EMPLOYMENT TRIBUNALS

Claimants: **(1) Mr Neil Adams**
(2) Mr Dean Adams

Respondent: **De La Rue International Limited**

Heard at: **London East Hearing Centre**

On: **29, 30, & 31 October, 4 & 5 November and 17 & 18 December 2019**

Before: **Employment Judge John Crosfill**
Ms M Long
Mr M L Wood

Representation

Claimant: **Mr B Uduje of Counsel instructed by TMP Solicitors**

Respondent: **Mr J Mitchell of Counsel instructed by Doyle Clayton**

JUDGMENT

The judgment of the Employment Tribunal is that:-

1. **The First and Second Claimant's claims of unfair dismissal brought under Part X of the Employment Rights Act 1996 are not well founded.**

2. **The First and Second Claimant's claims that they suffered detriments on the grounds of having made protected disclosures pursuant to Sections 47B and 48 of the Employment Rights Act 1996 are dismissed**

REASONS

1. The Respondent is a company which specialises in printing high security material such as bank notes and passports. Amongst the work it undertakes is the production and destruction of bank notes for the Bank of England. As such it has taken on some of the functions formally undertaken by the Royal Mint.

2. The Claimants Dean and Neil Adams are brothers. They applied for work with the Respondent and were offered employment on 22 February 2017 (Dean) and 27 February 2017 (Neil). They were each employed on a fixed term contract (which were subsequently renewed). They were assigned to 'the vault project'. The Bank of England were moving from paper to polymer bank notes. A consequence of this was that the Respondent needed to destroy a large quantity of bank notes (including used notes and 'spoilt' new notes) together with some of the special printing materials used in their production.

3. We describe the process of destroying bank notes in more detail below but in summary the notes were carefully counted before being placed in the 'disintegrator' which is an industrial shredder. On 22 January 2018 Dean Adams and another employee were working in the Disintegrator area when a manager, Jake Bensalah entered the area and picked up and loaded some notes into the disintegrator whilst suggesting that Dean Adams and the other employee were taking unnecessary steps in the process by carrying out some further count of the banknotes.

4. Dean Adams and later Neil Adams told various managers about this incident. They claim that what Jake Bensalah did was improper (a neutral phrase). They say that in drawing attention to his conduct they made protected disclosures.

5. The Claimants say that because that had made protected disclosures they were subjected to reprisals. Principally, but not exclusively, they complain that when the vault project came to an end their contracts were terminated without being renewed and they were unsuccessful in securing any of a number of vacant positions. Neil Adams employment and Dean Adams employment ended on 31 May 2018.

6. The Claimants have brought claims that they have suffered detriments on the ground that they made protected disclosures. Those claims are brought under Section 47B and 48 of the Employment Rights Act 1996. They also say that the reason that they were dismissed was that they had made protected disclosures and bring a claim of unfair dismissal relying on Section 103A of the Employment Rights Act 1996.

Procedural history and the issues for the Tribunal

7. The Claimants drafted their ET1 forms without any legal assistance. They referred to 'whistleblowing' but gave very little indication of the substance of any protected disclosure or the detriments alleged to have been inflicted as a consequence. EJ Gilbert reviewed the claim forms and ordered the Claimant's to set out the substance of any alleged protected disclosure and details of each detriment. The Claimants clearly did not understand what they had been ordered to do but attempted to comply. They did set out details of the occasions where they said they made protected disclosures. They plainly did not understand what was meant by a 'detriment'.

8. A preliminary hearing took place on 10 January 2019 before Regional Judge Taylor. She identified the issues to be determined. The list is set out in full in the Case Management Summary dated 10 January 2019. She ascertained that it was the Claimant's case that their disclosure was said to be of information that tended to show a breach of a legal obligation and that therefore the Claimants were saying that their disclosure fell within Sub-section 43B(1)(b) of the Employment Rights Act 1996. The legal obligation was said at that stage to be a breach of procedure. The Respondent is recorded as taking issue with whether that following that procedure was a legal obligation.

9. The Claimants clarified that the detriments they were complaining about were as follows:

    9.1. Not being selected for interview for the position of a Material Management Operative ('the MMO role') in March 2018 (both Claimants); and

    9.2. Not being selected for interview for the position of a Machine Operators in March 2018 (both Claimants); and

    9.3. Being offered interviews for the post of Security Operative in March 2018 but subject to a requirement that they were interviewed by Jake Bensalah (both Claimants); and

    9.4. Not being selected for the post of a Guillotine Assistant (Neil Adams)

    9.5. Not being selected for the position of a Print Assistant in April 2018 (Dean Adams only)

    9.6. Not being appointed to the position of Print Unblocker following interviews on 18 May 2018.

10. REJ Taylor ordered that the issue of whether the Claimants had made protected disclosures was to be determined as a preliminary issue. She directed that that matter be determined at a hearing on 26 April 2018 and made case management orders in preparation for that hearing. The Claimants were ordered to provide a full response to the Order of EJ Gilbert and were given an extension of time for doing so.

11. After the preliminary hearing the Claimants raised an issue about the accuracy of the case management summary and suggested that the list of detriments was inaccurate. It was suggested that the list of detriments should include a reference to Neil Adams not being offered a role as a Printer in February 2018 and accepting that he did not apply for a role as an Unblocker. REJ Taylor declined to amend her Case Management Summary. In his final submissions Mr Uduje complains about that but, other than what we record here, made no other applications to amend the Claimants ET1. The case that the tribunal has to decide is that set out in the pleadings. In ***Chandhok & Anor v Tirkey*** **UKEAT/0190/14/KN** Langstaff P (as he was) reminded parties of the importance of the pleadings. He said:

    'such an approach too easily forgets why there is a formal claim, which must be set out in an ET1. The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.'

12. The Claimant's ET1 scarcely mentions the detriments recorded by REJ Taylor other than by implication (extrapolating from the non-renewal of the contracts).

13. On 26 April 2019 the matter was listed before EJ Jones and members. By this stage the Claimants had instructed TMP Solicitors and were represented by Mr Uduje at the hearing. The parties both made submissions that the matter was not suitable for resolution at a preliminary hearing. Employment Judge Jones accepted that joint

position. She then did further work identifying the protected disclosures relied upon by the Claimants.

14. She identified that he Claimants were saying that they had made the following protected disclosures (we have paraphrased them slightly but they are set out in full in the Case Management Summary dated 26 April 2019):

    14.1. On 23 January 2018 Dean Adams said to Stella Hughes and Sharon Hipsgrave that Jake Bensalah and Hema Ravel threw money on to the disintegrator before they had completed the requisite checks.

    14.2. On 24 January 2018 Dean Adams told his line Manager Ciara Pritchett that Jake Bensalah and Hema Ravel had broken the rules on the destruction of notes; and

    14.3. On 24 January 2018 Neil Adams said to Jake Bensalah and Hema Ravel that they had broken the rules on destruction and interfered with the process by throwing money into the disintegrator; and

    14.4. On 7 February 2018 both Claimants explained to Ciara Smith during a meeting with the Vault Team that Jake Bensalah and Hema Ravel had broken the rules on the destruction of notes; and

    14.5. An account of the events of 22 January was included in an e-mail sent on 12 January 2018 (it is not said in the list who sent that e-mail); and

    14.6. On dates between 24 January and 31 March 2018 Dean Adams spoke to Sean Mavis and said that Jake Bensalah had thrown money on to the disintegrator before the checks had finished; and

    14.7. On 27 April 2018 Dean Adams reported the concerns (not identified in the list of issues) to Codelink (an internal service that investigates allegations of wrongdoing)

    14.8. On 15 May 2018 the Claimants reported the concerns during a meeting with Mr Sutton (the Codelink interview).

15. It is clear that EJ Jones is simply trying to identify the occasions where it is said that information was disclosed and the gist of what was said. When she compiled that list, she had the benefit of having seen witness statements prepared by both Claimants in anticipation that the hearing would deal with the question of whether there had been protected disclosures.

16. There is no record of the Claimants seeking to clarify or amend their claim during this hearing where all parties were represented by experienced Counsel.

17. At the outset of the hearing we discussed the issues with the parties and we agreed that the detriments were identified in the Case Management Summary of REJ Taylor and the alleged protected disclosures identified in the Case Management Summary of EJ Jones.

18. There was no disagreement that we would have to ask in respect of each alleged protected disclosure:

18.1. Whether the Claimant(s) had conveyed information; and

18.2. Whether they believed that information tended to show a breach of a legal obligation; and

18.3. Whether they believed that any disclosure was in the public interest; and

18.4. Whether the two beliefs identified above were reasonable.

19. If we found there were protected disclosures that would lead to a further enquiry and we would need to ask:

19.1. Whether the reason, or if more than one the principle reason for the Claimant's dismissal was on the grounds that he/they had made a protected disclosure; and/or

19.2. Whether the Claimants were subjected to each of the detriments they claim and. If we concluded they were;

19.3. Whether any detriment was on the ground that they had made a protected disclosure; and

19.4. For the unfair dismissal claim, whether the reason for the dismissal was that the Claimants had made protected disclosures.

20. An issue that had not been recorded, but was raised by the Respondent, is the question of whether the claims were presented within the time limit imposed by Section 48 of the Employment Rights Act 1996.

21. As may be seen below we have dealt with the case on the basis that the Claimants were entitled to rely upon the detriments they had discussed before REJ Taylor. It was not fair on the Respondent to allow the Claimants a free rein to amend their claim as the hearing progressed. We have regard to the fact that the Claimants were initially representing themselves. However, from before April 2019 they were represented by specialist solicitors who would have recognised that if further allegations of detriments were to be relied upon it would be necessary to amend the pleadings. We could and did have regard to the other matters relied upon by the Claimants as evidence supporting any other claim.

22. In advance of the final hearing there was a dispute about the extent to which the Respondent had complied with its obligations to give disclosure of all relevant documents. The Claimants wished to see the contract between the Respondent and the Bank of England governing the production and destruction of bank notes. The Respondents had disclosed only a schedule of that contract which they say contained the full extent of the relevant obligations relating to the secure destruction of bank notes. By a Judgment and Reasons sent to the parties on 2 October 2019 EJ Jones refused the Claimant's application for specific disclosure of the remaining parts of the contract. We do not understand that there has been any appeal against that decision.

The hearing

23. The non-legal members allocated to hear the case included Mr T Burrows. Mr Burrows had arrived early for the hearing and had read some of the papers. He had worked at the same site as the Claimants from 1981 to 2002 as a Personnel manager for the Bank

of England. Mr Burrows read the cast list prepared by the Respondent and identified 2 individuals that he had worked with. He had no social relationship with either of them. Prior to commencing the hearing, we informed the parties of these facts and asked the parties whether they had any concerns. The Claimants were concerned. As it transpired another non-legal member Ms M Long was available for all the hearing dates. Rather than consider whether there was any basis for Mr Burrows to recuse himself we took the pragmatic decision to swop non-legal members. The composition of the tribunal was shown above.

24. The hearing has been listed over 7 days. At the outset of the hearing we informed the parties that of those 7 days only 5 were then available. The parties believed that the number of witnesses required a 7-day listing. The situation was that if the entire case had been adjourned it was unlikely to be heard for 12 months. We therefore looked for additional days and could find 2 dates in December (17 and 18 December 2019) when the parties were all available.

25. The Respondents had prepared a cast list and a recommended reading list. We were told that reading these documents together with the witness statements would allow us to understand the issues in the case. We indicated that we would take the rest of the first day reading those documents. We asked the advocates to co-operate in agreeing a timetable for the remaining days of the hearing.

26. At the outset of the second day of the hearing the parties put forward an agreed position of which witnesses would give evidence on each day. As that timetable permitted the case to be concluded in the allotted time we did not at that stage micromanage the timetable but made it clear that the overall time estimate should be respected. The Respondent had provided some additional documents which were admitted without objection but we gave the Claimants time to give instructions on those documents before the evidence started.

27. We then heard from Neil Adams who gave evidence for the remaining part of 30 October 2019.

28. At the outset of the third day (31 October 2019) the parties asked for 30 minutes to discuss matters between themselves. We did not enquire what those discussions included but agreed provided that the representatives recognised that any time spent in those discussions would not be added to the length of the hearing. Both said that that the matter could be completed in time.

29. Mr Uduje sought to amend the description given to one of the detriments as identified by REJ Taylor in her case management order. This concerned applications by Neil Adams for the position of 'Security Operative'. He had been offered an interview for this position but had declined to attend when he learned that the interviews would be conducted by Jake Bensalah. The proposed amendment was to make it clear that the detriment complained of was the appointment of Jake Bensalah to conduct the interview rather than not being offered the position per-se. Mr Uduje argued that it was necessary to align the issues with the way Neil Adams actually put his case.

30. That application was opposed by the Respondent. Mr Mitchell. He argued that the starting point was to look at the pleadings. He said that the claim as presently formulated was nowhere to be found in the ET1. He says that the identification of the issues (as far as this detriment was concerned) was agreed by the time of the hearing before EJ Jones. He said that it would be unfair to allow Neil Adams to alter his case at this stage.

31. We decided to allow Neil Adams to advance his case in the way proposed by Mr Uduje. We accepted that the jurisdiction of the Tribunal is founded on the parties pleaded case. The ET1 was very general in its terms. That said there is a broad allegation that the Claimants' contracts were not renewed. The Claimants had been asked for further information about the detriments alleged. Having failed to do so in writing REJ Taylor extracted these orally from the Claimants in the hearing of 10 January 2019. The Claimants had simply been asked to confirm that that the Case Management Summary was accurate. This was perhaps an unhappy way to supplement pleadings but it would be unjust to treat the ET1s as not being supplemented by the further information given orally.

32. The formulation of the issues by REJ Taylor did refer to the appointment of Jake Bensalah to conduct the interviews. It did not make it entirely clear that that was the detriment complained of. We concluded that given a broad reading paragraph 7.2.3 of the Case Management Order of EJ Taylor was sufficiently wide to include the case as it was now being put. If permission to amend was required then we should apply the guidance given in ***Selkent Bus Co v Moore*** **[1996] ICR 836**. We accepted that the manner in which the case was now put arose out of the same facts as had already been in issue. We considered that there would be no need for any additional evidence to deal with the case as now understood. As such we concluded that the balance of prejudice favoured the Claimants in this case. Whether as a revision of the issues or whether as an amendment we permitted Neil Adams to advance this aspect of his case.

33. Dean Adams then gave evidence which concluded at the end of the day (31 October 2019). Whilst 1 November 2019 had originally been included as a siting day that was one of the two days that had been lost. We therefore adjourned in order to hear from the first of the Respondent's witnesses on 4 November 2019.

34. On 4 November 2019 we heard from the following witnesses:

    34.1. Karen Gay, a Production Controller, to whom the Claimants reported in their last 6 weeks of their employment and the person responsible for deciding who would be appointed to the MMO roles.

    34.2. Sean Mavis who was the 'Risk and Compliance Officer' who had a conversation with Neil Adams about the events of 22 January 2018.

    34.3. Sean Vaux a Finishing Team Leaded and the person responsible for recruiting into the roles of Guilotine Operator, Banknote Processing Systems No: 2 and Banknote Processing Systems Senior Operator.

    34.4. John Robertson a Print Team Leader and the person responsible for recruiting into the positions of 'Print Assistant' and 'Unblocker'.

35. On 5 November 2019 we heard from the following witnesses:

    35.1. Stacy Hughes who at the time had been a Payroll and HR Administrator. She prepared letters informing the Claimant's that their contracts would terminate and carried out exit interviews.

    35.2. Jake Bensalah who was the Health, Safety, Security, Environment and Resilience Manager. He was the Claimants' line manager's manager and he was the person who the Claimants say by his actions breached a legal obligation by

'throwing' banknotes on to the disintegrator. He concluded his evidence at the end of the day.

36. The hearing resumed on 17 December 2019. We had 3 witnesses left to hear including Ms Barr who had been an HR Manager. In advance of the hearing the Respondent had applied for Ms Barr to give evidence via video link. She was no longer in the Respondent's employment and lived in Wales. She had a bad back and was reluctant to travel to London. The Respondent had made an application by a letter e-mailed to the Tribunal on 13 December 2019. The Claimants solicitor's set out their objections by an e-mail sent later that day. Those e-mails were placed before the Employment Judge who granted the application.

37. At the outset of the Hearing Mr Uduje renewed the Claimant's objection to the Ms Barr's evidence being given by video link. As the original decision had been dealt with by the Employment Judge alone we considered that it was appropriate to re-visit the matter. Mr Uduje said he could add little to the grounds of objection contained in his instructing Solicitor's e-mail of 13 December 2019. He said that there was insufficient medical evidence to say that Ms Barr was unable to attend the Tribunal in person. He said that she was an important witness and that she would ordinarily have been expected to attend. He said that the quality of any evidence given via video link was inherently worse than evidence given in person.

38. Having considered Mr Uduje's submissions we decided that we would permit Ms Barr to give evidence via video link. She was a relevant witness. Her evidence was that she had managerial oversight of the HR issues relating to the termination of the vault project and the attempts of the Claimants to find alternative roles. We did not accept that there was any inherent difficulty in giving evidence via video link. We considered that the combination of a bad back and a long journey provided a good reason for requesting a video link. We saw little prejudice to the Claimants if we permitted evidence via video link. On balance these factors persuaded us that it would be right to permit evidence via video save that the matter could be revisited if any technological difficulties threatened the fairness of the proceedings. In fact, the video link worked perfectly well.

39. On 2 December 2019 the Claimants' Solicitor had made a written application (1) to amend the claims to add 2 further detriments and (2) to add Jake Bensalah as a Respondent to the claim. That application had been placed before the Employment Judge who had directed that the application be dealt with at the outset of the hearing.

40. We refused both applications. Our reasons were given orally at the hearing. The proposed amendments were to add 2 additional detriments. These were as follows:

    40.1. 'the decision of the Respondent not to appoint Dean Adams to the role of Security Operative following an interview on 4 May 2018'; and

    40.2. 'the decision of the Respondent not to offer both Claimants a permanent contract as a Security Operative in or around February 2018'

41. The Claimants' solicitor's letter set out the Claimant's arguments as to why permission to amend ought to be given to rely upon these detriments. Mr Uduje supplemented those arguments with oral submissions.

42. In respect of the addition of the first detriment it was said that this was somehow implicit in the way EJ Taylor had recorded the issues in her CMO of 10 January 2019. What is recorded there is that both Claimants had decided not to attend an interview for the

position of Security Operative because Jake Bensalah was on the interview panel. In Dean Adams witness statement, he referred to the fact that he had attended an interview for this position on 4 May 2018. He was interviewed by Jonathan Payne and Ciara Prichard. He was not appointed.

43. It was argued that as Ciara Prichard was yet to give evidence there would be no prejudice to the Respondent to permit the amendment.

44. Mr Mitchell opposed the amendment. We shall not set out the entirety of his objections but he pointed out that Dean Adams had given his evidence and had been cross examined on each of the issues identified. If the amendment was permitted then unless his evidence was re-opened there would be unfairness to the Respondent.

45. We reminded ourselves of the following principles:

45.1. The leading case giving guidance upon whether or not to permit an amendment is ***Selkent Bus Co v Moore*** **[1996] ICR 836** in which the EAT said at 843F-844C:

"(4). Whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

(5). What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant.

(a). The nature of the amendment. Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

(b). The applicability of time limits. If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978.

(c). The timing and manner of the application. An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time — before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of

delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision."

45.2. The reference in ***Selkent*** to the importance of time limits as a factor in the exercise of the discretionary exercise must not be elevated to a suggestion that an amendment will not be permitted simply because it is (apparently) presented outside any statutory time limit. An Employment Tribunal has a discretion to allow an amendment which introduces a new claim out of time: see ***Transport and General Workers Union v. Safeway Stores Limited*** **(2007) 6 June, UKEAT/0092/07/LA**

45.3. In assessing whether a claim is in time the date for presentation is to be taken as the date of the application to amend and not the date the ET1 was first presented. ***Galilee v Commissioner of Police for the Metropolis*** **UKEAT/0207/16/RN**.

45.4. In respect of amendments which seek to do more than make corrections or add to existing allegations in ***Abercrombie & Others v Age Rangemasters Limited*** **[2014] ICR 209** Underhill LJ said:

'48. Consistently with that way of putting it, the approach of both the EAT and this Court in considering applications to amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted. It is thus well recognised that in cases where the effect of a proposed amendment is simply to put a different legal label on facts which are already pleaded permission will normally be granted…..

……50. ….. Mummery J says in his guidance in Selkent that the fact that a fresh claim would have been out of time (as will generally be the case, given the short time limits applicable in employment tribunal proceedings) is a relevant factor in considering the exercise of the discretion whether to amend. That is no doubt right in principle. But its relevance depends on the circumstances. Where the new claim is wholly different from the claim originally pleaded the claimant should not, absent perhaps some very special circumstances, be permitted to circumvent the statutory time-limits by introducing it by way of amendment. But where it is closely connected with the claim originally pleaded – and a fortiori in a re-labelling case – justice does not require the same approach….'

