as a matter of fact, that the Marketing Team had failed to collaborate with Ms Agarwal. The Tribunal accepted Mr Krishnaswami's evidence that problems arose because Vodaphone events, which had been delayed, were not budgeted for at the time they later came to be delivered. This clearly caused disagreement and misunderstanding between Ms Agarwal and the marketing team. The Tribunal did not find that the marketing team was failing to cooperate with Ms Agarwal. The circumstances gave rise to difficulties delivering the Vodaphone events. Ms Agarwal and the marketing team, particularly Mamta Pandya, were simply not able to resolve their differences.

Senior HR Representatives – Grievance Issue 19.16A

559. The Claimants had raised grievances which were not upheld. They were given the right to appeal, but the appeals were not upheld either. Ms Agarwal had written separately to Ms Mallick to question the process which had been adopted and Ms Perry had responded on behalf of Ms Mallick, in a detailed way, to those further queries.

560. The Tribunal decided that the failure of more Senior HR representatives to intervene was because the First Respondent had already undertaken the grievance process and it would not have been appropriate for other HR representatives, who had no knowledge of the grievance, to become involved. This was nothing to do with the fact that Ms Agarwal had done a protected act.

Mr Meshram – From October 2017 Failing to Respond to Mr Meshram's Queries about Allocations and Other Significant Questions– Issue 19.46 and 19.54

561. The Tribunal did not find that Mr Krishnaswami failed to respond to Mr Meshram's queries about allocation. During April and May 2018 Mr Meshram and Mr Krishnaswami corresponded about Ms Agarwal's unallocated status, bundle page 2346. Mr Krishnaswami asked for further information regarding the Vodaphone contract and the status of the negotiations. He said that once he had more details, he would be able to identify possible solutions. Mr Krishnaswami was responding to Mr Meshram's queries about allocations and suggesting possible solutions.

562. From September 2017 to November 2017 there was communication about Mr Meshram's team between Mr Meshram and Mr Krishnaswami which was terse and unfriendly, on both sides. The Tribunal did not have evidence that this deteriorated after Mr Meshram's protected act.

563. This allegation failed on the facts.

November 2017 – Excluding Mr Meshram from Hitachi Calls. Issue. 19.47

564. This issue predates Mr Meshram's protected act.

Mr K Fabricating a Performance Chart Issue 19.48.

565. The relevant performance analysis was based on information taken from the First Respondent's computer systems and was created by another person, not Mr Krishnaswami. Mr Meshram conceded this in evidence. It was not fabricated. This allegation failed on its facts.

566. In the documents he provided to the grievance investigators, Mr Krishnaswami said that KPIs and targets from global plans had not been implemented and that associates had been asked by Mr Meshram to focus on activities that were not priorities. He gave the example of employees who were part of an Intel-funded team being assigned to tasks not directly linked to the Intel initiative, despite Mr Meshram being reminded not to do this, bundle 4 page 1381.

567. There was no evidence that the grievance investigators had any reason to doubt the information they were provided with, or any reason to reject it. There was no evidence from which the Tribunal could conclude that their failure to verify it was an act of victimisation.

Telephone Call with HPE 20 February 2018. Issue 19.50

568. On 20 February 2018, Mr Krishnaswami and Mr Venkatraman organised a call with Krishna Sirohi from HPE, without inviting or informing Mr Meshram. Mr Meshram told the Tribunal that Krishna Sirohi asked him why he had not been included in the call. Mr Krishnaswami told the Tribunal that HPE was both an Alliance partner and a customer of TCS; the call on 20 February 2018 was organised by Ramanan T in relation to HPE as a customer, not in relation to the Alliance function. He said that, therefore, there was no reason for Mr Meshram to join this call or to be told about it. The Tribunal accepted Mr Krishnaswami's evidence with regard to this. He knew the details about who attended the call and why it was made.

569. The failure to invite Mr Meshram was nothing to do with his protected act.

Conducting Mr Meshram's Appraisal in a Hostile Manner. Issue 19.51

570. The Tribunal did not find that Mr Krishnaswami conducted Mr Meshram's appraisal in a hostile or unprofessional manner. The Tribunal concluded that, given that Ms Perry was included in this telephone call, it was unlikely that the exchange between Mr Meshram and Mr Krishnaswami went beyond a robust exchange of views.

Miss Cinca, Ms Agarwal and Sachin Sail's Performance. Issue 19.52

571. Mr Meshram contended that Mr Krishnaswami had, as an act of vengeance, awarded a performance band B to Sachin Sail, Ms Agarwal and Miss Cinca in 2018. The Tribunal heard very little evidence about the performance of Miss Cinca and Mr Sail during the relevant year. As the Tribunal has found, there were a number of other employees whose performance was downgraded on review from A to B. Band A was appropriate for exceptional performance performers; band B was appropriate for very good or excellent performers.

572. Mr Meshram asserted that Mr Sail and Miss Cinca's performance had been exceptional. Sachin Sail consulted HR about his B grade, saying that he had been awarded a B the previous year but, in 2017-2018, he had overachieved against his financial targets, had built strong client relationships and had shown marked improvement, bundle 7, page 2505.

573. The Tribunal did not have evidence, however, of how Mr Sail's performance and revenue compared with other employees at his level. Much of his own justification for challenging his B grade was that he had improved on his previous performance, rather than his performance, was, of itself, exceptional.

574. The Tribunal has found that the First Respondent treated Ms Agarwal in the same way as it treated other employees in the appraisal process.

575. The Tribunal was unable to conclude, on the evidence, that Ms Agarwal, Miss Cinca, or Mr Sail's performance merited an A grade.

576. There was not evidence from which the Tribunal could conclude that Sachin Sail, Ms Agarwal and Miss Cinca's performance bands in 2018 were acts of victimisation against Mr Meshram.

Failing to Invite Mr Meshram to ATUNE. Issue 19.53

577. The Tribunal accepted Mr Krishnaswami's evidence that, in 2018, the Infrastructure Alliances Group, which had about 100 team members, was allocated 9 passes and that passes were not available for 7 of Mr Krishnaswami's direct reports, including Mr Meshram. The Tribunal did not find that there was evidence that Mr Meshram, rather than others, should have been selected to receive one of the small number of available passes. The Tribunal did not have evidence from which it could conclude that the failure to allocate an ATUNE pass to Mr Meshram was an act of victimisation.

