EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr D Mele	**v**	**1. Angela Mortimer plc** **2. Mr John Mortimer** **3. Mrs Angela Mortimer**

Heard at: **Central London Employment Tribunal**

On: **16-20, 23-27, 30 November & 1 - 4, 9 -11 December 2020 & 11 & 13 January 2021 (In Chambers)**

Before: **Employment Judge Brown**

Members: **Mr P de Chaumont-Rambert**
Mr R Baber

Appearances

For the Claimant: **Mr J Susskind, Counsel**

For the Respondents: **Mr P Keith, Counsel**

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. **The First Respondent unfairly dismissed the Claimant pursuant to s98(4) ERA 1996 on the grounds of redundancy.**

2. **The First Respondent did not automatically unfairly dismiss the Claimant, either under *s105 ERA 1996,* or *s103A ERA 1996*.**

3. **The First Respondent did not victimize the Claimant when it unfairly dismissed him.**

4. **The Claimant's dismissal was not an act of protected disclosure detriment by any of the Respondents.**

5. **The Third Respondent did not subject the Claimant to protected disclosure detriment, nor did she victimize him.**

6. **The First and Second Respondents subjected the Claimant to protected disclosure detriments and victimized him by doing the following:**

   6.1. **On 10 July 2019 the Second Respondent said to Ms Goodall words to the effect that: she and Ms Doling "should not have supported [the Claimant] during the investigation"; she and Ms Doling should not have attended the meetings with Mr Confrey as they "could be responsible for the company going under"; he knew "about the WhatsApp group" and would ask for it to be used in court; she should be "in court with" the Second Respondent to "support" him;**
   6.2. **The First Respondent failed to put in place proper measures to prevent intimidation of Ms Goodall by the Second Respondent;**
   6.3. **On 9 and 12 August 2019 the Claimant not being permitted to return to the First Respondent's building;**
   6.4. **On or about 9 August the Second Respondent told employees not to contact the Claimant or to give him information.**

7. **These detriments formed a course of conduct, or were a series of linked acts, and were all brought in time.**

8. **A Remedy Hearing will take place on 28 and 29 April 2021.**

REASONS

Preliminary

9. The Claimant brings complaints of

   9.1. Detriments on the ground that he made protected disclosures, pursuant to section 47B of the Employment Rights Act 1996;

   9.2. Victimisation detriments, pursuant to sections 27 and 39(4)(d) of the Equality Act 2010;

   9.3. The following alternative claims in respect of the termination of his employment:

      9.3.1. Automatic unfair dismissal, pursuant to section 103A of the Employment Rights Act 1996;

9.3.2. Automatic unfair dismissal, pursuant to section 105 of the Employment Rights Act 1996;

9.3.3. Victimisation dismissal, pursuant to sections 27 and 39(4)(c) of the Equality Act 2010;

9.3.4. Unfair dismissal, pursuant to section 98(1) of the Employment Rights Act 1996, in that his selection for redundancy and/or dismissal was not by reason of redundancy, but was instead for another reason or principal reason;

9.3.5. Unfair dismissal, pursuant to section 98(4) of the Employment Rights Act 1996, in that having regard to equity and the substantial merits of the case, in the circumstances (including the size and administrative resources of the First Respondent ("AM Plc")), AM Plc acted unreasonably in treating redundancy as a sufficient reason for dismissing him.

10. The List of Issues, with schedules of protected acts and disclosures and detriments, had been agreed. All are attached to this judgment.

4. Tribunal heard evidence from the Claimant. The Tribunal also heard evidence from Grace Goodman, a former colleague of the Claimant and Virginie Godart, former financial officer at Progressis, for the Claimant.

5. The Tribunal heard evidence from the following witnesses for the Respondents: John Mortimer and Angela Mortimer who are the Second and Third Respondents; Robin Johnson and Jo Barnard, the redundancy procedure panel; Prasanna Ramachandran, Financial Consultant at the First Respondent; Nick Hawkins, grievance and redundancy appeal decision maker; Chris Horsley Strategy and Development Executive at the First Respondent; Colin Adams, IT Consultant; Melanie Bramwell, Managing Director and Divisional Head at the First Respondent; and Jo Mortimer, former Divisional Head at the First Respondent Company and the daughter of the Second and Third Respondents.

6. There was a Bundle of documents and a Supplemental Bundle of documents. Some additional documents were added to the Bundle during the hearing.

7. The Tribunal made various case management decisions during the hearing, for which it gave oral reasons at the time. Both parties made submissions. The parties agreed that the Tribunal should not make decisions about *Polkey* at this hearing. The Tribunal reserved its judgment.

Findings of Fact

8. The Claimant started work for AM Plc, the First Respondent, from 7 February 1994. He was dismissed on 9 August 2019 when his employment was terminated, purportedly by reason of redundancy.

9. From 25 April 2007 the Claimant was employed as Director of International Operations. In that capacity, he was responsible for running the French, Belgian, and Swiss operations of AM Plc's business, as well as the International Division within its London business. From September 1999 the Claimant was Chairman of Progressis SAS, the French subsidiary of AM Plc.

10. By the time of the events in question, the Claimant's roles were "non-billing", in that he did not himself place candidates with client businesses. His roles were therefore not directly income generating. His roles did involve leading the International Division, including manging a team of 30 staff, strategic planning, recruitment, mentoring and training, financial, tax and governance responsibilities, identifying expansion opportunities and attracting client businesses. If candidates contacted the Claimant, he would pass them on to his recruitment team to place with client businesses. The Claimant had particular skills relevant to the company's work, in that he is at least tri-lingual, being fluent in French, Italian and English. He also has knowledge of relevant French business law.

11. Only one other Divisional Head, or team leader, in the business was non-billing. This was Belinda Lighton, who worked part-time, about 1 day a week, as head of AM plc's "Knightsbridge Recruitment" division.

12. AM Plc was founded in 1976 by Mr Mortimer and Mrs Mortimer and carries on business as a recruitment company specialising in the placement of permanent and temporary executive assistants, personal assistants, and office staff. It has offices in the UK and internationally, including in Paris, Bruges, and New York.

13. The Second Respondent, Mr Mortimer, is the Group Chief Executive Officer and a statutory director and shareholder of AM Plc.

14. The Third Respondent, Mrs Angela Mortimer, is a statutory director and shareholder of AM Plc. She is the figurehead of AM plc. She does not work full time, but her role involves networking and business development, external and internal training and being a female leader/role model in the First Respondent's largely female working environment.

15. Mr Mortimer and Mrs Mortimer were married, but later divorced, with decree absolute being declared in 2011. Unfortunately, their relationship has been, and continues to be, strained since at least that time.

16. Mr Mortimer has a partner called Ms Verity Stokes who lives in Birmingham.

17. Mr and Mrs Mortimer's' long-term plan is to step back from running AM plc and to hand over the running of the company to trusted successors. Their pension fund is a shareholder in the company, and it is therefore important to them to secure the ongoing financial health of AM plc.

18. By September 2017 Mr Mortimer considered that AM plc was losing money. He proposed a new equity scheme for the Divisional Leaders as part of a plan to address this. However, by Christmas 2017, the entire AM plc Group had made a £30,000 loss in the previous 6 months.

19. In March 2018, when the First Respondent was still making a loss, Mr Mortimer set up a series of workshops for the business leaders, facilitated by an external trainer called “Mandy”. A final workshop was held on 21 March 2018, where each leader was to present their plans to regenerate profit for the first Respondent. This final workshop was referred to by all parties as “the Mandy workshop”.

20. Before the final Mandy workshop, 4 leaders in the business, the Claimant, Jo Mortimer (who is Mr and Mrs Mortimer’s daughter), Melanie Bramwell and Sharon Doling/Fidler had been discussing alternative plans for the business, which amounted to a management buy-out.

21. The Claimant made an impassioned speech at the Mandy workshop about the leadership of the company. As a result of the speech, Mr Mortimer agreed to permit the business leaders to explore the idea of a management buy-out (“MBO”).

22. Privately, however, Mr Mortimer was extremely sceptical about whether the leaders, who he considered were not making money, would be able to run the business profitably for the benefit of his pension fund.

23. In the event, Mr Mortimer’s scepticism was borne out when it was established that the First Respondent was not generating enough profit to fund an MBO: there was no profit with which to leverage the funds for the purchase.

24. Mr Mortimer described the failed MBO attempt in evidence to the Tribunal as a “botched coup”.

25. On 29 March 2018 Angela Mortimer sent an email to all Divisional Heads about what appeared to be a significant increase in travel expenses in the year 2017. These travel expenses would have applied primarily to John Mortimer and the Claimant because it was mostly they who undertook international travel.

26. The Claimant had access to Mr Mortimer’s expenses on AM plc’s internal accounting system, Navision. He had known since December 2017 that Mr Mortimer appeared to be submitting expenses for items which were personal, rather than business, expenses. The Claimant had printed off details of Mr Mortimer’s expenses on 14 December 2017, 30 January 2018, and 9 March 2018.

27. On 23 April 2018, a meeting took place at the Claimant’s home, to discuss the proposed MBO, between him, Sharon Doling/Fidler (Equity Partner and Divisional Leader of the Sharon Fidler Division), Melanie Bramwell (Equity Partner and Divisional Leader of the Melanie Bramwell Division/Bramwell-Ross Division), and Jo Mortimer (Divisional Director and daughter of Mr and Ms Mortimer).

28. At this meeting, the Claimant told the others that he believed that Mr Mortimer had been wrongfully expensing personal items to AM Plc, including the cost of rent for an apartment in Birmingham for Ms Stokes.

29. Ms Bramwell and Ms Mortimer confirmed in evidence that the Claimant was genuinely concerned that Mr Mortimer was wrongfully claiming these expenses and that they were being incorrectly declared to HMRC.

30. Ms Bramwell agreed in evidence that the Claimant suggested that these expenses were being concealed from Mrs Mortimer.

31. Jo Mortimer undertook to inform Mrs Mortimer about what the Claimant had said about Mr Mortimer's expenses. She did so that month, initially concealing the source of her information. A week later, however, at her mother's insistence, she told Mrs Mortimer that it was the Claimant who had provided the information about Mr Mortimer's expenses.

32. Mrs Mortimer invited the Claimant to meet her to discuss the matter.

33. On 2 May 2018 Mrs Mortimer emailed AM plc's finance team, expressing concerns about the rigour and transparency of the group's accounting practices, including its expenses policy, page 598. She copied that email to Mr Mortimer and the company's accountant, Stephen Parker, of Thorne Lancaster Parker.

34. On 10 May 2018, the Claimant met with Mrs Mortimer in secret at Café Royal in Soho, London. The Claimant brought expenses claims sheets he had downloaded from Navision, as well as receipts he had obtained from files in the office. These related Mr Mortimer expensing AM Plc for around £4,000 for the rental of Ms Stokes' flat in Birmingham, for a private ski holiday in about March 2017 and for a ski holiday in France in March 2018.

35. He showed these to Mrs Mortimer, who took photographs of the documents on her iPad.

36. Mrs Mortimer agreed in evidence that the Claimant had appeared genuinely concerned that Mr Mortimer was breaking the law in relation to these expenses and that Mr Mortimer was effectively stealing from Mrs Mortimer in the process.

37. The Claimant told the Tribunal that he informed Mrs Mortimer at this meeting that he believed that Mr Mortimer had been wrongfully expensing items for 15-20 years and that a previous accountant had told the Claimant that he was uncomfortable about this. In evidence, the Claimant produced a diary entry made on 10 May 2018 at 17.03 which recorded that he said all this. The Tribunal accepted that he relayed all this to Mrs Mortimer on 10 May 2018.

38. In the Claimant's diary entry that day he also recorded, "I also took the opportunity to make Angela aware of John's behaviour towards me. He has been horrendous and aggressive towards me and very unpleasant in front of other people in the company and in front of my own staff I have told her that he keeps saying in front of my staff that I am far too expensive for the company and they should think about getting rid of me …." Mrs Mortimer agreed in evidence that, in that meeting, she said that she would support the Claimant if "it came to an employment tribunal", page 601.

39. Mrs Mortimer agreed that she was shocked by the revelations about Mr Mortimer's expenses on 10 May 2018.

40. The Claimant was cross examined about the genuineness of his belief that Mr Mortimer was breaking the law. In evidence he said, "I was very suspicious that what was happening was illegal. Handwritten, no VAT, I think this might be criminal."

41. The Claimant was also cross examined about whether he considered that the expenses were being concealed. The Claimant responded that Mrs Mortimer, Mr Mortimer's business partner did not know about the expenses which Mr Mortimer was claiming for and that Mr Mortimer had been claiming such expenses for many years.

42. On 11 June 2018 Mrs Mortimer sought advice from the company's external accountants Thorne Lancaster Parker ("TLP") on the rules relating to corporate expenses, which she then forwarded to Mr Mortimer and his team, page 609. She also said that she had been running checks on expenses and had identified errors which related specifically to expenses being put through the Chairman's (Mr Mortimer's) office. Mrs Mortimer asked that errors be rectified and said, "There is no need to feel concerned with regard to such matters as proper filing of expenses protects us all and ensures this is a properly run company."

43. On 15 June 2018 Mrs Mortimer sent an email to the Group's accounting team and external accountant entitled "*Careless accounting",* saying that she had detected a number of errors in expenses. These included some of Mr Mortimer's expenses which she said were personal, not business, expenses. She said, "This topic should be discussed on Wednesday with the HMRC rules provided by our external accountants..." page 614. Mr Mortimer replied "to all" to this email saying, "I'm afraid my team may longer accept instruction from you." p614.

44. On15 June 2018, in a text message, Sharon Fidler, one of the recipients of the April 2018 disclosures, told the Claimant regarding Mr Mortimer, *"He's really cross that we have questioned his expenses"*.p1018.6

45. On 18 June 2018, Mr Mortimer sent an email to all employees of AM Plc with the subject line *"FW: chairman's office expenses"*, p622. The email began, "It was brought to my attention, but not directly asked, that there are queries about the chairman's office costs". He said that these were "perfectly legitimate enquiries". He went on to say, "As I am directly responsible you may address your enquiries to me." Mr Mortimer set out his salary and that of Mrs Mortimer, along with the salaries of other employees in the Chairman's office. He then said, "There is a divisional leader in this company currently earning £65,000."

46. Mr Mortimer did not accept in evidence that this was a coded reference to the Claimant, however, on the evidence, it appeared that the Claimant was the only Divisional Leader earning £65,000.

47. Mr Mortimer's email of 18 June 2018 also gave an explanation for various expenses and said, "However, you were right to query the amounts. Next time, don't whine, check it out!"

48. On 20 June 2018, the Claimant emailed Mrs Mortimer, referring to recent unpleasant emails which Mr Mortimer had sent to senior leaders in the company, including the Claimant. He said that he had been accused of mismanaging the French company and that the emails were part of an agenda directed against the Claimant, in particular. The Claimant commented, "... the inference ... is that all this stems from the lead I took in recent discussions regarding the future of the company and its management." p 624.

49. The Claimant agreed in evidence that he was referring, here, to his speech at the Mandy Workshop. However, he told the Tribunal that he suspected that Mr Mortimer's unpleasant emails were, in fact, prompted by Mr Mortimer discovering that the Claimant had been questioning his expenses.

50. On 26 June 2018, Mr Mortimer invited Amy Breslin, Andrew Bannerman, Zoe Cave, Stephanie Symmons and Nikki Langworthy, Team Leaders in AM Plc's Wardour Street office, to a meeting at the Ham Yard Hotel for a discussion about the future of the company.

51. The Claimant was not invited. Neither were Melanie Bramwell, Sharon Doling/Fidler or Jo Mortimer, the other Divisional Heads.

52. After the meeting, Nikki Langworthy told the Claimant that Mr Mortimer had asked the attendees to write the names of "good" and "bad" leaders in the company and told them that the Directors were too expensive for the Team Leaders to become millionaires. Mr Mortimer also specifically criticised Melanie Bramwell, page 635. Mr Mortimer subsequently emailed the same Team Leaders asking them to remember that the meeting was "secret".

53. Mr Mortimer told the Tribunal that the reference to "secret" was a joke – as nothing in the company was secret. Mr Mortimer said that he had asked the team leaders for the names of trusted people in the company, in the event that the company was to be "rebuilt".

54. On 1 August 2018, Mr Mortimer and the Claimant had a lunch meeting at Aubin and Randall. The Claimant made a diary note of the meeting at 10pm that evening. The note recorded that Mr Mortimer said that the Claimant was a "f*cking idiot" and that his operation had never made any money for AM plc. The note recorded that the Claimant asked how much Mr Mortimer would sell the Paris operation for and that the Claimant said that he would be willing to buy the Paris, Brussels and London international offices. The note further recorded that Mr Mortimer was incensed by this suggestion. "He tells me that his daughter Jo Mortimer refuses to sign the new equity scheme as I have demonised the scheme. I have twisted Jo's mind he says." The note concluded by detailing the two men's argument about the proposed new equity scheme, p645.

55. The Claimant told the Tribunal that, on 9 August 2018 in London, in the presence of Mr Alex Levy (London Team Leader) and Ms Claire Williams (Senior Consultant), Mr Mortimer shouted at the Claimant that he should shut up, listen, and do what he (Mr Mortimer) told him. Mr Mortimer further stated that he was not interested in the numbers that the Claimant wished to show him in preparation for the next international team meeting. The Claimant referred to a diary entry on 9 August 2018 recording this, p652. He also referred to texts from Mr Levy sent on about 14 August 2018 saying, "Was he being rude and difficult as usual? Did he tell you to shut up and listen again", which the Claimant said referred to Mr Mortimer, p656. On the same day, the Claimant emailed 2 colleagues, Mses Paccagnella and Maffre, recording Mr Mortimer's approach which he said was, "I don't want to fight I don't want to argue on Tuesday I just want to know what the figures are... I am not interested in more statistics from you." P652.9. Mr Levy was interviewed later by Mr Confrey and said that he could not recall witnessing the incident, page 969. Mr Mortimer denied using the words alleged.

56. The Tribunal accepted that Mr Mortimer said words substantially as the Claimant alleged. This appeared to be frank exchange of views about the business. Mr Mortimer was certainly expressing his frustration with the figures being provided by the international operation.

57. Mr Mortimer told the Tribunal that, throughout 2018, he was trying to align the Paris office with the London Office, including introducing automated accounting for it. He told the Tribunal that Paris was spending significantly more per head in running costs than the UK operations and that he introduced workshops and discussions to interest the Paris office in greater profitability, which included reducing costs and increasing the volume of activities. He said that the Claimant was resistant to the change which Mr Mortimer felt was required.

58. Mr Mortimer told the Tribunal that he felt he had spent a long time trying to get the Claimant on board with making the Paris office more profitable, but by summer 2018 he felt he was running out of time. He felt their relationship was not functioning effectively.

59. The Tribunal noted that there certainly appeared to be a high level of tension and conflict between the Claimant and Mr Mortimer by summer 2018. The Claimant appeared to be devoting time to recording all his interactions with Mr Mortimer and discussing these in negative terms with his colleagues, rather than spending that time transforming the business or working cooperatively with Mr Mortimer. The documents shown to the Tribunal depicted disagreement and discord between these two very senior executives. There was little to indicate a productive relationship between the two.

60. The Claimant told the Tribunal that, on 14 August 2018 in Paris, Mr Mortimer asked Ms Frederique Paccagnella and Ms Amal Benjelloun (Team Leaders in the Brussels office), *"What does he actually do for you?"* in relation to the Claimant. He said that Mr Mortimer repeated similar questions to the Paris and Brussels Team Leaders multiple times.

61. Mr Mortimer told the Tribunal that he asked all the employees in these teams what they did and what the Claimant did and who made decisions. He told the Tribunal that the meeting was a normal quarterly meeting, at which he certainly enquired about the international operations, to better understand why they were not making a profit.

62. The Tribunal found that Mr Mortimer probably did ask the team leaders in the Brussels office what the Claimant did, as well as asking them what they did.