45.5. When considering any application to amend an employment tribunal will fall into error if it fails to have regard to the overriding objective set out at rule 2 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 – see ***Remploy Ltd v Abbott and ors*** **EAT 0405/14**.Equality Act 2010. The paragraph 5(c) quoted from ***Selkent*** draws heavily on the earlier decision of ***Cocking v Sandhurst Stationers Limited*** **[1974] ICR 650** and is a reminder that it is essential to have regard to all of the material circumstances and in particular the relative prejudice to each party.

46. We considered that the amendment sought to impugn an entirely different decision to that identified in the list of issues. The ET1 was silent about Dean Adams applying for

this role. Nevertheless, he would have known that he had applied and had not been appointed. There was no reason why, had he taken care with his ET1 or at the PH on 10 January 2019, he could not have put this case forward. After the hearing the Claimants did criticise the order produced by EJ Taylor but did not raise this as an issue. There was no application made to amend at the subsequent hearing when the Claimants were represented by experienced lawyers. Whilst Ciara Prichard had mentioned the interview in her witness statement she had not dealt with the reasons why Dean Adams had not been appointed. On the case presented she had no need to do so. The Respondent had not called Jon Payne who was the other person who conducted the interviews.

47. We had regard to the fact that had the amendment been presented as a fresh claim the Tribunal would not have had jurisdiction to entertain it. This was not in any sense determinative as the Dean Adams had complained about not obtaining this role he had not provided the proper factual account of how that came about.

48. Had we permitted the amendment we would have had to permit the Respondent to further cross examine Dean Adams, to have permission to add to Ciara Prichard's witness statement and to consider whether it needed to take a statement from Jonathan Payne the other person involved in the interview. To have any realistic prospect of completing the case within the allocated time we needed to complete the evidence on 17 December 2019. Allowing the application would inevitably have led to further tribunal time being needed. We recognised that not allowing Dean Adams to advance his case in this new way might cause him prejudice if the claim had any merits (which at that stage was unclear). However, balancing these matters together we considered that the balance of prejudice lay in favour of refusing this amendment. Had the application been made at the outset of the hearing, as it could have been, the outcome may have been different.

49. The second proposed amendment sought to deal with the fact that in February 2018 there were two teams of employees working side by side in the vault. One team were made up of 'Security Operatives' whereas the Claimants were allocated to the Vault Project. A decision was taken to make the Security Operatives permanent (without interview) whereas the employees on the Vault Project were told that their (extended) fixed term contracts would end. The proposed amendment deals with the decision to differentiate between the two teams and it is alleged that the fact that the Claimants made protected disclosures played a part in that decision. This was not a case foreshadowed in any way by the ET1 or the subsequent discussions of the issues. It was a new claim.

50. It was argued by the Claimants that they only became aware of the potential for bringing this claim when the Respondent disclosed a letter showing that one of the existing Security Operatives had been given a permanent contract during the earlier part of the hearing. It was said that Jake Bensalah had been asked about that decision and had no recollection of the reasons for it. They argued that Ciara Smith was involved in the decision and was yet to give evidence. Mr Mitchell on behalf of the Respondent opposed the application.

51. The bundle of documents included a document entitled Debden Looking Forward. There is no suggestion that that document was disclosed late in the day. That document made it clear that the Security Operatives were being offered permanent employment whereas the Vault team were not. The subsequent disclosure was simply an example of that. Assuming in their favor that they did not know that some Security Operatives were

offered permanent contracts, the Claimant could with reasonable diligence have discovered that at the stage disclosure took place.

52. Whilst it was suggested to Jake Bensalah that the reason for the disparity was that the Claimants were trouble makers he had no notice that this would be an issue until he gave evidence. He did not have the opportunity to discuss this with others involved in the decision or to look for any documents that might remind him of the reasons for the decision. It would be wrong to suggest that he had a fair opportunity to deal with this allegation. Again, fairness would demand that he have an opportunity to look for other contemporaneous documents that might illuminate the reasons for the decision and to be recalled to deal with the matter on a proper footing. He was not present as his evidence had been completed.

53. We accepted that the prejudice to the Claimants was that they would not be able to advance a claim that this particular decision was on the grounds they had made protected disclosures They had other claims which could proceed and would lead to the same losses if they succeeded. We had regard to the fact that had the amendment been presented as a fresh claim the Tribunal would not have had jurisdiction to entertain it.

54. We concluded that the likely consequence of allowing the amendment was that there would need to be additional evidence and the case would not be completed within the time allocated. In those circumstances we concluded that the balance of prejudice fell in favour of disallowing the Claimants' application in this respect.

55. Finally, the Claimants sought to join Jake Bensalah as an individual respondent. Two arguments were advanced. Firstly, it was suggested that the Supreme Court decision in ***Royal Mail Group v Jhuti*** **[2019] UKSC 55** had established that a 'manipulator' could be liable for his own acts. The liability of an individual for their own acts is perfectly clear from the amendments to Section 47B of the Employment Rights Act 1996 which introduced personal liability for co-workers in 2013. ***Timis & Anor v Osipov & Anor*** **[2018] EWCA Civ 2321** which was decided one year before the present application made it clear what the scope of those provisions are. ***Jhuti*** was not concerned with the liability of the manipulator but of the employer for the manipulator's acts. We do not accept that there was any change in the law that would justify the decision to join an individual respondent at this late stage.

56. The second argument put forward relied on a news story that suggested the Respondent's trading position was insecure. Mr Mitchell suggested that it was farfetched to suggest that the news item supported a submission that the Respondent, a substantial plc, would not be able to meet an award of the magnitude we might make. We did not need to rely on that argument.

57. Has Jake Bensalah been joined as an individual respondent he might have chosen to be represented by the Respondent's Solicitors or he might not. Assuming he had he would have had the right to give instructions and dictate how the case was run. If he had decided to instruct his own solicitors or any other representative he would have had the right to cross examine the Claimants and the Respondents witnesses. No application had been made until he had completed his evidence.

58. Rule 34 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may add a party where there are issues between that party and another party to the proceedings over which the Tribunal has jurisdiction but only where it is in the interests of justice to do so.

59. There was no dispute by the Respondent that they would be liable for any unlawful act of Mr Bensalah (they did not rely on the defence provided by Section 47B(1D)).

60. We concluded that joining Mr Bensalah at this late stage was not in the interests of justice. Unless we allowed an adjournment Mr Bensalah would be deprived of his right to file an ET3, appoint a representative and cross examine the witnesses. If we allowed an adjournment there would inevitably be a delay in the proceedings. The prejudice to the Claimants was, what seemed to us the rather remote possibility, that the Respondent would not meet any award. The prejudice to the Respondent and Mr Bensalah of joining him as a party far outweighed that.

61. Having dealt with those applications we proceeded to hear from:

    61.1. Aislinn Barr an HR Manager; and

    61.2. Ciara Smith, an HR Advisor; and

    61.3. Ciara Prichard who from September 2017 was the Material Teams Leader and the Claimant's direct line manager from that point.

62. Aislinn Barr commenced her evidence at 11:37. We had indicated at an early stage that if there was any prospect of getting through the witnesses that day she would need to complete her evidence before lunch. Mr Uduje many long questions which slowed the cross examination. Whilst making no criticism of Mr Uduje the Employment Judge pointed out that we did not have the luxury of being able to indulge that approach. Ultimately the Employment Judge indicated that the cross examination had to end and guillotined questions at 13:20. We had a very short lunch break to make up the time. In the event we completed the evidence shortly after 16:00.

63. Both Counsel had prepared comprehensive written submissions dealing with the issues of liability. We were presented with a bundle of 13 authorities. The written submissions run to just shy of 100 pages and we shall not set them out or attempt to summarise them here but deal with the arguments that we considered important in our discussions and conclusions below. We would like to thank both advocates for the time and effort they put into assisting the Tribunal with the law and their well-structured and useful submissions.

General Findings of Fact

64. Within this section we make the general findings of fact that have enabled us to reach our conclusions in this case. In the interests of brevity, we have made findings about the matters of greatest importance. When reaching our final conclusions, we had regard to everything that the parties placed before us. We make further secondary findings of fact about matters such as the beliefs of the Claimants and the reasons for the treatment they complain of below in the section headed discussions and conclusions.

The Respondent's Operation at Debden

65. The Respondent's Debden site was formally referred to as 'the Royal Mint' and was operated by the Bank of England. It was and remains principally a print works producing banknotes for the UK and for other countries. The Respondent now undertakes the work formerly done by the Bank of England.

66. The production of new banknotes requires the use of specialist materials in order to include security features found within bank notes. To prevent forgeries being produced these 'substrates' are kept and disposed of in a secure manner.

67. As in any printing process some of the notes that are printed were not of sufficiently good quality to be issued. Such printing waste is referred to as 'spoils'. We were told, and accept that spoilt bank notes can have considerable value as collectors' items.

68. Within the bundle of documents was a document entitled 'the Lifecycle of a Banknote'. That explained that the banknotes printed for the Bank of England were put into circulation by distributing them to wholesalers under a 'Note Circulation Scheme'. Members of the public would obtain banknotes mainly from ATM Machines. Once a bank not became damaged or dirty the wholesalers were required to return the notes to the Bank of England where they would be recycled. The destruction and recycling of damaged or dirty bank notes was carried out at Debden by the Respondent.

69. In 2017 the Bank of England were preparing to introduce a polymer twenty-pound note. A decision was taken that the amount of waste products then stored in the vault at Debden would need to be reduced. The waste product included below specification, spoilt or trial versions of bank notes. The task of securely disposing of this material was referred to as 'the Vault Project'.

70. The work that the Respondent does for the Bank of England is governed by a written contract. As we have set out above the Respondent had been reluctant to disclose the entirety of the contract but had disclosed what it said were the material parts of a schedule which it said set out the obligations relating to how banknotes and spoils were to be disposed of. As we have set out above, the Claimants had sought disclosure of the entirety of the contract but that had ultimately been refused by Employment Judge Jones. The schedule was referred to as 'Schedule 9'. The material parts read as follows:

> *'15.2 Destruction of Waste Secure Items*
>
> *(a) The supplier shall destroy waste Secure Items in a High Security Area and shall maintain Dual Control throughout the destruction process. The supplier shall ensure that the audit trail record for such items is completed accurately and that it confirms that the secure items have been destroyed.*
>
> *(b) The supplier shall ensure that, after the destruction process, the remains of the waste Secure Items are destroyed the on all further use.'*

71. The Respondent disclosed two further parts of the contract. Please read as follows:

> *'Security at all sites where Secure Items are produced or stored*
>
> *40.6 For the avoidance of doubt the Site Security Requirements shall apply to Secure Items which are no longer required (the Waste Secure Items) until they are destroyed in accordance with the provisions of the Site Security Requirements and where the Waste Secure Items contain different categories of Secure Items the most stringent Site Security Requirement shall apply to the entire quantity of Waste Secure Items.*
>
> *Stock Control Security*

40.15 The Contractor shall (and shall procure that Key Component Sub-Contractors shall) maintain a record showing the total quantities of Secure Items purchased, produced, processed, destroyed and included in Banknotes and any stocks held in storage in such detail as to enable confirmation that Secure Items processed have been recorded and that no loss of Secure Items has occurred.'

The Claimants and their recruitment by the Respondent

72. Neil Adams had undertaken a 3-year City and Guilds course at the London College of Printing. According to his CV which we accept is accurate he worked in a variety of roles associated with printing between 1989 and 2009 when he had decided to change track. Between 2009 and 2017 he had worked as a Trader of Gas and Oil. Dean Adams had followed a similar career path. He had done a printing course at Barking and Dagenham College (partially on a YTS Scheme). He had then held roles in the print industry between 1988 and 2015. For a short time, he worked as a Trader of Gas and Oil.

73. Dean Adams applied for a job with the Respondent and was appointed on 13 February 2017 as a 'Finishing Assistant' on a fixed term contract which was due to expire on 24 March 2017. On 22 February 2017 he was told that he would be joining the 'Vault Team'. Neil Adams applied for and was given a fixed term contract as a 'General Operative' his first contract was to expire on 14 June 2017.

74. Aislinn Barr and Jake Bensalah both said in their witness statements, and we accept, that it had been thought that the entire Vault Project could be completed in 50 days. That was the expectation of the Bank of England. An internal document entitled 'Get the Project Completed by May 2017' is consistent with the suggestion that there was pressure to complete the project. The proposed solution included increasing the number of people doing the work. In fact, the project took considerably longer than the Respondent expected and wanted.

75. When the Claimants first started work they reported to Stella Hughes who was at the time the Security Audit Team Leader. On 26 June 2017 Jake Bensalah was appointed as a 'Health, Safety, Environment and Resilience Manager. Upon his appointment Stella Hughes reported in to him.

The Claimants initial training

76. Stella Hughes had been responsible for training the vault team. As a part of that process she drew up a document comprising of two pages. The first page had a heading 'Check sheet for packed Spoils prior destruction (please staple to Destruction Certificate) [sic]. It then contained the following instructions:

'1. All usual Destruction procedures must be adhered to for Secure Waste

2. a Note counting machine should be placed in the Disintegrator prior destruction [sic]

3. All parcels per cage should be decanted onto disintegrator table and shrink wrap checked for any possible tampering prior to placing in the Disintegrator. Any parcel showing possible signs of tampering must be Dual counted, and discrepancies reported to T/L. In this instance no disintegration should commence.

4. Count all parcels from cage to ensure that correct quantity of parcels is present.

5. 3 x 3000 note parcels should be picked at random and dual counted as per usual Note destruction the Usual Destruction certificate, with SAGE, Nightly Agreement Sheet and Input Sheet updated as usual.'

77. The first page included a table where the vault team could enter two signatures in respect of each cage destroyed. We were told by the Claimants and accept that initially they did complete that table but that after a period they were no longer required to do so.

78. The second page was entitled 'Destruction Rules for each Flat cage of Security Material. 13 steps were set out. The material parts were:

'1. Sign in to the Disintegrator room. Dual check the Disintegrator is on the correct substrate e.g Polymer or Paper, change as required under Dual Control (For Polymer, strictly Polymer notes only no paper note bands, shrink wrap or plastic bags)

2. Ensure all cages, material and equipment are present before opening cage – possible items required: Stanley Knife/Scissors, Dual padlock keys, Destruction paperwork, Pen, Metal Detector, Lifting Truck, Guillotine Trimmings.

3. Dual presence at all times – Eyes on each other at all times.

4. Both Staff will check the cage number against the authorised list they have been provided with, check the physical seal No is the same as written on cage, verify the contents is the correct denomination and quantity, then write the details from the cage onto the Destruction Certificate ensuring that all other entries on the certificate are also completed.

5. Both staff will confirm the staggered 100 sheets and the reams inside the cage (if in doubt call T/L). If there is a discrepancy re-lock the cage and seal, and do not destroy until an investigation has been completed. In this instance another cage will be destroyed.

6. If correct the reams will be placed on the table at the bottom of the Disintegrator. One person on each side of the table will then load the work on to the machine.

7-8…

9. When all work has been loaded, signatures from both parties should be added to the certificate.

10-13'

79. The status of this document was a matter of dispute before us. The second page has at its foot the words 'Training conducted by S Hughes'. We set out below that, at times, the Claimants had referred to these two pages as being a 'Standard Operating Procedure' or SOP. The Respondents denied that this document had any such status.

80. The Respondent had produced a number of SOPs that governed aspects of the counting and destruction process. Those SOPs have a common format. They bear the Respondent's logo, they are all marked GES\SOP. They bear a revision number. We were told by Jake Bensalah that the SOPs are managed by 'Q Pulse' a document

management system and that they are available by accessing the Respondent's Intranet. When produced SOPs were subject to an approval process.

81. Putting to one side the question of whether there was or was not an SOP governing the Destruction process at the time of the incident on 22 January 2018 we are satisfied that the document produced by Stella Hughes was not and was not intended to be a formal SOP. The context in which it was produced was when the Claimants were being trained. The second page of the document suggests that it is a record of the training that was given.

The process of destroying banknotes and spoils - counting and preparing the cages

82. Neil Adams gave a description of the scope of the work he did in his witness statement that we accept is broadly accurate. The materials to be destroyed were stored in metal cages which could be sealed. There were some 400 cages in total. There were records of what each cage was thought to contain kept on a 'Sage' accounting system but these were not reliable. A second excel spreadsheet was created. The first task was to sort out the cages depending on their contents in order that they could be stored in one of 3 available vaults. What was required was to ascertain and record exactly what the contents of each cage were before they were destroyed.

83. A number of witnesses described the counting process to us. We did not detect any significant differences between their accounts of how that was undertaken. Jake Bensalah describes the counting process in his witness statement at paragraph 10 and we accept that his account is accurate. There were two methods of counting that were used. The first was machine counting using a machine called a 'BPS'. That machine is fast and accurate but can only be used when the printed material is in good condition. When the BPS machine was used it would also bundle the material into rolls and wrap them in an outer plastic covering. The term used by the Respondent for such bundles was a 'sausage'.

84. Where the printed materials were not in good condition they had to be hand counted. The Respondent had produced a standard procedure for hand counting which gave detailed instructions of how to count without error. When a hand count was done it was completed by two employees. The first person would count the material and make a record of the quantity of material. Then the same material would be counted for a second time by another employee and a record made. Once the second count was completed the two employees would compare their figures. If the figures matched then the materials would be placed in a storage cage together with the record of both counts each signed by the employee. If the counts did not match then a third count would take place by a third employee. Provided that count matched one of the earlier counts the materials would be placed in a storage cage.

85. In his second witness statement Neil Adams suggests that the Respondent has oversimplified the description of the counting process. The draws attention to documents which show that on some occasions a cage was sealed after a first count and then resealed after a second count took place. We accept his evidence which is supported by the documentation to which he refers. That said, this is not a matter of any particular significance. Both the Claimants and Respondent's witnesses agree that cages were sealed after counts had taken place. A record having been made as to whether the counts were a first or second count.

86. Once the materials were counted the cages would be locked using 2 padlocks. The keys would be kept by two different employees. The cage would also be sealed. The cage would be labelled to show that its contents had been counted. The bundle had examples of the paperwork that was completed at the point that the count was completed. They were not always of the same format but did contain a description of the type and quantity of the material and each was countersigned by at least 2 employees. The seal number was also recorded.

87. From documents we were provided with it seems that on some occasions material was added to a cage. Neil Adams suggests that on occasions cages were 'amalgamated'. That would provide one explanation why expressions such as 'notes added' are found on some of the documents. If notes were added after a cage was sealed then the seal would clearly need to be broken and the cage unlocked. That could only take place under 'dual control'. The cage would then be resealed and locked again. The label showing the amended contents would be fixed to the cage. We accept evidence given by the Claimants that some amalgamated cages had to be recounted entirely. However, we do not accept that the process of recording the contents and affixing a seal was any different once a cage had been amalgamated. That process took place before the issue of a destruction certificate.

88. The counting process took place in the vault. At the conclusion of the process all the material would have been counted at least twice and the paperwork would bear at least two signatures to confirm that was the case. A copy of the paperwork was attached to the sealed cage which was double locked. The two keys would be stored separately.

Preparation for destruction

89. The next step in the process was to generate a 'Certificate of Destruction'. We had numerous examples of those certificates in our bundle. The Certificates of Destruction were initially drawn up by the Claimants' managers and not by them. A record was kept of what was to be destroyed. The certificates have spaces to record the description of the materials to be destroyed (in two sections 'sheets and reams' and 'notes'). In those sections the denomination and quantity of the materials are recorded. There is for cross referencing to the 'Sage System'. A number of the certificates that we were provided with had no reference numbers against the Sage system suggesting as we have accepted that the Sage records were not exhaustive. Nevertheless, the Certificate of Destruction was intended as an accurate record of what was destroyed and that information was retained as a record of that.

90. Once a Certificate of Destruction had been completed two members of the Vault Team would undertake the next stage of the process. The first stage was to load the cage onto a pallet truck. They would each take one of the two keys needed to unlock the cage. The cage is then taken to the destruction area. The destruction area was a separate and secure area. It is the process that was to take place in the destruction area that has led to the dispute in this case.

Change of line manager and further instructions

91. Before we deal with the destruction process we shall set out our findings in respect of the change in the line management of the Claimants what are. As we have set out above Jake Bensalah was appointed in June 2017. Jake Bensalah told us and we accept that he was unhappy with the progress of the vault project. A reorganisation took place and Stella Hughes was given notice of redundancy. At this point Ciara Prichard was

appointed to be the direct line manager of the vault project team. Stella Hughes eventually left in late January or February 2018 and therefore there was some overlap.

92. Amongst the changes Jake Bensalah introduced from about November 2017 was to require the vault team (and as we understand others) to attend a morning briefing. His evidence and that of the Claimants is broadly consistent. At those meetings the matters that were discussed included the progress that was being made and the procedures that should be followed. Ciara Prichard says that she would attend those meetings. An issue which we need to determine was the extent to which the destruction process and the status of the document produced by Stella Hughes was discussed during the period from November 2017.