Meeting 21 May 2018 Insisting that Ms Agarwal and Miss Cinca Seek Another Role. May 2018 Proposing to TCS Client Partner that Ms Agarwal Join that Team Without Informing Mr Meshram. Issue 19.4 (Ms Agarwal) Issues 19.55 & 19.57 (Mr Meshram)

578. In early May 2018 Vijay BS, Head of CMI UK & Ireland, who was responsible for the Vodaphone account (as a customer), proposed to Mr Meshram that Ms Agarwal move to the CMI Unit as part of the Vodaphone account, to continue to work as an Alliance Partner there and to be part of a project which Vodaphone had recently won. Mr Krishnaswami and Mr Venkatraman indicated to HR that they would agree to Ms Agarwal moving to the CMI Unit and Vodaphone account, bundle 6, page 2370.

579. On about 21 May 2018 Ms Perry met with Ms Agarwal to discuss her transferring to another team. Ms Agarwal declined to do so because the promotion recommendation made by Mr Meshram would not transfer to a new role in the CMI Unit. In cross-examination, Ms Agarwal agreed that, where there is disaffection in a workplace team, it is reasonable for an HR Officer to raise the possibility of an internal move to another team.

580. HR did not insist that Ms Agrawal move teams. She was offered the possibility of doing so.

581. The Tribunal decided that suggesting that Ms Agarwal moved was not a detriment. Ms Agarwal had brought grievances which had not been upheld, but still felt aggrieved. She was given an opportunity to move out of Mr Krishnaswami's team, away from the source of her ongoing unhappiness. If she had moved, she would not have been at risk of redundancy. The suggested move was, in a number of ways, advantageous for her. Even if her promotion recommendation would not have transferred with her, a reasonable employee could not consider themselves to have been disadvantaged by simply being offered this opportunity.

582. Regarding Mr Meshram, on the facts, HR did not "insist" that Ms Agarwal and Miss Cinca moved from his team. Further, Vijay BS suggested the move to his team, not Mr Krishnaswami. This allegation failed on its facts.

Mr Krishnaswami Presenting Unauthentic Communications from Team Members December – February 2019. Issue 19.56

583. On the Tribunal's findings of fact, Mr Krishnaswami started to gather negative feedback about Mr Meshram before Mr Krishnaswami knew about the Claimants making discrimination allegations against him. He was clearly attempting to have Mr Meshram removed from his post even before Mr Meshram alleged discrimination.

584. Some of the documents which supposedly recorded past complaints about Mr Meshram were backdated. Mr Sivakumar attached a document which was ostensibly dated 7 September 2017, but was created on 18 December 2017, Bundle 4, page 1299.1. Mr Nallasivan sent a document dated 20 April 2017, but the document's metadata showed that the date of its creation, in UK time, was 06:23 on 19 December 2017.

585. It was clear from the contents of their emails that various employees had sent their feedback on Mr Meshram, having been prompted to do so in conversations with Mr Krishnaswami.

586. On 19 December 2017 Mr Krishnaswami sent Gill Hide a document setting out a chronology / sequence of events, bundle 4 page 1350. This was in relation to Ms Agarwal and Miss Cinca's collective grievance, which did not allege discrimination.

587. It was not until 21 December that Mr Krishnaswami heard about Mr Meshram's discrimination grievance against him. This was apparent from his email to Mr Venkatraman, on 21 December, saying that, on 21 December, he had had a call with a different team from the UK, related to the new grievance from Mr Meshram and Ms Agarwal. He said, "I would like to mention that we should consult with HR to start a formal investigation with respect to this team. They are colluding and conspiring during TCS paid work time bringing false allegations, disrupting others and my work ... there are many disciplinary and policy violation activities that are coming to light ...". Bundle 4 page 1350.

588. In evidence to the Tribunal, Mr Krishnaswami confirmed that, at this date, he was aware that the Claimants had brought discrimination allegations in their grievances. He was aware that they had alleged discrimination on the basis of ethnicity. Mr Krishnaswami was cross examined about this email and his statement that company should initiate a formal investigation against Mr Meshram, Miss Cinca and Ms Agarwal. Mr Krishnaswami told the Tribunal that he believed that the first grievance was related to the video conference and the way that he had spoken and that the subsequent grievances were about him discriminating against them. He said, "Which is what drove me to write this." He said that the allegations were totally baseless and that what the employees had raised related to discriminatory activities by Mr Krishnaswami, with which he strongly disagreed.

589. It appears that, on 30 December 2017 and 2 January 2018, Mr Krishnaswami collated documents relating to Mr Meshram and his alleged lack of management capabilities, bundle 4 pages 1380-1394. He sent these to the grievance investigators. The documents included the statements he had gathered from people who had previously been in Mr Meshram's team.

590. Mr Krishnaswami also said that recently it had come to his attention that several travels undertaken by Mr Meshram and his team were without mandatory approval and that the TCS corporate credit card had been used indiscriminately for non-permissible expenses, bundle 4 page 1383.

591. While Mr Krishnaswami had started to gather statements from other employees with the apparent purpose of criticising Mr Meshram's capabilities and performance, before he knew of Mr Meshram's discrimination allegations, the Tribunal found that he redoubled his efforts to undermine Mr Meshram when he learnt of his protected act. At that point, he told Mr Venkatraman that Mr Meshram and the other Claimants should also be subjected to disciplinary investigations.

592. He continued to collate evidence against Mr Meshram thereafter and sent it, along with the witness statements he had gathered, to investigators, on 30 December 2017 and early January 2018. He also told the investigators that Mr Meshram had undertaken travel and credit card expenditure without approval.

593. Mr Krishnaswami prompted employees, who were junior to him, to make the statements. Some statements were clearly misleading because they had been significantly backdated. They could not be described as objective.

594. The Tribunal found that sending the employees' statements to the investigators amounted to a detriment. They were clearly designed to undermine Mr Meshram and they were not objective. The dates of some were false. Mr Meshram could reasonably have felt disadvantaged in the workplace as a consequence of them.

595. The Tribunal considered that the burden of proof shifted to the First and Second Respondent to show that Mr Meshram's protected act was not part of the reason that Mr Krishnaswami presented these statements to the investigation.