63. The Claimant also told the Tribunal that, on or around 14 August 2018 in Paris, Mr Mortimer instructed Ms Paccagnella and Ms Benjelloun not to go to the Claimant for important decisions, and told them that: Something was going to happen to the Claimant in September and that they should *"not get involved"*; that the Claimant had *"gotten away with murder and it was time that this came to an end"*; that the Claimant had constantly lied to him and his division; the Claimant was responsible for the Amsterdam office closing; Mr Horsley had done most of the work in Geneva; and *"Davide has a lot of money".* The Claimant told the Tribunal that Ms Paccagnella reported all this to him on the day.

64. On 19 March 2019, several months later, Ms Paccagnella emailed the Claimant, recording this, page 873. Ms Paccagnella's email also recorded that Mr Mortimer said, "If you are his friend, help him. He needs to come back down." The email said that Mr Mortimer told Mses Paccagnella and Benjelloun to refer decisions to the Board and ask the Claimant to bring it up at the Board meeting.

65. Mr Mortimer told the Tribunal that Ms Paccagnella had been stressed about the Claimant and his unhappiness and that Mr Mortimer had tried to reassure her that it would all be sorted out after the holiday period.

66. The Tribunal concluded that Mr Mortimer did say the things which Ms Paccagnella recorded in her email. Mr Mortimer was strongly critical of the Claimant. However, the email included a reference to Mr Mortimer encouraging Ms Paccagnella to prevail upon the Claimant, as Ms Paccagnella's friend, to become more cooperative and in tune with the rest of the business.

67. On 21 September 2018, the Claimant and Mr Mortimer met at Princi, in Soho. The Claimant secretly recorded the meeting. He drew the Tribunal's attention to Mr Mortimer saying that he got too much *"yak yak yak"* from the Claimant; said that all the Claimant did was sit on his backside; said that the Claimant merely behaved like a manager rather than being one; and said that the Claimant could not *"blag it"* anymore, p852.

68. The full transcript of that meeting was in the bundle. Mr Mortimer did not know that he was being recorded, but the Claimant did know.

69. In the meeting Mr Mortimer said, "You need to understand ... I am running out of time. I am not going to wait for a year to get profitable ... you need to take responsibility...", p673. Mr Mortimer asked the Claimant for facts, for example the fee turnover for a number of months (pp663 -664), and his plans. The

Claimant agreed, under some pressure, that the Paris costs on advertising and accounting were too high, p671.

70. The Tribunal found that Mr Mortimer was very much focused on the performance of the international business and whether the Claimant had plans to address past problems.

71. The notes of the Princi meeting also recorded that Mr Mortimer, "... sorry Davide the facts are there has been a negative conversation going on inside this group [DM: you are making me responsible for that?] I am not making you responsible I am telling you I believe you are part of that and I have evidence"… "When Angela gives me a piece of shit I don't know about Davide you are the only person to tell her.", p661 – 676.

72. In evidence, Mr Mortimer said that his comment "when Angela gives me a piece of shit... you are the only person to tell her," was a specific reference to Mr Mortimer not having been given an important piece of information about an employee called Monique in Geneva before he went into a meeting. The passage of conversation certainly concerned Monique, because the Claimant responded, "Angela has got a relationship with Monique she has her number.", p673. The whole page of transcript also concerned Geneva. Further, immediately before the "when Angela gives me..." comment, Mr Mortimer asked the Claimant not to have conversations Mr Mortimer did not know about. At various points in the meeting, Mr Mortimer asked the Claimant to include Mr Mortimer in communications, p662 and p664. At p662 Mr Mortimer again complained about Mrs Mortimer knowing something about Monique before Mr Mortimer did.

73. The Tribunal found that that Mr Mortimer's comment specifically concerned Mr Mortimer not having been told an important piece of information about Monique when Mrs Mortimer had been told this information.

74. Immediately after the Princi meeting, the Claimant emailed Frederique Paccagnella in the Brussels office, p681. He told Ms Paccagnella that Mr Mortimer had bullied him throughout the meeting and that Mr Mortimer did not want the Claimant involved in Brussels. He said that Mr Mortimer had accused him of badmouthing Mr Mortimer to Jo Mortimer, "He does not trust me. He knows I am speaking to Angela behind his back." Ms Paccagnella replied extremely sympathetically and asked whether this meant that Mr Mortimer was taking away the European Divisions which the Claimant had created. The Claimant replied, "Yes he is doing exactly that, effectively making me redundant." P681.

75. On 24 September 2018, the Claimant made a diary entry about a conversation he had had with Angela Mortimer. They had discussed the Brussels office and the Claimant had told her about the Princi meeting. The diary note recorded, "She asks me why I think he [Mr Mortimer] is so upset with me and I explain to her that he is upset about the fact that I have not engaged with the newly proposed scheme as well as he thinks I have influenced his daughter Jo to distrust him...". The diary entry went on to note a more detailed discussion about the new equity scheme that had been proposed and concluded by noting

that the Claimant told Mrs Mortimer that he was intending to send a point-by-point rebuttal of Mr Mortimer's "accusations" at the Princi meeting, p687.

76. On 27 September 2018, the Claimant did send Mr and Mrs Mortimer an email arising out of the Princi meeting, p689. The Claimant set out his disagreement with at least 14 matters which Mr Mortimer had raised at the Princi meeting, including saying that he did not agree that Progressis was "on the edge of bankruptcy", despite the figures Mr Mortimer was relying on. He said that he was happy to discuss development matters. He said that he would like to know more detail of Mr Mortimer's plans.

77. Also on 27 September 2018, Mr Mortimer replied. He started his email by saying, "... It is quite clear that we do not agree on what is happening inside this company." Regarding the Brussels office, managed by the Claimant, he stated "I have decided that there is no work required in Brussels, which I cannot handle"; "Your operation in London is not exactly paying for your salary"; and "Your letter, is a clear statement of disagreement. You do not have that right." P688.

78. The letter set out Mr Mortimer's view of the situation of Progressis and the international division, including that the international division had an intercompany deficit of £1.17m. He said that the only divisions currently making a profit were Knightsbridge and Birmingham; Mr Mortimer said that the Claimant's letter gave no indication that he wished to adopt Mr Mortimer's plan rebuild the company.

79. The Tribunal considered that this correspondence restated the entrenched disagreement between the two men and reflected their uncooperative working relationship. Mr Mortimer's letter was not diplomatically expressed. Neither letter was likely to rebuild a constructive relationship between them.

80. Mr Comfrey, who later investigated the Claimant's grievance, concluded that Mr Mortimer had a case to answer on bullying regarding his statement "You do not have the right".

81. The Claimant told the Tribunal on about 18 October 2018, Mr Mortimer instructed Mr Levy, a more junior member of the Claimant's team, to record in writing the Claimant's whereabouts. The Claimant said in evidence that this was undermining of his position. On 19 October 2018 Mr Levy emailed Mr Mortimer asking him more specifically what Mr Mortimer wanted him to confirm in writing, p696.

82. Mr Mortimer told the Tribunal that he had given the instruction because the Claimant's team had raised issues about the Claimant's whereabouts.

83. The Claimant was cross examined about his electronic diary entries, supplementary bundle ("SB") pSB147, SB149, SB151, on 3 August, 30 August, and 31 August 2018. These appeared to show the Claimant having arranged meetings about one of his own private properties during work time – at 11am, 11am and 9.30am. The Claimant said that the 3 and 31 August meetings were lunch meetings; but the dairy entries showed that he also had separate lunches

booked on the same day. He agreed that he did spend time rectifying a leak at one of his properties on these days.

84. The Tribunal concluded that the Claimant did, on occasion, deal with matters relating to his own property letting business during his work time for AMplc.

85. The Tribunal observed that, given the Claimant's position as Director of the International Division, all other employees in his Division were subordinate to him. If there were issues about the Claimant's whereabouts and his employer wanted to establish when these issues were arising, the employer would inevitably have to instruct a more junior employee to make a note of the relevant times.

86. The Claimant told the Tribunal that, on 8 October 2018, Mr Mortimer instructed Catherine Tardieu and Alexandra Vercken (Paris Team Leaders who reported to the Claimant) that they should report directly to Mr Mortimer. The Claimant made a diary entry on 9 October 2018 in which he recorded that Ms Maffre had told him that John Mortimer had informed Mses Tardieu and Vercken that he wanted to "flatten short term the structure of Progressis" and have Mses Maffre Tardieu and Vercken as leaders, reporting directly to him, p694. In his witness statement, Mr Mortimer agreed that he had given this instruction, to allow the Paris office to move closer to compliance with the London operating structure, which the Claimant had refused to do.

87. On 16 October 2018, Mr Mortimer emailed Mrs Mortimer in response to her having raised queries about his expenses, p694:1. He said of his expenses, that they were "you perennial plaything when you want to chew a bit of me off." Mr Mortimer then went on to justify various of his expenses but said, "I have heard quite enough from you in this negative vein... I will now have to take your constant negativity seriously, and deal with it. My corporate responsibility to the company now requires it."

88. Mrs Mortimer agreed in evidence that she understood that Mr Mortimer was threatening to remove her from the business. She explained that she is a minority shareholder and that, therefore, he would potentially have the power to do that.

89. Mr Mortimer went on in the email to talk about his "succession plan", saying that he had made decisions and would write Mrs Mortimer a full report. He asked her to get on board with his plans. He concluded by saying "there is at least one big one who I am beginning to tire of having to humour, and save from himself", p694.4. Mr Mortimer agreed in evidence that that was a reference to the Claimant.

90. On 17 October 2018 Mr Mortimer did prepare a draft document for Mrs Mortimer entitled "A situation report, and my decisions on action.", p694:5. In it, he said that last year, only Knightsbridge, Brussels and Birmingham had made profits. Mr Mortimer then appeared to set out his analysis of the company. He said that the leaders had failed to acknowledge the lack of profitability and, at the [Mandy] workshop, "Instead of accepting the maths, they gave angry, self-justificatory presentation... culminating in Davide's [the Claimant's] childish act

of defiance." Mr Mortimer said that, as a result, Chris Horsley had resigned as he had believed that the leaders were "Turkeys voting for Christmas." Mr Mortimer said that, with Mr Horsley's resignation, his "succession plan A" was therefore ended.

91. In the report, Mr Mortimer went on to set out his plans, saying that he would be demerging the group. He said that his daughter, Jo, would need to make decisions including "having to face up to Davide's [the Claimant's] barrage of misinformation." He said that Brussels would be removed from Davide and helped by Mr Mortimer. Regarding France, Mr Mortimer said, "I will be breaking up Paris into three new companies, and rebuild... Paris will largely be relieved to lose Davide. He really has only one supporter there, Shirley. She relies on him, but in fact does all the work. So far Davide has resisted me in such a way that I have had to move him on. He has literally resisted at every step… tried to trick his way through ignoring the fundamental fault in Paris. Too many chiefs, with too high salaries, and commissions... His failure to address the real issue of salaries that are too high was to put trainee recruitment on hold…. Davide… flatly disagrees with me, on principle, with no interest in the logic and relevance of the maths ... Sadly Davide is a director, and directors are not allowed to disagree so publicly and for such a long time with the CEO, and both of them stay... (legally). Unless he catches on very quickly, he will be gone...", p694:7 – 694:8.

92. In a concluding paragraph addressed directly to Mrs Mortimer, Mr Mortimer wrote, "if you wish Davide to remain in the company, I suspect that you will have to convince him that I have your support in all of the above," p694:8.

93. This report was never sent, but remained private to Mr Mortimer. The Tribunal concluded, nevertheless, that it appeared to represent Mr Mortimer's unvarnished view, both about AMplc, and about senior leaders, including the Claimant in October 2018.

94. On 22 October 2018, in a meeting with Ms Maffre and Ms Virginie Godart (European Financial Controller), Mr Mortimer stated that AM Plc did not need two managers in Paris. The Claimant told the Tribunal that Mr Mortimer said this aggressively. Mr Mortimer denied this.

95. The Claimant contended that Mr Mortimer's implication was that the Claimant's services were not required. Again, Mr Mortimer denied this. He said that the structure he proposed could have been the Claimant leading 3 Divisions.

96. The Claimant was present in the meeting. He did not ask what his role would be. Mr Mortimer that there would be 3 Divisions in Paris, headed by Mses Maffre, Tardieu and Vercken. The Tribunal concluded that a possibility of the change was that the Claimant would not be required; but it was not the only implication. The Claimant did not ask what his role would be, which he might have been expected to do if it seemed that there would be no role for him following the changes.

97. There was a transcript of the meeting. The language used by Mr Mortimer did not appear, from the transcript, to be aggressive.

98. The Claimant told the Tribunal that, also on 22 October 2018 in Paris, Mr Mortimer said to Ms Maffre and Ms Godart that the Claimant did not do much, and had not been involved in the forthcoming Paris office move.

99. Mr Mortimer told the Tribunal that Ms Maffre had kept consulting Mr Mortimer regarding the Paris move and he believed that the Claimant should have been dealing with these things.

100. On about 25 October 2018 the Claimant met with Mrs Mortimer at her home and provided her with documents which he had identified in connection with Mr Mortimer's management expenses claims. He took Ms Mortimer through a pack of receipts, invoices, and expense forms relating to Mr Mortimer's expenses from 2016-2018.

101. These included: 19 February 2016, for "Opera client", claimed with no receipt (GBP 854.96); 19 February 2016, for Salzburg Opera subscription/tickets (GBP 1,528.57); 19 February 2016, for Glyndebourne Opera subscription/tickets (GBP 2,780.00); 19 February 2016, for hotels (GBP 51.69, 122.80, 671.53, 235.2, and 334.23); 20 December 2016, for wine delivered by Berry Bros & Rudd to Mr Mortimer's home address (GBP 752.00);1 January 2017, for non-specified "travel and accommodation – Birmingham" (GBP 2,000.00); 20 February 2017, for a hotel in California for two adults with spa services and dinner, invoiced to Mr Mortimer's personal address; 17 March 2017, for Salzburg Opera subscription/tickets (GBP 1,198.66); 17 March 2017, for Glyndebourne opera subscription/tickets (GBP 2,640.00); 27 March 2017, for skiing accommodation in France, claimed as staff entertaining; 30 March 2017, for flights (GBP 382.00) and car hire (GBP 350.00) for a trip to fishing Helsinki/Russia, claimed without an invoice; May 2017, for "rent" in Birmingham (Ms Stokes' apartment), claimed with no receipt (GBP 500.00); 6 July 2017, for Mercedes-Benz Chelsea, with Mr Mortimer's name and personal address as Customer Details (GBP 3,754.61); 21 July 2017, for a lobster dinner at Gazette restaurant on a Friday night at 22:38 (GBP 110.81); July 2017, for "Clifton Design Stroud – Creative Consultancy and Networking" (GBP 1,565.00); 1 August 2017, for "Birmingham rent" (presently assumed to be for Ms Stokes' apartment) (GBP 500.00); 6 August 2017, for cash at Sainsbury's bank (GBP 400.00); 18 August 2017, for dinner for two at Riedenburg restaurant in Salzburg (EUR 377.40); 19 August 2017, for dinner at a restaurant in Austria (EUR 267.00); 20 August 2017, for Hotel Sacher for two people (EUR 147.90); 21 August 2017, for Kellerei Kurtasch South Tyrol wine in Italy, claimed as business entertaining (EUR 781.00); 23 August 2017, for wine in Italy, claimed as a travel expense (EUR 295.00); 24 August 2017, for Locanda di Noris Peschiera del Garda (EUR 117.00); 25 August 2017, for Hotel Ziba Peschiera del Garda in Italy for two people for two nights (EUR 758.00); 28 and 29 August 2017, for expenditure on alcohol including Domaine Daniel Rion 'Exclusive Wine of Bourgogne' (EUR 755.00) and Champagne Perrot Batteux (EUR 367.50) in France); 29 August 2017, for artwork from Antiquite Chapusot, claimed by way of a handwritten invoice in French with no VAT details (EUR 1,500.00); 29 August 2017, for champagne Bergeres-Les-Vertus (EUR 367.50); 22 September 2017, for SRL Emporio San Vigilio, a souvenir shop, claimed as office supplies (EUR 158.00) ("Disclosure 36"); 22 September 2017,

for wine in Italy, claimed as "business entertaining" (EUR 282.00); 22 September 2017, for subsistence food in Salzburg (EUR 314.00) ("Disclosure 38"); 22 September 2017, for furniture from Maison du Monde, claimed as office supplies but which the Claimant informed Ms Mortimer that he believed was given to Ms Stokes as a gift for her flat in Birmingham; 19 October 2017, for Hotel Bellevue (GBP 523.19), Hotel Le Christiana (GBP 194.94), Kentisbury Grange (GBP 199.00), and Dornoch Castle Hotel (GBP 198.45); 19 October 2017, for Hotel Schloss "general expense – travel and accommodation" (GBP 4,898.14); 1 January 2018, for "MCC" (GBP 524.00); 2 March 2018, for the cost of champagne at Champagne Roger Manceaux (GBP 770.91); 27 and 28 August 2018, for a two-person stay in Hotel La Chouette (EUR 163.00); and for a two-person stay in Le Chateau d'Etoges with degustation menus and champagne (EUR 456.77); "taxi receipt" in respect of which Mrs Mortimer recognised Mr Mortimer handwriting (GBP 45.00); Undated, for a rental car, handwritten by Mr Mortimer on the headed notepaper of a US hotel (EUR 35.00); Undated, for non-specified "repairs and decorations" (GBP 1,414.26); May-July (otherwise undated), for gym membership, by way of a note handwritten by Mr Mortimer on the headed notepaper of a US hotel, (EUR 135.00); and multiple small entries of less than GBP 50, at Neals Nurseries garden centre.

102. Mrs Mortimer agreed in evidence that, at this meeting, the Claimant had produced numerous expense documents and said that Mr Mortimer had been wrongfully expensing AM Plc for his personal expenses for a long period. She agreed that the Claimant and she both expressed the view that the expenses looked fraudulent. She agreed that the Claimant appeared to be raising these concerns in good faith. She said that the Claimant kept saying, "He is stealing from you."

103. On 30 October 2018, Joanne Burton, Mr Mortimer's Personal Assistant emailed Alex Levy, one of the Claimant's direct reports, to schedule Mr Mortimer and Mr Levy's attendance at forthcoming meetings, but did not include the Claimant in the email, p712.

104. The Claimant questioned his omission from the invitation, and Ms Burton apologised saying, "John has been clear with me that I do what he says and not ever question it." P 1130.

105. The Claimant told the Tribunal that he believed that Mr Mortimer had deliberately not invited him to the meeting.

106. The Tribunal was unable to conclude that the Claimant was deliberately excluded from the meetings. Ms Burton did not give evidence to the Tribunal and her email was ambiguous. It was unclear whether Mr Mortimer was setting up separate meetings with Mr Levy, or whether Mr Mortimer himself was asking to attend scheduled meetings.

107. The Claimant told the Tribunal that, in November 2018, Mr Mortimer told Ms Godart that he had not agreed a particular business plan with the Claimant. The Claimant told the Tribunal that this plan had been agreed on 22 October 2018. Ms Godard told the Tribunal that, in about December 2018, Mr Mortimer

denied the business plan had been agreed. The notes of the meeting of 22 October 2018, p716, record the attendees discussing the business plan. There is no specific record in the notes that Mr Mortimer agreed the plan. It may be that the attendees came away with different impressions of what had happened in the meeting.

108. On 6 November 2018 Mr Mortimer emailed Ms Maffre, copied to all the staff in the International Division. He congratulated her on the Paris office move, saying "I had no doubt of your ability to pull it off". Mr Mortimer also spoke about the proposed changes in the International Division. He asked for more courage from the leaders and more trust in him and his systems. He said, "I expect no more negative whinging or negative body language from the leaders within my office in France!" p722. Mr Mortimer also proposed workshops and said that, after the workshops, he anticipated that the leaders would be excited by the opportunities for the future. He also said that he was confident that the employees would prefer his plan "to the one I have seen so far". This suggested that Mr Mortimer did not believe he had agreed the Claimant's business plan on 22 October 2018.

109. The Claimant told the Tribunal that Mr Mortimer's failure to congratulate the Claimant on the Paris move was detrimental. The Tribunal observed that the email was a reply to Ms Maffre's email of the previous day, in which she had told him that the move had gone smoothly. It was a reply specifically to Ms Maffre, so it was natural for Mr Mortimer to address her.