93. Ciara Prichard's first witness statement contains the following passage. She says:

'When the Vault Project team came to be included in the 8.30am team meetings, it was clear very quickly that they, and particularly the Claimants, were very supportive of Stella, and were not very happy about the fact that she was leaving. They did not welcome the changes that followed a restructure in the business and having a new team leader. In my interactions with the Claimants, I found them headstrong, manipulative and stubborn, and to be quite intimidating, for example standing over me whilst I was seated to ask questions in a rapid and aggressive manner. They were very negative, and would be very unpleasant to individuals who had secured roles as permanent employees, often belittling them'

94. We do not need to deal with the question of whether the Claimants behaved in the aggressive manner that Ciara Prichard suggests. We accept that her perception that the Claimants were intimidating was a view that she genuinely held. What we did take from her evidence was that the Claimants were loyal to Stella Hughes and her way of managing the vault project. Our findings in that respect are reinforced by the stance taken by the Claimants during the grievance proves we refer to below.

95. In his first witness statement Jake Bensalah says that in December of 2017 the Claimants were given the opportunity to read Schedule 9. He says that this was done to ensure the teams were working in the same way. A meeting took place on 12 March 2018 between the vault team and Jake Bensalah to discuss what were termed collective grievances. We shall return to that meeting below. Minutes were taken of that meeting. Neil Adams says that he did not agree that the minutes were accurate and he amended the minutes which he then signed. The un-amended minutes support Jake Bensalah's evidence that the Claimants were invited to review Schedule 9 in December 2017. In the amended minutes Neil Adams have added the suggestion that the vault team did not remember this being said. However, the original minutes to include a record that Colin Timms accepted that the team had been asked to read this and familiarise themselves with the ISO standards. We find that is more likely than not that Jake Bensalah did invite the Claimants to read Schedule 9 in December 2017. It is common ground that the Claimants did not do so.

96. Ciara Prichard said in her witness statement that in December 2017 she had observed the Claimants using the document provided by Stella Hughes. She says that she spoke to the Claimants and told them that the document was not a formal procedure. She says that Hema Ravel the Risk and Compliance Manager also told the Claimants this. We find that by December there was some friction between the vault team and Ciara Prichard and Jake Bensalah that related directly to the way the destruction process was to be undertaken. It is clear to us that there were discussions about this and that the

invitation to the vault team to read Schedule 9 was one incidence of this. Against that we accept that Ciara Prichard, who gave day to day instructions to the Claimants, would have been aware that the Claimants were using Stella Hughes instructions and we accept that she did inform the Claimants that those instructions were not part of any formal process.

97. Ciara Prichard in her witness statement also says that she told the Claimants that there was no need to recount any material once it had been certified as fit for destruction. We accept that she did. When asked questions about the destruction process Ciara Prichard could give a clear account of how she expected the destruction process to be carried out. She was clear that no counting should be undertaken in the destruction area prior to destruction.

98. Dean Adams says in his witness statement that in December 2017 Jake Bensalah entered the destruction area where he and Colin Timms were working and picked up some bank notes to put them on the conveyor belt. Dean Adams says that he and Colin Timms explained that they had not completed their checks and that they stopped Jake Bensalah from putting the banknotes on the conveyor belt. Jake Bensalah said that he had no recollection of picking up bank notes but he does recall speaking to Dean Adams and Colin Timms about what he expected them to do in the destruction area. We find that there was a discussion about what was expected by Jake Bensalah and that Dean Adams expressed his view that some check needed to be done in the destruction area. We find that Jake Bensalah would have told Dean Adams that he did not expect any counting to be done in the destruction area.

99. Below where we deal with the events of 22 January 2018 we find, as the Claimants have said, that Jake Bensalah was exasperated with the vault team in general and on that day with Dean Adams and Colin Timms. This finding is consistent with both the Claimants account, and that of Jake Bensalah and Ciara Prichard, that there had been several discussions about how the destruction process should be carried out but that the Claimants were unhappy with the instructions they were given.

100. The was considerable dispute before us as to whether Standard Operating Procedures relating to the destruction of banknotes and spoils were in place on 24 January 2018. There are two questions firstly whether Standard Operating procedures had been written and secondly whether they were drawn to the Claimants' attention.

101. The Respondent says that the SOP in place on 22 January 2018 was 'DLR Security Destructions – Banknotes and confidential waste' which was 'SOP8'. It produced a copy of that document which was in our bundle at page 344- 346. In a footer the words 'Revision 11' are found.

102. The copy of this document included in our bundle was marked by handwriting which said *'*process in place @ 01-12-17 documented on QPulse'* and *'*on the board during'*. We were not told who had added those words. We concluded that the addition of the phrase 'on the board during' meant that the author was trying to indicate that the document was on notice boards during the Claimants employment. It was more likely than not the words had been added in the context of preparing for the tribunal proceedings. As such we could place very little weight upon those additions as they were not contemporaneous and we do not know who wrote them.

103. Both Jake Bensalah and Ciara Prichard identified SOP8 as the procedure that had been in place in January 2018. It was common ground that in April 2018 Ciara

Prichard produced a new SOP for the destruction process. In his written submissions Mr Uduje suggested that the contemporaneous documentary evidence undermined any suggestion that SOP8 had been in place in January 2018. He points out that during the meeting that took place on 12 March 2018 it was recorded (in the un-amended minutes) that Ciara *Prichard 'would be briefing them on their responsibilities and providing appropriate SOPs'*. He pointed out that when SOPs were prepared by Ciara Prichard in April 2018 she sent them to Ciara Smith who commented in an e-mail 'I am hoping [the vault team] have seen these'. The minutes of a further meeting that took place on 11 April 2018 Ciara Prichard responds to Paula Olack asking her *'was there an SOP'* saying *'No we were updating it it's now in place'*. Finally, Mr Uduje pointed at the letter summarising the outcome of the Claimant's grievance where it was stated that the SOPs were now displayed in the disintegrator area.

104. The issue of whether SOP8 had been drawn up by January 2018 is separate to the questions of whether the Claimants had seen it or whether it had been displayed on any notice board (accepting of course that, if it did not exist, it could not have been). We do not consider that what Ciara Prichard is recorded as saying during the meeting on 12 March 2018, that she would be providing SOPs, is inconsistent with SOP8 having been drawn up before January 2018. Ciara Prichard told us that she was updating the SOP. That is what she said in the meeting of 11 April 2018. The phrase 'updating' suggests that there is a document that needs to be updated. Notes of a 1-2-1 appraisal meeting that took place on 24 January 2018 made by Ciara Prichard who was conducting an appraisal of Dean Adams include a comment against a selection criterion, *'Familiarity with SOPs'*, that reads '*All under review so will update when correct'*.

105. We accept the evidence that SOPs are managed on a document management system, QPulse. It was common ground before us that the Bank of England was a demanding customer and undertook audits. Destruction of bank notes was not unique to the vault project and it would have been surprising if no guidance in the form of an SOP had been drawn up. SOP8 is clearly marked 'Revision 11'. It is a formal document which is in a common format with other SOPs that the Respondent provided and cross refers to the counting procedure.

106. We find that SOP 8 had been drawn up prior to the incident that took place on 24 January 2018. We accept the evidence of Ciara Prichard that all SOPs were stored on the Intranet and were available if any employee wished to see one. Such willingness to share formal documents with the Vault Team is consistent with the Claimants being offered the opportunity to inspect Schedule 9 if they wished to do so.

107. That leaves the question of whether SOP8 had been drawn to the attention of the Claimants. Jake Bensalah and Ciara Prichard maintain that the SOPs were displayed on the notice boards and in work areas in accordance with a company-wide policy which was subject to a monthly audit. Ciara Prichard says that there were references to the SOPs in the morning briefings. In her witness statement she suggests that at some point somebody took SOPs from the Disintegrator area and she speculates that this was done by the Claimants. Jake Bensalah says in his witness statement that he would have expected the Claimants would have been introduced to the SOPs relevant during their work during training. He refers, to the SOP governing counting and says that he observed the Claimants following the strict procedures referred to on the SOP and infers that they must have known about it.

108. The Claimants said that they had not seen SOP8 at all. We find that the Claimants were aware that the Respondent produced and expected its employees to follow SOPs.

Dean Adams refers to following an SOP in a letter he intended to present to HR on 5 February 2018. As we have set out above Ciara Prichard says that the SOPs were referred to in morning briefings. We accept that it is more likely than not that general reference was made to these documents as Ciara Prichard says.

109. Ciara Prichard told us that the only time that SOPs were not displayed was when they were being updated. We know, because it was common ground, that the Destruction SOP was updated by Ciara Prichard during March 2018. In the meeting of 12 March 2018 there is a suggestion that instructions should be posted in the Destruction area. That is inconsistent with the idea that the SOPs were displayed at that time but consistent with the evidence of Ciara Prichard that they were not there because they were being updated. The notes of the meeting of 24 January 2018 would suggest that the review had commenced at about that time. Dean Adams at paragraph 33 of his witness statement says, *'Copies of the SOPs Rules of Destruction Sheets were visible within the Disintegrator Room for all to see*'. Whilst We take Dean Adams to be referring in part at least to Stella Hughes training document we find support in what Dean Adams says for the suggestion that SOPs were generally displayed.

110. None of the Respondent's witnesses could say that they had specifically drawn the Claimants attention to SOP8. We accept the Respondent's case that SOPs were generally displayed in the work areas and on notice boards and taken down only when they were being reviewed. We further find that the Claimants would have been familiar with at least some SOPs and in particular the detailed SOP dealing with counting. They would have been familiar with the format of a formal SOP. We cannot say with any certainty when SOP8 was or was not displayed on the notice boards or in the destruction area and accept that for a period it was not. However, we find that at some points during the Claimants' employment prior to January 2018 SOP8 was displayed on notice boards and in the destruction area. We accept the Claimants evidence that they never read SOP8. That is consistent with them not reading Schedule 9 when they were invited to do so.

111. SOP8 sets out the process that should be followed when destroying banknotes and confidential waste after the contents of any cage are counted. The spoils counting process is dealt with in a separate SOP which is SOP33. SOP8 sets out how a Destruction Certificate is initially completed. It then deals with the collection of two keys in preparation for opening the cage. It then lists the checks that require to be made once the certificate is produced. These are:

> *'Prior to Destruction, the following checks are verified –*
>
> - *Cage details i.e. denomination, cage number and seal number and*
> - *Pre Disintegrator Safety checks are verified and signed for in the book*
>
> *The two SA personnel will load the Disintegrator (covered by CCTV) ensuring that the mix of secure and non-secure waste is used.'*

112. SOP8 sets out that once the destruction process is complete the 'two SAs' should clean and tiny the disintegrator area before securing it with a lock. Each of them are required to sign the Destruction Certificate which is then given a reference number and filed. The spoils register is updated to reflect the materials destroyed.

113. When later Ciara Prichard updated the SOP for the destruction process the updated process referred to the fact that material ought to have been counted in

accordance with SOP33. The cage would be prepared by securing it with a security seal. The verification of the counts would be fixed to the cage together with the authority to destroy. Nothing is said about checking or recounting once in the disintegrator area. What is said is that the destruction process should be under dual control at all times. The destruction certificate should only be signed once it is clear what had been destroyed.

114. In his witness statement Jake Bensalah gave a full description about what he expected to take place in the destruction area. We find that there was little difference between his account and the instructions given by Stella Hughes. Jake Bensalah accepts that those employees doing the destruction would, under dual control, need to check the destruction certificate, check the denomination of the notes, check that the notes had not been tampered with, and then then load the notes on to the disintegrator. We find that was initially a check made against the documentation fixed to the cage and then a visual check that the contents correspond with the description on the paperwork.

115. Both Stella Hughes' instructions and Jake Bensalah's account of what should happen include only a visual inspection of the contents of any cage. It is not suggested that any form of count needs to take place. We accept the evidence of Jake Bensalah and Ciara Prichard that the Respondent considered having loose notes to be a security risk that should be minimised. We were also told and accept that counting would only ever take place in the vault area.

<u>The events of 22 January 2018</u>

116. Much of what occurred on 22 January 2018 is agreed. In the morning of 22 January 2018 Dean Adams and Colin Timms were working together. They had been asked to destroy the contents of a number of cages. At about 12.00am they were working on a cage which contained banknotes. They had opened the cage and had placed banknotes on the table beside the conveyor that led to the disintegrator. At this point Jake Bensalah and Hema Ravel entered the disintegrator area. Jake Bensalah says in his witness statement that he *'noted that they were sat around a table with hot drinks, and that packed sausages (some open) were scattered on the table along with loose notes'.* Dean Adams also says that the cage he was working on had 'live £5G' bank notes. In the bundle, at page 448, there is a destruction certificate signed by Dean Adams. The documents attached to that certificate followed in the bundle show that that cage did contain a mix of notes and spoils (which we accept were packed into sausages). It is more likely than not that this documentation refers to the cage that Dean Adams was working on when Jake Bensalah came into the destruction area. Dean Adams accepted in his evidence that there were notes on the table. Given the broad overlap between the evidence of Dean Adams and Jake Bensalah and the contents of the destruction certificate we accept Jake Bensalah's description of what he observed on the table.

117. It is agreed that Jake Bensalah commented on Dean Adams and Colin Timms drinking tea. Although it is slightly unclear on which occasion he did so, all parties understood that the issue was a live one on 22 January 2018. It is common ground that Jake Bensalah picked up some of the bank notes and placed them on the conveyor belt that led to the disintegrator. When he gave his evidence Jake Bensalah resisted the suggestion that he was angry and said that he behaved professionally at all times. He says that he picked up the bank notes himself to demonstrate how the task should be performed. Whilst we accept that he was giving his honest recollection we do find that he was exasperated by what he considered to be a further occasion where the vault

team were failing to follow the instructions they had been given. The project was delayed and finding the vault team drinking tea in those circumstances caused him some frustration. That is consistent with his stance during the meeting on 12 March 2018 where he does not resile from his criticism of the team drinking tea and suggested that they should *'look in the mirror'*.

118. There was some dispute before us as to precisely what was said during the incident. It is agreed that Jake Bensalah asked what Dean Adams and Colin Timms were doing. He says that said they were carrying out a count. Dean Adams denies that and say that they told Jake Bensalah that they were 'doing their checks' (Paragraph 33 of Dean Adams' first witness statement). On 5 February 2018 in a handwritten letter the Claimants say they intended to present to HR there is a reference to '*doing our SOP'*. In the grievance document produced on the same day there was reference only to *'before SOP checks have been carried out'*. In an interview with Martin Sutton on 15 May 2018 (an occasion said to be a protected disclosure – to which we shall return) Dean Adams said that *'he picks up money that I haven't cleared for destroying yet and throws it on the disintegrator'*.

119. In his witness statement Dean Adams says; *'We were in the process of taking bank notes from a cage and putting them on the green table prior to checking then destroying'.* Neil Adams in his witness statement says that when he arrived at work Dean Adams and Colin Timms told him that *'Jake Bensalah and Hema Ravel had entered the disintegrator and intervened and that they threw notes on the disintegrator whilst Dean and Colin were completing final checks'.* It was only when Dean Adams gave oral evidence did he clarify exactly what he says the checks that had not been carried out were. This is surprising. The Claimants' entire case turned on the suggestion that some important step or steps in the destruction process had been bypassed by Jake Bensalah. When he gave his evidence Dean Adams said that what he had been doing was taking trays of notes from the cage and noting the content of each tray by 'eyeballing' the contents and tallying up the totals on a piece of paper. He said that there were about 5 trays remaining in the cage. The Claimants do not suggest that this information was ever included in any protected disclosure.

120. We accept that Dean Adams protested about money being thrown on the disintegrator. We find that in the context of a poor relationship Dean Adams resented the suggestion that he was 'slacking' and particularly resented being reprimanded for drinking tea on that or the previous occasion. In that last respect his resentment was justified. In his evidence Jake Bensalah accepted that there could have been no proper objection to the vault team having a hot drink whilst they worked. His protest about notes being thrown on the conveyor must be seen in that context. Whatever was said Jake Bensalah understood Dean Adams to be suggesting that he was counting the contents of the cage.

121. We do not accept that Dean Adams was in the process of keeping a running tally of quantities in trays of notes on a piece of paper. Had that been the case it would have been easy to explain during the later grievance process and/or when discussing what had happened with Martin Sutton. We would have expected that to have been set out in detail in his witness statement. We find that what Dean Adams and Colin Timms were unloading the cage and had opened some 'sausages' prior to loading the conveyor belt. The fact that the notes were scattered, as we find they were, contradicts the suggestion that there was some visual inspection or tallying up taking place. It was common ground before us that if discrepancies were discovered during the checks in the destruction area

the cage would be returned to the vault. We find that any checks that needed to be carried out had been completed. We expand on this below.

122. It is agreed between the parties that Jake Bensalah and Hema Ravel left the destruction area before the destruction process was complete. Once the destruction process was complete Dean Adams and Colin Timms signed the Destruction Certificate. In doing so they certified that the materials described on the certificate had been destroyed. Mr Mitchel suggested to Dean Adams that he would not have signed that certificate had it been inaccurate. Dean Adams suggested that he and Colin Timms had no choice as Jake Bensalah was their head of department.

123. It is the Claimants case that they raised the question of wrongdoing almost immediately. In his witness statement Dean Adams says, *'As this was a deviation from policies and procedure I took it as my duty to escalate this (paragraph 34)'*. He says he spoke to Stella Hughes on 23 January 2018. He says he raised the matter with Ciara Prichard on 24January 2018 in a 1-2-1 meeting. Neil Adams says he raised the matter with Jake Bensalah on 24 January 2018. We find that Dean Adams could raise any concerns he had without any hesitation.

124. We find that, when Dean Adams and Colin Timms signed the destruction certificate certifying that the materials described on that certificate were destroyed, they did so because they believed that that was the case despite any interruption in their work by Jake Bensalah and Hema Ravel.

The first alleged protected disclosure - 23 January 2018

125. Dean Adams says that he spoke to Stella Hughes on 23 January 2018. He sets out what he said in his witness statement. He says: *'I told Stella that Jake Bensalah and Hema Ravel had thrown bank notes on to the disintegrator whilst we were doing the SOPs rules of destruction'.* As we have already noted he did not say what check identified in any SOP he and Colin Timms were actually doing. He says that Stella Hughes shook her head disapprovingly and said that should not have taken place. She than called over a colleague, Sharon Hipgrave. Dean Adams says he repeated what he said and that she too said that *'he should not have done that'*.

126. We accept Dean Adams account of what he said. It is consistent with what he has said later. Given that Dean Adams had stated that there was a breach of procedure it is unsurprising that these two managers agreed that there had been some wrongdoing. However, as Dean Adams gave no details whatsoever of what part of the SOP he was completing they could not have formed any reasoned decision. We note that neither of these two managers took any action to escalate this matter any further.

The second alleged protected disclosure - Dean Adams 24 January 2018

127. Dean Adams met with Ciara Prichard on 24 January 2018. The purpose of the meeting was to conduct a 1-2-1 appraisal. We were provided with the notes that Ciara Prichard inserted on a pro-forma.

128. During that meeting Ciara Prichard raised the question of whether Dean Adams was working efficiently. We find that Dean Adams was offended at this suggestion as it was later raised as part of the grievance process. There are notes suggesting that there was a discussion about following procedures with Dean Adams being recorded as saying that he believed that he was *'working well and follows procedures'*. In the 'Line

Manager Comments section Ciara Prichard wrote *'I feel Dean does not agree with the comments made about waste destruction although he did listen to what I had to say'*.

129. Dean Adams says in his witness statement that *'I told Ciara Prichard what I had told Stella Hughes and Sharon Hipgrave that Jake Bensalah and Hema Ravel had thrown bank notes onto the* disintegrator *whilst me and Colin Timms were doing our checks*'. He says that Ciara Prichard said that they should not have done that. Again, he does not say that he identified what check he says was not done. Ciara Prichard in her statement has no recollection of Dean Adams raising this during the meeting. She did learn of the matter later.

130. We find that it is more likely than not that some reference to the events of 22 January 2018 was made. We would accept that there would have be a mention of Jake Bensalah and Hema Ravel putting notes into the conveyor and some reference to 'checks'. Dean Adams does not claim to have specified what had not been done.

The Third alleged protected disclosure - Neil Adams 24 January 2018

131. It is agreed between the parties that on 24 January 2018 Neil Adams went to Jake Bensalah's office. Hema Ravel was also present. Neil Adams says that he complained that they had *'intervened in the procedures'*. Jake Bensalah recalls a conversation about that time and suggests that he would have replied that he had followed all procedures. We accept that it is more likely than not he would have challenged the suggestion of wrongdoing. We accept Neil Adams account of what he said. He does not suggest he referred to any particular part of the procedures.

132. It was agreed on the same day that there would be a meeting to discuss a 'collective grievance'. The meeting was due to take place on 5 February 2018 but was cancelled by Jake Bensalah has was a further meeting on 6 February 2018 when Jake Bensalah said he was too busy to see the Vault team. Both sides have differing accounts of their behaviour on that day. We do not need to resolve the conflict but note that on Neil Adams own account he informed Jake Bensalah that it was *'not good enough'*. This does not suggest that the Vault Team were unable to challenge their managers. The Claimants say that in preparation for that meeting Dean Adams and Colin Timms drew up a handwritten letter setting out their account of the events of 22 January 2018. They did not provide it until much later and we shall return to its contents below.