596. The Tribunal concluded that they had not discharged the burden of proof on them. From the wording of his 21 December 2017 email to Mr Venkatraman, Mr Krishnaswami was clearly motivated to retaliate against Mr Meshram and the other Claimants by the fact that they had alleged discrimination against him. He admitted this in evidence at the Tribunal. The Respondents failed to show that this desire to retaliate against the discrimination grievances was not part of the reason that Mr Krishnaswami then sent the detrimental statements to the investigators.

Mr Meshram Attending a Vodaphone Event in Singapore January 2018, Mr Venkatraman Writing a Hostile Email and Suggesting Disciplinary Action Against Him. Issue 19.49

597. On 13 December 2017 Mr Buckley had emailed Mr Venkatraman, saying that Mr Meshram, Ms Agarwal and Miss Cinca had raised formal serious discrimination allegations. He said, "I am aware that all have taken external legal advice and are intent in pursuing their agendas as far as they possibly can through the court system". Bundle 4 page 1259.

598. On 21 December Mr Krishnaswami had emailed Mr Venkatraman, saying that he had been contacted about Mr Meshram and the other Claimants' grievances, that they were make false allegations and that they should be investigated in relation to their expenses.

599. Mr Venkatraman clearly knew about the fact that Mr Meshram had raised discrimination grievances. He had also received correspondence from fellow employees which were pejorative in their descriptions of Mr Meshram in

relation to these grievances. There was no evidence that Mr Venkatraman had disagreed with these sentiments.

600. On 26 January 2018 Mr Meshram wrote to Mr Venkatraman, saying that Vodaphone had invited Mr Meshram to present at their event in Singapore about TCS' alliance with Vodaphone. He said that his travel and travel accommodation costs would be covered by Vodaphone. Mr Venkatraman replied the same day, saying that Mr Meshram had given less than a week's notice for international travel, so that it would not be approved under policy.

601. The Tribunal found that, contrary to Mr Venkatraman's email and evidence to the Tribunal, travel could be approved at short notice through the central Travel Desk. Ms Mallick confirmed this in evidence to the Tribunal.

602. Mr Meshram attended the Vodaphone Singapore event. On 2 February 2018 Mr Venkatraman further emailed Mr Meshram, saying that, despite Mr Venkatraman having mentioned that business travel could not be undertaken without formal request and approval, Mr Meshram had travelled to Singapore and represented TCS. He said, "This is a serious violation of compliance and cannot be tolerated". Bundle 5 page 1688. Mr Meshram responded the same day, saying that the request from Vodaphone had come at short notice and it was too late for him to cancel it, as they had issued tickets for him. He said he had tried to put the travel details on Ultimatix, which had not allowed him to do this, but that he had raised a Global Helpdesk ticket to that effect. Mr Meshram copied his reply to Nupur Mallick, who sent it on to Daphna Perry and Joanna Cowie, an Employment Law advisor. Miss Cowie responded to Nupur Mallick, saying that she believed that Mr Meshram's explanation and mitigating circumstances sounded plausible and that disciplinary action might therefore be unreasonable in the circumstances.

603. Mr Venkatraman denied, in evidence, that he meant that disciplinary action should be taken against Mr Meshram. The Tribunal rejected his evidence on this. It was clear, from Ms Cowie and Ms Perry's emails, that they had understood that Mr Venkatraman meant that disciplinary action should be taken. Furthermore, the Tribunal found, the words used – "serious violation" of policy which "cannot be tolerated" - would, in ordinary language, be understood as describing something which merited disciplinary action.

604. The Tribunal found that tone of the email Mr Venkatraman's email to Mr Meshram and the threat of disciplinary action amounted to a detriment. Mr Meshram would reasonably feel disadvantaged in the workplace after a very senior manager threatened disciplinary action against him in a hostile email and HR considered the matter. He would reasonably feel that his employment was at risk.

605. The Tribunal considered that the burden of proof shifted to the Respondents to show that Mr Meshram's protected act was not part of the reason that he acted in this way. Mr Venkatraman was aware of the protected act and had been encouraged by Mr Krishnaswami to initiate disciplinary

investigations against the Claimants, partly because of the discrimination allegations they had raised.

606. The Tribunal decided that the Respondents had not discharged the burden. It rejected Mr Venkatraman's evidence that travel could not be taken at short notice. It rejected his statement that he had not meant that disciplinary action should be taken against Mr Meshram. The Tribunal concluded that Mr Venkatraman victimised Mr Meshram by his hostile email threatening disciplinary action against the Claimant, which HR then considered.

27 June 2018 Awarding Mr Meshram D Performance Rating. Issue 19.59A.

607. In March and April 2018 Mr Krishnaswami completed Mr Meshram's appraisal document, bundle 6 pages 2231-2239. He awarded scores for each goal set for Mr Meshram. Regarding Personal Development, Mr Krishnaswami said, "Scope for improvement", page 2233. With regard to Corporate Governance and Reporting, Mr Krishnaswami awarded a score of 3 and said that he would like to highlight two incidences of non-compliance with TCS travel processes. Mr Krishnaswami gave Mr Meshram a 4 for Personal Development. He gave him a 4 for Effectively Influencing Others positively; he said there was scope for improvement. He also gave him a 4 for Team Skill, Ability to Create an Environment of Trust and Cooperation Through an Open Exchange of Ideas Towards Achieving Goals; he said there was scope for improvement in this regard.

608. In evidence, Mr Krishnaswami was asked what was in his mind when he gave scores of 4 and said there was scope for improvement regarding Personal Development, Effectively Influencing Others Positively and Creating an Environment of Trust and Cooperation. Mr Krishnaswami said that he could not remember what was in his mind at the time.

609. Mr Krishnaswami scores produced an IPF of 3.8 for Mr Meshram. On 30 April 2018 Mr Krishnaswami emailed Shabana Gaffar, Unit HR Head, saying that Mr Meshram's performance band should be D. He gave justifications for this including a significant drop in performance, lack of focus and poor management. He also said "... refusal to comply with TCS process, refusal to comply with supervisor and ATUs Head directions, overall change in attitude in last fiscal year- autocratic style of operations, inability to work harmoniously with global team and refusal to comply with instructions in general", bundle 6 page 2308.

610. While Mr Krishnaswami said that he could not recall what was in his mind when he awarded the grades for particular goals, it appeared from the email that what was in Mr Krishnaswami's mind included the Claimant's travel to Singapore contrary to Mr Venkatraman's instructions and the evidence that Mr Krishnaswami had gathered from previous employees who had worked for Mr Meshram. Those employees, however, had predominantly provided documents to Mr Krishnaswami about the Claimant's conduct and management style over periods which ended before March 2017.