110. In late November 2018, the Claimant had an email exchange with Steve Mills, a Finance Team member. Mr Mills asked the Claimant whether the International Division was unhappy with the finance team. When the Claimant reassured Mr Mills that there was no such unhappiness, Mr Mills responded that two other divisions were unhappy and that Mr Mortimer was "using that to deflect from the uproar over his costs", p727.

111. Given that Mr Mills described an "uproar", it appeared that the issue of the CEO office costs was being widely discussed in the company at the time.

112. On 3 December 2018 Ms Burton, Mr Mortimer's PA, presented a grievance about Mr Mortimer's "relentless, aggressive, bullying behaviour towards her, p736.

113. Mrs Mortimer agreed, in evidence to the Tribunal, that Mr Mortimer was a bully. She did not agree that it was always the case that his worst bullying was displayed when people disagreed with him; she said that she had seen him ending up agreeing with people with whom he had initially been at odds. Mrs Mortimer observed that Mr Mortimer became angry when he was frustrated and when others did not understand, when people were not listening, or when he believed that people were against him.

114. On 4 December 2018 Mrs Mortimer emailed Mr Mortimer, referring to Ms Burton's grievance and saying that the London office was thinly populated, and that Mr Mortimer was to blame. She said, "Bullying and harassment have become your stock response… please stop shouting at everyone." P744:3. Mr

Mortimer replied, saying that the issues at the company had been clear for a long time, “First we have been badly let down by the senior leadership. It is not just a matter of you and others, like Davide, briefing against us, there is a simple matter of the basics of running a business.” P744.1.

115. On 14 December 2018 Mr Mortimer again emailed Mrs Mortimer on “The future strategy of the Angela Mortimer group”, p752. He referred to personnel in the Paris office and said that Ms Maffre was conflicted because she could see the advantages of the new arrangements but was getting “negative briefing”. He continued, “In summary, there are only two people, and you who are briefing against me. I know that one of them will release herself from you very soon.” p754.

116. On 14 December 2018, Mrs Mortimer emailed Mr Mortimer asking what the Claimant’s job now was. Mr Mortimer replied, that, at that time he did not know because the Claimant was not talking to him or taking responsibility. Mr Mortimer said that the Claimant was showing signs of moving in a direction towards recruitment, which Mr Mortimer had suggested to him 6 months previously, p755.

117. That Tribunal considered that that email suggested that Mr Mortimer tentatively envisaged the Claimant staying with AM plc, but in an altered role.

118. In December 2018 at the AM Plc Christmas party, Mr Mortimer thanked teams, including the Brussels team, but did not thank the French team. This omission was noted by Ms Maffre, who attended the party. The Claimant was not present at the party.

119. Given that Mr Mortimer thanked the Brussels team, which was part of the Claimant’s International Division, the Tribunal concluded that Mr Mortimer’s words could not reasonably be seen as a deliberate slight towards the Claimant.

120. On 18 December 2018 Mrs Mortimer asked Mr Mortimer, in an email entitled, “Constructive dismissal”, whether he had taken legal advice about the Claimant’s job. She said that he did not want to make an expensive mistake. Mr Mortimer replied that he had. He said that the Claimant had two problems; first, that he was in open disagreement with Mr Mortimer and that, as a director, the Claimant should either agree or resign; second, that the Claimant had, by inaction and failures in Amsterdam and Geneva and by lack of profit in Paris and by ineffective financial and administrative management “made himself redundant”. Mr Mortimer said, “He needs to wake up. I have given him huge opportunity to get on board. One last chance remains, as I said to you before, but he is drinking at the last chance saloon.”, p770.

121. The Claimant told the Tribunal that, on 19 December 2018, Mr Mortimer refused to allow the Claimant to attend a meeting with Ms Maffre, despite her express request that the Claimant be present at the meeting. Ms Maffre confirmed to Mr Comfrey, the grievance investigator, that this had happened, p1142.

122. The Claimant also told the Tribunal that, after around one hour, Mr Mortimer summoned the Claimant into the meeting and stated to him and Ms Maffre that he did not trust either of them.

123. Mr Mortimer denied that this had happened. Given that Ms Maffre recalled the event, however, the Tribunal concluded that Mr Mortimer did not agree to the Claimant attending the first part of the meeting.

124. The Tribunal observed that if Mr Mortimer told both the Claimant and Ms Maffre that he did not trust them, he was not singling the Claimant out.

125. The Claimant also told the Tribunal that, on 19 December 2019, at a monthly management meeting of the Progressis SAS board, in the presence of Ms Catherine Tardieu and Ms Vercken (Paris Team Leaders), Mr Mortimer instructed the Claimant to leave the room, stating that he wanted to "break the habit" of the Claimant attending such meetings. The Claimant said that, by virtue of his position as Chairman of Progressis SAS, he would expect to attend all such meetings, had invariably attended them in the past, and had regularly chaired them.

126. Again, Ms Vercken recalled Mr Mortimer arranging the chairs in the meeting so that there was no room for the Claimant and Mr Mortimer telling the Claimant that he was not required. The Tribunal accepted the Claimant's evidence that he was initially told that he was not required; this was corroborated by Ms Vercken. However, it appeared that the Claimant nevertheless attended the meeting, as Ms Vercken also said that Mr Mortimer ignored the Claimant during the meeting, page 1131.

127. In December 2018, Mr Mortimer scheduled an appraisal for the Claimant to be held on 8 January 2019. Mr Mortimer cancelled the appraisal with little notice. He said that they were in the middle of an "important operation" and said he would like to postpone the appraisal for a month or two "to see how we go." P813.

128. The Claimant told the Tribunal that, in around December 2018, Mr Stephen Mills (Accountant) had overheard Mr Mortimer telling Ms Bramwell that she had "sided with the wrong person", referring to the Claimant. Ms Bramwell gave evidence to the Tribunal and was cross examined. She denied that Mr Mortimer had said this to her. The Tribunal found Ms Bramwell to be a forthright and credible witness. Mr Mortimer also denied the allegation. The Tribunal preferred the evidence of Ms Bramwell to the untested hearsay evidence of Mr Mills.

129. The Claimant told the Tribunal that, on Friday 4 January 2019, Ms Shaileyee Patti (Junior Consultant) informed the Claimant that, on 27 December 2018, in the Wardour Street office, Ms Lottie Warren had asked Mr Mortimer if staff could leave early, but that Mr Mortimer told Ms Warren that she could only leave early if she went to his flat to have a glass of champagne with him. Ms Warren declined to do so. Ms Patti had reported that Mr Mortimer had left the office, but then telephoned the main office and, when Ms Patti answered, she transferred the call to Ms Warren, at Mr Mortimer's request.

130. Ms Patti said that she later encountered Ms Warren upset and shaken, as Mr Mortimer had again asked her to come to his flat in Wandsworth for a glass of champagne to discuss business. Ms Patti's inference was that Mr Mortimer was engaging in unwanted conduct of a sexual nature.

131. The Claimant told the Tribunal that, on Monday 7 January 2019, he disclosed the "Warren Incident" to Mrs Mortimer, adding that Mr Mortimer's conduct was unacceptable, and that Ms Bramwell (Ms Warren's manager) was aware of the Warren Incident but had stated to other staff that she "wanted to bury the matter as 'it is John'" and "we all know how John is".

132. The Claimant told the Tribunal that he was concerned about Ms Warren when he did so. His evidence was that he believed that women in the business were at risk of sexual harassment.

133. Mrs Mortimer confirmed to the Tribunal that the Claimant did tell her about the incident. She said, however, that he was one of many people to do so. She also said that she did not tell Mr Mortimer that the Claimant had been one of the people who had told her about the incident.

134. On 7 January 2019 Mrs Mortimer emailed Mr Mortimer referring to the "hot topic of conversation in Wardour Street" and saying that "everyone" was talking about his indiscreet invitation to a pretty member of staff to have drinks at his home, p815:19. Mrs Mortimer was scathing in her criticism of Mr Mortimer's actions.

135. At AM Plc's annual strategy meeting on 8 January 2019, Mr Mortimer stated that he did "not want anyone in the Company to make a judgment about [his] personal life".

136. At the same meeting, Mr Mortimer announced that he had created a committee for AM Plc's Wardour Street office. None of the Divisional Leaders - the Claimant, Ms Bramwell, Ms Doling or Ms Goodall - was invited to be on the committee. The previous day, Mr Mortimer had instructed that attendees of the annual strategy meeting be sent an email entitled "plans for 2019", p803. In the email, he described the committee as a "committee of suggestion".

137. Ms Doling, who gave evidence to the grievance investigation, said that Mr Mortimer had told her that the committee represented "a changing of the guard", in that he had previously tried to reenergise the London office with the Senior Partners, but it had not worked. She said that the exclusion was embarrassing to her, p933:5.

138. The Claimant told the Tribunal that, on or around 14 January 2019, Mr Mortimer stated to Ms Doling, in the presence of the Claimant and others, that he had tried a succession plan with the Senior Partners (including the Claimant) but that it had not worked, implying that he had lost faith with the Claimant and others; and that he also remarked that the Claimant was no longer in the "inner circle", due to Mr Mortimer's lack of trust in him.

139. Ms Doling confirmed to the grievance investigation that Mr Mortimer had said that the Claimant was no longer in the "inner circle" due to Mr Mortimer's lack of trust in him.

140. On 14 January 2019, Mr Mortimer excluded the Claimant from meetings in relation to Ms Maffre's need for a personal loan from AM Plc/Progressis SAS, in order to prevent Progressis SAS AM Plc from becoming liable under French law for the payment of her tax liability. The Claimant had previously been responsible for finding a solution to this issue, and had liaised with Progressis SAS's lawyer and auditor.

141. Ms Godart agreed in evidence that she had asked Mr Mortimer, as CEO of AM plc, to join the relevant meeting to agree the loan, which needed to come from AM plc and not Progressis. Under French law, it was unlawful for Progressis to make a loan to its director. In those circumstances, the Tribunal found that Mr Mortimer was the relevant senior executive required in the meeting, not the Claimant.

142. On 11 February 2019, in the Wardour Street office, in the presence of Ms Sharon Doling, Mr Mortimer told the Claimant aggressively that the Claimant's team thought he worked part time as he was never there on Fridays. Ms Doling confirmed to the grievance investigation that she had heard Mr Mortimer saying this, p933:5. She remembered the reference to Friday because she felt uncomfortable because she was not in the office herself on Friday.

143. On 12 February 2019 Alex Levy emailed Mr Mortimer saying that Mr Mortimer had asked him to provide the Claimant's whereabouts on Friday 25 January and Friday 1 February, because there was uncertainty about his whereabouts on those two days, p834.

144. On 15 March 2019, Mr Mortimer invited the Claimant to a meeting and told him that he believed that the International Division was losing money, that the intercompany accounts showed a negative balance to the international division of about £1.2 million and that the Claimant was at risk of redundancy, p847.

145. He handed him a letter, p843, which said that, as a result of losses in the International Division, it was proposed that the Claimant's role be made redundant "in order to reduce overheads and ensure the financial viability of the continuing operations." In the letter, Mr Mortimer said that he proposed that the Claimant's duties be absorbed by Mr Mortimer himself.

146. Mr Mortimer's letter mentioned a potential alternative role of lower status than the Claimant's present role, concentrating on the French operation, with the same salary, said to be £60,000, but a less favourable bonus structure.

147. The letter said that no decision had yet been made and invited the Claimant to a consultation meeting.

148. The Claimant told Mrs Mortimer on Friday 15 March 2019, that Mr Mortimer had commenced a redundancy process against him. She told the

Claimant that she was shocked, speechless, and had no idea that it was happening.

149. The Claimant told the Tribunal that Mrs Mortimer told the Claimant that she would think over it over the weekend and call him back on Monday 18 March 2019. Mrs Mortimer did not contact the Claimant in respect of the threatened process redundancy on 18 March 2019, or thereafter. She did not become involved in the redundancy process, despite being the Claimant's friend and despite having previously told him that she would support him.

150. Mrs Mortimer told the Tribunal that she had never dealt with redundancies and was powerless to intervene. She told the Tribunal that she felt that she was in a very difficult position. While the Claimant was her friend, she was unable to control Mr Mortimer. She was also aware that there was a longstanding strong difference of opinion between the Claimant and Mr Mortimer and she considered that it was up to the Claimant to find a way of agreeing with Mr Mortimer about the future of the business.

151. She agreed that she was shocked about the Claimant's "at risk" meeting, because she expected Mr Mortimer or Mr Horsley to have told her about it in advance. She also said that she knew that redundancy was on the cards in December 2018, but that Mr Mortimer did not consult her about it later. She did not feel optimistic at that time about a resolution to the situation, because she considered that both Mr Mortimer and the Claimant were so intransigent.

152. Mrs Mortimer did not offer friendly support to the Claimant. However, Mrs Mortimer was also a director of the company which had put the Claimant at risk of redundancy, so she was in an inherently difficult position.

153. The Tribunal found Mrs Mortimer's evidence on the reasons for her failure to support the Claimant during the redundancy process to be entirely credible. It was clear from the emails sent by Mr Mortimer to Mrs Mortimer that he vigorously (and unpleasantly) rejected any attempted intervention by her in his running of the business. She was reasonable in believing that she was powerless to influence that process. In any event, the Tribunal accepted her evidence that she considered that Mr Mortimer and the Claimant had adopted entrenched positions which only they could resolve. It also accepted that Mrs Mortimer had no experience of redundancy processes, so she had no expertise to offer.

154. On 25 March 2019, the Claimant filed a grievance with Mrs Mortimer against Mr Mortimer and AM Plc.

155. The grievance alleged that Mr Mortimer had conducted an "unrelenting campaign of bullying, discrimination, harassment and otherwise degrading and intimidating treatment" against himself and others, as well as "inappropriate conduct involving female members of staff" and "apparent breaches of employment law obligations" and gave alleged examples of these.

156. The grievance further stated that Mr Mortimer had flouted AM Plc's expenses rules by failing to provide receipts and insisting that his expenses

were reimbursed nevertheless; That Mr Mortimer had expensed non-business purchases including "holidays, art work, attending the Salzburg festival, huge quantities of wine and alcohol, shooting days and rent for his girlfriend's apartment in Birmingham"; That Mr Mortimer had threatened to fire individual(s) raising queries about his expenses, allowing him to conduct his expenses unchecked; That Mr Mortimer had created a culture in which employees were intimidated and deterred from raising complaints for fear of retaliation and losing their jobs; That in a meeting with Team Leaders and Divisional Leaders on 10 October 2017, Mr Mortimer had stated that he needed to "get rid" of one person and asked each attendee to write down their passport or national insurance number, together with the name of the person whom they considered should be dismissed from the business, as between Ms Nicola-Jane Wilkins and Ms Jennie Labbett (now Kelleher). Ms Wilkins was not present at this meeting. Ms Kelleher was present; That AM Plc did not appear to have disclosed the minutes or fact of the 10 October 2017 Meeting in the employment tribunal litigation which followed the dismissal of Ms Wilkins for purported redundancy; That on 21 February 2019 Mr Mortimer had intentionally disseminated "privileged and highly sensitive" emails to the whole of AM Plc regarding the Wilkins Litigation, "presumably as a way of intimidating those who may think of suing AM or John on similar grounds" , before deleting those emails from all inboxes; That Mr Mortimer had recently dismissed his personal assistant in response to her raising a grievance against him; and that Mr Mortimer had created a "sham redundancy situation" as a "culmination of [Mr Mortimer's] personal vendetta against" the Claimant.

157. The Grievance stated: "I can only assume that his actions and agenda are driven by my vocal objection to his leadership style…the issues I have raised regarding his apparent employment law breaches and his management expenses". The Claimant proposed that AM Plc suspend the redundancy process immediately on the ground that Mr Mortimer had a conflict of interest.

158. On 26 March 2019, Mrs Jo Barnard (Operations Manager) confirmed receipt of the grievance and stated that the redundancy consultation process would be postponed pending the Grievance investigation.

159. On 25 March 2019, Mr Mortimer sent an email to Mrs Mortimer which was addressed to the Claimant and "written but not sent", p897.2. He had sent the same email to Ms Barnard earlier that day, p894. The email concerned an audit meeting with the French auditors as well as Mr Mortimer's request that Progressis' accounting and payroll systems were computerised in line with AM plc's systems in the UK (and the Claimant's disagreement about this). Mr Mortimer said that cost control in France was lacking. He said that there was a need to create profit and that this, along with the loss of Amsterdam and Geneva had led restructure of the International Division. Mr Mortimer concluded, "It is still my hope that you will ... change your mind about the acceptance of realities and use your talent to help me drive change and increase profit and growth."

160. The Tribunal found that the letter set out what Mr Mortimer perceived, on 25 March 2019, to be the realities of the French business and the Claimant's failure to accept these.

161. The Claimant told the Tribunal that Mr Mortimer had repeatedly referred to the Claimant in insulting or dismissive terms, including referring to him as "stupid" on at least 3 occasions in front of other staff after April 2018. The Claimant did not give the context for these remarks. The Tribunal noted that Mr Mortimer did use very robust language. It found that Mr Mortimer may have used such language towards the Claimant. The Tribunal noted, however, that the Claimant himself used strong language at times, including saying in a text exchange with Mr Horsley about another colleague, "Fuck Gizelle, I dislike her so much. I wouldn't piss on her if she was on fire." P556.

162. On 28 March 2019, Ms Barnard informed the Claimant that Mr Michael Confrey, Chief Operating Officer of the consultancy Intersol Global Limited, had been appointed to investigate and reach a decision in respect of the Grievance.

163. On 28 March 2019, the Claimant filed a Data Subject Access Request ("DSAR") with AM Plc, p 1944. In it he asked he asked, amongst other things, for emails sent to and from Mr and Mrs Mortimer to be searched in the date range January 2017 to 28 March 2019, p1945. A later DSAR requested such documents to from January 2017 to 8 August 2019, p2115.

164. The Claimant received the first substantive response to his first DSAR on 3 May 2019.

165. This excluded all documents relating to the grievance citing an exemption that "applies to documents to the extent that they will prejudice negotiations. This covers documentation/emails relating to your ongoing grievance and these have therefore been withheld".

166. The Claimant told the Tribunal, however, that no negotiations were taking place pursuant to paragraph 23 of Part 4 of Schedule 2 to the Data Protection Act 2018, which provides: "The listed GDPR provisions do not apply to personal data that consists of records of the intentions of the controller in relation to any negotiations with the data subject to the extent that the application of those provisions would be likely to prejudice those negotiations."

167. The Claimant told the Tribunal that this response also excluded personal data about the Claimant from the private Gmail accounts of Mr Mortimer and Ms Mortimer, notwithstanding that they were used for business purposes. This deficiency was raised in an email to Ms Barnard dated 31 May 2019 and no substantive reply was forthcoming. The Claimant also told the Tribunal that the DSAR response was provided in media which were corrupted/difficult to read, or were formatted in such a way as to make interpretation hard or impossible; and included documents which were redacted without explanation.

168. The Claimant told the Tribunal that he was therefore denied a full or proper response to his DSAR.

169. During these Tribunal proceedings, numerous emails were later disclosed from Mr and Mrs Mortimer's personal email accounts.

170. Chris Horsley, Strategy and Development Executive at the First Respondent and Colin Adams, IT consultant, gave evidence to the Tribunal about the Respondents' efforts to comply with the DSAR request. They both said that Mr Horsley had carried out searches of Mr and Mrs Mortimer's personal email accounts and mobile phone records, as well as running reports from Navision and searching the email archive called Mimecast. Mr Adams told the Tribunal that the total amount of time spent conducting the email searches was 177.5 hours. Mr Adams described the search terms used and the problems encountered. The Tribunal was satisfied that Mr Adams and Mr Horsley conducted a thorough and conscientious search of documents and provided these to the Claimant.

171. It was put to Mr Horsley that emails between the Second and Third Respondent dating from August 2019 and thereafter were not disclosed pursuant to the DSAR requests. Mr Horsley explained that he searched Mr and Mrs Mortimer's email accounts in the date ranges specified in the DSARs - January 2017 to 28 March 2019, p1945 and January 2017 to 8 August 2019, p2115.