The Fourth alleged protected disclosure - Meeting with Ciara Smith on 7 February 2018

133. The Claimants met with Ciara Smith and Stacy Hayes both members of the Respondent's HR team on 7 February 2018. We find that the matters discussed were, as suggested by Ciara Smith in her witness statement, broad ranging complaints about Jake Bensalah. Amongst those matters was reference to the events of 22 January 2018.

134. There is broad agreement between the Claimants and Ciara Smith as to what was said. We find that Neil Adams said words to the effect that *'the SOP had been broken when Jake threw money on the conveyor belt'*. Dean Adams said that they had been *'doing checks'* on a £5 live cage when Jake Bensalah threw handfuls of notes on the disintegrator. He said that they had left leaving him and Colin Timms to finish the work and to sign the Destruction Certificate.

135. Ciara Smith undertook to arrange a meeting between the Vault Team and Jake Bensalah. She sent an e-mail to Jake Bensalah on 8 February 2018 and told him of her meeting with the vault team. She booked a meeting into his diary for 14 February 2018.

She informed the vault team that she had done so. Shortly after that Jake Bensalah sent an e-mail to Ciara Smith telling her that he had already spoken to the Vault Team and that they knew a meeting was to be scheduled. He said that he would prefer to arrange this himself. We find that Jake Bensalah was irritated that having promised the Vault Team a meeting they had spoken to HR before he had had, in his view, a sufficient opportunity to meet with them.

The Fifth alleged protected disclosure - the e-mail from the vault team sent on 12 February 2018

136. On 12 February 2012 the vault team sent an e-mail to Jake Bensalah and Ciara Smith. The Claimant's say that the contents of the e-mail amounted to a protected disclosure. The material parts of that e-mail are as follows:

'Demeaning Procedures set by Stella that we have signed up to. Example Jake came into the disintegrator telling the staff that money is just shit and need to get rid, we then proceeded to explain the procedures we had been given and were following and adhering to.

On a separate occasion after that Jake and Hema throwing in life 5G work on to the disintegrator before SOP checks have been carried out.

Bearing in mind that we got feedback from Stella by yourself that the bank were pleased with our SOP that we were following when it was explained to them by Neil and Lee on the Security Audit they carried out in the disintegrator area.

Comment about sitting down and drinking tea.

Saying in Deans 1-1[sic] that he has been inefficient so unfair……..

… One month contract continually mentioned in suggesting that we are hanging out the job i.e. the blackbelt guy being told that we are a monthly contract by Jake…..

We have asked for SOPA rules of the disintegrator and the area to be Displayed on the wall to make it easier for additional staff and ourselves to follow and adhere to them……'

137. In addition to the matters quoted above there were some other complaints about the way the Vault Team had been managed but none that specifically related to the process of carrying out checks on banknotes (as opposed to other materials) prior to using the disintegrator.

138. When Jake Bensalah received this e-mail, he sought a meeting with Aislinn Barr to discuss the contents.

Final extension of contracts and vacancies

139. On 19 February 2018 the members of the vault team were offered what turned out to be a final extension to their contracts. The Claimants and Colin Timms accepted the extension. The fourth member of the vault team left his employment at that stage. The extension was for a further 3 months with the contracts due to expire on 31 May 2018.

140. On 23 February 2018 there was a general announcement about the staffing consequences of what was referred to as the 20G Ramp Up. A 'Newsflash' was

prepared by Steve Craig, the Plant Manager. The document was directed to employees on fixed term contracts. It referred to the extension of contracts offered to the vault team. It also stated that the roles of the 'Security Operatives', who had been on fixed term contracts, were to be made permanent. The Claimants sought to amend their claim to allege that the reason they were not given roles as security operatives at that time was because they had made protected disclosures. We refused that application and our reasons are set out above.

141. The 'Newsflash' referred to a number of actual and anticipated vacancies. The document invited any employees to show interest in any roles prior to them being advertised.

The incident between Neil Adams and Colin Timms – 7 March 2018

142. On 7 March 2018 at around 14:00pm Neil Adams had a conversation with Colin Timms during which he questioned whether it had been appropriate for Colin Timms to meet with Jake Bensalah and Ciara Pritchard in a 1:2:1 meeting. Neil Adams was interviewed by Hema Ravel the next day about this and he says, and we accept, that he had told Colin Timms *'I told him we don't go into meetings until we go together'*. He explains that by saying that he believed that the vault team needed to stick together in the light of their complaint about Jake Bensalah.

143. It is not essential that we make any findings about whether Neil Adams was being aggressive towards Colin Timms. It is sufficient to note that the tone of the conversation prompted Vicky Stone, a Materials Control Operative, to intervene. When Neil Adams was asked the following day whether he felt that his behaviour was acceptable he accepted that he had moderated his behaviour when it was pointed out that it could be perceived as intimidating.

144. The incident was investigated by Hema Ravel. She spoke to Colin Timms, Vicky Stone, Sean Mavis and Neil Adams. In our bundle we had notes of each of the interviews. Colin Timms disavowed any suggestion that Neil Adams had behaved badly towards him. Vicky Stone described Neil Adams as being agitated and frustrated said that she did not feel threatened. She suggested the conversation with Colin Timms was longer than it needed to be. She said that Neil Adams was laughing and "sort of mocking him and talking to him like a child". She suggested that it would be a matter for Colin Timms if he felt that the matter should be taken further but she would not do so. Sean Mavis said he did not observe any conduct aimed towards Colin Timms. He did observe Vicky Stone attempting to de-escalate the situation. He says he saw Neil Adams talking over Vicky Stone.

145. Hema Ravel Hugh viewed the CCTV footage. On 14 March 2018 she prepared a report. Her summary and recommendations include the following passages:

> *'From reviewing the interviews that were held and observing the CCTV, it would seem that Neil Adams was frustrated and looks to direct this towards Colin Timms. Neil Adams seemed to be the ringleader in the conversation and comes across as intimidating. Neil admitted in his interview that he was reprimanding Colin Timms for having a 1:1 meeting with Jake Bensalah and not as a collective group.*
>
> *I have reviewed the DLR disciplinary policy and in section 3.2 it lists usual circumstances requiring formal disciplinary action of which one of them states 'preventing or hindering other staff from performing their duties'. I view a one-to-*

one meeting with the line manager is a reasonable management request super duty to comply. I would find this statement as being most relevant to this case however [it] does not fully match due to the fact that Neil did not prevent Colin from conducting his one-to-one rather reprimand him from doing so retrospectively. I do not see this is acceptable behaviour and would therefore recommend a formal document discussion is had with Neil Adams in regard to his actions and how they are perceived. Disciplinary action is not relevant at this stage, this is coupled with the fact that Colin did not report to feel threatened [sic].'

146. When Hema Ravel's report was sent to Jake Bensalah he wrote an email to Hema Ravel, Aislinn Barr and Ciara Prichard sent on 14 March 2018. He questioned whether the conclusion not to bring any disciplinary action was justified. He suggests that intimidating conduct might be classed as bullying or harassment or disorderly conduct. We find that his concerns were entirely reasonable. Hema Ravel had somewhat missed the point. If Neil Adams had intimidated Colin Timms by overly aggressively remonstrating with him about attending a one-to-one meeting then that is a matter which would give a reasonable employer grounds for concern. The fact that Colin Timms was not complaining himself was simply a factor that needed to be considered.

147. Ciara Prichard replied on 15 March 2018. Her response is balanced. She noted that Dean Adams had not been interviewed. She sets out that Colin Timms had not provided any information that he was uncomfortable. She noted that Vicky Stone had felt the need to intervene and that Sean Mavis had stayed on to support her. She expressed her opinion that Neil Adams had become frustrated with the fact that the team needed to stick together and said in her view in all likelihood Neil did behave badly. She expresses no view as to whether disciplinary action should follow but suggests that Jake Bensalah needed to take that decision.

148. Hema Ravel interviewed Dean Adams on 20 March 2018. During his interview Dean Adams accepted that both he and Neil were displeased that Colin Timms had attended a one-to-one but denied that there was any improper behaviour. Hema Ravel then prepared a further investigation report. She did not alter her recommendation that no disciplinary action was warranted. Rather than Jake Bensalah are taking a decision on whether to proceed with any disciplinary action, on the matter was dealt with by Peter Viney on 29 March 2018. We find that this was because the HR department in general and Aislinn Barr in particular wanted to deal with these issues and calm matters down. Peter Viney had re-interviewed Vicky Stone on 26 March 2018. She had said that whilst she believed Neil Adams conduct had made Colin Timms feel uncomfortable and that it could have been perceived as bullying she did not think that it met that threshold. She again said that once she had commented on Neil Adams behaviour he had backed off. She did describe Neil Adams as being 'irate'.

149. Peter Viney invited Neil Adams to a meeting on 29 March 2018 at which he was represented by a trade union representative. He was told that the matter would be taken no further.

<u>The grievance meeting of 12 March 2018</u>

150. A meeting took place on 12 March 2018 to discuss the e-mail sent on 5 February 2018 by the vault team. Present on the management side were Jake Bensalah and Ciara Pritchett supported by Ciara Smith. The three remaining members of the vault team (the Claimants and Coilin Timms) attended to put forward their points. Ciara Smith took

minutes of the meeting. Around 13 April 2018 Neil Adams provided his suggested amendments to the minutes.

151. Both the original and amended minutes show that there was a discussion about each of the 12 points raised in the document sent on 5 February 2018. Jake Bensalah said that the document provided by Stella Hughes was not an official SOP. It is clear that vault team said that they were following that process as they had been told to. Neil Adams amendments include a further description of the events of 22 January 2018. They record Dean Adams as saying, *'Dean said how he and Colin were doing their checks on live 5G cage and Jake came in with Hema and picked up and threw notes onto disintegrator whilst there were doing their checks [sic]'*. In addition, Neil Adams minutes include the suggestion that he said that this was important as amalgamations had been done after cages had been counted and that this had caused problems.

152. During the meeting the vault team raised their resentment at being seen as stringing out their work. Jake Bensalah did not hesitate to put forward his opinion that the vault team was taking its time. We find that this caused further resentment. If the meeting was intended to pour oil on troubled waters it failed to live up to that expectation. Other than the fact that all matters were discussed it is unclear what the respective parties considered would be the outcome. The vault team had not said in terms that they were following any of the Respondent's formal processes and we find that nobody at this stage recognised that the vault team wished to pursue a formal grievance.

153. We find that Jake Bensalah simply assumed that the meeting of 12 March 2018 was the end of the matter. He took no steps to prepare a formal outcome letter and neither did Ciara Smith. We find that neither of them believed that there was any need to do anything further. The Claimants were expecting a formal outcome. The working relationship between the Claimants and Jake Bensalah continued to fester.

154. During the meeting that took place between Peter Viney and Neil Adams on 29 March 2018 the issue of the unresolved disputes discussed on 12 March was raised. Peter Viney took charge of the process. He proposed a round table meeting with a formal outcome. At the conclusion of the meeting the minutes record Neil Adams as thanking Peter Viney for his intervention. We find that Peter Viney was acting in a responsible manner attempting to deal with what he correctly recognised was a breakdown in normal working relationships.

<u>The Sixth alleged protected disclosure – Dean Adams to Sean Mavis</u>

155. Dean Adams says that at some point between 24 January and 31 March 2018 he told Sean Mavis that Jake Bensalah had thrown money on the disintegrator before 'checks were finished' and that 'they did not sign the certificate'. Sean Mavis in his witness statement accepts the fact that a conversation of this kind did take place. He recalled that Dean Adams was hostile and dismissive towards Jake Bensalah and says that he advised him to raise the matter with his manager or HR. We accept his evidence. The suggestion that Dean Adams was hostile to Jake Bensalah is consistent with our finding that Dean Adams resented the suggestion made by Jake Bensalah that he and Colin Timms were stringing out the work. We find that, by this time, Dean Adams had suggested some check had not been completed a number of time to others. We conclude that it is more likely than not that he would have mentioned this to Sean Mavis. We note that Dean Adams did not say what checks he says were interrupted.

<u>The meeting of 11 April 2018 and outcome letter</u>

156. Peter Viney arranged for a meeting to be held on 11 April 2018. He brought together the Vault Team together with Jake Bensalah and Ciara Prichard. The vault team was accompanied by their trade union representative. Notes were taken by Ciara Smith who also attended. Ciara Smith told us in her evidence that she felt that the Claimants were difficult and obstructive in this meeting. We find that she is justified in that view. The minutes show a combatative stance taken particularly by Neil Adams. He wanted to record the meeting but that was refused. He is recorded as saying that he wanted each and every issue dealt with and would not accept, as Peter Viney urged him to do, that some matters were in the past. After urging the two sides to move forward Peter Viney and Ciara Smith left the meeting. There was a further discussion between the Vault Team and their managers.

157. On 26 April 2018 Jake Bensalah provided the Vault Team with a formal outcome to their concerns raised on 5 February 2018. Jake Bensalah and Ciara Smith accept that the outcome letter was the subject of some discussion between Jake Bensalah, Peter Viney and the HR team and was the final iteration of several drafts. The letter finally sent to the Claimants started with an apology that the various meetings had not taken place sooner. The issue of SOPs is dealt with. Jake Bensalah saying that Ciara Prichard had completed new SOPs which were then displayed in the disintegrator area. Had been an offer to deliver the outcome of the grievance personally made by Peter Viney but that was declined by Neil Adams on behalf of the other team members.

158. Jake Bensalah's response to the suggestion that he had acted improperly on 22 January 2018 was to say:

'You raised a concern about me and a member of my team throwing work onto the Disintegrator before SOP checks being carried out. On investigation it was found that this concern stemmed from the destruction purposes and procedures being unclear, under previous management. These procedures have now been clarified and SOP's [sic] created documenting the process. To clarify currently both the Team Leader and I sign a final Destruction Certificate in the area which is provided to the customer. I would not expect a physical recount of the work as it is being thrown onto disintegrator, but a visual check is expected.

159. At the conclusion of his letter Jake Bensalah indicated that if the Claimants were not satisfied with the outcome set out in his letter they could, if they wished, bring a formal grievance. As a matter of fact, the Claimants did not invoke the grievance procedure although they did take their concerns further as detailed below.

160. Even though his letter of 26 April 2018 was professional and to some degree conciliatory it is clear that Jake Bensalah was frustrated with the vault team. On 25 April 2018 the day before he sent his letter Jake Bensalah sent an email to Peter Viney and others. He said:

Firstly, I would like to thank you all for your time in dealing with what I perceived been a terribly tiresome and difficult period….

.. The points raised by the Vault Team are not constructive, I view this as disruptive behaviour……

… In this instance, the team and I have been faced with a group of malcontents whose end is either [sic] to cause disruption to the team. In a sense, they have succeeded in achieving this due to the time spent appeasing them. I have lost trust and confidence with those persons to the point that a dialogue is being openly recorded……

.. From a business perspective, I would like clarity whether the team and I will be expected to continue working alongside these individuals. As stated the relationship has broken down due to lack of trust and confidence. The extension was to see the vault members transferred to Supply Chain. I would grateful if this can be reviewed.

161. We find that the email we have quoted above demonstrates that Jake Bensalah was enormously frustrated by the Claimants and that he did not relish managing them in the future.

The seventh protected disclosure - Neil Adams report to Codelink – 27 April 2018

162. The Respondent subscribes to a service which describes itself as a whistleblowing hotline service. On 27 April 2018 Neil Adams telephoned that service and gave a summary of what was concerning him. We note that the first matters that he referred to related to the period before the incident on 22 January 2018. It seems that Neil Adams had sold a vehicle to a fellow employee which had turned out to be faulty. This had caused bad feeling and a grievance process. He said that Dean Adams had initially been rejected for employment and he alleged that this was because he had been active in a trade union. He refers to both himself and his brother being picked on by Jake Bensalah from as early as September 2017. All he said about the incident on 22 January 2018 was *'Mr Bensalah was also accused of circumventing contractual rules established between the company and the Bank of England, ordering staff to drop some requirements in favour of speed of performance'*. Neil Adams made a further telephone call the same day that he did not add any information about the incident of 22 January 2018 in that further call. One of the maters he did mention was that he had been told that the vault team were to be moved to the Materials Management Section.

Transfer and work in the production team

163. At the end of April 2018, the vault project was complete. The remaining three members were transferred to work under Karen Gay who was the Supply Chain Manager. Karen Gay told us, and we accept, that she was asked to take on the vault team. She had work available counting substrate. This was similar to aspects of the work that the vault team had done and it was something they had been trained to do.

164. We are not asked to determine whether the move to working under Karen Gay was on the ground of any protected disclosures. The timing of the move does coincide with Jake Bensalah's exasperation with the team. Having regard to all the evidence we are satisfied that the vault project was always a finite project and that it had concluded in April. Whilst Jake Bensalah would have been relieved not to have to deal further with the vault team that was not the reason for the move.

165. Karen Gay presented as a very straightforward no nonsense manager. In her witness statement she said that whilst she managed the Claimants their work was satisfactory and reliable. She accepted she was aware that the Claimants did not get on with Jake Bensalah (we deal with her knowledge of any protected disclosure below). We are satisfied that she did, as she said in her oral evidence, decide that she would make her own mind up about the Claimants and had no difficulties managing them.

The Eight alleged protected disclosure – the meeting with Mr Sutton 15 May 2018.

166. On 15 May 2018 the Claimants attended a meeting with Mark Sutton who had been allocated the job of investigating the whistleblowing report to 'Codelink'. Mark Sutton was the Director of Audit and Risk. Rachael Davidson, an HR Manager and Mike

Lycell the Head of Delivery HSSE also attended. Before the meeting Mark Sutton had spoken to and exchanged text messages with Neil Adams. He had asked for and was supplied with the letter from Jake Bensalah dated 26 April 2018. It is clear from the text messages that Mark Sutton was concerned that many of the Claimants concerns were day to day grievances with their manager and he told Neil Adams that that if he wanted to raise such matters he should take up the suggestion of contacting Aislinn Barr to proceed with a grievance. Neil Adams responded by saying that there was a 'Security Risk'. Martin Sutton replied saying that Security Risks were taken very seriously and he asked for details.

167. The meeting lasted about 5 hours. During the meeting the Claimants provided a large number of documents. These included the hand-written letter of 5 February 2018 (addressed to HR but not sent) and the e-mail of 12 February 2018 which was later treated as a grievance. After the meeting Martin Sutton compiled a list of all the documents he had been given and sent it to Neil Adams for confirmation. There were 55 in total. The first 26 documents concerned events prior to 22 January 2018 and had no apparent connection with any allegations of wrongdoing on that day. They include documents relating to a grievance or grievances arising from the sale of a car to a fellow employee.

168. We were provided with minutes of the meeting with Martin Sutton which the Claimants accept were agreed by them on the day. We have taken them as an accurate summary of what was discussed. During the meeting Neil Adams suggested that he had been unfairly treated as a consequence of the ramifications of selling the car to a colleague. Dean Adams suggested that he had had a 'black mark' against his name from the outset of his employment.

169. The minutes record a brief discussion about the events of 22 January 2018. When asked by Martin Sutton about these events Dean Adams is recorded as saying:

'Me and Colin Timms were doing the checks-double checking, dual control and I put it on green table and Jake came in and was saying he had a Black Belt guy coming in and mentioned as being on monthly contracts and we were "hanging out the job" and in [the] process he picks up the money that I haven't cleared for destroying yet and he throws it on the disintegrator and five weeks earlier he had gone to do the same thing and Colin pulled him up and said we haven't checked it yet. He was with Hema. He mentioned we were on monthly contract so we started to do it along with him, he never signed the certificate so basically he was pushing us to do stuff against the SOP. About a week before he had told Stella me and Colin were drinking too much tea, made us feel uncomfortable so Colin asked him about it and I went off and had a chat about it. It was about 22 Jan when JB threw money in the disintegrator'

170. Later in the interview Dean Adams said; *'I felt bullied into doing something else because I'm on a month's contract'.* Martin Sutton asked whether he was asserting that he was coerced into throwing live notes on the disintegrator and Dean Adams replied *'yeah, and he didn't sign the certificate'*. Dean Adams then goes on to say the following:

'the reason it was more critical, at the end of Vault project-there was an order from above that they wanted to do an amalgamation and reduce cages. I raised it that they shouldn't because its all logged, Charles Sanders got involved, I told Stella that I didn't agree with it. Charlie did it, when he started to check there were misdemeanours, and its in minutes that Colin said we found discrepancies in accounts because of the amalgamation that

was done last minute. If we had done what JB had done, we were destroying what was in there'

171. After the meeting with the Claimants Martin Sutton caused enquiries to be made from the HR department at Debden. Aislinn Barr responded to him and provided documentation respecting the various grievance procedures and the current recruitment drive.