611. In Mr Venkatraman's witness statement, he said that Mr Krishnaswami and he had jointly made the decision to award Mr Meshram a performance band D. He said that, when they compared Mr Meshram's rating with other senior employees in the ATU, he came lowest and so he got a D.

612. The D performance rating was clearly detrimental to Mr Meshram. He would not have been entitled to a pay increment as a result. Furthermore, such a low score is likely to have prejudiced recruiting managers' opinion of him, if he sought alternative roles in the Respondent company.

613. The Tribunal concluded that Mr Krishnaswami's scores resulted in Mr Meshram being given a "D" for performance. Those scores produced the lowest IPF score of his cohort. Mr Venkatraman confirmed that Mr Krishnaswami was jointly responsible for deciding Mr Meshram's final grade.

614. Mr Krishnaswami took into account, in awarding the scores, matters which the Tribunal has found were themselves acts of victimisation:

- a. Mr Meshram's travel to Singapore at short notice, in respect of which Mr Venkatraman threatened him with disciplinary action; and
- b. employee witness statements which Mr Krishnaswami used to undermine Mr Meshram in the grievance investigation.

615. The witness statements mainly concerned Mr Meshram's management of employees outside the relevant review period. They should not have been used to justify performance scores for 2017- 2018.

616. Tribunal decided that it could conclude, on these facts, that Mr Krishnaswami's scores were partly affected by victimisation. It decided that the Respondents had failed to show that Mr Meshram's protected act was not part of the reason for Mr Krishnaswami's low scores. He was unable to explain to the Tribunal what was in his mind when awarded a number of the scores. It concluded that Mr Krishnaswami victimised the Claimant by awarding him these scores and recommending that he be given a D performance rating.

Putting Ms Agarwal and Mr Meshram at Risk of Redundancy. Dismantling Mr Meshram's Team. Issues 19.14, 19.58, 19.59.

617. From the evidence, only Mr Meshram's UK/European IAG Alliance Management group underwent a redundancy exercise as a result of the decision to change it to a revenue generating unit. No redundancies occurred in the equivalent American team – all US Alliance Management team members were slotted into the new BDM roles.

618. There were a number of pieces of evidence which showed that Mr Krishnaswami wanted the Claimants, in particular, to leave his Business Unit

and that he saw the restructuring and redundancy exercise as a way of achieving this.

619. Ms Perry and Mr Krishnaswami emailed each other about the restructuring proposals. On 17 February 2018 Ms Perry wrote to Mr Krishnaswami saying, "I am still thinking about the approach" ... note that there are no names/positions mentioned in this email (winking smiley face)", bundle 5 page 1802.

620. This email implied that Ms Perry was deliberately omitting names of specific employees. In all the circumstances, the ET concluded that it was the Claimants, in particular, whose names were being omitted.

621. On 13 April 2018 Ms Perry emailed Mr Krishnaswami, summarising a discussion they had had a couple of days previously. Ms Perry went on specifically to deal with Mr Meshram, Ms Agarwal and Miss Cinca. With regard to Mr Meshram, she said that his role would change, in that business development and sales was a small part of his current role, but would become a major part after the offshoring of alliance management. With regard to Ms Agarwal, she was working on the Vodaphone account and Mr Krishnaswami was verifying whether the contract had been renewed; if the contract was discontinued, a potential alternative role could be business development of services for partners, bundle 6 pages 2125-2126. Mr Krishnaswami replied, saying that Ms Agarwal's role managing Vodaphone would become redundant if the contract was not renewed, so the role would not move offshore. He said that it appeared from the system that the contract had not been renewed, but he needed to confirm that. He said that there were two ex-pats (employees working under Indian terms and conditions), Sachin Sail and Bharat Reddy, who could either move offshore per TCS policy, or, if they wanted to remain in the UK and found alternative roles there, they could be released from the ATU, bundle 6 page 21215.

622. The First Respondent produced document entitled, "UK Organization Structure and Proposed Changes for FY 19", Bundle 6, page 2323. It addressed the members of Mr Meshram's team. Of Sachin Sail, Bharat Reddy and Aravind Sivakumar, who were all Alliance Managers under the existing structure, the document said, "Role moved to India". The document proposed that Mr Sail and Mr Reddy be given the option of performing the same role in India. Of Mr Sivakumar, the document said, "Option given to perform business development role in EU for ATU." In respect of Mr Meshram, the document said, "All alliance management roles moved to India. To be released to RMG or option to move to India." Of Ms Agarwal, who was described as Alliances Manager for Vodaphone, JLR, Nationwide, the document said, "Role to exist 'till contract validity. Contract has not been renewed as on date. To be released to RMG." Of Miss Cinca, who was described as a trainee, the document said, "No role. To be released to RMG."

623. Ms Perry emailed Mr Krishnaswami on 30 April 2018 saying, "... the IBM and Intel alliances that are funded by the customer and therefore unaffected: who are the associates that will get to stay?" Bundle 6, page 2310. Mr

Krishnaswami replied giving the names of associates he said were part of IBM and Intel: Shipra Jha, Mangesh Poddar, Raghavendran Selvaraj and Sachin Chawla. All reported to managers in India or the US. Mr Krishnaswami also said that Pavan Goyal Kumar was a technical solution architect paid for by CISCO.

624. At this point, Mr Krishnaswami was proposing that, specifically, Ms Agarwal and Miss Cinca would be “released to RMG”. Mr Meshram, who was not employed on Indian terms, would be offered a job in India or released to RMG. RMG is the First Respondent’s Resource Management Group which identifies alternative roles for employees who are redundant from their current roles. Mr Krishnaswami was proposing that all other employees in the Alliance Management Group would be retained to look after existing customers (Jha, Poddar, Selvaraj, Chawla), or be given a EU BDM role (Sivakumar), or be offered the chance to carry out their existing roles in India, or be released from the Unit to another UK job if they could identify one (Sail, Reddy). Messrs Sail and Reddy were employed on Indian terms and conditions – they were “ex pat” employees.

625. This indicated that Mr Krishnaswami wanted Ms Agarwal, Miss Cinca and Mr Meshram, in particular, to move out of his Unit or be dismissed.