172. Mrs Barnard told the Tribunal that she was inexperienced in conducting and responding to DSARs and that, when certain documents were generated by the Respondents' system, the system software had automatically redacted them. She said that she provided the documents as they had been generated. Mrs Barnard also said that the Respondents' managed service provider had never undertaken a DSAR before, but that they were contacted and were able to unredact individual letters which were then sent to the Claimant.

173. At the end of the Tribunal hearing there was an outstanding dispute between the parties as to whether emails from early August 2019 between Mr and Mrs Mortimer had indeed been disclosed pursuant to the second DSAR. On 29 December 2020, however, the Claimant's representatives wrote to the Tribunal saying that the Claimant now accepted that the first pages of each of the emails at pp1463-1463:1 (emails from 1 and 2 August 2019) and p1311 (2 July 2019) were disclosed in heavily redacted form by the First Respondent as part of its response to the Claimant's second Data Subject Access Request dated 6 September 2019. The Claimant withdrew the submission that the First Respondent failed to include in its response to the Claimant's second DSAR dated 6 September 2019 certain emails between the Second and/or Third Respondent's personal email accounts.

174. The Tribunal was not given detailed evidence about the redactions in the DSAR responses, nor was it appropriate for the Tribunal to explore the legal advice given to the Respondents about appropriate redactions.

175. The Tribunal concluded that all emails between Mr and Mrs Mortimer during the date ranges of the first 2 DSAR requests were provided to the Claimant in response to the DSARs.

176. On 8 April 2019 Mr Mortimer composed an email Mrs Mortimer, but sent it to himself, p903:1. It included the following comments, "..it is now clear that your conversations with Davide have been going on for a long time…Even if

these conversations had not the clarity of the final putsch attempt, they were extremely successful in discrediting me, and destabilising my team, and undermining the moral position of the company"… "somebody actually succeeded in having [Jo Mortimer] loose [sic] her faith and trust in her father…it is very clear because she explained to me very clearly, that Davide fed her the disinformation" …"…as every lie from Davide is nailed, so our daughter's underlying trust in her father is beginning to return" "…her current position of compromise is that fathers and daughters should not expect to be able to work together, and to thank me for the opportunity……that you and Davide have now taken away from her.""…Davide's most outrageous behaviours, still supported by you…""I do not know when people recognise that the evil that they do is evil, however unintentionally the collateral damage. clarly [sic], for Davide, she was just a lucky opportunity to use to further his private agenda" "…the first, and will become a major witness in the proceedings which I will instruct to continue to the bitter end".

177. Mr Mortimer was cross examined about this email and it was put to him that "the first, and apparently most damaging of Davide's lies is easy to expose" referred to the Claimant's protected disclosures about Mr Mortimer's expenses.

178. Mr Mortimer told the Tribunal that the biggest of the Claimant's lies was that Paris was profitable. He said that the Claimant had also lied about the equity scheme and had turned his daughter Jo Mortimer against him.

179. At one point in his evidence, Mr Mortimer said that expenses were low down on his thoughts, the first on list was manipulation of ex-wife and daughter for his own ends. He then sought to correct this evidence, by saying that he thought that this was a "June letter", when it was composed in April 2019, so he was not aware of the Claimant's allegations about his expenses.

180. Mr Mortimer told the Tribunal that he did not read the grievance when it first arrived. He said that AM plc's solicitors had read it and he was read the riot act about the allegations about bullying and harassment. Mr Mortimer said that he was not aware, from the conversation with the solicitors in March, that the Claimant had made allegations about his expenses. He said that he could not remember when he did become aware; he was drip fed parts of the grievance by Mr Horsley because the grievance was depressing, Mr Mortimer did not enjoy reading it and he needed to be positive.

181. Mr Mortimer also told the Tribunal that Mrs Mortimer and Jo Mortimer did not tell him that the Claimant had told them that Mr Mortimer was wrongfully claiming expenses, or that he had shown them evidence of the expense claims. He told the Tribunal that he did not know, until he saw Jo Mortimer's witness statement, that the Claimant had raised his expenses with her.

182. Mrs Mortimer told the Tribunal that her final word to the Claimant in their October 2018 expenses meeting was that she would not betray him because "it is the one thing for the wrath of God to descend on me", referring to Mr Mortimer. She told the Tribunal that she wanted the Claimant to stay in the company; he was her friend and, if there had been anything, she could have done to keep the Claimant and Mr Mortimer together, she would have done it.

Mrs Mortimer said that she abided by her promise to the Claimant until Mr Mortimer knew that the Claimant had questioned his expenses anyway.

183. Mrs Mortimer said that she had, herself, queried Mr Mortimer's expenses with Mr Horsley, because she thought that Mr Horsley signed off the expenses, but she never told Mr Horsley about the source of her concerns, because she knew that it would have gone straight back to Mr Mortimer.

184. Mrs Mortimer said that, in April 2018, she had extracted the Claimant's name from Jo Mortimer "under duress" in relation to the expenses allegations.

185. Jo Mortimer told the Tribunal that, in April 2018 the Claimant had wanted Jo Mortimer to keep the source of the expenses confidential and that Jo Mortimer agreed to pass the concerns to Angela Mortimer because, as the daughter of the bosses, she could have the conversation with impunity. She said that she had told Angela Mortimer who her source was after a couple of weeks, because she trusted her to keep that confidence. Jo Mortimer said that she had never told Mr Mortimer that the Claimant had questioned his expenses. She was sure that she had not, because to have done so would have been a betrayal and she would have had "an emotional memory" of having done so.

186. Mr Horsley confirmed that he read the Claimant's grievance shortly after it was submitted, as Ms Barnard had saved it in the HR folder to which he had access. He agreed that, at some point between 25 March and May 2018, he had told Mr Mortimer that it contained allegations about Mr Mortimer's expenses.

187. By an email dated 20 May 2019 with the subject line "further disclosure", the Claimant provided to Ms Barnard and Mrs Mortimer, expressly pursuant to AM Plc's whistleblowing policy, a screenshot of AM Plc's accountancy software, showing an expense of £4,000 for rent of an apartment in Birmingham for Ms Stokes; and a further screenshot showing that the same expense entry had been altered to a personal expense of Mrs Mortimer. The Claimant said that he was concerned that the entry had been changed following submission of the Grievance on 25 March 2019 and said that the change from Mr Mortimer to Mrs Mortimer disclosed "illegal and unethical conduct which requires investigation." P1056.

188. Ms Barnard responded that Mr Confrey would investigate this as part of the Grievance investigation, as the Claimant had already raised the same matters with Mr Confrey.

189. Following the Grievance Outcome and Grievance Appeal Determination (below), in emails to Ms Barnard and Ms Mortimer dated 25 July 2019, 26 July 2019, and 5 August 2019, the Claimant restated and added recent and further information in respect of Mr Mortimer's expenses and AM Plc's apparent noncompliance with its duties.

190. The Claimant alleged that these matters were not investigated - timeously, properly and/or at all.

191. The Respondents agreed that these expenses had been changed from Mr Mortimer's to Mrs Mortimer's.

192. Mrs Mortimer told the Tribunal that the matter had been investigated, but no explanation could be found. She said, "I say this ironically, it would be a very clumsy attempt at concealment. I would not be spending the night with Verity. No one could find an explanation."

193. Mr Confrey interviewed the Claimant on 3 April 2019 and 14 May 2019. On 9 April 2019, the Claimant provided Mr Confrey with hard-copy documents relevant to the Grievance.

194. The Claimant alleged that, during the Grievance investigation, Mr Mortimer and Ms Mortimer sought improperly to interfere with, obstruct, and/or delay full and timeous resolution of the Grievance.

195. He said that, on or around 1 or 2 May 2019, Mr Mortimer took Ms Doling, Ms Bramwell and Ms Goodall into a private meeting room and showed them documents which the Claimant had provided to Mr Confrey for the purpose of investigating the Grievance. The Claimant relied on a diary entry he made at the time, in which he recorded that Ms Goodall had told him that Mr Mortimer had called the 3 women into a meeting and informed them in a threatening way that he was "very upset" and had shown them all the evidence in his hands.

196. Mr Mortimer knew that grievances were to be treated as confidential and he was specifically asked by Mr Confrey: *"Please do not contact any persons named in the documents."*

197. Ms Bramwell told the Tribunal that, on the day in question, she had seen Mr Mortimer looking sad and hurt and had asked him how he was, to which he had responded that he *"didn't know who to trust"*. Ms Bramwell said that she had only just returned from holiday and had no idea about the grievance. She said that Mses Doling and Goodall had already given evidence to the grievance investigation. She said that Mr Mortimer had documents in his hand, but did not show them any of them. Mr Mortimer also denied showing any documents, but agreed that he had said he was feeling low about meeting Mr Confrey.

198. On 3 May 2019 Mr Mortimer emailed all 3 women apologising for any *"undue duress"* and saying the conversation was *"not intended to assert pressure"*, p988:1.

199. The Tribunal found that Mr Mortimer, in response to an enquiry about his wellbeing, told the 3 women that he was feeling low about the grievance and did not know who to trust. He did not show the documents to them. The next day, he sent an email apologising and said he did not intend to put pressure on any of them.

200. On 13 May 2019 Mrs Mortimer sent an email to AM plc's external accountant, copied to Mr Mortimer, asking for the accountant's advice on company expenses, including Salzburg Opera tickets, holidays, wine

purchases, pot plants for the home, payment of rent by the company to a staff member, p1076:3.

201. On 15 May 2019 Mr Mortimer replied Mrs Mortimer, saying, "... may I also suggest that you appear to have shared this list, or information on this list, with Davide. The information you have shared with Davide has turned into an apparently striking piece of damaging insight… This particular "insight has in fact been checked with our auditor several times. It is defamatory in its presentation by Davide, because it is in fact wrong… and is intended by Davide to cause damage. That makes it actionable", p1076:2.

202. That email of 15 May 2019 suggested a number of things. First, that Mr Mortimer knew, at that point, that the Claimant had made allegations about Mr Mortimer's expenses. Second, that he believed at that point that Mrs Mortimer had supplied the information to the Claimant. In other words, the email indicated that neither Jo Mortimer nor Mrs Mortimer had hitherto told Mr Mortimer that the Claimant had made expenses allegations about him. Third, that Mr Mortimer did not know, before this time, that the Claimant had made allegations about Mr Mortimer's expenses. The 15 May 2019 email specifically talked about the Claimant having raised issues about expenses and specifically rebuffed those allegations. Mr Mortimer's previous emails, in which he talked about the Claimant's "lies", "misinformation", "briefing", did not mention expenses at all.

203. Fourth, the email suggested that Mr Mortimer intended some retaliation in respect of the expenses allegations – in that he described the allegations being "defamatory" and actionable.

204. On 17 May 2019 Mr Mortimer sent Mrs Mortimer a private email, p1047, which included "…she is playing/overplaying Davide's game"... "I am quite confident in the fact of a long running campaign of targeted defamation"... "I am pretty confident of the fact of a conspiracy to defame…an orchestrated campaign"... "I have been pondering on what was the objective. I now know for certain that it was aimed at depriving me of my living, and possibly my assets without compensation".

205. On 30 May 2019 Mr Mortimer sent an email to Mrs Mortimer saying that she had run a check on his expenses in September 2019 "the entire floor knew you were doing it". He then said that he surmised that the Claimant had investigated Mr Mortimer's expenses before submitting the grievance and asked, "…how did he get the information?" … "So, Danielle gave him the information, or accounts did, or you did? Just another of the mysterious actions that lead one to suppose an intentionally directed campaign of destabilisation was going on."

206. The Tribunal observed that this email suggested that Mr Mortimer was still unaware, on 30 May 2019, that the Claimant had told Mrs Mortimer anything about the expenses, rather than the other way round.

207. On or around 14 May 2019, the Claimant's access to Navision was restricted without explanation to him. Mr Ramachandran admitted, in evidence, that he had overlooked replying to the Claimant's query as to his restriction on

Navision. Mr Ramachandran told the Tribunal that, historically, employees had only been given access to documents on Navision which were relevant to their own Division. However, when IT access problems had occasionally arisen, IT consultants had (lazily) resolved them by restoring the relevant employee's access to all Divisions on Navision.

208. The Respondents' witnesses told the Tribunal that, at this time, Belinda Lighton, of Knightsbridge, had complained that someone outside her Division was accessing her Division's documents. As a result, there was a review and the appropriate access parameters were restored. The Claimant's access was therefore reduced to his own Division, as it always should have been.

209. The Claimant alleged that Mrs Mortimer refused to participate properly or at all in the Grievance process, notwithstanding that (i) she was a senior figure in AM Plc, (ii) she had relevant evidence to give in respect of the Protected Acts and/or Protected Disclosures, and (iii) she was implicated in the same. By her inaction and/or conduct she sought to (and did) prevent or delay the full investigation and resolution of the Claimant's grievances.

210. The Grievance Outcome stated: *"AM declines to make any comment in relation to JM",* p1143. The Claimant contended that Mrs Mortimer was a senior figure within the company, a confidant of the Claimant's in respect of Mr Mortimer's behaviour, and someone with significant knowledge of the key people and many of the key facts. She was also a Director of the Company. The Grievance Outcome observed that the Claimant had *"clearly stated to AM that* [I] *felt* [I] *was being bullied by JM and yet little or no action was taken to address* [my] *concerns"*, p1144. The Claimant contended that, from Mrs Mortimer's own evidence, she had decided that the Claimant was *"attacking the company"* (i.e., the Grievance Disclosures) and wanted nothing to do with him.

211. Mrs Mortimer did not assist the investigation. She did not give evidence about the fact that the Claimant had previously made the same disclosures to her.

212. Mrs Mortimer told the Tribunal that she had had long conversation with Stephen Parker at the First Respondent's accountants TLP about Mr Mortimer's expenses at the time. The Tribunal noted that Mrs Mortimer had indeed sent an email on 13 May 2019 to Mr Parker, asking for advice on a list of Mr Mortimer's expenses.

213. She also told the Tribunal that she was still trying to conceal that anyone, other than herself, had had anything to do with the investigation into Mr Mortimer's expenses. Again, the Tribunal considered that this accorded with its findings that Mrs Mortimer had honoured her undertaking to the Claimant that she would not reveal the source of her information about the expenses allegations.

214. Mrs Mortimer also told the Tribunal that she felt her evidence about Mr Mortimer would be worthless anyway, as an "ex-wife"; if she said anything critical it would be dismissed on the grounds that, "she would say that wouldn't she". She said that she completely "boxed in" by the Claimant and Mr Mortimer,

who should have sorted their differences out between them, but neither was prepared to change their positions.

215. The Tribunal accepted Mrs Mortimer's evidence, she was credible in her assertion that she was exasperated by the intransigence of both the Claimant and Mr Mortimer and therefore did not want to get involved.

216. In any event, the Tribunal did not accept that there was a detriment effect on the grievance outcome. It was not clear from the Claimant's case, which parts of the grievance outcome the Claimant alleged would have been concluded differently, or in his favour, if Mrs Mortimer had given evidence to the grievance. Indeed, in section 9.14 of the grievance outcome, where Mr Confrey recorded that Mrs Mortimer had not make any comment in relation to John Mortimer, Mr Confrey upheld the Claimant's allegation saying, "There is a case to answer in relation to point 14. DM's reported of bullying were met with inaction by AM who was in a position to have taken action to address the alleged bullying and did not," p1144.

217. On 17 June 2019, Mr Confrey emailed the Claimant attaching a document titled "Investigation Report Angela Mortimer Plc". Each page was watermarked with the word "Draft", p1121. In the Draft Grievance Outcome, Mr Confrey found that there was a "case to answer" in respect of 13 of the Claimant's complaints, including complaints of bullying and harassment.

218. Mr Confrey otherwise dismissed and/or declined to make findings as to the remainder of the Claimant's allegations on the basis that there was "no case to answer". Mr Confrey did not make findings about the expenses allegations, saying that accountants' advice was required. He did not make findings about the proposed redundancy process. He advised the Claimant to seek legal advice in relation to the redundancy process.

219. The Draft Grievance Outcome advised the Claimant that Mr Nick Hawkins, also of Intersol Global, had been appointed to hear any appeal, p1151.

220. 20 June 2019, Mr Confrey confirmed that the Draft Grievance Report was, in fact, his final report. He re-sent the same report with the watermark removed, p1164.

221. On 23 June 2019, the Claimant appealed against the Grievance Outcome to Mr Hawkins, p1170 -1178.

222. The Claimant told the Tribunal that, on or around 10 July 2019, Mr Mortimer said to Ms Goodall words to the effect that she and Ms Doling should not have supported the Claimant during the investigation; that she and Ms Doling should not have attended attend the meetings with Mr Confrey as they "could be responsible for the company going under"; that he knew, "about the WhatsApp group" (a reference to a conversation between the Claimant, Ms Jo Mortimer, Ms Bramwell, and Ms Doling), and would ask for it to be used in evidence "in court"; and that she should be "in court with" Mr Mortimer to "support" him.

223. The Claimant told the Tribunal that, in the same meeting, unprompted, Mr Mortimer raised the issue of his expenses with Ms Goodall, stating as follows (or words to the effect that): “it only happened once when skiing”.

224. The Claimant produced a diary note dated 11 July 2019, recording that he had had a conversation with Mary Goodall, in which she had reported all these things to him, page 1325.

225. The Claimant said that no or no proper measures were put in place by AM Plc to prevent such intimidation by Mr Mortimer.

226. Ms Goodall did not give evidence to the Tribunal. Mr Mortimer told the Tribunal that he had not said these things.

227. The Tribunal accepted that Ms Goodall reported these things to the Claimant. There was a contemporaneous note of the Claimant’s conversation with Ms Goodall. The Tribunal considered that Mr Mortimer told Ms Goodall, an employee, that she should support the Company, and not the Claimant, in any disputes, including contemplated litigation. He referred to his disputed expenses in that conversation, indicating that they were relevant to his instructions to Ms Goodall.

228. Mr Hawkins met with the Claimant on 12 July 2019 and with Mr Mortimer on 15 July 2019.

229. On 22 July 2019, Mr Hawkins sent the Claimant his determination on the grievance appeal, page 1398. Save in respect of a small number of grounds, the Claimant’s appeal was dismissed.

230. On 19 June 2019, two days after the Claimant received the original “draft” grievance outcome, Mr Mortimer wrote to the Claimant, recommencing the redundancy consultation process. He said that the “redundancy consultation process and ultimate decision making” would be carried out by Ms Barnard and himself. He invited the Claimant to attend a redundancy consultation meeting on 21 June, p1158.

231. The Claimant replied on 20 June 2019, objecting to the redundancy being recommenced. He said that the grievance investigation had not been completed and that he had the right to appeal. The Claimant said that, from the draft grievance outcome, serious findings had been made against Mr Mortimer, so it was not appropriate for Mr Mortimer to be the decision maker in the redundancy process, p1163, 1167.

232. Mr Mortimer responded by email the next day, saying that the planned consultation meeting would be postponed, p1168.

233. Mr Mortimer contacted Robin Johnson, leadership mentor at OvationXL Limited, who had previously undertaken some work for the First Respondent Company, to ask him whether he would undertake the Claimant’s redundancy consultation process.

234. On 21 June 2019 Mr Mortimer spoke to Mr Johnson by telephone, outlining that there was a redundancy process, and that it was felt that, rather than Mr Mortimer being involved in it, an impartial outsider should be appointed, p1188:8-9.

235. Mr Johnson met Mr Mortimer and Ms Barnard on 25 June 2019, when Mr Mortimer gave Mr Johnson a more detailed briefing. Mr Mortimer told Mr Johnson about the "Mandy workshops" and the Claimant's speech to the Mandy workshop. He told Mr Johnson that the only AMplc Divisions which were profitable were Birmingham, Knightsbridge, and Jo Mortimer's Division. He told Mr Johnson that the Claimant was a "gay Italian". He also referred to an event attended by "Seven people David pluys husband or wife...".

236. Mr Johnson was cross examined about why he did not challenge Mr Mortimer's irrelevant and pejorative introduction of the Claimant's sexual orientation. Mr Johnson told the Tribunal that he found it irrelevant and irritating, but agreed he did not challenge it.