172. Martin Sutton produced a report on 23 May 2018. He summarised his conclusions as follows:

'I have no specific evidence that the matter was raised in bad faith. In the interview, the complainant and his brother appear to genuinely believe that they have cause to raise their concerns. I therefore default to the conclusion that the complainant and his brother raised their concerns in good faith but that there was no substantive evidence support allegations of breach of the Code of Business Principles.

Taking all the information together, I conclude that my original assessment of eighth of May 2018 that this is not a Codelink matter, but this is a specific Human Resources matter concerning the complainant and his brother. I will therefore write to the complaint advising them that he, and his brother if he wishes, should pursue their grievances through the grievance route described in the Grievance policy.

173. In respect of the events of 22 January 2018 Martin Sutton said this in his report:

'There is no substantive evidence that records or reports for internal or external use are inaccurate or untrue. The only matter the complainant raised the potentially could be considered as inaccurate if true, is that on 22 January 2018 Jake Bensalah, the HSSE Manager at Debden, participated in the destruction of some spoiled but did not sign the destruction certificate to say he had participated in the destruction of that waste. However, even if true, there is no evidence submitted of systematic falsification of documents'.

Neil Adams job applications

174. Under this heading we set out chronologically our findings of fact in respect of the various jobs that Neil Adams applied for. He lists those in his witness statement. He refers to 7 jobs. As we have said above the Claimants did not include any detail of the detriments they allege in their ET1. The case management summary of REJ Taylor following the hearing on 10 January records Neil Adams as only relied upon not being offered roles as being detriments on the grounds of having made protected disclosures in respect of 5 roles. The last of these was for a role as an 'Unblocker'. At the outset of his cross-examination Neil Adams accepted that he had never applied for this role.

The 'Printer role'

175. Neil Adams applied for a role as a Printer in December 2017. He provided a CV and was asked to attend an interview on 7 February 2018. The Respondent's recruitment processed follow what is becoming a standard format. Each candidate is asked the same questions designed to demonstrate the competencies thought necessary for the role. Each candidate is then given a score against each competency. On 7 February 2018 Neil Adams was interviewed by John Robertson who was then the Print Team Leader. He was accompanied by Ciara Smith. Each kept a record of the responses given by Neil Adams and each completed a score sheet where they made

comments as well as notes. After the interview Neil Adams was required to undertake two tests the first being a 'diagrammatic series test' and the second being a comprehension test. Neil Adams scored 62.5% in the first and 50% in the second test.

176. On 28 February 2018 Ciara Smith wrote to Neil Adams thanking him for attending the interview but informing him that he had not been successful in his application. She informed him that if he wished he could ask for feedback about the reasons for that decision. Neil Adams did ask for feedback and John Robertson spoke to him before 6 March 2018. On 6 March 2018 Neil Adams wrote an email to John Robertson in which he took issue with some of the feedback that he had been given. From Neil Adams email it is clear that John Robinson suggested that during the interview Neil Adams had struggled to give clear answers to questions. He had also expressed disappointment that Neil Adams had a lack of knowledge of the five processes used within the print department. It is also clear that John Robertson had said that Neil Adams had the appropriate experience and qualifications and that that had not stood in his way. Neil Adams letter ends by expressing an interest in some forthcoming Print Assistant roles and expressed an interest in any pre-training. John Robertson forwarded Neil Adams email to Ciara Smith commenting that he felt that Neil Adams was trying to score points after the event.

177. We have reviewed the notes taken during the interview. Both John Robertson and Ciara Smith comment negatively on Neil Adams ability to stay on track and the fact that he would talk over his interviewers. Both interviewers give a score of 2/3 for skills and experience. In other areas such as leadership and communication both interviewers gave scores of 1. In their notes both give an explanation of their scores that is consistent with the notes they took during the interview. Those notes include a record of Neil Adams interrupting the questioner and an example of 'leadership' which involves an argument with another employee.

178. In his evidence John Robertson said that he had no idea that there had been any protected disclosures at the time of the interview. We accept that. Our reasons for doing so are set out below in our discussions and conclusions. We are satisfied that the reason Neil Adams did not obtain a role as a Printer was because of his performance at interview. He suggests that this is an extraordinary decision given his skills and experience as a printer. He says that in his previous job he had managed one of the printers working for the Respondent. We do not consider that those facts undermine the evidence of John Robertson and Ciara Smith that the reason for not appointing Neil Adams was his poor interview performance. In the scoring matrix skills and experience scored a maximum of 3 points but there were 4 other competencies that scored equally. Those included communication and leadership. Having regard to the interview notes we are satisfied that there were good objective reasons for scoring Neil Adams poorly against these skills. We also find that there was a genuine subjective belief on the part of John Robertson and Ciara Smith that Neil Adams had performed poorly at interview. That was the reason he was not appointed.

The MMO role

179. On 15 March 2018 Neil Adams applied for a role as a Material Management Operative. This is one of the roles that he says that he was not given on the ground that he made a protected disclosure. The people responsible for the recruitment to those roles were Jon Payne a temporary member of the HR team and Karen Gay who was then the Production Controller. As we say above the Claimants would later be managed by Karen Gay and had no difficulties with her management and vice versa.

180. Jon Payne provided details of all the candidates. The applications were essentially by way of submitting a CV. There were 4 roles and a total of 17 candidates for the MMO roles. The candidates were given numbers but many candidates could be recognised as they included details of their existing roles. Karen Gay produced, or populated a spreadsheet identifying who she thought met the criterial for interview. She identified 8 candidates for interview. Neil Adams was not given an interview along with 9 others.

181. Karen Gay gave evidence and said that her decision about who to invite to an interview was based on her assessment of the CVs provided. When challenged by Mr Uduje about her assessment Karen Gay explained that she had not focussed of looked for print experience but was particularly interested in warehouse experience and stock control as that was what the role required. We accept that this was the approach she took.

182. Karen Gay accepted that at the point that she took over management of the Claimants in April 2018 she had been told by Jake Bensalah that they had been causing trouble. She said that this was simply a vague suggestion that they had not been getting along with their managers and that no detail was given. We accept that evidence and expand on our reasons below. We accept that Karen Gay had no knowledge of any protected disclosures. The sifting of the candidates for the SMO role took place on or before 2 April 2018. That was some 2 weeks before the Claimants worked under Karen Gay's management.

183. We found Karen Gay a straightforward witness. She was prepared to accept points that favoured the Claimants. For example, she acknowledged the possibility that the candidates might have been identifiable as some CVs had photos. She also accepted that she had some knowledge of the difficulties between the Claimants and Jake Bensalah. She gave evidence that she judged people based on her own experience and said that she had no difficulties working with the Claimants. She was perhaps the only witness to give a favourable assessment of the Claimants. We accept that Karen Gay was honest when she says that in choosing which candidates to interview she was looking for particular skills and experience in warehousing and security and honestly believed that the candidates selected for interview were the most promising candidates. We find that she had no knowledge of any protected disclosures and that her reasons for not interviewing the Claimants had nothing to do with any protected disclosures. We explain further our reasoning for this conclusion below.

The Security Operative and Machine Assistant roles

184. On 11 March 2018 Neil Adams applied for a role as a Security Operative. Has he been appointed to that role he would once again have been reporting to Ciara Prichard who was responsible for recruiting to that role. Neil Adams was offered an interview by Jon Payne who was assisting Ciara Prichard. That interview was due to take place on 27 April 2018. Neil Adams informed the Respondent that he was unwell on that day. This was the day that he contacted Codelink. Had the interview proceeded it would have been conducted by Ciara Prichard and Jon Payne. Jon Payne proactively contacted Neil Adams to rearrange the interview.

185. Before the interview was fixed Jon Payne sent an e-mail on 14 May 2019 thanking Neil Adams for his attendance at the interview and informing him that one a final candidate is interviewed the candidates would be notified of the outcome. The error was swiftly explained in an exchange of correspondence and discloses noting sinister. The

remaining interview referred to was Neil Adams and he had been sent the same text as sent to the other candidates. Jon Payne sent an e-mail explaining this. Jon Payne informed Neil Adams that Ciara Prichard was off sick and that Jake Bensalah might be asked to do the interview. An interview was offered on 29 May 2018. Aislinn Barr had specifically requested that the interview be scheduled before Neil Adams' contract ended.

186. Neil Adams had applied for a role of a Machine Assistant on 11 April 2018. On 1 June 2018 he was informed by Jon Payne that he had been selected for interview. Had he attended that interview would have been conducted by John Robertson who we have found knew nothing about the alleged protected disclosures. This is not one of the detriments relied upon by the Neil Adams. A matrix included in the bundle shows the scores given to Neil Adams for that role. This matrix was sent by e-mail by Jon Payne and we assume that he or John Robertson had evaluated the CVs. It shows Neil Adams getting a total score of 27 including one of the highest scored for previous print experience. Had he progressed his application there was every possibility that he could have demonstrated his suitability for the role.

187. On 1 June 2018 Neil Adams wrote to Jon Payne withdrawing his interest in both roles. Essentially, he said that he would be wasting his time attending for the interview due to his relationship with Jake Bensalah. His applications were not progressed any further.

The BPS and BPS Senior roles

188. Neil Adams applied for a role as a BPS Senior on 11 March 2018 and a further role as a BPS No:2 on 12 March 2018. The responsibility for recruiting to those roles fell to Shaun Vaux who was at the time the Finishing Team Leader. He was assisted by Ray Staerrck who was in the same role as Shaun Vaux on the opposite shift at the time. Shaun Vaux told us and we accept that 'BPS' stands for 'Banknote processing Systems'.

189. When the roles were advertised, job descriptions were circulated. The job description for the BPS Senior role included explaining that the post holder would be responsible for a BPS machine worth £4M and run by a crew of 3. The role of BPS No: 2 reported into this position. The placeholder was responsible for achieving average throughput of 110,000 notes per hour and reconciling 1.6 million documents per day. The qualifications and experience expected were listed on the document as:

189.1. Craft Apprenticeship or NVQ level II or equivalent (desirable)

189.2. Educated to GCSE level Maths and English (essential)

189.3. Experience of finishing processes, in particular BPS machine (essential)

189.4. Good eyesight and attention to detail (essential)

189.5. Computer literate (essential)

189.6. Able to manipulate OBIS model (desirable)

190. The job description for the BPS No:2 role essentially set out that the post holder would be expected to support the BPS Senior in producing banknotes on the BPS machine. The qualifications and experience required included the following:

190.1. Minimum GCSE or equivalent in Maths and English (essential)

190.2. Experience of working in an industrial environment (essential)

190.3. Team player with good communication and interpersonal skills (essential)

190.4. Experience of finishing processes (desirable)

190.5. Able to manipulate OBIS model (desirable).

191. The Claimants and other candidates could upload their applications for these roles through the Respondent's recruitment system known as Optamor.

192. In deciding who to select for interviews Ray Staerrck prepared a matrix for each of the two roles. At the head of the matrix he included the qualifications and experience that the candidates were required to demonstrate. In respect of the BPS No:2 role he included an additional column where points were awarded to candidates who had shown a particular interest in the role by contacting the team leader for details in advance of their application. In his evidence Shaun Vaux explained that he agreed with the rationale for this being to reward candidates with a particular interest in this role. The reason for this is that many fixed term contractors were applying for roles in an indiscriminate manner. We accept that that is objectively reasonable and was the purpose for including that additional requirement.

193. Neil Adams was not invited to an interview for either role. For the BPS Senior role there were 12 candidates. Neil Adams had the lowest score alongside Dean Adams and another candidate. Neil Adams in his witness statement says that he met all the essential criteria as he had a NVQ Level 3 qualification whereas only a Level 2 NVQ was an essential requirement. In the matrix Neil Adams is awarded 8 points for his NVQ qualification which is equal to the highest score given to any candidate under this heading. However, he is awarded the joint lowest score of 5 for 'Educational Qualifications'. GCSE Maths and English were said to be an essential requirement. The application submitted by Neil Adams for this role names his school but says nothing about whether he has any GCSE qualifications. Other candidates had qualifications including A-Levels and one had a degree. The highest score given was 9.

194. Neil Adams was given a score of 2 under the heading 'finishing'. Mr Uduje challenged Shaun Vaux to justify that score. Shaun Vaux acknowledged that it was a low score but said that it was justified by two things. Whilst Neil Adams' CV did show that he had started as a Finisher Apprentice in 1989 there was no further mention of 'Finishing' on the CV. In addition, higher points were only going to be available if the finishing was specific to the BPS process. We accept that this was the approach taken. Neil Adams was one of 4 employees who were scored 2 against this requirement. Neil Adams got a score of 0 for the (desirable) requirement of being able to manipulate the OBIS Model. He did not suggest before us that he had any skills that would justify a mark for this. Many others also scored 0 against this requirement.

195. We do not accept that Neil Adams had demonstrated that he met all the essential criteria. He did not say that he had GCSE English and Maths. It does not appear that he did but what is important was what it said on his application. We accept Shaun Vaux's explanation for the scores given. The explanations were rational and clear.

196. In respect of the BPS No:2 role Neil Adams was awarded a total score of 39 which was the lowest out of 20 applicants for the roles. Again, he was awarded 5 for his

educational qualifications. That was the lowest score given to anybody. Neil Adams had not demonstrated that he met the minimum requirement. He was awarded a high score of 8 for his experience of industry. Only one person did better.

197. Neil Adams was given a score of 0 for 'Experience of Finishing'. We were not given an explanation of why no credit had been given for the brief mention of finishing on Neil Adams CV. We do not find that this provides any evidence that the scores were manipulated. Neil Adams claimed no experience of finishing banknotes and only referred to finishing during an apprenticeship almost 30 years previously. Most other scores were average. In the additional category of contacting the team leader those candidates who had sought out details of the role were given 5 points. That was less than half the candidates. Those who had not, including the Claimants, got 0.

198. We are satisfied having heard from Shaun Vaux that the scores Neil Adams was given for the BPS No:2 role were awarded based on a genuine assessment of the application.

199. Shaun Vaux said, and we accept, that he had no knowledge whatsoever that the Claimants had made any protected disclosure. We set out below our reasons for this in more detail.

The guillotine role

200. Shaun Vaux was the only person who spoke about why Neil Adams was not offered an interview for the role of Guillotine Operative. Neil Adams applied for that role on 18 April 2018. He was told that he had not been selected for interview at some point before 2 May 2018 as on that date he asks for feedback asking why he had been rejected for all three roles.

201. Sean Vaux accepts that he has had to reconstruct reasons for the Respondent not offering Neil Adams an interview for this role. There was no matrix or other paper trail. He said that having reviewed Neal Adams CV he believes that he would not have been offered an interview for much the same reasons as had been given for the other two roles Shaun Vaux considered him for. He said that Neal Adams CV shows little evidence of numeracy skills either through qualifications and experience or of computer skills which were listed as essential requirements for the post.

202. We are satisfied that the CV did not make any reference to numeracy skills. It had not been tailored to the specific post but was the same as used in other applications. Whilst it may be that Neil Adams did have some or all the skills needed for the role the recruitment process required that to be demonstrated to a certain level on paper. We find that it is more likely than not that any person assessing Neil Adams' CV would have concluded it did not demonstrate that.

203. As above we accept Shaun Vaux's evidence that he was entirely unaware of the alleged protected disclosures at the time he took the decisions not to interview Neil Adams.

Dean Adams job applications

204. We shall now deal with the job applications made by Dean Adams. There is some overlap between the jobs applied for by the Claimants and in respect of some findings we shall simply refer to our previous findings in respect of the relevant recruiting manager.

The MMO role

205. Dean Adams applied for a role as a Material Management Operative on 17 March 2018. As we set out above consideration of who was appointed for that role was undertaken by Karen Gay who sifted the applications to decide who should be offered an interview. On 25 April 2018 Dean Adams was informed that he would not be offered an interview as he had not met the essential criteria for the role.

206. As we have set out above the candidate's applications were anonymised before being sent to Karen Gay. We have found that despite this it may have been possible to identify internal candidate because they listed their present role on their application. Karen Gay prepared a spreadsheet naming the candidates she wished to interview for both the SMMO and MMO roles. For reasons which are unclear she thought Dean Adams had applied for both roles and his candidate number appears twice on the spreadsheet she produced.

207. There were 17 candidates for the MMO roles. 8 were offered interviews. Some of the rejected candidates had good academic qualifications and had a variety of previous careers. A number of those who were offered an interview did, as Karen Gay said demonstrate warehousing or stock control experience.

208. Whilst the Claimants applications both showed a great deal of experience in printing they did not demonstrate any great experience in warehousing or stock control. This was not a printing role so their past experience was of little relevance. We accept that Karen Gay wanted to interview employees who had warehouse or similar experience. We accept that she did not believe that Dean Adams application demonstrated the experience she was looking for. The Claimants were not over qualified for this role. They were well qualified for a different role which is not the same thing. Other candidates with good qualifications in other areas were also rejected.

209. As we have set out above, and further discuss below, we are satisfied that Karen Gay knew nothing about the alleged protected disclosures but did know that the Claimants did not get on with Jake Bensalah. We are satisfied that neither matter played any part in her decision.

The Unblocker role

210. Dean Adams applied for a role as an Unblocker on 18 April 2018. He was offered an interview on 24 May 2018. The person responsible for recruiting into this role was John Robertson who was assisted by Jon Payne. The selection process followed a similar patter to others in that there was an interview where all candidates were asked the same questions and their answers noted. They were then scored against competencies principally drawn from the job description. Each candidate was required to undertake a literacy and numeracy test.

211. Dean Adams in his witness statement says that when a list of candidates for interview was drawn up it was noted that he was a 'Possible Machine Assistant'. He suggests that if he was considered for that role, which was better paid and at a higher grade, it follows that he was a good candidate for the Unblocker role. We find that he is reading too much into that document. It is clear that many candidates had applied for multiple roles. There are several documents that show that recruitment decisions were taken that reflected the possibility of a candidate obtaining more than one offer of work. The entry relied upon by Dean Adams does no more than suggest that it is a possibility

that he would be offered a Machine Assistants role. That reflects the fact that he had an extant application.

212. The score sheets completed by John Robertson and Jon Payne disclose that each of them gave Dean Adams a high score of 4 for his skills and experience. His scores were lower against the competencies of 'Strengths and areas of development' and 'taking on responsibility' where he scored 2 out of 5 a score that reflects 'limited evidence'. Overall, he was given a score of 23/40 by one interviewer and 22/40 by the other. Where lower marks were given the two scorers included comments that suggest that they thought that Dean Adams had failed to show that he met the competencies. Having regard to the notes of the answers given we consider that the lower scores appear to have a rational basis. Dean Adams' recorded answers do appear very basic. For example, when asked what he had done to positively contribute to a team the answer recorded is 'working together to get most achieved'. There is nothing to suggest that the scores given in any particular category were unfair.

213. John Robertson told us, and we accept, that a decision was taken to weight the interview scores and the test scores evenly. Unfortunately for Dean Adams his score for numeracy was 50% and 60% for literacy. That gave him an overall score of 55%. This was the third worst score from 12 candidates. This had the overall effect of dragging his overall score down to the point where he was not offered the position. When the scores were combined Dean Adams had the second lowest score from 12 candidates.

214. We are satisfied that the literacy and numeracy tests were introduced for perfectly good reasons not connected with any protected disclosures. The interview process necessarily has a degree of subjectivity but the high scores given in some categories would not support the suggestion that the interviewers were biased against Dean Adams. Indeed, his overall score is respectable. We are satisfied that the reason that Dean Adams was not offered this job was the overall score he obtained in a fair process was lower that the successful candidates.

215. We have set out above that we are satisfied the John Robertson had no knowledge of the alleged protected disclosures.

The Machine Assistant role

216. Dean Adams applied for the job of Machine Assistant on 18 April 2018. He heard nothing in response for some time. On 26 June 2018 he contacted Aislinn Barr to ask what had happened to his application. It seems that that prompted a meeting or discussion between Aislinn Bar, Ciara Smith and John Robertson. They discovered that several applications for this role had never been downloaded or processed from the computer based applications portal. On 2 July 2018 Ciara Smith wrote to Dean Adams. She told him that the selection process was ongoing but that his CV as submitted did not meet the criteria for an interview. She sent a further copy of the job description and asked Dean Adams to resubmit an amended CV if he was still interested. Ciara Smith told us, and we accept because it was supported by contemporaneous documentary evidence, that several other applicants were sent a similar e-mail and were asked to re-submit their CVs in the same time frame.

217. Dean Adams did not submit an amended CV and his application was not progressed any further. Dean Adams said in his evidence that he did not submit an amended CV because he felt the Respondent was wasting his time.

218. We compared Dean Adams CV to the job description. Dean Adams CV heavily promotes his work as a printer. Aislinn Barr said, correctly as we find, that in all the applications by both Claimants there was a failure to tailor the application/CV to the particular job they were applying for. Given that the process of selection involved satisfying identified competencies we find that a good application would have been directed towards demonstrating particular skills as well as experience. We accept that Dean (and Neil) Adams had long experience of working as printers. They do not appear to have appreciated that the Respondent did not put as much value on that experience as they clearly think they should have done. Dean Adams CV failed to address several of the qualities set out in the job description. Whilst those essential skills included previous experience within print, which was well evidenced by Dean Adams CV the requirements also included knowledge of health and safety, computer literacy (Sage experience of similar), strong organisational skills, problem solving skills and strong communication skills. Dean Adams CV did not address those points expressly.