626. The Tribunal found that Mr Krishnaswami had wanted to release Mr Meshram from his Unit as early as November 2017. However, in the business reorganisation, Mr Meshram, Ms Agarwal and Miss Cinca were being treated as a group. The Tribunal considered that the most likely reason for this is that they were all employees who had raised discrimination grievances against Mr Krishnaswami.

627. On 17 May 2018 Ms Perry sent Mr Krishnaswami and Mr Venkatraman the content of Mr Meshram’s whistleblowing allegations against them, bundle 6 pages 2405-2406. Mr Krishnaswami responded the next day saying, “Overall this is taking just too long ... I have three associates doing absolutely nothing constructive and also eating into my productivity! ...” Bundle 6 page 2403.

628. Ms Perry replied, saying that now the grievances had concluded, HR was recommending, based on what Mr Krishnaswami had raised in his email, to move all 3 associates out of his team. Ms Perry said that they had all rejected the company procedure outcomes and had strong feelings against Mr Krishnaswami and it was not advisable for them to continue to work with him. Ms Perry said that she would explain this and “the upcoming change” to Mr Meshram. She went on to say, “If he is in agreement to move we will hold off on the formal consultation re change, but if he objects then we will commence consultation immediately and conclude after 30 days”. Bundle 6 page 2403.

629. Ms Perry gave evidence to the Tribunal about this email. She said that, when she met with Mr Meshram on 21 May 2018, she said that it was not healthy for Mr Meshram and Mr Krishnaswami to continue to work together.

630. Ms Perry told the Tribunal that, if Mr Meshram, Ms Agarwal and Miss Cinca had moved out of the Unit, then she and Mr Krishnaswami would have reassessed whether change management was required. If the company had Business Development Manager roles for the other employees, then change management would not be relevant.

631. Mr Krishnaswami also gave evidence about this. He said that, if the three Claimants had agreed to move out of the Unit, then the change process would not have happened in the UK; it would probably have gone the same way as it had in the US.

632. The ET concluded from this oral evidence, and the written correspondence, that Mr Krishnaswami's primary aim in the restructure was to remove the Claimants from his team. If they agreed to move, the restructure would not take place. If they did not agree, they would be put at risk of redundancy.

633. Furthermore, when the restructure did proceed, and others in the team were also put at risk of redundancy, the job description for the new BDM roles specified strategic partners with whom other Alliance Managers had an existing relationship.

634. Mr Ganesh Nallasivam confirmed that knowledge of the partner offerings of these named strategic partners would be an advantage during the interview process. Mr Suprio Chowdhury, who was also on the BDM interview panel, told the Tribunal that it would have been important for candidates to have knowledge of the named strategic partners' technologies.

635. The ET concluded that Ms Agarwal, in particular, would have been at a disadvantage in applying for the new BDM roles when the job description specifically mentioned strategic partners with whom she did not have an existing relationship.

636. On all the evidence, the ET concluded that the primary aim of the proposed restructure was to remove Mr Meshram, Ms Agarwal and Miss Cinca from Mr Krishnaswami's team. They had all done protected acts and Mr Krishnaswami had already victimised Mr Meshram as a result. The burden of proof shifted to the First Respondent to show that their protected acts were not part of the reason Ms Agarwal and Mr Meshram were put at risk of redundancy.

637. The Tribunal decided that the First Respondent had not discharged the burden of proof. Mr Krishnaswami and Ms Perry told the Tribunal that the restructure was part of a global process and was not targeted at the Claimants. The Tribunal rejected their evidence in this regard. The First Respondent may have designed a restructuring process which was also applied to others, but the Claimants were its primary targets. There was ample evidence that Mr Krishnaswami was irritated by the Claimants' allegations against him and wanted them to be investigated, disciplined and/or removed from his team. The First Respondent victimised Mr Meshram and Ms Agarwal

when it commenced the change management process and put them at risk of redundancy.

Not Offering Mr Meshram Roles of Client Partner for Insurance Partner, Country Head for Ireland, Client Partner for Unilever; Terminating Mr Meshram's Employment. Issues 19.61 & 19.62

638. The First Respondent did offer Mr Meshram a number of alternative roles during the redundancy process. Mr Meshram rejected many, saying that they were not at the appropriate level of seniority in the business.

639. Mr Meshram told the Tribunal that managers at his level in the Respondent company would be approached by Unit / Business leaders and encouraged to apply for senior jobs for which they were considered appropriate candidates. He said that it was not usual for managers at his level in the organisation to apply competitively for jobs without having been first approached by a business Head.

640. The Tribunal accepted Mr Meshram's evidence. It was broadly corroborated by Mr Venkatraman and Ms Perry.

641. The Tribunal concluded, from all the evidence, that roles at Mr Meshram's level of seniority are typically filled by way of individual approach to preferred candidates, following informal soundings, rather than through a competitive recruitment process.

642. It also accepted Mr Venkatraman's evidence that Ritu Anand, head of LeaD, would normally make sure that all senior executives were made aware of the roles that were available.

643. Two very senior roles were available during the redundancy exercise – Ireland Head and Client Partner for AVIVA.

644. Mr Meshram said that, before the redundancy process had started, he had told Shankar Narayan, UK & Ireland Country Head, that he was looking for alternative roles, but that Mr Narayan had never approached Mr Meshram about senior roles which became available thereafter. Mr Meshram told the Tribunal that, given that Mr Narayan did not approach him about the Head of Ireland Role, Mr Meshram knew that he was not seen as a desirable candidate and, therefore, he did not apply.

645. There was no evidence that Unit Heads had approached Mr Meshram about available roles during the redundancy exercise, although some apparently spoke to Mr Venkatraman about Mr Meshram.

646. On 28 June 2018 Mr Meshram wrote to Ritu Anand, saying that he and his team had been put at risk of redundancy and asking Ms Anand to consider him for leadership openings through her LEAD initiative, bundle 7, page 2740.

647. Ms Anand replied on 5 July 2018 saying, “While I am aware of some discussions going on about the issues emanating from some disagreements involving you, I am not very aware of the complete background so will not be able to comment... about your role, my team .. will try to suggest your profile for openings, but you should also look at job postings on LeaD. ..”, bundle 7, page 2740.

648. The Tribunal considered that the likely interpretation of Ms Anand’s email was that she was aware of Mr Meshram’s grievances and that she considered that the fact that he had raised grievances was relevant to his ability to further secure senior positions in the Company.