237. Mr Johnson's notes of the meeting were written at speed and are fragmented. However, they did record that Mr Mortimer used various words and phrases to describe the Claimant and his conduct, "Total and utter"; "EGO"; "Not up to it financially…Red mists"; "Cannot be trusted with maths"; "He's a liar"; "Mr No - briefing negatively including daughter". Mr Mortimer also told Mr Johnson that the Claimant was rich, "Rich owns 8 flats with partner"; He described the Claimant's grievance "20-page grievance / Put in something big"; and told Mr Johnson that the Claimant had legal advice, "Mishcon de Reya advising".

238. The Tribunal noted that these descriptions were derogatory. Neither Mr Johnson nor Jo Barnard, who attended the meeting, challenged Mr Mortimer's descriptions of the Claimant.

239. This was the first redundancy consultation process which Mr Johnson had undertaken. He told the Tribunal that, by contrast, he had considerable experience of executive coaching and business rescue.

240. On 25 June 2019 Mr Johnson wrote to Mr Mortimer about the proposal that he become involved in the Claimant's redundancy consultation, p 1188:10. He said that his contribution, "may include helping [the Claimant] create a genuinely workable plan that puts the international side back onto a sustainable footing." Mr Johnson said that the Claimant represented a significant overhead and commented, "According to the financial figures presented to me, the international business is losing money on almost every front, building an inter-company loan than needs repaying." He said of the Claimant, "I am picking up that he could prove to be a dangerous enemy... I am concerned he could create even more damage to a business...". Mr Johnson said that delay would risk "pouring oil on this raging fire".

241. On 27 June 2019 Ms Barnard obtained the year-to-date profit and loss, balance sheets and cash flow forecast for each of the European offices for 2018 and 2019 , from Prasanna Ramachandran and forwarded them to Mr Johnson,

p1228. Mr Johnson examined these and sent his analysis to Ms Barnard, p1230. He said that overall profit in the International Division had increased in the year 2018/2019 by 74%, compared to 2017/2018, and said that, if he had interpreted the figures correctly, efficiency had significantly increased in the most recent trading period. He also said that minimum performance levels were "moving in the right direction". Mr Johnson was given the "green light" to proceed with meeting with the Claimant and undertaking a process, p1227.

242. By email of 28 June 2019, Mr Mortimer informed the Claimant that the redundancy process would continue. He said that he would "not play any part in the redundancy consultation process with yourself or in the final decision-making process". Instead, Mr Mortimer said that the decision-makers would be Ms Barnard and Mr Robin Johnson, a "business performance coach" employed by an external consultancy, OvationXL, p1231.

243. On late June 2019 Prasanna Ramachandran sent Mr Johnson financial analyses of sums owed to and from the International Division to AM plc. This showed that, overall, the International Division owed just over £1 Million to AM plc, p1240 and 1254.

244. Mr Ramachandran was cross examined about the "intercompany loan" between the International Division and AM plc. The Tribunal considered Mr Ramachandran to be factual and dispassionate in his explanation of the accounting practices used to record the intercompany balances. He explained that the "intercompany loan" account was an accurate record of all the sums which had passed between the 2 entities over their histories. The International Division was over £1M in deficit to AM plc, for example through failure to pay management fees, or AM plc having paid overheads for which the International Division was liable. The Tribunal accepted Mr Ramachandran's evidence that this £1M deficit took into account the £4.5M profit which the Claimant contended that the International Division had historically generated for AM plc. Mr Ramachandran explained that the intercompany account would reflect all transactions and that the £4.5M profit could not "disappear" from it, but would always have to be accounted for.

245. There was a considerable email exchange between Mr Ramachandran and Mr Johnson at the end of June 2019, analysing the profitability of the International Division, pp 1251 – 1288.

246. On 1 July 2019 Mr Johnson invited the Claimant to a consultation meeting to take place on 4 July 2019, p1281.

247. Mr Mortimer spoke to Mr Johnson on 1 July 2019. No minutes were kept of their discussion.

248. Mr Mortimer also emailed Mr Johnson and Ms Mortimer on 3 July 2019, in advance of the consultation meeting with the Claimant, p1292. He said that the Claimant "cost" £200,000 per year, of which Paris paid £96,000 and the London office paid £12,000. He said that the shareholders and London therefore "bleed" £100,000 and said, "This has to stop". Of the Claimant himself,

Mr Mortimer said, “think spoiled child”. Mr Mortimer also set out responses to the Claimant’s likely arguments.

249. While the Claimant had been told that Mr Mortimer would not be part of the consultation and decision-making process, Mr Mortimer was clearly providing information to the panel and seeking to influence the discussions in the consultation meeting. Rather than challenging Mr Mortimer, Mr Johnson responded, “Neatly put John. Thanks so much for this. This is helpful.” P1291. While Mr Johnson told the Tribunal that he ignored Mr Mortimer’s advice, his words at the time suggested the opposite.

250. By email of 1 July 2019 to Mr Johnson and Mr Mortimer, the Claimant restated his position that it was inappropriate for the redundancy consultation process to proceed while points in the grievance remained outstanding and while the grievance appeal was pending, p1282.

251. Mr Johnson and Ms Barnard held redundancy consultation meetings with the Claimant on 4 July 2019, 26 July 2019, and 8 August 2019.

252. In the meeting on 4 July 2019, Mr Johnson told the Claimant that he had been looking at the figures for the International Division. He said that he understood that there had been a downturn in business and there was a need to reduce costs. Mr Johnson said that he understood that the Claimant’s duties had decreased. He asked the Claimant to describe his role. The Claimant recounted the history of his employment and the way in which he had grown the International Division. He said that he had a track record of developing individuals and that his role was to add value to the business.

253. Mr Johnson commented to the Claimant that the Claimant did not directly generate income. The Claimant responded that he fed his leads to other team members. The Claimant said, on a number of occasions during the meeting, that the Paris office was profitable, that other Divisions were less profitable, and that the redundancy was a sham. He said that he had generated £4.76M in profits.

254. The Claimant told Ms Barnard and Mr Johnson that Shirley Maffre in the Paris office had resigned. Ms Barnard questioned this. Mr Johnson asked about “the intercompany loan” of £1.197M. The Claimant said that this was incorrect and that the funding for the Geneva and Lyon offices had come from the profits of Progressis in Paris.

255. Mr Johnson said that the Company was thinking of a different role for the Claimant, focused on developing Paris, with the Claimant’s basic pay being the same, along with a package predicated or growth and profitability, p1299.

256. After the first consultation meeting, Mr Johnson continued to analyse the financial performance of the International Division. On 11 July 2019 he asked Mr Ramachandran to confirm whether £230,000 needed to be deducted from the figures. He said that, if it did, this would produce a modest loss of £17,000 for the financial year, p1347. Mr Ramachandran replied saying the profit and loss for the International group from July 2017 – June 2018 was £163,000, from

which figures including the £230,000 needed to be deducted. Mr Ramachandran said that the upshot was a £210,000 loss for 2017/2018, p1351.

257. The Respondent's witnesses agreed that the £230,000 figure, which represented a rent rebate to Progressis for moving offices, should have been added to the profit for 2017/2018, not deducted from it.

258. It appeared from the email exchanges at this time that information was also being supplied by Mr Horsley to Ms Barnard and Mr Johnson, p1352.

259. Mr Johnson emailed the Claimant on 15 July 2019, providing notes of the 4 July consultation meeting, p1377. Mr Johnson also attached profit and loss, turnover figures for the previous 3 years, as well as a summary of the intercompany loan. He said that, from his analysis, the profit of the International Division, divided by its turnover, was too small to be sustainable and warranted a change in the business model.

260. Mr Johnson said that, while profitability in France in 2018/19 had increased, fewer employees were needed, resulting in a more efficient use of labour. He said, "The Company believes that the Divisional Leaders of each of the international operations are now senior enough and have sufficiently progressed to the stage where they now no longer require you to oversee their duties and so could absorb a large part of your current duties, (save that JM proposes to assist Monique in Geneva)." He also said that Mr Mortimer would absorb overall responsibility for the International Division. p1379

261. Mr Johnson's email addressed the reason why the company was considering the International Division, rather than other areas. He said that other areas of the business had made costs savings in recent years; in 2018 two self-employed contractors had been terminated in April 2018 from the Marketing and Events Department. The Head of Global Events was terminated in April 2018. The Manchester office was closed in 2016, resulting in 4 redundancies in April 2016. The Bristol office was closed in 2018, with 1 redundancy. The Central Services Team had reduced in size from 16 employees to 9 by attrition. Mr Johnson said that, as a result of downturn in work in Amsterdam, Switzerland and Belgium, the Company had decided to carry out a review of its European busines.

262. Mr Johnson then set out a proposed alternative role for the Claimant, growing the profitability French operation, retaining the Claimant's current basic pay, but with a different bonus scheme, p1380. Mr Johnson gave a deadline of 24 July 2019 for the Claimant to respond to this proposal. He invited the Claimant to a further consultation meeting on 26 July 2019.

263. However, by email dated 22 July 2019, Mr Johnson wrote to the Claimant stating that, "having reviewed the very latest data", the alternative role which had previously been considered possible for him was not financially viable and that it would not be further pursued, p1396. He said that, since the turn of the year, total fee income from the Paris office had fallen and actual profit was in negative territory. He said that the Company would continue to consult the Claimant about redundancy and to consider alternative roles.

264. Mr Johnson and Ms Barnard did not interview the Divisional Leaders.

265. In cross examination it was put to Mr Johnson that he did not consult the Divisional Leaders because he knew he would not get the answer Mr Mortimer wanted. Mr Johnson told the Tribunal that, "I was worried I was running over budget."

266. In an email to Ms Barnard on 24 July 2019, p1411, Mr Johnson set out concerns about whether the Divisional leaders would, in fact, be able or willing to assume the Claimant's role. In the email he recorded that staff in France were "exceedingly nervous and unsettled", that clients viewed the Claimant as "the face of the French operation", that the Claimant was "key to motivating the staff". Mr Johnson wrote, "Profits aside, DM is considered to have "contributed massively" to growing the Paris/Lyon operation". He said that, in the absence of the Claimant in Belgium "the Brussels operation would undoubtedly require additional support - which probably means the all-important new business generation/networking that DM provides".

267. Ms Barnard told the Tribunal that she had discussed the Divisional Leaders with Robin Johnson and, taking into account the length of time they had been in the business, Mr Johnson and she were both confident the Divisional Leaders could continue to do the Claimant's role, leading their teams, training, recruiting new buyers and developing the business. Ms Barnard told the Tribunal that the other Leaders in the International Division had the following employment histories: In the Paris Office, Shirley Maffre had been employed since 1999; Catherine Tardieu had been employed since 2003 and Alexandra Vercken had been employed since 1999. Frederique Pacagnella, who ran the Belgian office, was employed from 1999 to 2005 and had then returned in 2013; and Monique had been employed in the Geneva office since 2017.

268. There was a second redundancy consultation meeting on 26 July 2019, p1429. The Claimant asked whether the Divisional Leaders had been consulted about taking on his salary costs; Mr Johnson confirmed that they had not. The Claimant said that the costs of the Chairman's office (Mr Mortimer's office) were a significant drain on resources. He said that the management charges were too high for the size of the International Division.

269. The Claimant suggested that Shirley Maffre's role would be vacant soon. Mr Johnson asked him if he was saying he could do her role. The Claimant responded that they would have to cross that bridge when it was an option.

270. Alongside the consultation meetings, the Clamant was also sending emails about the consultation, to which Mrs Barnard or Mr Johnson responded in writing. The Claimant's email dated 25 July 2019 pp1416–1417 produced Mrs Barnard's response dated 5 August 2019, explaining the financial considerations and answering other questions, pp1507–1514. The Claimant's email dated 6 August 2019 pp1542–1544 and was responded to be Mr Johnson on 7 August 2019, pp1554–1556.

271. On 1 August 2019 Mr Horsley drafted a lengthy email, setting out cost cuttings measures the Company had already undertaken and dealing with the

financial positions of the Hong Kong and Sao Paulo offices, p1460.1 – 1460.4. He set out proposed wording for Ms Barnard and Mr Johnson to use in their correspondence with the Claimant, "You will be aware, and we have discussed before, that the Angela Mortimer Group has been fighting for profitability…" "For transparency we will also note that we have created a new role, my role, as Operations Manager…" … "It is a fact to say that the European operation is the least profitable out of the major recruitment team groupings…" … "It is therefore clear why the company is seeking to make cost savings in this area."… "…the company is concerned the fee income levels in the Progressis operation seem to have started a downward trend since the start of this year…." … "The company considered the roles inside the European Operation and as the primary, non-billing, non-primary client facing role also coming with the largest staffing costs, your role was considered. Upon looking at the duties that you carry out in your role, and as discussed, we believe that your duties may be primarily taken on by John Mortimer, his team and the other leaders inside the European operation."

272. In oral evidence Mr Horsley accepted that he was "making the case for redundancy*".* He responded, *"I can see it may be taken that way, yes"*.

273. Ms Barnard wrote to the Claimant on 5 August 2019, attaching the minutes of the second consultation meeting and responding to the matters the Claimant raised in the meeting. She copied and pasted Mr Horsley's email of 1 August 2019 into this email – pp1510 – 1511.

274. Mrs Mortimer did not take part in the redundancy process.

275. Mr Johnson and Ms Barnard were not provided with Mr Horsley's "Divisional League Table", produced on 6 August 2019, which showed 12-month profits for Progressis of £179,762, p1539. Progressis was described in this document as being in the "premiership" of Divisions in AM plc, on account of having more than £1M fee income.

276. The Claimant attended a final consultation meeting on 8 August 2019. He compared the profitability of his own Division to the profitability of other Divisions and asked why other employees were not being considered for redundancy. Mr Johnson said that the Claimant's role was a standalone position and that other Divisions were being looked at as an ongoing process. Mr Johnson also said that Progressis had made a loss in the second part of the year, in any event, p1561.

277. In that same consultation meeting, the Claimant told Mr Johnson, "I have contributed in bringing clients I have a list of the past two years my contribution which is unseen in the figures because these are clients that I brought into the company is about £120k and that's only on the client side." Mr Johnson replied, "Right". The Claimant continued: "I'm not talking to you about the candidates we have got a placement happening today with one my candidates which I have recommended to the team. You failed to look at that. You really concentrating on me".

278. On the same day, while drafting the Claimant's redundancy letter, Mr Johnson wrote, "Personally, I think it is wise to go light about how the business is to manage without Davide, as responsibilities are much more likely to be absorbed by various team members besides the DLs and we really don't need to box ourselves in on this critical point, p1546.

279. From the evidence of Mr Johnson and Mrs Barnard, the Tribunal decided that, during the redundancy consultation, neither were selection criteria identified or applied, nor was an analysis of the Claimant's skills conducted; or of the skills of other Leaders in the International Division. Ms Barnard and Mr Johnson were only asked to consider the Claimant for redundancy.

280. On 9 August 2019, Ms Barnard wrote to the Claimant stating that his employment would terminate that day due to redundancy, p1580. She said that the Claimant's role was not required in the future "in the interests of efficiency and to save costs". Ms Barnard said that the Claimant's workload had decreased due to the closure of the Amsterdam operation and that the Claimant's reduced duties could be absorbed by existing staff members, including the Team Leaders and John Mortimer. She said that Mr Johnson and she had decided that a role working in isolation on the growth of the French operation was not viable.

281. Mrs Barnard had booked a meeting room on 9 August to tell the Claimant that he was being made redundant, but the Claimant was not in the office that day.

282. Mrs Barnard therefore relayed the message to the Claimant by telephone.

283. The Claimant asked whether he could come and say goodbye, but Mrs Barnard responded that it was for the company to decide how to communicate the Claimant's dismissal to colleagues and that the Claimant no longer had access to the building, p1577.

284. The Claimant told the chair of the appeal hearing that the actual words used were not important, but their impact was, p1696.

285. On Monday 12 August 2019, when the Claimant asked to come to the office in order to return AM Plc property and collect his personal belongings, Ms Barnard responded "I am in Birmingham today – I can arrange for your personal items including your Nespresso machine to be delivered to your home address today." She asked the Claimant to confirm a time when he would be available for a courier to deliver the items, p1586:2.

286. Mrs Barnard was asked about not permitting the Claimant to return to the building after his dismissal. It was put to her that the Claimant was a long serving employee and that he was told that he was being dismissed for redundancy, not for any fault on his part. It was put to her that, in fact, he was treated as if he had been dismissed for gross misconduct. It was put that the Claimant was denied an opportunity to say goodbye to his colleagues, which

he would reasonably have expected to be able to do, after such a long time in the company.

287. Mrs Barnard told the Tribunal that the business was a commercial business and the commercial material employees created remained the property of the company. She said that anyone who leaves the Company does not have access to the building - their pass is stopped.

288. The Claimant told the Tribunal, however, that Lucy Chamberlain, who had left the company to join a competitor, was given a party and a silver plate. He said that many people who had been made redundant had been allowed into the building.

289. The Tribunal accepted the Claimant's evidence that other employees had been permitted to return to the First Respondent's building after they had left and, indeed, were given presentations. By contrast, it found that the Claimant was snubbed and shunned by Mrs Barnard's repeated refusal to permit him to return, even to gather his belongings. The Claimant was a long serving employee. He was not being dismissed for misconduct. He was denied an opportunity to say goodbye to his colleagues, which he would reasonably have expected to be able to do, after such long service.

290. Mr Mortimer emailed to Mrs Mortimer on 2 August 2019, before the Claimant was dismissed saying, "Davide wants my blood and he doesn't care if he destroys all his previous friends. He thinks you still support him". Mrs Mortimer replied saying, of the Claimant, amongst other things, "The vindictive feelings you have toward each other are destroying are wonderful company. "... "Think you are right he's out for blood and meanwhile milking the company dry any way he can. Can you think of a way of arresting this leakage of money?" In this email, Mrs Mortimer disclosed to Mr Mortimer that the Claimant had taken the expenses documents from the office and brought them to her at her home, pp1463 – 1464. In evidence to the Tribunal, Mrs Mortimer told the Tribunal that this was the first time she told Mr Mortimer that the Claimant had provided Mr Mortimer's expense documents to her.

291. The Claimant told the Tribunal that on about 9 August 2019, Mr Mortimer instructed members of AM Plc staff, including Ms Goodall, Ms Williams, Mr Phil Crocker (Senior Consultant), and Ms Jessica Laws (Temp Consultant), to cease all communication with the Claimant. The Claimant relied on a WhatsApp message, p1936 in which Ms Goodall told Nicola-Jane Wilkins that *"In truth I was given gagging order to stop me contacting ppl like you and Davide"*.

292. The Respondents contended that there was no such instruction. Mr Mortimer denied that he had done so and said that the Claimant had clearly continued to talk to staff after his departure from the Company. Ms Goodall's WhatsApp message to Ms Wilkins did not specify what words were used to her.

293. The Tribunal has already found that Mr Mortimer had said to Ms Goodall that she should support the Company and not the Claimant. The Tribunal found that it was likely that Mr Mortimer let it be known that he expected employees

to be loyal to the Company and not to contact the Claimant or to give him information.

294. At an Assemblée Générale Extraordinaire (extraordinary general meeting) of Progressis SAS on 22 October 2019, Mr Mortimer stated that the Claimant had to be removed as President of Progressis because, amongst other things, he was an improper person because of failure of compliance, failing to follow French Company Requirements and failing to respect audit results. He said that the Claimant was being investigated, amongst other things, for (i) paying himself a salary without Mr Mortimer's knowledge; (ii) failing to inform the Board of AM Plc that filing of Progressis SAS end of year accounts for 2018 had been postponed; and (iii) relying on AM Plc's P&L figures rather than the Progressis SAS yearly audited accounts during the Grievance process.

295. The draft minutes of that Meeting were at p1796.

296. Mr Mortimer told the Tribunal that the Respondent Company had been advised by its French lawyers that, in order to remove the President of the French company, there had to be a reason for their removal and a unanimous vote of the board. Accordingly, Mr Mortimer had said that there was a reason to investigate the Claimant paying himself a salary without Group knowledge.