219. We find that inviting Dean Adams, and others, to tailor their CV to the job description was done to assist Dean Adams and the other candidates. We would reject any suggestion that this was undertaken in order to waste Dean Adams time. Had there been a desire to shut down the application it would have ben open to John Roberson, Ciara Smith or Aislinn Barr to simply state that the CV did not demonstrate that Dean Adams met the essential requirements of the job. It did not.

The BPS No: 2 role

220. Dean Adams applied for a role as a BPS No:2 on 11 March 2018. We have set out our findings of fact as to the process that was followed above. There were 20 candidates. The top 12 were given interviews. Dean Adams was in position 15. In his witness statements he makes a number of criticisms of the scores he was given, the first is that he says he was given the lowest score for education qualifications. That is correct he was given 5/10 the same score as Neil Adams and one other candidate. The highest score was 9. Many candidates listed exactly what their qualifications were and most met the essential requirements of GCSEs in Maths and English. Some had A levels and at least one a degree. Dean Adams CV/Application sets out that he left school with CSE qualifications. He did not claim to have GCSEs in Maths and English which were listed as essential requirements for the job. He could not reasonably have expected a higher score.

221. Like all the candidates who had not contacted the relevant team leader to ask what the job entailed he was given a score of 0 in this category. That was true of 0 candidates. The Claimants complain that it was unfair to give points for a matter not disclosed in the job description. We consider it rational to reward candidates who showed initiative in pro-actively seeking information. Announcing that as a requirement in advance would not have served the same purpose of testing initiative/commitment to that particular role. Giving a score of 5 is perhaps generous as the other criteria did not separate all the candidates by much. However, there was no evidence that the criteria were introduced in order to single out the Claimants. Had that criterion not been used Dean Adams would still have been the 15th placed candidate.

222. Dean Adams was awarded 5 for his paperwork and PC skills. We note that other candidates' applications gave details of roles where such skills were a pre-requisite. Dean Adams complains that Colin Timms was interviewed when his background was as a taxi driver and computer salesman. Such a candidate may not score well in some categories but might make up ground in this category. Dean Adams CV did not mention

having PC skills (although he may well have some). In contrast Neil Adams does at least mention computer skills and he gets a slightly higher score. There were candidates who referred at length to their PC and paperwork skills. We note that there were some high marks awarded in this category.

223. Dean Adams complains that he was skilled in 'Finishing' and that he had previously used the BPS machine. In fact, he was given a score of 5/10 in respect of those skills which was the 10th highest score awarded. There is nothing to suggest that score is unfair. It reflected the fact that Dean Adams had some experience with finishing. We have looked at the CVs of the other candidates. Some candidates had been working with the BPS machine recently and several gave detail accounts of their experience of 'Finishing'. It is unsurprising that there were some scores above that awarded to Dean Adams.

224. Dean Adams compares himself to Colin Timms. He considers it irrational that Colin Timms got an interview when he did not. He points towards the fact that Colin Timms did not have a background in printing. The difficulty for this line of argument is it pre-supposes that all the competencies required focussed on the skills of a printer, which Dean Adams had, rather than the broad range of skills that the job description and scoring matrix required. We see nothing irrational in an employer accepting that a person could demonstrate competencies such as team working or communication skills from work outside the specific role that they are recruiting for.

225. As we have set out above we accept that Shaun Vaux had no knowledge that the Claimants had made any protected disclosures. We are satisfied that the failure of Dean Adams to obtain an interview was because his application was weak in comparison to other candidates.

226. Dean Adams was told that he had not been shortlisted for interview on 11 April 2018.

The Security Operative role

227. Dean Adams applied for a role as a Security Operative on 11 March 2018. Contrary to the case he advanced as recorded by REJ Taylor he was offered an interview on 20 April 2018 but cancelled that as he was told on that day that the vault team were expected to work under Karen Gay. We do not think that was a good or sensible reason not to attend an interview. The fact that the vault project was coming to an end was well known to Dean Adams and he ought not have been surprised by this. The cancellation of the interview did not stand in the way of his application and an interview took place on 4 May 2018. This finding means that the pleaded case under Section 47B of the Employment Rights Act 1996 must fail in respect of this detriment. As Mr Uduje has sought to rely on the outcome of this process as evidence supporting the other claims we make the following further findings in respect of this application.

228. The manager initially responsible for recruiting to this role was Ciara Prichard. She was supported by Jon Payne. As before the interview involved asking standard questions and assessing the responses against defined competencies. We have seen the notes of the interview taken by Ciara Prichard and Jon Payne. Ciara Prichard did not say much about this interview in her witness statement. As we have said above the case had been put on the basis that no interview had been offered. That was not the case.

229. Dean Adams takes exception to the scores recorded in a spreadsheet headed Security Operative Interview Matrix. This document was either amended or prepared after the decisions on appointment took place. It refers to the appointment decisions. It was common ground that Ciara Prichard had taken time off with ill health before the decision of who to appoint was taken. The scores recorded for Dean Adams are low. We note that the matrix includes scores for Neil Adams. He was never actually interviewed. Ciara Prichard was not asked to rationalise the scores recorded in this matrix.

230. We did have some information about Dean Adams interview. Jake Bensalah told us that when discussing the interview with Ciara Prichard she had expressed frustration about how poorly Dean Adams had responded to questions and commented that he required to be prompted. That is reflected in the notes of interview where one answer is recorded as following a prompt. When Mr Mitchell cross examined Dean Adams he suggested to him that he had not performed well in that interview. Very frankly Dean Adams accepted that it looked as if that was the case. We have had regard to the record of interview and have concluded that it was more likely than not that Dean Adams did not acquit himself well at interview. That would provide the most likely explanation of why he was not offered one of the three jobs available.

231. We find that it is more likely than not that the reason why Dean Adams was not appointed to this particular role was his performance in his interview.

Follow up investigations and the re-employment of Colin Timms

232. Jake Bensalah told us and we accept that following the Codelink report there was what was effectively an internal inspection of his department. No action was taken against him or anybody else.

233. Neil Adams says in his witness statement he made a report to the Bank of England about what he alleges was wrongdoing by Jake Bensalah. We were not shown his report but there was no evidence before us that the Bank of England had taken any action in response to the report. That supports an inference that they did not consider that there was any significant problem.

234. On 6 June 2018 Colin Timms sent an e-mail to Jake Bensalah. That e-mail is in effect an apology for Colin Timms involvement in the grievance process. He says: *'Yes there were mistakes by myself. I kept trying to solve the issue and drawing a line in the sand so we could* all *be [a] happy camp again……I don't understand why they needed to take it as far as they did, and super gutted I got dragged along for the ride'*. Colin Timms asks to be given a 'second chance' in the recruitment process. Jake Bensalah forwarded that e-mail to Aislinn Barr and Steve Craig the Plant Manager at Debden. He wrote *'As you would have guessed this relates to the Adams brothers. Colin was a good worker and differences aside, I would have no reservations in re-engaging'*.

235. Aislinn Barr's response was said by Mr Uduje to demonstrate that from February onwards there had been a plan to exit the Claimants from the company. She said: *'I thought we had already discussed this situation and agreed a way forward so not sure how we are back in this conversation again'*. She then went on to point out that Colin Timms had been interviewed and assessed for the role of a Security Operative and had not been offered a job. She suggested that he had a poor indicative end of year rating. However, she left it that the matter would be discussed later but that Karen Gay would

need to be involved as the hiring manager. It was agreed between the parties that Colin Timms was later given a job.

236. We deal with the suggestion that there was an orchestrated plan to remove the Claimants from the business in more detail below. When cross examined by Mr Uduje, Aislinn Barr said that any agreement about *'the way forward'* did not refer to any plan to oust the Claimants but referred to previous discussions about how vacancies would be filled and that it had been decided to advertise for external candidates.

237. On 1 May 2018 Hema Raval sent an e-mail to the Bank of England informing them that the three remaining members of the Vault Team were due to leave on 31 May 2018. She referred to them as 'disgruntled employees'. The responsible person at the Bank of England asked whether the three employees posed a security risk. Jake Bensalah responded. He said that he did not consider them a security risk but said that they were disgruntled employees and that they might try and cause embarrassment and disruption. He suggested that he had taken some steps to reduce any security risk. We find that the description of the Claimants as 'disgruntled' was accurate. They were clearly unhappy. We find that reporting this to the client in such a secure environment is a sensible and necessary step. Unhappy employees may well pose a security risk. We note that Jake Bensalah acknowledges that the Claimants are not a security risk. We consider he has given an honest assessment of the situation. We do not consider that this shows that he is singling out or picking on the Claimants. He would have taken the same stance with employees who were unhappy for any other reason.

The law to be applied

The burden and standard of proof

238. The standard of proof that we must apply is the civil standard that is the balance of probabilities. In other words, we must decide whether it is more likely than not that any fact is established. As a rule, the party making an assertion of any fact to support their claim or defence bears the burden of establishing that fact.

Protected disclosure claims

239. The protection for workers who draw attention to failings by their employers or others, often referred to as 'whistle-blowers', was introduced by the Public Interest Disclosure Act 1994 which introduced a new Part IVA to the Employment Rights Act 1996. Section 43A of the Employment Rights Act 1996 provides that a disclosure will be protected if it satisfies the definition of a 'qualifying disclosure' and is made in any of the circumstances set out in Sections 43C-H. The material parts of the statutory definition of what amounts to a qualifying disclosure are found in Section 43B of the Employment Rights Act 1996 which says:

> 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,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

240. To amount to a 'disclosure of information', it is necessary that the worker conveys some facts to her or his employer (or other person). In ***Kilraine v London Borough of Wandsworth*** **2018 ICR 1850, CA** the meaning of that phrase was explained by Sales LJ as follows (with emphasis added):

> *"35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)……..*
>
> *36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."*

241. Where, as here, an employee says that the information they conveyed showed a breach or likely breach of a legal obligation they do not have to be right either about the facts relayed or the existence or otherwise of the obligation. It is sufficient that the employee actually holds the belief and that objectively that belief is reasonable - see ***Babula v Waltham Forest College*** **[2007] EWCA Civ 174**. However, it is necessary that the belief is actually held. In ***Eiger Securities LLP v Korshunova*** **[2017] IRLR 115** Slade J said:

> *'…. in order to fall within ERA section 43 B(1)(b), as explained in Blackbay the ET should have identified the source of the legal obligation to which the Claimant believed Mr Ashton or the Respondent were subject and how they had failed to*

comply with it. The identification of the obligation does not have to be detailed or precise but it must be more that a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation.'

242. As a general rule each communication by the employee must be assessed separately in deciding whether it amounts to a qualifying disclosure however, where some previous communication is referred to or otherwise embedded in a subsequent disclosure, then a tribunal should look at the totality of the communication see ***Norbrook Laboratories (GB) Ltd v Shaw*** **2014 ICR 540, EAT** and ***Simpson v Cantor Fitzgerald Europe*** **EAT 0016/18** (where the employee had failed to make it clear which communications needed to be read together) and ***Barton v Royal Borough of Greenwich*** **EAT 0041/14** (where it was held that separate and distinct disclosures could not be aggregated).

243. The effect of Section 43B Employment Rights Act 1996 is that to amount to a qualifying disclosure, at the point when the disclosure was made, the worker must hold a belief that (1) the information tends to show one of the failings in subsection 43B(1) (a) – (e) and (2) that the disclosure is in the public interest. If that test is satisfied the Tribunal need to consider whether those beliefs were objectively reasonable. The proper approach was set out in ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)*** **2018 ICR 731, CA** where Underhill LJ said:

26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B (1).

27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the

essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

244. When going on to consider what was required to establish that something was in the public interest Underhill LJ said at paragraph 37:

"….. *in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."*

245. The 4 relevant factors identified by Underhill LJ were (at paragraph 34):

"(a) the numbers in the group whose interests the disclosure served – see above;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far."

246. Section 43C provides that a qualifying disclosure will be a protected disclosure if it is made to the employer.

247. Section 47B provides (as far as is material):

47B Protected disclosures.

(1) 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.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

248. The meaning of the phrase *'on the grounds that'* in sub-section 47(1) has been explained in ***Fecitt v NHS Manchester (Public Concern at Work intervening)*** **[2012] ICR 372** where Elias LJ said:

'the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.'

249. The meaning of the word 'detriment' in Section 47B is the same as in a claim of direct discrimination under the Equality Act 2010 and is treatment that a reasonable employee would consider to be to their disadvantage.

250. Section 48(1) of the Employment Rights Act 1996 provides for a right of enforcement in the employment tribunal. Sub section 48(2) provides that:

'(2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.'

251. The effect of Sub section 48(2) of the Employment Rights Act 1996 is that once the employee proves that there was a protected disclosure and a detriment the Respondent bears the burden of showing that was not on the grounds that the employee had made a protected disclosure. The fact that the employer leads no evidence or that the explanation it does give is rejected does not lead automatically to the claim being made out. It is for the tribunal looking at all the evidence to reach a conclusion as to the reason for the treatment. See ***Ibekwe v Sussex Partnership NHS Foundation Trust***

EAT **0072/14** and ***Kuzel v Roche Products Ltd*** **2008 ICR 799, CA**. Where there is no evidence or the employer's explanation is rejected it will be legitimate for the tribunal to draw an inference from the failure to establish the grounds for any treatment.

252. Where, as in the present case, there are several alleged protected disclosures and a number of alleged detriments it is necessary to take a structured approach. Guidance was given in ***Blackbay Ventures Ltd T/A Chemistree v Gahir*** **UKEAT/0449/12/JOJ** where it was said a tribunal should take the following approach:

> *a. Each disclosure should be separately identified by reference to date and content.*
>
> *b. Each alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered as the case may be should be separately identified.*
>
> *c. The basis upon which each disclosure is said to be protected and qualifying should be addressed.*
>
> *d. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the Employment Tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the Employment Tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the Employment Tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an Employment Tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.*
>
> *e. The Employment Tribunal should then determine whether or not the Claimant had the reasonable belief referred to in S43 B1 of ERA 1996 under the 'old law' whether each disclosure was made in good faith; and under the 'new' law introduced by S17 Enterprise and Regulatory Reform Act 2013 (ERRA), whether it was made in the public interest.*
>
> *f. Where it is alleged that the Claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the Respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.*
>
> *g. The Employment Tribunal under the 'old law' should then determine whether or not the Claimant acted in good faith and under the 'new' law whether the disclosure was made in the public interest.*

Time limits – protected disclosure

253. The statutory time limits for bringing a complaint that an employee has been subjected to a detriment are set out in sub sections 48(3) - (4A) of the Employment Rights Act 1996. Those sub-sections say:

> *(3) An employment tribunal shall not consider a complaint under this section unless it is presented—*
>
> > *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
> >
> > *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*
>
> *(4) For the purposes of subsection (3)—*
>
> > *(a) where an act extends over a period, the "date of the act" means the last day of that period, and*
> >
> > *(b) a deliberate failure to act shall be treated as done when it was decided on;*
>
> *and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.*
>
> *(4A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (3)(a).*

254. These sub-sections provide two routes whereby events that have taken place longer than three months prior to the presentation of the claim are to be regarded as having taken place within that period. The first found in sub section 48(3)(b) is where an earlier act is part of a series of acts. It is necessary to show that the acts are of a similar kind and that at least one unlawful act occurred within the time limit see ***Arthur v London Eastern Railway Ltd*** **[2007] IRLR 58, CA**

255. The second route to joining earlier events derives from sub-section 48(4)(a) where the events are to be regarded as part of one act extending over a period. That phrase is also found in the Equality Act 2010 and should be interpreted in the same manner and consistently with the guidance in ***Commissioner of Police of the Metropolis v Hendricks*** **2003 ICR 530, CA** in which it was said that the question should have be whether there had been an act over an extended period of time, rather than specific, isolated incidents for which time began to run from the date each act had been committed.

256. Time may only be extended where it is established that it is not reasonably practicable to present the claim within the ordinary time limit (within three months but

subject to any extension because of early conciliation). Where a claim is presented outside the period of 3 months it is necessary to ask firstly whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated. There is no general discretion to extend time and the burden of proof rests squarely on the Claimant to establish that both limbs of the test are satisfied.

257. The expression "reasonably practicable" does not mean that the employee can simply say that his/her actions were reasonable and escape the time limit. On the other hand, an employee does not have to do everything possible to bring the claim. In ***Palmer and Saunders v Southend-On-Sea Borough Council*** **[1984] IRLR 119** it was said that reasonably practical should be treated as meaning "reasonably feasible". ***Schultz v Esso Petroleum*** **Ltd [1999] IRLR 488** is authority for the proposition that whenever a question arises as to whether a step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved.

Unfair dismissal

258. The right not to be unfairly dismissed is conferred by Section 94 of the Employment Rights Act 1996.

259. It is necessary for the employee to show that they have been dismissed. The expiry of a fixed term contract without it being renewed is treated as a dismissal for these purposes – see Section 95(1)(b) of the Employment Rights Act 1996.

260. The right not to be unfairly dismissed is available only to those employees who have been continuously employed for at least two years or those dismissed for what are generally referred to as automatically unfair reasons. A dismissal for a reason falling within Section 103A of the Employment Rights Act is automatically unfair. That section says:

> *'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 has made a protected disclosure'.*

261. A 'reason for dismissal' is usually understood as 'a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee' — ***Abernethy v Mott, Hay and Anderson*** **1974 ICR 323, CA**. As such it is generally necessary to focus on the mind of the decision maker. Mr Uduje relied upon ***Royal Mail Group Limited v Jhuti*** **[2019] UKSC 55** in support of his proposition that the decision makers had been 'manipulated' into making adverse decisions about the Claimants' job applications. In Jhuti Lord Wilson giving the judgment of the court said at paragraph 60:

'*In searching for the reason for a dismissal for the purposes of section 103A of the Act, and indeed of other sections in Part X, courts need generally look no further than at the reasons given by the appointed decision-maker. Unlike Ms Jhuti, most employees will contribute to the decision-maker's inquiry. The employer will advance a reason for the potential dismissal. The employee may well dispute it and may also suggest another reason for the employer's stance. The decision-maker will generally address all rival versions of what has prompted the employer to seek to dismiss the employee and, if reaching a decision to do so, will identify the reason for it. In the present case, however, the reason for the dismissal given in good faith by Ms Vickers turns out to have been bogus. If a person in the hierarchy of responsibility above the employee (here Mr Widmer*

as Ms Jhuti's line manager) determines that, for reason A (here the making of protected disclosures), the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts (here inadequate performance), it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker'.

262. Where an employee has less than 2 years continuous service the burden of proof of showing the reason for the dismissal falls on the employee ***Smith v Hayle Town Council*** **1978 ICR 996, CA**, and ***Ross v Eddie Stobart Ltd*** **EAT0068/13.**

263. The reason for a dismissal the effective reason at the date that a period of notice expires and thus may be a different reason that that put forward when notice was given ***Parkinson v March Consulting Ltd*** **1998 ICR 276, CA**.

Discussion and Conclusions

Were there protected disclosures?

264. As we have set out above the Claimants case is that there were 8 occasions where they made protected disclosures. The Claimants presentation of their case did not clearly distinguish between the occasions where one or other of them provided information. We accept that it is possible for a person to make a qualifying protected disclosure through an agent (a solicitor's letter for example). We consider that might be the same where two people attend a meeting to reveal information but just one did the talking. It may depend on whether one person is held to be talking on behalf of both. Where a person does not make a disclosure on behalf of another then we consider that their association with another person would not mean that that other person should be taken to have made a disclosure. The interesting question of whether Section 47B and 103A prohibit retaliation towards an employee because of a third party's disclosure does not assist the Claimants given our findings of fact as to the reasons for their treatment.

265. The Claimants witness statements and Mr Uduje's written submissions criticised the Respondent for not disclosing its contract with the Bank of England. The Respondents had disclosed parts of Schedule 9 which were said to contain all the obligations relating to the destruction of banknotes. The Claimants had made an application for specific disclosure of the remaining parts but that had been refused by EJ Jones. There had been no appeal.

266. As we have set out above the Claimants were given the opportunity to read Schedule 9 of the contract between the Respondent and Bank of England both before and after the incident of 22 January 2018. It is not clear that they ever did so. The Respondent explained that whilst it had been prepared to share the whole of Schedule 9 with the Claimants they were subject to duties of confidentiality. It was said, correctly we find, that disclosing the whole contract was (1) unnecessary and (2) risked sensitive material being made public. We have no reason to believe that the Respondent's lawyers have not disclosed the material parts of Schedule 9 and accept that they have.

267. In respect of each disclosure we have made findings about what was said on each occasion. One disclosure is in writing and others are evidenced by notes which were essentially agreed. Our findings are as follows:

267.1. Disclosure 1 – Dean Adams *'.. told Stella that Jake Bensalah and Hema Ravel had thrown bank notes on to the disintegrator whilst we were doing the SOPs rules of destruction'*

267.2. Disclosure 2 - We have accepted that during a 1-2-1 Dean Adams would have mentioned Jake Bensalah and Hema Ravel putting notes into the conveyor and some there was a reference to 'checks' without specifying what they might have been.