649. There was no evidence that Ms Anand did anything to assist Mr Meshram in his job search, despite him asking her for such assistance. She did not draw his attention to the Ireland Head and Client Partner for AVIVA roles.

650. On all the evidence, the Tribunal concluded that Ms Anand did not assist Mr Meshram in the way that she would normally have assisted other senior managers looking for vacancies, because of his grievances which were protected acts. Ms Anand did not give evidence to the Tribunal and did not offer an alternative explanation.

651. Ms Anand was a very senior manager in the Company. The Tribunal considered that it was likely that other senior managers, including Shankar Narayan, were aware of Mr Meshram’s protected acts.

652. Shankar Narayan did not give evidence to the Tribunal.

653. The Tribunal decided that the burden of proof had shifted to the First Respondent to show that Mr Meshram’s protected acts were not part of the reason he was not offered, or considered for, the Ireland Head and Client Partner for AVIVA roles. In the absence of an explanation from the relevant witnesses, the First Respondent did not discharge that burden.

654. Given that the First Respondent victimised Mr Meshram by putting him at risk of redundancy and further victimised him by failing to consider him for, or offer him, 2 senior alternative roles during the redundancy process, the Tribunal concluded that the First Respondent also victimised him when it dismissed him for redundancy at the end of the redundancy process.

First Respondent Failing to Offer Ms Agarwal Alternative Employment. Issue 19.15

655. Ms Agarwal was not at a level in the Respondent organisation where recruitment was done by word of mouth. The search for alternative employment was conducted in her case by the Resource Management Group, who did send her lists of vacancies. Ms Agarwal did not point out any jobs to the ET which she was suited to, but were not offered to her, apart from the

roles for which the recruiting managers decided she did not have the correct skills.

656. The Tribunal concluded that there were no suitable alternative vacancies for Ms Agarwal. First Respondent did not victimise Ms Agarwal by failing to offer her suitable alternative vacancies.

First Respondent Terminating Ms Agarwal's Employment. Issue 19.16.

657. The Tribunal concluded that the First Respondent had undertaken a redundancy consultation process and had looked for suitable alternative vacancies. Dismissing Ms Agarwal was not a separate act of victimisation, but was the likely result of putting her at risk of redundancy in the circumstances that there were no suitable alternative vacancies, apart from the BDM role which she was unlikely to secure.

Mr Meshram - Whistleblowing.

658. The Tribunal decided that Mr Meshram did make protected disclosures within the meaning of *s43A ERA 1996*.

659. In his grievance appeal dated 26 February 2018, bundle 5 page 1815, he said that all partner funds and rebates for the UK and Europe were consumed by Mr Krishnaswami and his team, that Mr Meshram had not had any visibility into it, which was strange and suspicious, since those were funds invested by partners across all the geographies, bundle 5 page 1816. He said that he suspected that the transactions executed through MTI may not comply with revenue accounting requirements and the Tata Code of Conduct. He said it might amount to a breach of TCS legal obligations. He alleged that the arrangement with MTI was set up to tag UK-based revenue to the US (CMI North America) and said that this "malpractice" needed to be seriously investigated under TCS' whistleblowing process, page 1819.

660. The Tribunal accepted that Mr Meshram honestly believed his allegations that partner funds were being wrongly allocated and, therefore, wrongly accounted for, and that partner funding was not being allocated in accordance with agreements, so that funds from particular partners were being used to promote other partners in breach of legal obligations. Mr Meshram made clear, at the time, that he believed that contractual legal obligations to partners were being breached and that legal obligations with regard to accounting were being breached.

661. The Tribunal concluded that Mr Meshram believed that his disclosures that the company was not accounting for its profits according to its legal obligations and was acting in conflict of interest with its commercial partners were made in the public interest. Large companies complying with accounting requirements, for tax and other purposes, and not inappropriately exploiting their commercial partners, is easily seen to be in the public interest.

662. His disclosures came within *ss43B (1)(b) ERA 1996*.

Querying, or Failing to Approve Mr Meshram's Expenses December 2017 – July 2018 in Respect of Travel, Client Entertainment and Partner Expenses. Issue 23.1

663. Mr Krishnaswami and Mr Venkatraman had originally suggested that Mr Meshram's expenses be investigated in December 2017 – January 2018. This was before Mr Meshram had made his protected disclosures.

664. However, the Tribunal concluded that, in July 2018, there was further scrutiny of Mr Meshram's expenses. Given that the relevant expenses had been claimed in December 2017, the Tribunal concluded that this additional examination of the expenses was likely to have resulted from Mr Cuming raising the matter of expenses again in his ethics investigation and Ms Daphna Perry suggesting that a further investigation was required.

665. This further scrutiny was a detriment to Mr Meshram. It involved questioning his integrity. The Tribunal decided that, given that it directly followed Mr Cuming's report into his protected disclosures, the burden of proof shifted to the First Respondent to show that his protected disclosures did not materially influence (in the sense of being more than a trivial influence) its treatment of him.

666. The Tribunal decided that the First Respondent had not discharged the burden of proof.

667. It decided that Ms Perry had enthusiastically adopted Mr Cuming's suggestion that Mr Meshram's expenses should be investigated. She did so having assured Mr Krishnaswami that the Claimants would be removed from his Unit, in response to him expressing his anger and frustration about the whistleblowing allegations.

668. The Tribunal found that the First Respondent's treatment of Mr Meshram's protected disclosures was generally detrimental to him. It agreed with Mr Dawar that Mr Cumming should not have included Mr Krishnaswami's allegations against Mr Meshram in his whistleblowing report. They were not relevant to whether the First Respondent had breached contractual and legal requirements. Under the First Respondent's Whistleblowing Policy, the identity of the whistle blower should be kept confidential to the extent possible, bundle 2 page 506. This was not done. The First Respondent did not explain why the allegations could not have been investigated without revealing Mr Meshram's identity. Mr Cuming should not have sent the outcome to Mr Krishnaswami and Mr Venkatraman, either. Mr Cuming did little or nothing to protect Mr Meshram and, by contrast, reassured Mr Krishnaswami and Mr Venkatraman.

669. The Tribunal accepted Mr Dawar's evidence that he did not want to investigate Mr Meshram's expenses any further, but that Ms Perry had suggested it and wanted to do so.

670. The further investigation was inappropriate and resulted from a breach of the First Respondent's own policies protecting whistleblowers. The Tribunal found that it amounted to a whistleblowing detriment.