297. The Minutes record, "(ii) Revocation at the unanimity... JM said that Philippe Franc explained to him that this disclosure is a difficult disclosure, JM confirmed that in order to avoid any further legal cases, he had been obliged to create the following points in order to cover this clause and stated, "DM forced my hand my hand." P1979.

298. The Claimant did not resign as President of Progressis and therefore had to be removed pursuant to the Articles of the Company.

299. The Memorandum and Articles of the French Company appear to require misdemeanour ("motif grave") and a unanimous decision ("decision collective unanime des associes autres que la President" to remove the president pSB/410 [last paragraph].

300. Mr Mortimer also told the Tribunal that he was unaware of the Claimant's salary from the business plan he had seen at the time, as the Claimant's French salary was not included on it. He was cross examined about this. He recalled a more general business plan, pSB/1228, but not one containing the Claimant's French salary under "chairman office contract", pSB/1227, 1226.

301. The relevant business plans did not all include the Claimant's EUR 15,000 salary and, when they did, they recorded it as "chairman office contract" SB/1226 - 1228.

302. The Tribunal observed that, in other documents in the case, the "Chairman" consistently meant Mr Mortimer and "the Chairman's Office", consistently referred to Mr Mortimer's office in London.

303. The terminology "chairman office contract" was therefore somewhat opaque insofar as it in fact referred to the Claimant's salary as president of Progressis.

304. Mr Mortimer had signed the Claimant's Progressis contract in 1999, which stated his salary, as 6000FR per month ppSB/411 (about 600GBP per month).

305. £65,000 was the maximum salary for a divisional leader pSB/61. The Claimant was receiving this sum but he was also receiving 15,000EUR from Progressis.

306. From the evidence before the Tribunal, there was not a documented link between the 6000/month Franc salary in 1999 (approx. €7,600 per year) and the €15,000 salary that the Claimant was later paid.

307. Mr Mortimer told the Tribunal that the 22 October 2019 minute was never published, but that there was another meeting in November 2019, the minutes of which were published, and which did not contain the same wording.

308. The Tribunal concluded that, even if the minutes were published, it was clear from the minutes that Mr Mortimer said that he was compelled to give reasons for the Claimant to be removed – he said he had been forced into saying these detrimental things. The Tribunal noted that the Claimant had not resigned and therefore had to be removed. The Tribunal also accepted that Mr Mortimer genuinely believed that the Claimant had not been frank about the salary the Claimant was being paid by Progressis in France. There was no audit trail showing how the annual EUR 15,000 Progressis salary was awarded. The International Division business plan documents recording its payment in 2018 were inconsistent and opaque in their description of it, ppSB/1228, 1227.

309. The Claimant told the Tribunal that, in around September 2019, Mr Mortimer stated, at one or more meetings of AM Plc, that "lies have been stated with regards to figures about the company and in particular about the International Group" and that this would now "stop". He said that Mr Mortimer was referring to the Claimant and was implying that he had been dishonest in reporting the performance of aspects of the business.

310. The Claimant also told the Tribunal that, in around September 2019, Mr Mortimer stated at one or more meetings of AM Plc that "the French company has made millions of losses" and this "was now going to change". The Claimant said that Mr Mortimer was referring to the Claimant and was implying that the Claimant was an incompetent manager and that the business under his management had performed very poorly as a result.

311. The Claimant relied on his contemporaneous note of a telephone call with Ms Paccagnella, which recorded that Mr Mortimer said this, p1650.

312. Mr Mortimer told the Tribunal that, when he had presented to the Paris office, he had said that there was a lot of disinformation about the figures and that "we needed to ensure we were more accurate". He had had conversations

in the international offices about the reasons for the Claimant's redundancy and they may have been "stretched" to form this allegation, but that the note at p1650 did not reflect the conversation he had had with Ms Paccagnella.

313. The Tribunal concluded that it was likely that Mr Mortimer did tell the international offices that they had been misled about the figures and that the offices had been making millions of pounds of losses. Mr Mortimer believed that the International Division owed over £1M in intercompany loans. He said similar things in emails to other employees around the same time.

314. On 8 October 2019, Mr Mortimer sent an email to the Claimant, copying Mr Chris Horsley and Ms Jo Barnard of AM Plc, saying that there had been "problematic discoveries of possible financial irregularities" in relation to the Claimant, p1751. Mr Mortimer said that, "...nobody at group level appears to have been aware of your salary of eu15k in Paris… I have no need to remind you of the seriousness of obtaining a rise in personal income in this way."

315. The Tribunal has already found that there was no clear record of how this 15,000EUR annual salary was awarded and that business plan documentation which referred to it was unclear and inconsistent.

316. Mr Mortimer agreed that, as the Claimant alleged, on about 21 October 2019 in AM Plc's Brussels Office, Mr Mortimer said the following to Ms Frederique Paccagnella and Ms Amal Benjelloun (Directors and Team Leaders in the Brussels office), "Daisy [Page] and Anna [Ross] are very disappointed by [the Claimant]. Davide has broken their trust. He is not trustworthy. "... "No one trusts Davide any longer" …"…with what Davide has done he could go to jail for that"…"Davide asked for a pay rise from Chris Horsley without telling Chris that he had [€]15,000 paid from Paris. Davide asked Paris 'NOT' to tell anyone about his Paris salary. The increase had been granted to him but he had failed to tell about his Paris salary." ..."Davide is extremely greedy. All he thinks about is money" …"People can go to jail for what he has done. It's really, really bad. It's actually illegal what we are talking about".

317. Mr Mortimer told the Tribunal, "I did say, 'Financial deception is criminal, people'".

318. The Tribunal concluded that Mr Mortimer said these things but also that he believed that he had good cause for considering that the Claimant had not been entitled to EUR15,000 per year from Progressis and had not declared it clearly to AM plc.

319. On or around 13 November 2019, at a Meeting in Paris chaired by Mr Mortimer, attended by Mr Pierre Ancely and Ms Florence Ouvrard of Union Fiduciaire de Paris (Progressis SAS' auditors), Mr Christophe Drouard of Assistance Comptable-Controle-Analyse-Financiere (Progressis SAS' chartered accountants), Ms Shirley Maffre (Managing Director of Progressis SAS) and Ms Godart (European Financial Controller), Mr Mortimer stated, "AM plc were not aware of [the Claimant's] French remuneration [as President of Progressis SAS]".

320. The Claimant contended that Mr Mortimer's words were intended to imply that Mr Mele had behaved in a dishonest and/or fraudulent manner.

321. At a lunch meeting in London on or around 20 November 2019, Mr Mortimer told Ms Paccagnella. That the Claimant's strategy had been to "dismantle" Mr Mortimer; and that "many people" at AM Plc "are now saying that they realise they have been manipulated by [the Claimant]". The Claimant pointed out to the Tribunal that, although Ms Paccagnella was later disciplined for passing information to the Claimant, it was not put to her that what she had said was incorrect.

322. Mr Mortimer agreed that he may have said this because he believed it was true. The Tribunal concluded that Mr Mortimer probably did say these things to Ms Paccagnella – he had long believed that the Claimant was misleading and manipulating people in the Company, including his wife and his daughter. He believed that the Claimant had misled the Company about his salary.

323. In the week commencing 2 December 2019, Mr Mortimer wrote to recipients including, Mr Drouard, Mr Ancely, Ms Ouvrard, Mr Eric Barlier and Ms Berengere Leclere-Kher of Société de Caution Mutuelle des Entreprises de Travail Temporaire, and Mr Pierre-Philippe Franc (a lawyer at Progressis SAS), saying that the Claimant and Ms Maffre had "created a conspiracy to sabotage" Progressis SAS, that Ms Godart was part of the "plot", and that "if Progressis is in its current financial situation, it is because 'the Directors' have worked against me with regards to bad debt recovery." Mr Mortimer repeated the allegation as to a "conspiracy" at a meeting with Ms Maffre on or around 17 December 2019.

324. This email referred to "the Directors" plural, including the Claimant. The emails referred to Progressis accounts and the calculation of the debt owed to Progressis from clients. Part of the debt had been sold to a Factoring company. There was a considerable disagreement between Progressis and the AMplc about Progressis' accounts at this time. Ms Godart told the Tribunal that there is a different period in France, compared to the UK, for calculating when a debt was due, which explained the difference in the figures.

325. The Tribunal was not able to conclude what was the appropriate way of representing the Progressis accounts at the end of 2019. There was very conflicting evidence on this, much of which was unclear. Nevertheless, the Tribunal considered that it was plain that there were strong disagreements between the officers in Progressis, including Ms Godart, and the financial officers in AMplc, including Mr Ramachandran, about the true state of the Progressis finances. It was clear that Mr Mortimer was very alarmed by what AM Plc considered to be the poor state of Progressis finances at this time.

Other Employees in AM plc

326. Both Mr and Mrs Mortimer were non billing executives in AM plc.

327. Belinda Lighton at AM plc's Knightsbridge Division was non-billing. The Knightsbridge office had profit margins of 33.9% in 2018, p2469 and 36.7% in

2019 p 2470. Ms Bramwell told the Tribunal that Ms Lighton worked one day per week.

328. There were also other non-billing employees at AM Plc, two of whom gave evidence: Jo Barnard (Operations Manager) and Chris Horsley (Strategy and Development Executive).

329. The Leaders within the International Division included Amal Benjelloun and Frederique Paccagnella in Brussels, Shirley Maffre, Catherine Tardieu, and Alexandra Vercken in Paris, and Monique Rowe in Geneva. Shirley Maffre was the Claimant's co Director in Paris.

330. In oral evidence the Claimant said that there were notional "billers" who took a salary, but did not in fact generate any income. He gave Jess Norton as an example.

331. The audit for the AM plc group to June 2017 was a £55k loss.

The Financial Position of the International Division

332. Historically the International Division had been successful, and the Claimant was instrumental in starting and growing the European offices. The management accounts at pp2467–2470 showed the following results for the International Division:

Year end	Income	Profit	Margin
June 2016	£3,071,308	£283,124	9.2%
June 2017	£3,352,865	–£33,094	0.0%
June 2018	£3,531,401	£155,154	4.4%
June 2019	£3,222,111	£88,101	2.7%

333. Progressis' profits were enhanced in 2018 because the Parisian landlord made a compensation payment of €231k to move premises (referred to elsewhere in the documentation as a "rent rebate"). Progressis made a profit of £155,154 this year.

334. The Claimant said in evidence that this compensation payment was never put through the management account.

335. The audited accounts for Year End 2018 include the "résultat exceptionnel" of €231,084 p1836:12. The Claimant and Ms Godart accepted in evidence that this was the compensation payment. These audited accounts for Year End 2018, including the rebate, show a total profit of €167,122 p1836:12.

336. The half-yearly accounts for the International Division in December 2018 showed a profit for the first six months of £449,997, p3/1066.

337. However, by May 2019, Progressis showed a profit of £225,591 for the year-to-date, p1218.

338. By the end of the financial year in June 2019, Progressis showed a profit of £179,762, pSB/1621.

339. Progressis therefore lost £270,000 over the second half of 2019.

340. The International Operation owed £1.1M to the parent company according to the intercompany accounts, p SB1628.

Other Circumstances Before and After the Claimant's Dismissal

341. Mr Horsley told the Tribunal that his hours did not increase as a result of the Claimant leaving, although they increased in November 2020, more than a year after the event.

342. Mr Horsley also told the Tribunal that the only training he has delivered in Paris was a course which he has delivered at every office for years.

343. Mr Horsley told the Tribunal that the First Respondent did intend to acquire Covent Garden Bureau in a cash-neutral purchase, paid for from its debtor book. The deal did not proceed when it transpired that the debtor book was not large enough to finance the deal.

344. He also told the Tribunal that the First Respondent proposed to acquire Christopher Taylor Associates, with Mr Taylor working for the First Respondent. In the event, the First Respondent bought the brand with a small up-front payment, with most payments related to future profits.

345. Mr Horsley said that there was also an "AM Real Estate" purchase, which was not a business acquisition but the purchase of two properties. One was a property in Birmingham into which the Katie Bard office moved from their rented accommodation and of which one floor was sold, covering the purchase price and a third of which was rented out. The second property was in Brussels, into which the Brussels office moved from their rented accommodation, to save money.

346. The Tribunal accepted Mr Horsley's evidence on these matters. He had detailed knowledge of them and his explanations were logical and credible.

Relevant Law

Victimisation

347. By *27 Eq A 2010*,

" (1) A person (A) victimises another person (B) if A subjects B to a detriment because—(*a*) B does a protected act, or (*b*) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—(*a*) bringing proceedings under this Act;(*b*) giving evidence or information in connection with proceedings

under this A (*c*) doing any other thing for the purposes of or in connection with this Act; (*d*) making an allegation (whether or not express) that A or another person has contravened this Act."

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

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

Causation

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

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

Detriment

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

Burden of Proof

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

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

Protected Disclosure

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

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

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

> "43B Disclosures qualifying for protection
> (1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
> (a) that a criminal offence had been, was being or was likely to be committed; or
> (b) that a person had failed, was failing or was likely to fail to comply with a legal obligation;
> …
> (f) that information tending to show any matter falling within any one of the preceding paragraphs had been, was being or was likely to be deliberately concealed."

358. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR [24] – [25]; *Kilraine v LB Wandsworth* [2016] IRLR 422.

359. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance, *Fincham v HM Prison Service* EAT 19 December 2002, unrep; *Western Union Payment Services UK Limited v Anastasiou* EAT 21 February 2014, unrep.

360. The test for whether a relevant failure is *"likely"* to occur is: it need only be *"probable"* or *"more probable than not"*, *Kraus v Penna plc and anor* [2004] IRLR 260 at [24]. Reasonableness has both a subjective and objective element.

361. In *Chesterton Global Limited v. Nurmohamed* [2015] ICR 920 the EAT (Supperstone J) found that the words *"in the public interest"* were introduced to do no more than prevent a worker from relying on a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications.

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

> " 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…."

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

364. Under *s.48(2) ERA 1996* where a claim under *s.47B* is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done".

365. In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy *Kuzel v. Roche Products Ltd* [2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure, *International Petroleum Ltd v Osipov* in the EAT (19 July 2017).

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

Protected Disclosure Detriment – Causation

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

Automatically Unfair Dismissal

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

"103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

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

370. In *Royal Mail Group v Jhuti* [2019] UKSC 55, Ms Jhuti made protected disclosures, in response to which her line manager sought to pretend that her performance was inadequate. In due course the company appointed another officer to decide whether Ms Jhuti should be dismissed. That officer, *"albeit by reference to evidence which was hugely tainted, genuinely believed that the performance of Ms Jhuti had been inadequate and…dismissed her for that reason"*. The Supreme Court held at [60]-[62]:

"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….if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."

Protected Disclosure Detriment by Worker and Dismissal

371. Since *Timis and anor v Osipov (Protect intervening)* [2019] ICR 655, however, a worker or agent may also be held personally liable for the dismissal of an employee or worker as a detriment under *section 47B(1A)* and their employer can be vicariously liable for this detriment.

Unfair Dismissal

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

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

374. It is generally not open to an employee to claim that his dismissal is unfair because the employer acted unreasonably in choosing to make workers redundant, *Moon v Homeworthy Furniture (Northern) Ltd* [1976] IRLR 298, *James W Cook & Co (Wivenhoe) Ltd v Tipper* [1990] IRLR 6. Courts can question the genuineness of the decision, and they should be satisfied that it is made on the basis of reasonable information, reasonably acquired, *Orr v Vaughan* [1981] IRLR 63.

Redundancy

375. Redundancy is defined in *s139 Employment Rights Act 1996.* It provides

"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

…

376. (6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason."

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

378. In *Safeway Stores Plc v Burrell* [1997] ICR 523 EAT, Judge Peter Clark said that the question for a Tribunal is not whether there has been a diminution in the work requiring to be done; it is the different question of whether there has been a diminution in the number of employees required to do the work. Where "one employee was now doing the work formerly done by two, the statutory test of redundancy had been satisfied", even where the amount of work to be done was unchanged, *Carry All Motors Ltd v Pennington* [1980] ICR 806.

379. The manner in which a redundancy situation arises may be relevant to the fairness of a dismissal, but not to whether a redundancy situation exists in the first place. In *Berkeley Catering Ltd v Jackson* UKEAT/0074/20/LA(V), the

employer admitted arranging matters so that its Director took over the Claimant's duties in addition to his own duties. Those facts established a redundancy situation under section *139(1)(b).* Bourne J said at para 20:

> "… A redundancy situation under section 139(1)(b) either exists or it does not. It is open to an employer to organise its affairs so that its requirement for employees to carry out particular work diminishes. If that occurs, the motive of the employer is irrelevant to the question of whether the redundancy situation exists.

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

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

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

383. "Fair consultation" means consultation when the proposals are still at the formative stage, adequate information, adequate time in which to respond, and conscientious consideration of the response, *R v British Coal Corporation ex parte Price* [1994] IRLR 72, Div Ct per Glidewell LJ, applied by the EAT in *Rowell v Hubbard Group Services Limited* [1995] IRLR 195, EAT; *Pinewood Repro Ltd t/a County Print v Page* [2011] ICR 508.

Pool

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

385. In *Taymech v Ryan* [1994] EAT/663/94, Mummery P said, "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a

matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind the problem."

386. Mummery P also said,

"…As the employers had never applied their mind to anything, except Mrs Ryan's actual job of telephonist/receptionist, they had not applied their mind to a pool and therefore there was no meaningful consultation as to who was in the pool, with whom comparisons should be made with Mrs Ryan's position, and as to who should be selected.

In a sentence, there was no process of selection from a pool. Mrs Ryan was told she was redundant because she was the only person who occupied the position as telephonist/receptionist. The evidence accepted by the Tribunal was to the effect that she was doing more than that job and was in a position where there could be a meaningful comparison between her skill and those of four or five other administrative workers in the office.

[…]

the employers should have applied their minds to the creation of a pool for the purpose of deciding who to select for redundancy. As they did not go through that process, they had not made a fair selection"

Alternative Employment

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

Automatically Unfair Redundancy s105 ERA 1996

388. Selection for redundancy may be automatically unfair under *s 105 ERA 1996.*

389. S105 provides (in material part):

"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
(c)it is shown that any of subsections (2A) to (7N) applies.
[…]

(6A)This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A."

390. Dismissal is automatically unfair under this section proceeds if the principal reason for dismissal was redundancy - a potentially fair reason - but the employee was selected for redundancy because he made a protected disclosure.

Discussion and Decision

391. The Tribunal has taken into account all the relevant facts and the law before coming to its decision. For clarity, however, it has addressed each issue separately.

Protected Disclosures

392. The Tribunal concluded that the Claimant did make protected disclosures when he made: the April 2018 disclosures to Jo Mortimer and other Divisional Leaders; the May 2018 Disclosures to Angela Mortimer; the October 2019 Disclosures to Angela Mortimer; the Warren Disclosure to Angela Mortimer; when he presented his grievance; and when he sent the emails containing disclosures 78 and 79.

April, May and October 2018 Disclosures

393. The Tribunal has found that the Claimant disclosed information to Jo Mortimer (and other Divisional Leaders) and Angela Mortimer and in the grievance that Mr Mortimer was claiming company expenses for expenses which appeared, in fact, to be personal expenses.

394. The Tribunal accepted that the Claimant reasonably believed that these disclosures were in the public interest. It accepted that he thought that Mr Mortimer's expenses were illegal – he told the Tribunal, "I was very suspicious that what was happening was illegal. Handwritten, no VAT, I think this might be criminal."

395. Ms Bramwell and Jo Mortimer confirmed in evidence that the Claimant was genuinely concerned that Mr Mortimer was wrongfully claiming these expenses and that they were being incorrectly declared to HMRC.

396. The Tribunal found that revealing fraudulent or criminal conduct was plainly in the public interest.

397. The Tribunal also concluded that the Claimant disclosed information which he reasonably believed tended to show that the law was being broken, or a criminal offence had been committed.

398. The expenses in question appeared to be personal, rather than company, expenses, in that they included claims for holidays, gym membership and rent for Ms Stokes's flat.