267.3. Disclosure 3 – We accept that Neil Adams told Jake Bensalah that he had *'intervened in the procedures'*. No details were given as to what those procedures might have been.

267.4. Disclosure 4 – At a meeting with Ciara Smith Neil Adams said words to the effect that *'the SOP had been broken when Jake threw money on the conveyor belt'*. Dean Adams said that they had been 'doing checks' on a £5 live cage when Jake Bensalah threw handfuls of notes on the disintegrator. He said that they had left leaving him and Colin Timms to finish the work and to sign the Destruction Certificate.

267.5. Disclosure 5 – This disclosure was by an e-mail its contents were not in dispute

267.6. Disclosure 6 – Dean Adams told Sean Mavis that Jake Bensalah had thrown money on the disintegrator before 'checks were finished' and that 'they had not signed'. He did not say what checks were unfinished.

267.7. Disclosure 7 – the report made by Neil Adams to Codelink – the notes of which were not disputed; and

267.8. Disclosure 8 the meeting between the Claimants and Mark Sutton on 15 May 2018 - again the notes of which were agreed.

Who is to be treated as having made a disclosure?

268. Disclosures 1, 2 & 6 took place on occasions when Dean Adams was not accompanied by Neil Adams. There is no indication in the evidence that he spoke on behalf of anybody else. We find that insofar as there were any protected disclosures they were only made by Dean Adams. We make the same finding in respect of Disclosure 3 when Neil Adams spoke to Jake Bensalah. We find that on each of the other occasions it is clear from the context that each Claimant was passing such information as they provided on behalf of the others. This is illustrated by the e-mail of 12 February 2018 which is expressly stated to be from the entire vault team.

Was any information conveyed?

269. The first question we must address is whether on each occasion there was 'information' that was conveyed that was capable of tending to show a breach of a legal obligation applying the test identified in ***Kilraine***. That test requires identifying the obligation the Claimants say they believed had been or was likely to be breached. As in ***Eiger Securities LLP*** the Claimants needed to identify the '*source of the legal obligation to which the Claimant believed Mr Ashton or the Respondent were subject and how they had failed to comply with it'.*

270. The Respondent accepts that it was subject to some legal obligations in respect of the destruction of bank notes. The express provisions set out in Schedule 9 are clearly of contractual effect. We accept the suggestion that the contractual obligations are 'high level'. The requirements are broadly that the bank notes must be destroyed under dual control and that there must be an audit trail of documentation showing what has been destroyed. The contract does not descend into the detail of how these obligations must be met. In addition, whether spelt out in the contract or not there would be an implied term that the destruction of bank notes would be carried out with reasonable skill and care. We would accept that, if they had thought about it, both Claimants could have reasonably believed in the existence of these obligations.

271. The Claimants both provided witness statements for the purposes of a preliminary hearing at which the issue of whether there were protected disclosures was to be determined as a preliminary issue. The Respondents had prepared for that hearing on the basis that the Claimants were saying that the source of the legal obligation was in the document produced by Stella Hughes. That is unsurprising because that is how the issue was recorded in the Case Management summary of REJ Taylor. It also corresponds with the way the Claimant's put their case in their ET1 where they say 'Jake Bensalah was in breach of a legal obligation to carry out agreed contractual security procedures for the customer'. We accept that the ET1 does not specify where the contractual security procedures are to be found.

272. In his first witness statement between paragraphs 41 and 50 Neil Adams sets out what he says was his understanding of the relevant legal obligations and how they were said to have been breached. Neil Adams refers to the document provided by Stella Hughes and says that he believed that the procedures had been put in place to combat fraud. He says:

> *It was our belief that it was our responsibility to check what was going to be destroyed and complete and sign the paperwork. The destruction certificate was a declaration that you had fulfilled the requirements expected regarding the certificate details that had to be audited at a later stage. By throwing sterling onto the disintegrator we believed that Jake and Hema had acted unlawfully in doing so.*

273. Dean Adams first witness statement at paragraphs 49 to 58 is in identical terms.

274. Whilst the Claimants did not assist themselves with the lack of clarity around how they put their case ultimately, we understood then to be accepting that they did not believe that Stella Hughes instructions were the source of any legal obligations. We understood then to say that they believed that any failure to follow those instructions would breach the contractual requirements of the Bank of England and, in particular, the requirement that the destruction certificates provided an accurate audit trail for what had been destroyed.

275. We turn to the question of whether on each occasion there is said to be a protected disclosure the Claimant(s) disclosed information that tended to show a breach of the obligations as the Claimants understood them to be. It is necessary to deal with each in turn. We deal firstly with the question of whether there were any facts conveyed at all.

Disclosure 1

276. Disclosure 1 included information in the sense that it included factual statements that (1) Jake Bensalah and Hema Ravel had thrown bank notes on to the disintegrator and (2) that this had taken place at a point in time when Dean Adams and Colin Timms *'*were doing the SOPs rules of destruction'. We consider it implicit that it was said that there was some part of the SOP rules of destruction that had not been completed at the time. The allegation is vague as it does not specify what part of the process had not been completed.

Disclosure 2

277. Disclosure 2 is similar. Dean Adams referred to materials being placed on the disintegrator and he made reference to the timing being when checks were being done. Whilst he did not say what checks were outstanding the implication is that there was some step that had not been completed.

Disclosure 3

278. Neil Adams told us in his witness statement only that he had told Jake Bensalah *'what the problem was'* and that he and Hema Ravel had *'intervened in the procedure'*. It is for Neil Adams to show he has made protected disclosures and a necessary first step is proving to the civil standard what was said or at least the gist of anything said. We consider the statements he says he made to be incredibly vague. We would accept that in may be implicit in the suggestion of there being a 'problem' and a reference to an intervention in a procedure, that the procedure was not followed.

Disclosure 4

279. In the meeting with Ciara Smith Neil Adams said that there had been a breach of the SOP without specifying what that might be. Dean Adams said two things. Firstly, that the money had been placed on the disintegrator whilst he was doing some unspecified check and secondly that Jake Bensalah had left before the certificate was signed. Whilst there is a distinct lack of any specifics of any wrongdoing there were factual statements made by the Claimants.

Disclosure 5

280. The only relevant part of the e-mail of 12 February 2018 is where it is said 'On a separate occasion after that Jake and Hema throwing in live 5g work on to the disintegrator before SOP checks have been carried out. Here we find that there is information that the destruction of the banknotes took place before some (again unspecified) part of a standard operating procedure had been completed.

281. Disclosure 6

282. This concerns the disclosure said to have been made by Dean Adams to Sean Mavis. The facts conveyed were limited to a reference to money being placed on the disintegrator AND a reference to that being done whilst some unspecified check was carried out. Dean Adams also said that Jake Bensalah and Hema Ravel had not signed the destruction certificate.

Disclosure 7

283. When Neil Adams contacted Codelink by telephone he relayed a long history of difficulties at work. His only mention of the events of 22 January 2018 was to say that

Jake Bensalah 'was circumventing contract rules established between the company and the Bank of England, ordering staff to drop some requirements in favour of speed of performance'. That is the limit of the information given on that occasion. We note the lack of detail about what requirements were being 'dropped'.

Disclosure 8

284. We have set out in our findings of fact above the material parts of the transcript of the meeting between the Claimants and Mark Sutton. Dean Adams said that he was doing his checks (unspecified) when Jake Bensalah placed money on the disintegrator. He says that he was pressured in to this. He goes on to suggest that that might have been a problem due to cages being amalgamated.

Did the Claimants actually believe that this information tended to show a past or present breach or a likely future breach of a legal obligation?

285. At this stage we are not concerned whether the Claimants believed the information they were disclosing was true. That is relevant only to the question of whether the Claimants believed that the disclosures were in the public interest to which we return below.

286. The thrust of each disclosure was that Jake Bensalah and Hema Ravel had placed money on the disintegrator before some check had been carried out. In three instances there was reference to Jake Bensalah leaving before the destruction certificate was signed.

287. We have found above that Ciara Prichard told the Claimants before the events of 22 January 2018 that Stella Hughes rules of destruction were not a formal document. We have also found that around January 2018 the formal SOP was being revised. We are satisfied that before being informed otherwise by Ciara Prichard the Claimants did believe that following Stella Hughes instructions was the means to stay within the legal requirements required by the Bank of England. We have considered whether they maintained that belief after they were told that the training document had no formal status as an SOP. There was a marked reluctance by the Claimants to accept that Ciara Prichard was their manager. Even in these proceedings they suggested that they would still answer to Stella Hughes beyond 22 January 2018. Whether reasonable or not we find that the Claimants did continue to believe that Stella Hughes destruction rules needed to be followed up. They maintained that belief despite the meeting of 12 March 2018 when Jake Bensalah set out in clear terms that the overall obligations were found in Schedule 9 (which they were invited to inspect) and that a revised SOP was to be produced shortly.

288. We are satisfied that the Claimants believed that when they said that some checks had not been completed when banknotes were placed on the disintegrator they actually believed that that information tended to show that there had been a failure to comply with a legal obligation. We find not only that that was their belief that was their intention. They wished to suggest that Jake Bensalah had caused the Respondent to be in breach of its obligations to its clients. In short, they wished to get him into trouble.

289. At some point, and we are not sure when, the Claimants began to believe that the fact that Jake Bensalah did not sign the destruction certificate was further wrongdoing. We find that they did believe that providing the information that Jake Bensalah had left the destruction area before signing the certificate was a breach of the contractual obligations owed to the Bank of England.

Was the Claimants belief reasonable?

290. It is necessary to ask whether the Claimants could have reasonably believed that the information conveyed tended to show that there was a breach of the obligations owed by the Respondent. The test is objective but we bear in mind the guidance given in ***Chesterton*** which although it was directed towards the issue of public interest applies equally here. When asking whether a belief is reasonable it is necessary to bear in mind that there may be more than one reasonable view of a single set of facts or situation.

291. The focus of this question is once again on the Claimants belief about information disclosed and not on whether it was true or false. Asking whether information tends to show some wrongdoing does not require an assessment of the truth of the information.

292. If some check had not been completed in the destruction area such as the visual check of the denominations or the fact that parcels had not been tempered with at the time that Jake Bensalah threw notes on the disintegrator then we accept that there is a potential for a breach of the obligations owed to the Bank of England in respect of auditing what had been destroyed. There is some possibility that the contents marked on the cage would not correspond with the documentation. The Claimants refer to amalgamated cages. The evidence we have heard does not persuade us that it was more likely than not that there was any greater risk of errors in an amalgamated cage than in a cage that had not been amalgamated after counting. In either case a check ought to have been carried out before the seal is attached and the contents authorised for destruction.

293. We do not think that the fact that in most cases failing to do the final checks would not result in any inaccuracies means that disclosing information that corners had been cut could not reasonably show a breach of the legal obligations owed to the Bank of England.

294. We find that the Claimants could have reasonably believed that doing the visual check included in Stella Hughes instructions and said by Jake Bensalah to be a part of the process was contractual in the sense that these were steps necessary to carry out the task with reasonable skill and care. Accordingly, when the Claimants disclosed information that checks had been interrupted before they were complete they could have had a reasonable belief that that information tended to show a breach of the legal obligations owed to the Bank of England.

295. We then turn to the three occasions where the Claimants stated that Jake Bensalah had not signed the destruction certificate. The actual requirements of Schedule 9 are that the destruction process takes place under dual control. We find that that is an obligation to provide at least two people to be present at all times during the destruction process. Stella Hughes instructions make this clear as do all versions of the Respondent's SOPs and Jake Bensalah's description of the process in his witness statement.

296. What does not appear in Schedule 9 or in any SOP of instruction is any suggestion that anybody at all who is involved in any way in the destruction process should sign to acknowledge their involvement. Jake Bensalah said, and we accept, that there is a certain fascination in destroying bank notes and that visiting dignitaries are often invited to place banknotes on the disintegrator.

297. The Destruction Certificates contain a declaration that the material listed has been shredded in accordance with a standard Din66399 which provides for how finely

the notes will be shredded. There is a further declaration that there has been a search carried out of the destruction area and that the area is clear of secure material. The certificates have a place for just two signatures.

298. Mr Uduje directed us to the action suggested by Martin Sutton as an outcome to the Codelink investigation. He said: '*The only matter the complainant raised the potentially could be considered as inaccurate if true, is that on 22 January 2018 Jake Bensalah, the HSSE Manager at Debden, participated in the destruction of some spoiled but did not sign the destruction certificate to say he had participated in the destruction of that waste'.* We find that that statement falls far short of accepting that there is a contractual obligation to sign a destruction certificate if a person had any involvement in the process. Martin Sutton uses the word 'potentially' and passes the matter on for further investigation. We have accepted that that investigation caused no action to be taken.

299. Mr Uduje asked Sean Mavis whether he would have expected to see a signature on a destruction certificate for each person involved in the process. Mr Mavis said that he would. Mr Uduje relies upon that in support of his contention that the Claimants could have had a reasonable belief that this was a contractual obligation. Mr Uduje did not actually suggest to Sean Mavis that there was such a contractual obligation.

300. As a matter of fact, we do not find that there was any contractual obligation to require an individual who had been present and participated in some part of the destruction process to sigh a destruction certificate. We accept the Respondent's evidence that the Bank of England are demanding and that processes are audited (the contract provides for that). The destruction certificate is inapt to deal with a requirement that every person involved should sign it. This is because that certificate is signed at the end of a process to certify the destruction of materials. If a person was involved at an early stage but not the later stages they could not truthfully sign that certificate. Every person would need to stay to the end. The certificate is designed to meet the contractual requirement for dual control.

301. The question we must address is whether the Claimants could reasonably believe that the failure of Jake Bensalah to sign the destruction certificate tended to show a breach of a legal obligation. Objectively we find that there was no such obligation but we remind ourselves that the Claimants do not have to be right. Their belief needs only to be reasonable. There was no evidence that the Claimants were told that every person who takes any step in the destruction process must sign the certificate. We have seen some certificates with three signatures but do not know the circumstances.

302. We would accept that the Claimants might have reasonably believed that it was good practice for everybody involved in the destruction process to sign the certificate. However, it is taking the matter much further to say that they could have reasonably believed that there was a breach of contract when Jake Bensalah did not do so. A breach of contract gives rise to a claim in damages. In circumstances where there was no instruction to that effect, in circumstances where the Claimants had been offered the opportunity to look at Schedule 9 and not done so and in circumstances where the destruction certificate was inapt for signature in the circumstances that had arisen we do not find that it was reasonable for the Claimants to believe that any failure to sign the destruction certificate was a breach of a legal obligation as opposed to good practice.

Did the Claimants actually believe that their disclosures were in the public interest?

303. Mr Uduje on behalf of the Claimants took us to features of the operation at Debden which he said made it obvious that any disclosure concerning the security and destruction of bank notes would be in the public interest. We would accept without any hesitation the suggestion that there is a public interest in ensuring that banknotes are processed, stored and destroyed in accordance with the requirements of the Bank of England. As Mr Uduje says the contract is between a public body and a private contractor. The public at large have an interest in the proper performance of such a contract.

304. That said the first step is to ask whether, at the time the disclosures were made the Claimants actually believed that making the disclosures was in the public interest. That requires us to look again at the disclosures that were made for it is the disclosure of that information that the Claimants needed to believe was in the public interest.

305. In our findings of fact and in our discussions above we have remarked time and again on the fact that when asserting that 'we were doing our checks' (and various similar permutations) when the money was placed on the disintegrator Dean Adams never said what it was that he was doing that was interrupted. This was the case over all the protected disclosures, the ET1 and over 2 witness statements. It was only in his oral evidence that he sought to explain what he and Colin Timms had left to do before the banknotes were destroyed.

306. Jake Bensalah had assumed that Dean Adams and Colin Timms were carrying out a count of the money. He was exasperated because he had made it clear on a previous occasion that that was unnecessary. Before us the Claimants appeared to accept that no such count was ever required. When asked during his oral evidence what exactly he was doing when Jake Bensalah entered the destruction area, Dean Adams said, for the very first time, that he was totalling up the amount in trays and noting the quantities on a piece of paper. We have not accepted that evidence. We find that this is something that was seized upon to plug a gap in his case. Had this been the case there was no reason why those details could not have been relayed before. Dean Adams had every opportunity to say that during a 5-hour meeting with Martin Sutton or, at the very least, included that detail in one of his two witness statements.

307. We have set out above that we find as a fact that Dean Adams and Colin Timms were not, as they later claimed, doing any checks at all at that stage. Any visual inspection would have been undertaken before notes were, as we find they were, scattered on the table.

308. Mr Uduje sought to persuade us that there was no reason why, what he said were exemplary employees, would raise this matter if they did not believe it to be in the public interest. We think it is going a little too far to describe the Claimants as exemplary employees. There had been friction between the Claimants and other employees over some months. A considerable amount of the Codelink complaint concerned those matters. Friction between the Claimants and Ciara Prichard also predated the disclosures.

309. We consider that Mr Uduje' submissions overlook simple human frailty. As we have found above both Claimants were loyal to a fault and were unhappy that Stella Hughes lost her job in the re-organisation. They manifested that unhappiness in the way they regarded Ciara Prichard essentially refusing to acknowledge her role whilst Stella Hughes remained employed. We find that the Claimants, and probably the vault team as a whole, resented the suggestion that the fact that the project was overrunning the

time allocated for it was in some way their responsibility. This was a powder keg into which Jake Bensalah threw a match when on 22 January 2018 he suggested that Dean Adams and Colin Timms were holding up progress. Petty as it sounds the suggestion that time was being wasted by drinking tea was particularly offensive. The Claimants Codelink complaint emphasises the fact that the Claimants were complaining about the way they had been treated rather than trying to draw attention to something in the public interest. They spend a great deal of time complaining about matters entirely unrelated to any disclosure.

310. We find that Dean Adams knew that there were no checks left undone but that he decided to take a stand to defend himself from criticism. The allegation that there was some check that he had been prevented from doing flows from that. As we have set out above we find the reason that Dean Adams and Colin Timms signed the destruction certificate without making any reservation is that they knew that the information contained on it was correct.

311. We remind ourselves of what was said in ***Chesterton*** that in asking whether the Claimants believed that their disclosures were in the public interest we should not have regard for their motivation in making the disclosures. In addition, we should recognise because a person may later come up with better reasons why something was in the public interest does not mean that they did not actually believe that the disclosure was in the public interest at the time.

312. We have asked ourselves whether a person who makes a disclosure that he knows to be untrue can do so believing it to be in the public interest. Section 43B of the Employment Rights Act 1996 as amended in 2013 no longer requires a disclosure to be in 'good faith'. The question of whether a disclosure was made not in good faith goes only to remedy. We note that Section 43G requires a person making a disclosure to 'any other person' to reasonably believe that the information they disclose is substantially true. That is a higher threshold than in Section 43B where there is no need to show that a reasonable person might have believed the information to be true.

313. The amendments to Section 43B substituted a requirement that the disclosure was in the public interest. It may be possible to identify some occasion where it is possible that disclosing information known to be false is in the public interest. In ***Chesterton*** Underhill LJ suggests that the reasons later put forward for believing that a disclosure is in the public interest might cast light on whether the belief was ever held at the material time. We consider that a finding that a person did not believe the information they were disclosing has the same evidential weight. The fact that somebody knew that the information they were disclosing was not correct makes it less likely that they actually held a belief that the disclosure was in the public interest. It is a question of fact whether they did so or not.

314. In the case before us we find that Dean Adams knew that he had no checks left to compete. He knew that the notes destroyed were those listed on the destruction certificate which he signed as being correct. We have regard as well to the context in which the disclosures were made. We have found that in all cases the disclosures were made in response to criticism by managers. The use of the Codelink process to advance personal grievances would be one example of that. Taking all these matters together we find that when Dean Adams later claimed that Jake Bensalah had destroyed money when there was some check left to do he did not believe that it was in the public interest to do so because it would not have occurred to him that it was.

315. We then turn to the position of Neil Adams. It is necessary for us to make supplementary findings of fact and we do so below. We accept that if he was told that banknotes had been destroyed without checks being done Neil Adams might believe that it was in the public interest to disclose those facts. The issue is whether he too knew that the checks had as a matter of fact been completed. We see no reason that Dean Adams would not tell his brother the truth about what had happened rather than the glossed version he later told others. Anybody listening to an account of 22 January 2018 would wish to ask Dean Adams what part of his checks were not completed. Neil Adams says nothing about this in his 2 witness statements. We make the additional finding that it is more likely than not that Dean Adams told Neil Adams the truth. That is that he and Colin Timms had been interrupted in their work but that there was nothing left for them to check at that time. We find that putting a gloss on this was just a means of pushing back at the criticism of the vault team. For the same reasons as we have outlined in respect of Dean Adams we find that Neil Adams had no belief that making a disclosure referring to checks not being done was in the public interest.

316. Above we have held that the Claimants could not have reasonably believed that there was any breach of a legal obligation where Jake Bensalah did not sign the destruction certificate. On the assumption that we are wrong about that we consider whether the Claimants believed there was any public interest in disclosing that fact on the three occasions it was referred to.