“Insisting” that Mr Meshram Look for Another Role. Issue 23.5

671. On the facts, Ms Perry and Ms Acharya did not insist that Mr Meshram look for another role. They suggested that he did. He declined.

Putting Mr Meshram at Risk of Redundancy. Issue 23.6.

672. In their 17 May 2018 email exchange, as a direct result of Mr Krishnaswami being told about Mr Meshram's protected disclosures, Ms Perry and Mr Krishnaswami agreed that Mr Meshram would be asked to leave Mr Krishnaswami's Unit and, if he did not agree, a change management/redundancy exercise would be commenced for his team. The natural inference was that Mr Meshram's protected disclosures materially influenced the decision to put him at risk of redundancy.

673. The First and Second Respondents did not discharge the burden of on them to show that this was not the case. It was plain from the wording of the email exchange that Mr Krishnaswami was demanding prompt action against Mr Meshram, Ms Agarwal and Miss Cinca because he was angered and frustrated by the protected disclosures. Putting them at risk of redundancy was one of the courses of action which was then agreed.

Mr Venkatraman Awarding Mr Meshram D Performance Rating. Issue 23.7

674. Mr Krishnaswami was not aware of the protected disclosures until 17 May 2018. He completed Mr Meshram's appraisal document in March and April 2018.

675. The Tribunal has concluded that Mr Krishnaswami's scores resulted in Mr Meshram being given a “D” for performance; those scores produced the lowest IPF score of his cohort. Mr Venkatraman confirmed that Mr Krishnaswami was jointly responsible for deciding Mr Meshram's final grade.

676. The Tribunal decided that the “D” performance rating had effectively been determined by 17 May 2018. The protected disclosures did not materially influence it.

Protected Disclosure Detriment Defence

677. The Tribunal heard no evidence that the First Respondent's employees were instructed or trained not to subject Mr Meshram to detriments as a result of making protected disclosures. The First Respondent had a whistleblowing policy. As the Tribunal has found, even the investigator, Mr Cuming, failed to give Mr Meshram the protections set out in it. The First Respondent has not established the defence in *s47B(1D) ERA 1996*.

Unfair dismissal. Automatic unfair dismissal.

678. The First Respondent did not show that redundancy, some other substantial reason, or another potentially fair reason, was the principal reason for dismissal in this case.

679. On the facts, the Tribunal decided that victimisation was the principal reason for dismissal.

680. The Tribunal decided that, had the Claimants not made discrimination allegations against Mr Krishnaswami, there would not have been a redundancy exercise. The First Respondent would have dealt with the change to Profit and Loss in a manner which did not require redundancies. It had done this in the US.

681. The dismissals were unfair.

682. Seeing that victimisation was the principal reason for dismissal, Mr Meshram's protected disclosures were not the principal reason for his dismissal. His dismissal was not automatically unfair. The redundancy exercise was targeted at the 3 Claimants and would have happened in any event. The protected disclosures did reinforce Mr Krishnaswami and Ms Perry's determination to remove the Claimants from the Unit, so that they materially influenced it, although they would still have been removed.

Ordinary Unfair Dismissal - Issues

683. In the event that the Tribunal is wrong regarding the principal reason for dismissal, it has gone on to make findings regarding s98(4) ERA 1996 fairness.

Pool. Issue 29.1.

684. While the Second Respondent had originally suggested that Ms Agarwal and Miss Cinca, specifically, would be removed and other Alliance Managers be retained to deal with particular client partners, ultimately all UK Alliance Managers were put in the pool for redundancy and were required to apply competitively for the Business Development Manager roles. In the end, the choice of pool was within the broad band of reasonable responses and was fair.

Consultation. Issues 29.2 & 29.3

685. On the facts, the First Respondent did conduct numerous consultation meetings with both Claimants. The Tribunal found that the Claimants were given answers to the questions they asked. The consultation itself was fair.

Composition of Interview Panel. Issue 29.4

686. Ms Agarwal objected to Messrs Ganesh Nallasivam and Arun Kumar being part of the interview panel, because she considered that they were Alliance Managers like she was and that they should be required to apply for the new BDM roles in the US, so that it was inappropriate for them to be on the interview panel.

687. Messrs Nallasivam and Kumar were not employed in the UK and were not subject to the UK change management process.

688. On 31 July 2018, Divya Acharya, HR manager, emailed Ms Agarwal, saying that Messrs Nallasivam and Kumar had been piloting the BDM roles in the US for a year and were the 2 employees who had been confirmed in those roles. She said that it was appropriate for them to be on the interview panel for the UK BDM roles because they had experience in the BDM role.

689. Mr Nallasivam confirmed in evidence to the Tribunal that he had been piloting the new BDM role for a year.

690. The Tribunal accepted the First Respondent's evidence regarding Messrs Nallasivam and Kumar having been piloting the BDM roles. They had intimate knowledge of the roles and were therefore in a good position to judge the suitability of candidates for them.

691. As they were not employed in the UK and were not subject to the UK change management process, it was within the broad band of reasonable responses to include them in the UK interview panel.

Bumping. Issue 29.5

692. The Tribunal heard no evidence regarding employees who might have been "bumped" from roles to make room for the Claimants. It was fair for the First Respondent not to consider bumping as an alternative to dismissing the Claimants.

Alternative Employment. Issue 29.6

693. The First Respondent did propose a number of alternative roles to Mr Meshram. However, it did not adopt its usual process for redeploying senior managers through informal soundings with Unit heads. Further, Ritu Anand did nothing to assist Mr Meshram to identify suitable alternative roles, even though she was responsible to the LeaD initiative, which was designed to assist senior managers in identifying suitable alternative roles.

694. The Tribunal concluded that the failure of senior managers to assist and approach Mr Meshram was because of victimisation. The First Respondent did not act reasonably in seeking suitable alternative employment for Mr Meshram.

695. Ms Agarwal was notified of available vacancies. The ones she identified as potentially suitable were not, ultimately suitable for her. The relevant hiring

managers considered that she did not have the requisite skills and /or experience.

696. Ms Agarwal was encouraged to apply for the BDM roles. The Tribunal concluded that it was unlikely that she would have been successful in securing a role because she was not familiar with the client offerings of the clients mentioned in the job description. Both Mr Nallasivam and Mr Chowdhury said that such familiarity would have been, at least, a real advantage.