399. Mrs Mortimer agreed in evidence that the Claimant had appeared genuinely concerned that Mr Mortimer was breaking the law in relation to these expenses and that Mr Mortimer was effectively stealing from Mrs Mortimer in the process.

400. Mrs Mortimer agreed in evidence that she, too, was concerned that the expenses were unlawful. It is clear from the facts that, as a result of the Claimant's disclosures, Mrs Mortimer sought repeatedly sought advice from the company's external accountants concerning the rules for allowable expenses.

401. The Tribunal also accepted the Claimant's evidence that he disclosed information which he reasonably believed tended to show that the expenses claims had been, were being, or were likely to be deliberately concealed.

402. The Claimant told the Tribunal that Mrs Mortimer, Mr Mortimer's business partner did not know about the expenses which Mr Mortimer was claiming for. The Tribunal accepted that the Claimant had informed Mrs Mortimer that Mr Mortimer had been claiming such expenses for many years, without her knowledge.

403. Ms Bramwell agreed in evidence that the Claimant suggested that these expenses were being concealed from Mrs Mortimer.

Warren Incident

404. The Claimant also told Mrs Mortimer in January 2019 that Mr Mortimer had invited a young female member of staff to his flat to drink champagne. The Tribunal accepted his evidence that he was concerned about Ms Warren and that he believed that it was an incidence of sex harassment.

405. Mrs Mortimer clearly also believed that the incident amounted to sex harassment, p815.19.

406. In the circumstances that a male senior officer at the company invited a junior female member of staff alone to drink champagne at his private flat, the Tribunal concluded that the Claimant reasonably believed that those facts tended to show that Mr Mortimer was in breach of his legal duty as employer to his employee and that disclosing them to Mrs Mortimer was in the public interest. Disclosing sex harassment is plainly in the public interest.

Grievance

407. The Claimant repeated his disclosures about Mr Mortimer's expenses and about the Warren incident in his grievance.

408. The grievance also contained further allegations that Mr Mortimer had contravened the Equality 2010 Act: it said he had conducted an "unrelenting campaign of bullying, discrimination, harassment and otherwise degrading and intimidating treatment" against himself and others, as well as "inappropriate conduct involving female members of staff" and "apparent breaches of employment law obligations" and gave alleged examples of these.

409. The Tribunal found that these disclosures were disclosures of information which, in the Claimant's reasonable belief were made in the public interest; and tended to show that persons had failed, were failing, or were likely to fail to comply with legal obligations to which they were subject – in particular Mr Mortimer's obligation not to harass staff or subject them to discrimination, or breach the implied term of trust and confidence and AM Plc's duty to prevent such unlawful conduct.

410. The Tribunal rejected the Respondents' contention that the Tribunal should find that the Claimant did not have such a reasonable belief because he had delayed in complaining about the matters.

411. The Tribunal considered that disclosing allegations of discrimination in the workplace is in the public interest, whether done at the time the alleged harassment occurs, or later. Discrimination in the workplace is unlawful and the law can only be enforced in this regard if discrimination is identified. Employees may often delay in reporting matters for many reasons, not least because they are concerned about job security. The fact that allegations are made late is not therefore a compelling indication that they are made in bad faith or only for self-interest. In this case, the Claimant supplied dates, facts, and context for his allegations, as well as a broad description of the legal obligations breached, indicating that he had the requisite reasonable beliefs.

412. By an email dated 20 May 2019 with the subject line "further disclosure", the Claimant provided to Ms Barnard and Mrs Mortimer, expressly pursuant to AM Plc's whistleblowing policy, a screenshot of AM Plc's accountancy software, showing an expense of £4,000 for rent of an apartment in Birmingham for Ms Stokes; and a further screenshot showing that the same expense entry had been altered to a personal expense of Mrs Mortimer. The Claimant said that he was concerned that the entry had been changed following submission of the Grievance on 25 March 2019 and said that the change from Mr Mortimer to Mrs Mortimer disclosed "illegal and unethical conduct which requires investigation." P1056.

413. From the Respondents' submissions, it did not appear that there was a dispute that these amounted to protected disclosures. In any event, they were made explicitly pursuant to the First Respondent's Whistleblowing policy and alleged illegal conduct. In emails to Ms Barnard and Ms Mortimer dated 25 July 2019, 26 July 2019, and 5 August 2019, the Claimant restated and added recent and further information in respect of Mr Mortimer's expenses and AM Plc's apparent noncompliance with its duties. For the reasons already given, the Tribunal found that these, too, amounted to protected disclosures.

Protected Acts

414. The Claimant's disclosures to Mrs Mortimer of the Warren incident and his allegations of harassment and discrimination in his grievance also amounted to protected acts for the purpose of a victimization claim. He alleged that Mr Mortimer had subjected employees to sex harassment, amongst other things.

Mr Mortimer's Knowledge of the Protected Disclosures and Protected Acts

415. The Tribunal has decided that, before the Claimant's grievance on 25 March 2019, Mr Mortimer did not know that the Claimant had done protected acts or made protected disclosures.

416. There was no evidence that Mrs Mortimer told Mr Mortimer that the Claimant had been the source of her knowledge about the Lottie Warren incident. Indeed, in her email to Mr Mortimer of 7 January 2019, Mrs Mortimer referred to the matter being the "hot topic" of conversation in the Wardour Street office, about which "everyone" was talking. She was explicit that numerous employees were talking about the matter. In any event, Mr Mortimer would have known that the Claimant was not present on the day Mr Mortimer invited Ms Warren for a drink, so the Claimant would not have been the obvious source of Mrs Mortimer's information.

417. In the extensive documentary material available to the Tribunal in this case, including private emails between Mr and Mrs Mortimer, there was no suggestion that, before the Claimant's grievance in March 2019, Mr Mortimer believed that the Claimant told Mrs Mortimer (or anyone else) about Lottie Warren.

418. The Tribunal found that Mr Mortimer did not know, and did not believe, that the Claimant told Mrs Mortimer about the Lottie Warren incident.

419. Regarding the protected disclosures, the Tribunal accepted Jo and Mrs Mortimer's evidence that they did not tell Mr Mortimer that the Claimant had made allegations about his expenses during 2018. Jo Mortimer did not tell Mr Mortimer at all – he discovered what the Claimant had told Jo Mortimer from Jo Mortimer's witness statement in this Tribunal claim. Mrs Mortimer eventually told Mr Mortimer by email on 2 August 2019 that the Claimant had given her information about Mr Mortimer's expenses.

420. The Tribunal was asked to infer, from Mr Mortimer's emails and conduct in 2018 - 2019, that he knew or believed that the Claimant was the source of Mrs Mortimer's investigations into Mr Mortimer's expenses.

421. However, having considered the voluminous email evidence in the case, and the transcripts of secret recordings made by the Claimant, the Tribunal made the following findings about Mr Mortimer's knowledge:

422. On 15 May 2019 Mr Mortimer knew that the Claimant had made allegations about Mr Mortimer's expenses.

423. On 15 May 2019 Mr Mortimer believed that Mrs Mortimer had supplied the information to the Claimant.

424. At the time when Mr Mortimer had written previous emails to Mrs Mortimer, including on 8 April 2019, he did not know that the Claimant had made allegations about Mr Mortimer's expenses. The 15 May 2019 email specifically

talked about the Claimant having raised issues about expenses and specifically rebuffed those allegations. Mr Mortimer's previous emails, in which he talked about the Claimant's "lies", "misinformation", "briefing", did not mention expenses at all.

425. The Tribunal has found that where Mr Mortimer was expressing strong criticism of the Claimant in earlier emails and conversations, he did so because he was frustrated by the Claimant's lack of cooperation with his plans for the business, or was angry because he believed that the Claimant was influencing his daughter against the share equity scheme, or because the Claimant had told Mrs Mortimer facts about another employee in the Geneva office, but not Mr Mortimer.

426. Mr Mortimer was still unaware, on 30 May 2019, that the Claimant had told Mrs Mortimer anything about the expenses, rather than the other way round.

427. The Tribunal considered when Mr Mortimer became aware that the grievance contained allegations about Mr Mortimer wrongfully claiming personal expenses as company expenses. The Tribunal accepted Mr Mortimer's evidence that he did not read the grievance himself.

428. It was clear from Mr Mortimer's evidence that his advisers told him very quickly that the grievance alleged that he had subjected employees to discrimination and sex harassment. He was therefore aware the Claimant had done protected acts within a few days of the grievance being presented.

429. The Tribunal also found, from Mr Horsley's evidence, that he told Mr Mortimer in April 2019 that his expenses had been raised in the Claimant's grievance. This must have been after 8 April 2019. The Tribunal considered that it was likely to have been very shortly after 8 April 2019 because the details of a grievance from such a senior an employee as the Claimant against the Chairman of the company would not have been kept from the Chairman for long, whatever the Chairman's wishes. Mr Mortimer therefore knew that the Claimant had made protected disclosures from about 10 April 2019.

Reason for Detriments

430. Pursuant to *s47B ERA 1996*, the Claimant had the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that he had made a protected disclosure. By *s.48(2) ERA 1996* it is for the employer to show the ground on which the detrimental act was done.

431. The test of whether the Claimant was been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, "the protected disclosure materially influenced (in the sense of being more than a trivial influence)" the treatment of him.

432. The Tribunal has found that Mr Mortimer did not know until 10 April 2019 that the Claimant had made protected disclosures. He knew almost immediately

after 25 March 2019 that the Claimant had done protected acts, because his advisers told him.

433. Any detriments alleged against the Second (and First) Respondents occurring before 25 March 2019 could not have been done because of protected acts or protected disclosures, because the Second Respondent did not know about them. This applied to alleged **detriments 1 – 32** of the original claim.

434. There may have been detrimental acts done towards the Claimant before 25 March 2019, but the Tribunal was satisfied that these were done entirely because Mr Mortimer believed the Claimant was not making the necessary changes in the business to secure its profitability, or was in active disagreement with him about proposed equity scheme. Insofar as Mr Mortimer considered that the Claimant was briefing against him, this was not to do with the protected disclosures, or protected acts, but to do with the future running of the business.

435. The Third Respondent did know that the Claimant had made protected disclosures from May 2018 and had done protected acts from early January 2019. The first detriment alleged against her – **detriment 32**, "In relation to the redundancy proposal, R3 informing C she would think it over and call him back on Monday 18 March 2019, but not doing so (then or at all)" – therefore happened when the Third Respondent knew about the protected acts and disclosures.

436. However, the Tribunal accepted the Third Respondent's evidence that she had no experience of redundancy exercises. It accepted that she did not offer support to the Claimant entirely because of this and because Mrs Mortimer did not want to become involved in what she saw as the two men's entrenched positions and inability to compromise over the future of the Company. This was not to any extent because of the protected disclosures/acts, but because she considered that the Claimant needed to resolve the matter with Mr Mortimer, and she was powerless to intervene. The Tribunal was satisfied that, on the other hand, Mrs Mortimer took the Claimant's protected disclosures and protected acts seriously and addressed them. She was withering in her criticism of Mr Mortimer's conduct towards Ms Warren in her email of 7 January 2019. Mrs Mortimer repeatedly and openly questioned Mr Mortimer's expenses during 2018 and 2019 and required the Company's external accountants to advise on them.

437. **Detriment 33:** Denying C a full and proper response to his DSARs. The Tribunal concluded that the Respondents did try diligently to provide the Claimant with a full and proper response to his DSAR requests. It accepted Mr Adams' evidence that total amount of time spent conducting the email searches was 177.5 hours. The Claimant conceded at the end of the proceedings that all Mr and Mrs Mortimer's emails requested in the relevant DSAR periods had indeed been disclosed, so there was no failure in this regard. Redactions and unreadable documents were included in the DSAR responses, but the Tribunal accepted that, the Respondents and their IT managed service providers were inexperienced in carrying out DSARs. The Tribunal also accepted that the

Respondents were relying on external advice regarding some redactions. It found that, if the Respondents failed to provide full documentation pursuant to the DSAR requests, this was through inexperience or inadvertence.

438. **Detriment 34:** Not investigating the matters raised in Disclosure 78 or Disclosure 79) timeously, properly, or at all. The Tribunal found that the Respondents did investigate why some expenses were moved on the Navision system from Mr Mortimer to Mrs Mortimer, but could not find any answer. It accepted Mrs Mortimer's evidence on this. This allegation was not established on the facts.

439. **Detriment 35:** The Second Respondent taking Ms Doling, Ms Bramwell, and Ms Goodall into a private meeting room and (*inter alia*) referring to materials which C had provided to Mr Confrey for the purpose of investigating the Grievance, with the purpose and/or effect of interfering with the Grievance investigation process and intimidating these and other employees into refusing to cooperate, lessening their cooperation, or declining to implicate R2.

440. The Tribunal found that Mr Mortimer gave an instinctive, human response to Ms Bramwell's friendly enquiry about his wellbeing. He told the 3 women that he was feeling low about the grievance and did not know who to trust. He did not show the documents to them. The next day, 3 May 2019 he sent an email apologising and said he did not intend to put pressure on any of them.

441. The Tribunal found that this conduct did not amount to a detriment. A reasonable employee would not feel disadvantaged in the workplace by this spur of the moment comment, which was stated in broad, general terms, did not contain any direct criticism of other employees and reflected Mr Mortimer's personal feelings. Moreover, the comment was withdrawn, along with an apology, shortly afterwards.

442. **Detriment 36** On 10 July 2019 R2 said to Ms Goodall words to the effect that:

a) she and Ms Doling "should not have supported [C] during the investigation"

b) she and Ms Doling should not have attended the meetings with Mr Confrey as they "could be responsible for the company going under"

c) he knew "about the WhatsApp group" (understood by C to be a reference to a conversation between C, Ms Jo Mortimer, Ms Bramwell, and Ms Doling) and would ask for it to be used in court

d) She should be "in court with" R2 to "support" him

443. The Tribunal accepted that Mr Mortimer told Ms Goodall, an employee, that she should support the Company, and not the Claimant, in any disputes, including contemplated litigation. He referred to his disputed expenses in that conversation, indicating that they were relevant to his instructions to Ms Goodall. The Tribunal noted that the Claimant was still employed at the time.

It concluded that Mr Mortimer was instructing the Claimant's fellow employee not to support the Claimant and not to give an honest account to an investigation into a grievance brought by the Claimant. Employees are entitled to expect that the grievances they bring will be fairly and promptly investigated. Employees have employment rights which they are entitled to enforce and should be able to expect fellow employees to give truthful relevant evidence, if called as witnesses. Mr Mortimer's words to Ms Goodall clearly amounted to a detriment. A reasonable employee would feel disadvantaged by their employer attempting to obstruct a fair investigation into their grievance or to prevent honest evidence being given in relation to their employment rights.

444. The Tribunal concluded that these acts were done because the Claimant had made protected disclosures and done protected acts. Mr Mortimer's words explicitly referred to the Claimant's grievance, which contained protected disclosures and done protected acts. They also referred to contemplated litigation which would have arisen out of them. Mr Mortimer further specifically referred to his expenses, indicating that they were in his mind. Mr Mortimer subjected the Claimant to protected disclosure detriment and victimised him when he spoke to Ms Goodall in the way alleged in detriment 36.

445. **Detriment 37** R1 failed to put in place proper measures to prevent intimidation of Ms Goodall by R2

446. Mr Confrey told Mr Mortimer not to discuss the grievance with others. Nevertheless, the First Respondent did not separately take any measures to stop the Second Respondent intimidating Ms Goodall. Mr Mortimer did intimidate Ms Goodall and was allowed to do so by the First Respondent. The First Respondent also subjected the Claimant to detriment by failing to protect him from Mr Mortimer's detrimental treatment.

447. **Detriment 38** Restricting C's access to Navision without explanation or justification. The Tribunal found that Belinda Lighton, of Knightsbridge, had complained that someone outside her Division was accessing her Division's documents. As a result, there was a review and the appropriate access parameters were restored. The Claimant's access was therefore reduced to his own Division, as it always should have been. The Claimant was not entitled to see other Divisions' documents. There was no detriment to him - a reasonable employee would not consider themselves to be disadvantaged by being treated in the same way as other employees and being permitted only to access documents relevant only to their work. In any event, restoring the appropriate parameters for the Claimant's document access was nothing to do with his protected disclosures/acts.

448. While Mr Ramachandran did not reply to the Claimant's query, the Tribunal was satisfied that this was an oversight, which Mr Ramachandran freely admitted in evidence at the Tribunal. It was not because the Claimant had done protected acts or made protected disclosures.

449. **Detriment 39** R3 failing to participate properly in the Grievance process, notwithstanding that (i) she was a senior figure in R1, (ii) she had relevant evidence to give in respect of the Protected Acts and/or Protected Disclosures,

and (iii) she was implicated in the same. By her inaction and/or conduct she sought to (and did) prevent or delay the full investigation and resolution of C's grievances.

450. The Tribunal accepted Mrs Mortimer's evidence that she was trying to protect the Claimant by keeping his protected disclosures confidential from the grievance investigation and that she felt that her evidence, as Mr Mortimer's estranged ex-wife, would not hold weight. This was nothing to do with the Claimant's protected disclosures or acts. In any event, the Tribunal did not consider that the Claimant was subjected to any detriment by Mrs Mortimer's failure to participate in the process. Mr Confrey appropriately made finings against Mrs Mortimer and the Company in the relevant parts of his grievance outcome.

451. **Detriment 40** R1 holding redundancy consultation meetings with Claimant in July and August 2019 while the Grievance Appeal had not been concluded. The original institution of the redundancy process predated both the grievance and Mr Mortimer's knowledge of protected disclosures. The redundancy process had been paused for three months during the grievance process. The grievance outcome did not recommend that the redundancy process be delayed. Reinstating that redundancy process, which was nothing to do with the protected disclosures/acts in the first place, was the natural result. It was reasonable for the process to continue thereafter. A reasonable employee would not consider themselves to be at a disadvantage by the continuation of a process which was unimpeached. Reinstating the redundancy procedure was not caused by the protected acts/disclosures simply because they had been done by the time of that reinstatement.

452. **Detriment 41** R1 proceeding with the redundancy process notwithstanding that the decision-making panel was not independent of R2, who had already taken the decision to dismiss. This will be considered below, under the Claimant's unfair/detrimental dismissal claim.

453. **Detriment 42** Withdrawal of Paris role. This potential role was raised by Mrs Barnard and Mr Johnson during the resumed redundancy process, long after the Claimant had made his protected disclosures/ done his protected acts. Chronologically, the Paris role was withdrawn when Mr Johnson had identified that the Progressis profits had dramatically declined. The Tribunal was satisfied that, on the facts, Mr Johnson had looked at the Progressis figures and then decided the role was not viable. The protected disclosures and acts had been done a long time before this; if these were a reason why the role was not made available, the role would not have been proposed in the first place. There was nothing to tie this decision, at this point, to the protected disclosures/acts.

454. **Detriment 43** R3 refusing or failing to take part in the redundancy process at all, notwithstanding that she was the person most properly placed to determine its outcome. The Tribunal accepted Mrs Mortimer's evidence that she had never undertaken a redundancy process. Conduct of such processes was not part of her role. Mrs Mortimer's failure to take part in the redundancy process was because of her lack of experience, expertise in - and therefore suitability for – the task. It was nothing to do with the protected acts/ disclosures.

455. **Detriments 44 and 45** On 9 August 2019 C being told he was not welcome in the building; on 12 August 2019 when C asked to come to the office in order to return R1 property and collect his personal belongings, Ms Barnard instead instructed a courier to come to C's home for the exchange of belongings

456. The Tribunal accepted the Claimant's evidence that other employees had been permitted to return to the First Respondent's building after they had left and that some had been given presentations. By contrast, the Claimant was snubbed and shunned by Mrs Barnard's repeated refusal to permit him to return, even to gather his belongings. The Claimant was a long serving employee and was denied an opportunity to say goodbye to his colleagues, which he would reasonably have expected to be able to do, after such long service.

457. The refusal to permit him to return to the building was clearly a detriment. The Claimant was treated as if he had been dismissed for misconduct.