317. We find that neither Claimant actually gave any thought to whether this was in the public interest. The Claimants knew that they had not been interrupted before their checks were complete. They were prepared to provide information that they knew was inaccurate to further their own cause. In those circumstances we find that it is more likely than not that the Claimants gave no thought to whether the additional information about the signatures on the destruction certificate was in the public interest. Whether it was or wasn't we find that the Claimants have not satisfied us that they gave any thought to the matter.

318. As we have concluded that the Claimants held no belief that their disclosures were in the public interest the answer to the question of whether such a belief was reasonable falls away.

319. For the reasons set out above we have concluded that none of the disclosures made by the Claimants were protected disclosures falling within Section 43B of the Employment Rights Act 1996. That finding means that the Claimant's claims must fail.

320. Lest we are wrong in respect of our findings above we shall go on to consider whether the disclosures made were the reason for any of the Claimants' subsequent treatment.

Causation

321. To do justice to the work Mr Uduje put in to his cross examination of the Respondents witnesses, we start this section by giving our reasons for accepting that certain of the decision makers had no knowledge of any protected disclosures. We then deal with Mr Uduje's point that the decision makers were 'manipulated' by being supplied contaminated information about the Claimants.

322. Mr Uduje said this in his written submissions:

'…in the present case there is overwhelming evidence that the Respondent's (Debden

Plant) hierarchy were acutely aware of the material facts of the Claimants protected disclosure; they were also involved in the recruitment process for the roles that the claimants applied for and/or interviewed – playing a formal role in the decision-making process.'

323. Mr Uduje asked questions of most of the Respondents witnesses which were aimed at showing that the management and HR teams worked closely together. Aisinn Barr told us, and it was not contentious, that at the material time she was the HR Manager and had 4 members of the HR team reporting to her. These included Ciara Smith, Stacy Hayes and Jonathon Payne who was recruited on a temporary basis to conduct a recruitment campaign. She also said that at the time there was a Senior Leadership Team that included all the senior managers. That included Jake Bensalah, John Robertson and for a period Sean Vaux. Where a manager did not attend a Senior Leadership Team meeting it was possible they would ask their team leader(s) to deputise for them.

324. There were several people who were aware of what the Claimant(s) were saying had been done improperly on 22 January 2018. Those included:

324.1. Stella Hughes and Sharon Hipgrave on 23 January 2018; and

324.2. Ciara Prichard who was told on 24 January 2018; and

324.3. Jake Bensalah who was told by Neil Adams on 22 January 2018; and

324.4. Ciara Smith who spoke to the vault team on 7 February 2018; and

324.5. Aislinn Barr who saw the e-mail of 12 February 2018; and

324.6. Steve Craig the Plant Manager and Stacey Hughes who learned that there was a complaint from Aislinn Barr; and

324.7. Sean Mavis who had spoken to Dean Adams at some point; and

324.8. Peter Viney who dealt with some aspects of the grievance.

325. In addition, Karen Gay accepted that she was aware that the Claimants were not getting on with Jake Bensalah.

326. Sean Vaux denied any knowledge of the Claimant's complaints and of any difficulties between the Vault Team and Jake Bensalah. John Robertson's evidence was that he knew nothing of the complaints. He accepted that he had some knowledge about the volume of work that the vault team were expected to get through.

327. Mr Uduje is correct that there were a number of members of the HR department and Senior Leadership team who were aware of the disclosures. We understand him to be inviting us to draw inferences that that Karen Gay, John Robertson and Sean Vaux did in fact know about the disclosures and that their knowledge played a material part in their recruitment decisions. We understand him to argue that the primary facts from which any such inference should be drawn included (1) the close connections between those people who knew about the disclosures and those who say they did not and (2) what Mr Uduje says are the inexplicable reasons why the Claimants were unable to secure alternative employment.

328. We have set out our findings of fact above in respect of each of the recruitment decisions. The Claimants repeatedly point to their many years of experience as printers and invite us to find that the decisions not to offer them interviews or roles was so extraordinary that we should find that the decision makers must have known of their disclosures. The difficulty with this line of argument is that we have found that in respect of every role the Respondents had set criteria that were wider than experience as a printer. In some roles, the ones Karen Gay considered, print experience counted for very little. In others it was important but by no means the only requirement for the job. We consider that the job descriptions that were produced were very clear and set out exactly what qualities the candidates needed to demonstrate. We agree with the Respondent's witnesses who stated that the Claimants failed to tailor their applications to the criteria required. We do not accept that any of the reasons put forward for not progressing any of the applications made by the Claimants is surprising or calls out for any explanation.

329. We accept that the recruiting managers worked with, attended meetings with and interacted with each other. We do not accept that that means that it was inevitable that the Claimants disclosures would be discussed. For the Claimants their complaints were very important matters. When Jake Bensalah gave evidence, he said something that struck us as having a ring of truth. He said that he was never particularly concerned what the Claimants were saying about him as he knew he had done nothing wrong. We have agreed with him that he did nothing wrong as he was correct in his assessment that all checks that were necessary must have been completed when he threw money on the disintegrator. We do accept that Jake Bensalah was exasperated at the Claimants persistence in advancing their complaints together with the way they did so. We do not accept that issues such as disagreements between team members and their managers would necessarily be discussed at Senior Management meetings.

330. A theory advanced by Mr Uduje was that there was a decision in early February to give the vault team a final fixed term contract in order that they could then be 'exited' when they were not offered any roles. Mr Uduje points to the fact that Jake Bensalah had a meeting with Aislinn Barr after receiving the Claimants' e-mail of 12 February 2018. He points to an e-mail sent by Aislinn Barr to Ciara Smith on 27 February 2018 when she asked Ciara Smith not to copy her in on routine e-mails including one which concerned organising a meeting to deal with the vault team grievance. She said; *'I've stepped away given that you picked it up with him and now that the new structure is in place I in theory do not need to get involved (smiley face)*'

331. Mr Uduje sought to say that the 'new structure' referred to was the decision to give the Vault Team a further fixed term contract in contrast to security operatives had been on fixed term contracts but were made permanent. He points to the fact that the documentation showing the new structure was amended at this time. He then refers to the e-mail sent by Aislinn Barr in response to Jake Bensalah sending her Colin Timms e-mail asking for a second chance. He seizes on the words *'I thought we had already discussed this situation and agreed a way forward….*'. He says that this proves that there was a decision taken as early as February to oust the Claimants.

332. We do not find that there was any 'plan hatched to 'exit' the Claimants'. We have accepted that the vault project was of finite duration. The Claimants knew that. The 20g ramp up exercise was independent of the Claimants disclosures and was the subject of a great deal of planning. The Respondent was going to need more Security Operatives. It had Security Operatives working on fixed term contracts. It is entirely unsurprising that those individuals' contracts were made permanent where there was permanent work for them to do in contrast with the vault team whose work was running out. We find it more

likely than not that this clear and obvious explanation was the true explanation. Whilst we accept that Jake Bensalah was unable to recall the reasons for the decision that does not provide a sufficient basis for departing from this conclusion.

333. Aislinn Barr's e-mail of 27 February 2018 refers to a new structure. When she gave evidence that she was referring to a new structure in the HR Department. A decision had been taken to delegate areas of responsibility. That explanation was clear and is entirely consistent with the instruction that was given to Ciara Smith not to copy Aislinn Bar into any routine e-mails. We make a further finding of fact and accept her explanation.

334. The final piece in Mr Uduje's jigsaw was Aislinn Bar's e-mail in June 2018 when she refers to having discussed 'a way forward'. In her evidence Aislinn Barr said that this simply referred to the recruitment process where a decision had been taken to invite external applicants. We have accepted that evidence.

335. Taking the evidence as a whole we reject the suggestion that there was any plan to remove the Claimants from the business hatched between Jake Bensalah and Aislinn Barr or by anybody else. The Claimants were displaced from their roles because they were engaged on a project which was expected to finish and was finished by mid-April. Thereafter their continued employment depended upon their success applying for other jobs.

336. We further decline to draw the inference that Mr Uduje invites us to draw that the recruiting managers must have known of the disclosures. There was insufficient evidence to establish that that was the case. For these reasons we accept that Karen Gay, John Robertson and Sean Vaux did not know that there had been any protected disclosures and therefore could not have been influenced by that.

337. Mr Uduje's alternative position is that any recruitment decisions taken by persons who did not know of the disclosures would have relied on tainted information about the Claimants and that in that sense the recruiters were 'manipulated' by Jake Bensalah. Mr Uduje referred extensively to ***Royal Mail Group Limited v Jhuti*** in support of this aspect of his case. Whilst that case concerned the reasons for a dismissal (in contrast with reasons for not recruiting) we would accept that the same principle would apply. However, a necessary foundation to a finding that the decision maker acted for the reasons of any 'manipulator' is that the decision maker had been influenced something said or done by the manipulator.

338. We have already found that Karen Gay, John Robertson and Sean Vaux had no knowledge of the protected disclosures. Karen Gay had been told that the Claimants were difficult to manage. We have found above that she put that to one side and formed her own view of the Claimants. If this was an attempt to influence Karen Gay, it failed. John Robertson and Sean Vaux said that they had no knowledge at all of this. Applying the same approach as we did to their knowledge of the disclosures we accept their evidence in this regard.

339. We would accept that Jake Bensalah and Ciara Prichard would have discussed the Claimants between themselves. As such there is a possibility that Ciara Prichard may have been influenced by Jake Bensalah. That said she did not shirk from the fact that she held a very dim view of the Claimants.

340. Mr Uduje drew attention to Jake Bensalah's interference in the disciplinary process arising from the incident with Colin Timms as well as his intemperate references to the Claimants in his correspondence. He argued that this was all material from which we could draw inferences that Jake Bensalah wished to see the back of the Claimants. We do

not consider that we are very much assisted with Jake Bensalah's input into the Colin Timms incident. He could quite reasonably have thought that Hema Ravel's conclusions were not well reasoned. There was at least a prima facia case of bullying behaviour of which Colin Timms protestations that he was unconcerned could have been regarded as a symptom. Jake Bensalah's correspondence on the other hand shows that he was totally exasperated with the Claimants. He expressed himself in forceful terms. Had he been involved in any further decision making we would have needed to look carefully at any decision he took. The question is whether he in fact take or influence any decision.

341. We have had regard to all the matters set out in Mr Uduje's written submissions but find that there is no sufficient evidence from which we could draw any inference that Karen Gay, John Robertson or Sean Vaux were 'manipulated' by Jake Bensalah or anybody else.

342. We then turn to our findings in respect of each pleaded detriment. We deal with Neil Adams and then with Dean Adams

Neil Adams – causation

The MMO role

343. We have set out our findings above that Karen Gay had no knowledge of the protected disclosure. We have rejected the factual basis for suggestion that she was influenced or manipulated by Jake Bensalah or anybody else. We have accepted Karen Gay's evidence that the reason that Neil Adams was not offered an interview was that his CV did not demonstrate the qualities she was looking for.

344. We are satisfied that disclosures played no part whatsoever in Karen Gay's decision.

The BPS and BPS Senior roles

345. We have found above that Sean Vaux did not know about any disclosures and rejected the suggestion that he was manipulated or influenced in the decisions he took. Mr Uduje pointed out that those decisions were taken alongside Ray Staerrck who we did not hear from. We had no evidence that Ray Staerrck had any knowledge of the disclosures. We are satisfied from Sean Vaux's explanation of how applications were scored against the essential criteria that the scoring was carried out objectively. There is nothing in any score that suggests that Neil Adams was unfairly marked down. His principle difficulty is that he had failed to demonstrate that he had satisfied the essential criteria which included having GCSEs in Maths and English.

346. The Respondent has satisfied us that the reason why Neil Adams was not appointed to these roles was his failure to demonstrate in his application that he was a sufficiently strong candidate.

The guillotine role

347. We had no direct evidence why Neil Adams was not interviewed for the Guillotine role. Sean Vaux provided a likely explanation which was that the application failed to demonstrate skills that were identified as requirements. Section 48(2) of the Employment Rights Act 1996 places the burden of proof on the Respondent to show the reason for any treatment complained of. Had we not held that there were no protected disclosures and had we not held that this complaint was out of time we would have had needed to resolve

the question of whether the treatment was on the grounds of making a protected disclosure. In the light of our other findings this does not arise.

The Security Operative and Machine Assistant roles

348. Neil Adams withdrew his applications for these two roles. The detriment that was relied upon was the appointment of Jake Bensalah to conduct the interview for the Security Operative role. As we have found above that decision was taken when Ciara Prichard fell ill and was unavailable. An interview had previously been arranged with Ciara Prichard but Dean Adams did not attend. Jake Bensalah was the next manager in line. As in all the other recruitment exercises a manager in the department worked with HR to decide who should be recruited. There is no evidence at all that the reason Jake Bensalah was asked to do the interview was because of the disclosures.

349. We are satisfied that the reason that Jake Bensalah was asked to conduct the interview was only because he was the only manager of that department available. His appointment had nothing whatsoever to do with the disclosures.

350. We accept that given the animosity between Jake Bensalah and Neil Adams it would have been very difficult for Jake Bensalah to have remained fair and objective had he conducted the interview. As it transpired he did not have to as the applications were withdrawn.

Dean Adams – Causation

The MMO role

351. We need not repeat what we have said above. Karen Gay's reasons for not offering Dean Adams an interview were the same as her reasons in respect of Neil Adams. We are satisfied that that had nothing whatsoever to do with any protected disclosure.

The Unblocker role

352. As we have found above John Robertson had no knowledge of the disclosures nor was there any evidence he was 'manipulated'. He gave a clear rational explanation why Dean Adams failed to secure this role. We accept that the reasons he gave were the only reasons and that it had nothing to do with any disclosure.

The Machine Assistant role

353. Dean Adams was not rejected for this role he was asked to provide a CV tailored to the role rather than his generic CV. He decided not to do this. If there was any detriment it was being asked for a tailored CV. We note that a substantial number of other candidates were asked to do the same. We find that the criticism of Dean Adams CV was entirely rational. It was not tailored to this role. We find that Ciara Smith was trying to assist Dean Adams (and others) by giving an opportunity to put in a stronger application. In no sense at all was that because of any protected disclosure.

The BPS No: 2 role

354. We have found above that Sean Vaux had no knowledge of any disclosures and was not 'manipulated'. Whilst the decision who to appoint was taken jointly with Ray Staerrck there is no evidence that Ray Staerrck knew anything about the disclosures. We have accepted the evidence of Sean Vaux as to why Dean Adams got the scores he did.

He had a low score for his academic qualifications as he did not meet the essential criteria. We are satisfied that the only reason that Dean Adams was not interviewed for this role was that his application did not sufficiently demonstrate he had the skills that were sought by the Respondent.

The Security Operative role

355. Contrary to the pleaded case Dean Adams was offered an interview for this role. As we have set out above that would mean that his claim fails. However, we have gone on to ask whether disclosures played any part in the reasons for the decision. Dean Adams was interviewed by Ciara Prichard and Jonathan Payne. Ciara Prichard was aware of the disclosures. We accept that her assessment of Dean Adams would have played a part in him not being offered the job. We have found above that Dean Adams did not do well in his interview. That is evidenced by the notes and was something he recognised himself when giving evidence. If it were necessary to have done so we would have found on the evidence we had that the reasons for not offering Dean Adams this role were because of his interview performance and for no other reason.

<u>The unfair dismissal claims</u>

356. Our findings in the unfair dismissal claim flow from our other findings. As we have found that there were no protected disclosures then the claim of unfair dismissal must fail. If we are wrong about that wen make the further findings as to the reason for the dismissal.

357. We are satisfied that the reason that the Claimants were given a final fixed term contract in February 2018 was that it was anticipated that the vault project would end. We have rejected the suggestion that the Claimants should have been offered roles as Security Operatives like those employees already engaged in that role. There was some work still to be done on the vault project and it was entirely logical to appoint the existing Security Operatives to permanent roles.

358. We are entirely satisfied that the reason or principle reason for giving the Claimants a further fixed term contract was that they were needed for a temporary period to complete the vault project. We find that the fact that they had made disclosures played no part in that decision. That decision was therefore entirely lawful when it was made

359. In those circumstances the Claimants employment would end on 31 May 2018 unless they secured alternative employment. As we have set out above in looking at the reason for a dismissal it may be necessary to look at the reasons in the decision makers mind at the time that a notice period (or here a fixed term) expired.

360. We are satisfied that the same reasons existed at the termination of the fixed term contract. The vault project had been completed and neither Claimant had found another role. We are satisfied that that reason was not that the Claimants had made any disclosures.

361. We have not accepted that any of the recruitment decisions were on the grounds that there were disclosures (protected or otherwise). Had we held to the contrary that would not have caused us to find that the reason for the termination of the contract was that the Claimants had made protected disclosures. The reason would have remained the same as the reason for giving a fixed term contract in the first place. The unlawful act would not have changed that but would have given rise to a claim in its own right.

362. The claims for unfair dismissal are accordingly not well founded.

Time – the detriment claims

363. We have set out above the legal principles relating to when a tribunal will have jurisdiction to entertain a complaint brought under Section 48 of the Employment Rights Act 1996. The Claimants contacted ACAS on 13 August 2018 and presented their claim on 21 September 2018. That means that in order to confer jurisdiction on the tribunal the Claimants need to show that the acts complained of took place or are (by reason of sub sections 48(3)(a) or 48(4)(a) deemed to have taken place) after 14 May 2018.

364. We have set out above our findings as to whether there was some 'plan to exit' the Claimants and rejected that. We have also considered whether there was, as Mr Uduje suggested, an environment where Jake Bensalah was manipulating others to force the Claimants out. We have found that there was not. In the circumstances we have concluded that there was not any 'act extending over a period' as understood in ***Hendricks***. We find that each recruitment decision was a discrete act undertaken by the people assigned to that role.

365. It follows from that conclusion that for any part of the claim to be in time there must be one unlawful act that took place after 14 May 2018 – see ***Arthur v London Eastern Railway Ltd***. We would accept that if the adverse recruitment decisions were on the ground that there had been a protected disclosure then they would form part of an act extending over a period.

366. For Neil Adams the only acts complained of that postdate 14 May 2018 are the decision that Jake Bensalah would be conducting the interview for the Security Operative role and the termination of the fixed term contract. We have held that neither of these acts were unlawful. It follows that any act that predated 14 May 2018 were presented outside the primary time limit.

367. It was not argued on behalf of Neil Adams that it was not reasonably practicable to present his claim in time. In the circumstances even if we had accepted that some earlier decisions were on the grounds of protected disclosures the tribunal would have had no jurisdiction to hear them.

368. In respect of Dean Adams there were two decisions which were taken after 14 May 2018. Those were the decisions that he would not be offered a role as an Unblocker or as a Print Assistant. We have held that neither of those decisions were unlawful. It follows that any claim arising from an earlier decision would be out of time unless it was not reasonably practical to have presented the claim in time. No argument was advanced that it was not.

369. For the avoidance of any doubt we find that a decision was taken not to interview Neil Adams for the role as a guillotine operator by no later than 2 May 2018 when he was notified he was not successful. Any improper act by Ciara Prichard in respect of Dean Adams application for the role of Security Operative must have taken place before she went on sick leave. Correspondence about Neil Adams interview for the position as a Security Operative shows that Ciara Prichard was already of work on 14 May 2018. As such any claim relying on any act of omission by her was out of time. Even if we had permitted the application to amend this claim would have failed on this basis.

370. Conclusions on the claims brought under Section 47B/48

371. For the reasons set out above all of the claims fail. In respect of all of the claims we find that there were no protected disclosures. We have set out our findings on

causation on the assumption that there were protected disclosures. We have then found that there were no unlawful acts postdating 14 May 2018 and that as a consequence the Tribunal has no jurisdiction to deal with any earlier

PostScript

372. The Claimants commenced their claim using the same claim form. As the case developed it has become clear that whilst the claims arise out of the same background facts some of the claims made under Section 48 of the Employment Rights Act 1996 are unique to one or other of the Claimants. Rule 9 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that more than one claimant can present a claim to the tribunal if it arises from the same set of facts. Applying the test set out in ***Brierley & Othrs v Asda Stores Ltd*** **[2019] EWCA 8**, we do not think that all of the claims brought do arise out of the same set of facts. For instance, Dean Adams was rejected for a role as an Unblocker but Neil Adams did not apply for that role. The facts are not common to each of the claims. A claim form that is presented in breach of the requirements of rule 9 shall be treated as an 'irregularity'. Rule 6 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 permits us to waive that irregularity if it is 'just' to do so. Given that the Respondent had not taken any point on this and the matter had proceeded to a final hearing had we found for the Claimants we would have had no hesitation in deciding that it would be in accordance with the overriding objective to waive the irregularity.

373. The Employment Judge apologises for the time it has taken to provide this judgment and reasons. He had another long running case that finished in the same week and this decision has been held up because of this and the variety of challenges thrown up by the Covid19 Pandemic.

Employment Judge John Crosfill

Date: 28 July 2020