697. Nevertheless, Ms Agarwal did not apply for the BDM role and removed herself from consideration.

698. The First Respondent acted within the broad band of reasonable responses in notifying Ms Agarwal of alternative roles and encouraging her to apply for the BDM roles.

Process - Appeal

699. There were no notes of the Claimants' appeal meetings. The Claimants told the Tribunal, and the Tribunal accepted, that the appeal hearings did not address the Claimants' appeals but focused solely on potential settlement.

700. The Tribunal concluded that the appeal meetings involved no conscientious consideration of the appeals. The outcome letters did not arise from the discussions in the appeal meetings.

701. It was outside the band of reasonable responses and unfair for the appeal meetings themselves not to be substantive hearings. The ACAS Code of Practice envisages that an appeal will involve a hearing – paragraphs [26], [28] and [29]. The Claimants' appeals might as well have been conducted on paper.

702. The failure to offer a fair appeal made the dismissal process itself unfair.

Unlawful Acts

703. In conclusion, the Tribunal found that the Respondents had subjected the Claimants to the following unlawful acts.

704. Ms Agarwal:

705. **Sex harassment or sex discrimination** Ms Bhogal and Mr Buckley: Ms Agarwal's allegations 6.20.1.1 – 6.20.1.6 and 8.12A(i) – 8.12A (i) – 8.12A (vi) against the First Respondent of sex harassment, alternatively sex discrimination, all succeeded insofar as they related to Ms Bhogal and Mr Buckley.

706. **Sex discrimination:** Ms Hide subjected Ms Agarwal to sex discrimination. Ms Agarwal's allegation 6.20.1.1 against the First Respondent succeeded in relation to Ms Hide.

707. **Victimisation:** The First Respondents victimised Ms Agarwal by putting her at risk of redundancy. Issue 19.14.

708. **Unfair Dismissal.** The First Respondent unfairly dismissed Ms Agarwal.

709. **Mr Meshram:**

710. **Victimisation.** The First and Second Respondent victimised Mr Meshram by Mr Krishnaswami presenting unauthentic communications from team members December 2017 – February 2018. Issue 19.56.

711. **Victimisation.** The First and Third Respondents victimised Mr Meshram by Mr Venkatraman's hostile email threatening disciplinary action against the Claimant, which HR then considered. Issue 19.49

712. **Victimisation.** The First and Second Respondents victimised the Claimant by awarding Mr Meshram a D Performance Rating. Issue 19.59A.

713. **Victimisation.** The First Respondent victimised Mr Meshram when it commenced the change management process and put him at risk of redundancy. Issue 19.59.

714. **Victimisation.** The First Respondent victimised Mr Meshram by not offering Mr Meshram roles of Client Partner for an insurance partner, Country Head for Ireland; Issues 19.61.

715. **Victimisation.** The First Respondent victimised Mr Meshram by terminating his employment. Issue 19.62.

716. **Protected Disclosure Detriment.** The First Respondent subjected Mr Meshram to protected disclosure detriment when it queried, or failed to approve Mr Meshram's expenses in July 2018. Issue 23.1;

717. **Protected Disclosure Detriment.** The First Respondent subjected Mr Meshram to protected disclosure detriment when it put Mr Meshram at risk of redundancy. Issue 23.6.

718. **Ordinary Unfair Dismissal.**

Time Limits

719. On 26 March 2018 Ms Agarwal contacted ACAS in respect of her claims against Mr Krishnaswami and on 28 March she contacted ACAS in respect of her claims against the First Respondent. Ms Agarwal's ACAS Early Conciliation Certificates were issued in respect of both Respondents on 19

April 2018. Ms Agarwal presented her claims against the First and Second Respondents on 30 April 2018.

720. On 21 May 2018 Mr Meshram contacted ACAS in respect of his claim against Mr Krishnaswami. On 23 May 2018 Mr Meshram's Early Conciliation Certificate regarding Mr Krishnaswami was issued, Bundle 6, page 2454. On 18 June 2018 Mr Meshram presented his claim against the First and Second Respondents. His ACAS EC certificates in respect of the First and Third Respondents were issued on 19 October 2018, the same day he contacted ACAS in that regard.

721. By s123 *Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of

- a. the period of three months starting with the date of the act to which the complaint relates or
- b. such other period as the Employment Tribunal thinks just and equitable.

722. By s123(3) *EqA*, conduct extending over a period is treated to be done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided on it.

723. In *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'. Paragraph [52] of the judgment.

724. The Tribunal decided that there was a discriminatory state of affairs prevailing in respect of these Claimants from, at the latest, 21 December 2017, when Mr Krishnaswami told Mr Venkatraman that the Claimants should be disciplined / investigated. Thereafter, he sent inaccurate statements he had secured from Mr Meshram's former team members, to the investigators, to undermine Mr Meshram. Mr Venkatraman asked that Mr Meshram's travel be subject to a disciplinary investigation and Ms Perry and Mr Krishnaswami started to discuss a reorganisation which was intended to remove the Claimants from Mr Krishnaswami's team. The reorganisation eventually resulted in the Claimants being put at risk of redundancy. Mr Meshram was subjected to further victimisation by Ritu Anand and the First Respondent when he was not assisted in seeking alternative employment.

725. Mr Meshram was also subjected to detriments as a result of whistleblowing, when his expenses were investigated in July 2019 and when he was put at risk of redundancy.

726. The Tribunal decided that the protected disclosure detriments were also part of a linked series of detrimental acts arising out of protected acts and protected disclosures.

727. The discriminatory and detrimental state of affairs lasted until the Claimants' dismissal.

728. In respect of Ms Agarwal, the discriminatory state of affairs started earlier, when she was subjected to sex harassment and/or discrimination by Ms Bhogal, Mr Buckley and Ms Hide in response to her earlier grievances. Even though these did not allege discrimination, the Tribunal decided that the First Respondent retaliated against her grievances by its acts of sex harassment. The retaliatory sex harassment, sex discrimination and victimisation were part of an ongoing state of affairs whereby Ms Agarwal was subjected to detriments because she was a woman who had raised grievances.

729. All the Claimants' successful complaints of sex discrimination, protected disclosure detriment and victimisation are in time.

Employment Judge Brown

Dated: 25. 10. 2019

Judgment and Reasons sent to the parties on:

28/10/2019

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For the Tribunal Office