458. The burden of proof shifted to the Respondents to show the reason for the treatment, both under *s48 ERA 1996* and *s136 EqA 2010.*

459. The Respondents did not discharge the burden of proof. It did not accept Mrs Barnard's explanations, when other employees had been allowed to return. The Tribunal found that there had already been a souring of the atmosphere because of the Claimant's protected acts and disclosures. Mr Mortimer had already told others not to support Claimant in relation to his grievance and litigation which might arise out of it. The emails on 2 August 2019 between the Mortimers showed that they viewed the Claimant as someone who was hostile to the company, particularly in the context of his allegations about Mr Mortimer's expenses.

460. The Tribunal concluded that Claimant's protected acts and disclosures were a material reason for the failure to permit the Claimant to return to the building.

461. **Detriment 46** R2 instructing staff of R1 (including but not limited to Ms Goodall, Ms Williams, Mr Crocker, and Ms Laws) to cease all communications with C.

462. The Tribunal found that Mr Mortimer did let it be known that he expected employees to be loyal to the Company and not to contact the Claimant or to give him information.

463. This was a detriment, in that a reasonable employee would consider themselves at a disadvantage when former friends and colleagues were effectively instructed to ostracise them. The Tribunal rejected the First and Second Respondents' denial that Mr Mortimer had done this. Those Respondents did not discharge the burden of proof to show that the detriment was not done on the grounds of the Claimant's protected acts/disclosures. The

Tribunal considered that, on the contrary, it was highly likely that the instruction was given on those grounds.

464. **Detriments 47 & 48** were withdrawn by the Claimant.

465. **Detriment 49**. R2 stating falsely at an EGM that C had been made redundant for (i) paying himself a salary without R2's knowledge; (ii) failing to inform the Board of R1 that filing of Progressis SAS end of year accounts for 2018 had been postponed; and (iii) relying on R1's P&L figures rather than the Progressis SAS yearly audited accounts during the Grievance process.

466. Even if this did amount to a detriment, the Tribunal was satisfied that the reason Mr Mortimer said these things was because he had been advised that, under French law, he had to identify a misdemeanour ("motif grave") in order to remove the Claimant as President of Progressis. Mr Mortimer's evidence accorded with the wording of the relevant Articles, pSB410. This was nothing to do with the fact the Claimant had made protected disclosures or done protected acts The Claimant had not resigned as President and the First Respondent therefore was compelled to pursue his removal under Progressis' Articles.

467. **Detriment 50** R2 stating at meetings that "lies have been stated with regards to figures about the company and in particular about the International Group" and that this would now "stop". In these remarks R2 was referring to C, and understood and intended that his audience would take him to be referring to C. His false implication was that C had been dishonest in reporting the performance aspects of the business; **Detriment 51**. R2 stating at meetings that "the French company has made millions of losses" and this "was now going to change". In these remarks R2 was referring to C, and understood and intended that his audience would take him to be referring to C. His false implication was that (i) C was an incompetent manager and (ii) that the business previously under C's management had performed very poorly as a result of C's management.

468. The Tribunal found that Mr Mortimer did say words to this effect. However, it found that these words were a reflection of his long-held beliefs about Claimant and the Claimant's failure to accept and address losses in the International Division. Mr Mortimer also believed that the International Division owed over £1M in intercompany loans. Mr Mortimer's beliefs predated the Claimant's protected acts and disclosures and were not connected to them.

469. **Detriment 52** R2 email to C, copied to Mr Horsley and Ms Barnard, making serious allegations against C in relation to alleged "*problematic discoveries of possible financial irregularitie*s". The contents of this email implied, and were intended and are understood to have implied, that C had engaged in fraudulent and/or criminal activity. **Detriment 53** R2 saying words to Ms Paccagnella and Ms Benjelloun (or words to the effect that): "Daisy and Anna are very disappointed by [C]. [C] has broken their trust. He is not trustworthy" "No one trusts [C] any longer" "… with what [C] has done he could go to jail for that" "[C] asked for a pay rise from Chris Horsley without telling Chris that he had [E] 15,000 paid from Paris. [C] asked Paris 'NOT' to tell

anyone about his Paris salary. The increase had been granted to him but he had failed to tell about his Paris salary" "[C] is extremely greedy. All he thinks about is money" "People can go to jail for what he has done. It's really, really bad. It's actually illegal what we are talking about. **Detriment 55** At a Meeting in Paris chaired by R2, with attendees including Mr Pierre Ancely and Ms Florence Ouvrard of Union Fiduciaire de Paris (Progressis SAS' auditors), Mr Christophe Drouard of Assistance Comptable-Controle-Analyse-Financiere (Progressis SAS' chartered accountants), Ms Shirley Maffre (Managing Director of Progressis SAS) and Ms Godart (European Financial Controller), R2 stated: "AM plc were not aware of [C's] French remuneration [as President of Progressis SAS]". This allegation was false and was intended to (and did) make the false implication that C had behaved in a dishonest and/or fraudulent manner.

470. The Tribunal accepted that Mr Mortimer genuinely believed that the Claimant had not been frank about the salary the Claimant was being paid by Progressis in France. There was no audit trail showing how the annual EUR 15,000 Progressis salary was awarded. The International Division business plan documents recording its payment in 2018 were inconsistent and opaque in their description of it, ppSB/1228, 1227. Mr Mortimer therefore had some justification for his belief that the Claimant had not been candid about his Progressis salary. This was nothing to do with protected acts/disclosures.

471. **Detriment 54** Withdrawn.

472. **Detriment 56** R2 told Ms Paccagnella, or used words to the effect that: a) [C's] strategy was or had been to "dismantle" R2; b) "many people" at R1 "are now saying that they realise they have been manipulated by [C]"

473. Mr Mortimer did use words to this effect. Again, the words reflected his long-held beliefs that the Claimant had been involved in a "botched coup" against him and had been misleading people In the Company, including his daughter and ex-wife. These beliefs predated the protected disclosures and acts and were not caused by them.

474. **Detriment 57** R2 wrote to recipients including, Mr Drouard, Mr Ancely, Ms Ouvrard, Mr Eric Barlier and Ms Berengere Leclere-Kher of Société de Caution Mutuelle des Entreprises de Travail Temporaire, and Mr Pierre-Philippe Franc (a lawyer at Progressis SAS), stating (or using words to the effect that) that C and Ms Maffre had *"created a conspiracy to sabotage"* Progressis SAS, that Ms Godart was part of the *"plot"*, and that *"if Progressis is in its current financial situation, it is because 'the Directors' [including C] have worked against me with regards to bad debt recovery."* These statements were false and defamatory. R2 repeated the allegation as to a *"conspiracy"* at a meeting with Ms Maffre on or around 17 December 2019.

475. Mr Mortimer genuinely believed that the Progressis finances had not been accurately reported. These words were used in the context of an ongoing argument between AMplc and the Paris office about its accounts. This was nothing to do with the Claimant's protected disclosures/acts.

Unfair Dismissal

476. The Claimant submitted that, from the documents and the evidence, there were 5 other potential principal reasons for dismissal in this case

477. First, because he made protected disclosures.

478. Second, because he did protected act(s).

479. Third, because of the Second Respondent's unwarranted personal animus towards the Claimant;

480. Fourth, because the Respondents had concerns about the Claimant's conduct.

481. Fifth, because the Respondents had concerns about the Claimant's capability.

482. Sixth, the Claimant also relied on *s 105 ERA 1996* in contending that, even if there was a redundancy situation, if the Claimant was selected for redundancy because of his protected acts, his dismissal was automatically unfair.

Reason for Dismissal – Who Made the Decision – Was the Decision Predetermined?

483. The Tribunal decided that Mr Johnson and Mrs Barnard made the decision to dismiss the Claimant. They were the panel who conducted the redundancy consultation meetings, gathered relevant evidence and made the decision to dismiss. The Tribunal was satisfied that, in early August 2019, when the dismissal decision was made, there was no evidence that anyone else was involved in that decision.

484. The Tribunal, however, considered whether the decision had nevertheless been predetermined by Mr Mortimer, so that Mrs Barnard and Mr Johnson had no discretion in the matter. It also considered whether their decision was tainted, in that Mr Mortimer had determined that the Claimant should be dismissed because of his protected disclosures/acts, but invented redundancy as the reason for dismissal, which Mr Johnson and Mrs Barnard then adopted.

485. The Tribunal considered that Mr Johnson and Mrs Barnard were not entirely independent of Mr Mortimer. Mr Mortimer gave them both a briefing on 25 June 2019 which contained much unnecessary and prejudicial criticism of the Claimant. He also emailed them on 3 July 2019, the night before the first consultation meeting, guiding them on how to conduct the meeting.

486. From Mr Johnson's notes of the meeting on 25 June 2019 and Mr Mortimer's 3 July email, the Tribunal had a detailed record of Mr Mortimer said to Mr Johnson. From Mr Johnson's letter to Mr Mortimer on 25 June 2019, the Tribunal had evidence about Mr Johnson's understanding of the remit of his role.

487. In the meeting on 25 June 2019 Mr Mortimer said, "If he does stay looking after Paris. Me and him having mediation. Rebuild trust.", p1188:7. The notes therefore record Mr Mortimer telling Mr Johnson and Mrs Barnard that it was possible that the Claimant could stay in the business; that his dismissal was not the only outcome.

488. Mr Johnson's letter to Mortimer on the same day, p1188:10, said that Mr Johnson's role "may include helping [the Claimant] create a genuinely workable plan that puts the international side back onto a sustainable footing." Mr Johnson, likewise, was setting out how he envisaged the Claimant could stay in the business, notwithstanding the redundancy exercise.

489. While Mr Mortimer's email of 3 July 2019, p1292 stated his position that the Claimant's role was redundant, "Result; redundancy of job…", it also said, "add; there are still big plans for France, and room for people who want to support those plans… please remember, you don't have to come up with answers, he does… It is a polite but firm discussion of reality." P1293.

490. The Tribunal considered that the correct reading of that email was that Mr Mortimer was saying that the Claimant could not continue in his role as before, but that the Claimant needed to face the reality of the situation in the International Division and that there could be a future for him in the Company, particularly in France, as part of the Company's plans for the French business.

491. From all these interactions, the Tribunal concluded that Mr Mortimer had not predetermined that the Claimant must be dismissed. Nor did Mr Johnson or Mrs Barnard understand that he had. Mr Johnson envisaged that his own role in the redundancy process could involve helping the Claimant stay in the business, making a success of the International Division.

492. The Tribunal considered whether Mr Horsley's email at p1460:1, setting out financial situation of the company and the cost cutting measures already taken, was evidence that the decision to dismiss was "tainted" by Mr Mortimer through Mr Horsley. The Tribunal considered, however, that the decision-making panel was entitled to obtain information from the business during the consultation exercise, in order to address questions raised by the "at risk" employee. In any event, the information in Mr Horsley's email about previous cost cutting measures was not challenged, in fact, at the Tribunal. The information was correct. It was not tainted/misleading information which obscured the true reason for dismissal.

493. The Claimant also asked the Tribunal to infer, from the following matters, that Mr Johnson and Mrs Barnard were not independent of Mr Mortimer and were infected by his decision that the Claimant must be dismissed. The Tribunal has addressed each:

a. <u>That only the Claimant was considered for redundancy:</u> The Tribunal concluded (see further below) that Mr Johnson and Mrs Barnard did not consider anyone else as part of the pool in redundancy process, nor address their minds properly to the pool. That was one of the matters which made the dismissal

unfair. However, the Tribunal did not consider that this indicated that Mr Johnson and Mrs Barnard were not independent of Mr Mortimer, in that they adopted his decision to dismiss the Claimant for the misleading reason he gave. It decided that Mr Johnson and Mrs Barnard did address why other Divisions were not being considered in the redundancy exercise, at that time, and gave the Claimant an explanation. They also considered the figures for Progressis and came to their own decision that the International Division could not afford an International Director performing the kind of work the Claimant was doing, at the salary he was being paid.

b. That Mr Johnson thought that his role was to soothe tensions between Mr Johnson and the Claimant - failing which, the Claimant would have to go. Mr Johnson may have thought that part of his role was to repair the relationship between the two men. More importantly, Mr Johnson considered that his role could be to help the Claimant reinvigorate the International Division. That indicated that redundancy was not predetermined.

c. Failures in the redundancy process cannot rationally be explained by anything other than an active desire on the part of Ms Barnard and Mr Johnson to reach a particular outcome the manner of the Claimant's dismissal. There were significant failures in the redundancy process, but ultimately the Tribunal concluded that Mr Johnson and Mrs Barnard genuinely believed, from their own consideration of the figures, and having consulted with the Claimant, that his role was redundant.

d. Mr Johnson had never conducted a redundancy procedure before and that made him more reliant on the Second Respondent for guidance. The Tribunal considered that Mr Johnson was clearly more experienced in executive coaching and turning around failing businesses. This indicated that, of the options available to Mr Johnson, he would be more comfortable deciding to retain the Claimant, and working with him to transform the International Division, than dismissing him.

e. Ms Barnard was new to the business and in a position of direct subordination to the Second Respondent. This is correct, but the panel also included Mr Johnson, who was external to the business.

f. Mr Johnson and Ms Barnard conspicuously failed to assert their independence. Mr Johnson and Mrs Barnard did not challenge Mr Mortimer's unflattering portrait of the Claimant, nor did they rebuff his advisory email. Nevertheless, failure openly to contradict Mr Mortimer did not mean that their ensuing consultations and investigations were hidebound by Mr Mortimer. Mr Johnson obtained the International business' accounts and conducted his own analyses of them; initially coming to the view

that the figures showed improvement. The Tribunal did not find that Mr Mortimer had any involvement after the consultation process had commenced.

494. The Tribunal was satisfied that Mr Johnson and Mrs Barnard made the decision to dismiss and that it was not predetermined by Mr Mortimer, nor was it tainted in the sense that they adopted an invented reason which hid the real reason for dismissal.

Detriment 41 – Protected Disclosure Detriment

495. R1 proceeding with the redundancy process notwithstanding that the decision-making panel was not independent of R2, who had already taken the decision to dismiss. Mr Johnson and Mrs Barnard did make an independent decision and were permitted to do this, albeit within limited parameters – Mr Mortimer only asked them to consider the Claimant for redundancy. However, these parameters were not determined by protected disclosures. Mr Mortimer had already identified the Claimant, alone, as being at risk of redundancy in March 2019, before Mr Mortimer knew of any protected disclosures.

At Risk of Redundancy – Not Victimisation or Protected Disclosure Detriment

496. Mr Mortimer was not aware of the Claimant's protected acts/disclosures when he notified the Claimant that he was at risk of redundancy. The decision to put the Claimant at risk of redundancy was not an act of protected disclosure detriment or victimisation.

Reason for Dismissal

497. The Claimant contended that the real reason for dismissal was: that the Claimant had made protected disclosures, or done protected acts, or the Claimant's conduct, or capability, or Mr Mortimer's animus towards the Claimant.

498. The Tribunal was satisfied, however, Mr Johnson and Mrs Barnard genuinely decided that there was a reduced need for the role of International Director, because the International Division was in financial difficulties and could not afford to pay for the Claimant. The Tribunal found that no new employees were taken on in order to do the Claimant's work after he was dismissed, but that his work was shared out among existing senior members of staff. There was no evidence that new senior staff members were recruited after the Claimant's dismissal. The reason for dismissal was therefore a diminution in the number of employees required to do the work. Where "one employee was now doing the work formerly done by two, the statutory test of redundancy had been satisfied", even where the amount of work to be done was unchanged, *Carry All Motors Ltd v Pennington* [1980] ICR 806.

499. The Tribunal has accepted that Mr Johnson and Mrs Barnard genuinely and believed that the International Division was unprofitable, and that their belief was based on accurate financial figures. The Tribunal has found that the

International Division had made significant losses in the 6 months leading up to the Claimant's dismissal and that it owed more than GPB 1Million in intercompany debt to AMplc.

500. To be clear, the Tribunal did not accept that the Claimant had been selected for redundancy because he had made protected disclosures under *105 ERA 1996.* He was selected for redundancy because there was Mr Johnson and Mrs Barnard considered that there was a reduced need for the role of International Director, specifically.

Fairness of Dismissal

501. The Tribunal reminded itself that it should not substitute its own decision for that of the Respondent, but should determine whether the decision to dismiss fell within the broad band of reasonable responses of a reasonable employer.

502. The Tribunal considered that Mr Johnson and Mrs Barnard acted outside the broad band of reasonable responses when they decided to dismiss the Claimant.

Pool

503. Only the Claimant was considered for redundancy.

504. While the question of how the pool should be defined is primarily a matter for the employer to determine, the Tribunal decided that, because Mr Johnson and Ms Barnard were not asked to consider other employees for redundancy, they never genuinely applied their mind to the question of how the pool should be defined.

505. As in *Taymech v Ryan* [1994] EAT/663/94, they only considered the Claimant's job as Director of the International Division.

506. In the third redundancy meeting, the Claimant told Mr Johnson, "I have contributed in bringing clients I have a list of the past two years my contribution which is unseen in the figures because these are clients that I brought into the company is about £120k and that's only on the client side." Mr Johnson replied, "Right". The Claimant continued: "I'm not talking to you about the candidates we have got a placement happening today with one my candidates which I have recommended to the team. You failed to look at that. You really concentrating on me".

507. The Claimant therefore told Mr Johnson and Mrs Barnard, during the consultation process, that he passed his candidates and clients to his recruitment teams. He indicated that he had recruitment skills, in addition to his many other acknowledged skills.

508. The leaders within the International Division were identified as being able to pick up the Claimant's work. In doing so, it must have been considered that they had similar skills to the Claimant. These Leaders included Amal Benjelloun and Frederique Paccagnella in Brussels, Shirley Maffre, Catherine Tardieu, and

Alexandra Vercken in Paris, and Monique Rowe in Geneva. Shirley Maffre was the Claimant's co Director in Paris and therefore must have been carrying out at least some of the same duties as the Claimant.

509. However, there was never any analysis conducted of the Claimant's skills, or other International Division leaders' skills. Nor was there any consultation about these, or about selection criteria which might be used to select from the leaders of the International Division. Nor was there any analysis of the costs of other International Division employees to the business, as opposed to the Claimant. Mr Johnson and Mrs Barnard did not genuinely apply their minds to the issue of whether there were others in the International Division who could be included in the pool for selection.

510. For clarity, the Tribunal did not accept another of the Claimant's arguments – that M Johnson and Mrs Barnard acted unreasonably in failing to consider other employees *in other Divisions* should be considered for redundancy. In Mrs Barnard's letter to the Claimant dated 5 August 2019, she explained (adopting Mr Horsley's 1 August 2019 draft) what cost saving measures had been taken in respect of other Divisions.

Consultation and Alternative Work

511. The Tribunal decided that Mr Johnson and Mrs Barnard also failed to act reasonably with regard to consultation.

512. They withdrew the possibility of an alternative role in Paris for the Claimant without even consulting him about it, including about the remuneration package which might be attached to it. The alternative "offer" of work was withdrawn two days before the deadline which had been set for the Claimant to respond.

513. There was no consultation about alternative configurations of the Claimant's existing role, for example whether the Claimant might work part time or reduce his salary.

514. This failure to consult the Claimant about alternatives to dismissal was so fundamental that it rendered the dismissal unfair.

Other Arguments

515. To be clear, the Tribunal found that, in other respects, the consultation did take into account the Claimant's arguments. The Claimant's email dated 25 July 2019 pp1416–1417 was answered by Ms Barnard's response dated 5 August 2019, explaining the financial considerations and answering other questions pp1507–1514. The Claimant's email dated 6 August 2019 pp1542–1544 was responded to by Mr Johnson's on 7 August 2019, pp1554–1556. The letters following the consultation meetings also addressed issued raised.

516. The Tribunal decided that the dismissal decision was not unfairly influenced by material supplied by Mr Horsley. The decision makers obtained

information from the business by Mr Johnson, in particular, conducted his own extensive analysis of the figures.

517. The Tribunal concluded that Mr Johnson and Mrs Barnard independently considered whether the Divisional Leaders could undertake the Claimant's role. It was clear that Mr Johnson raised concerns with Mrs Barnard about this; he did not ignore the matter. The Tribunal decided that it was reasonable not to consult the Team Leaders about whether they could, in fact, take on the Claimant's duties. Consulting them would put them in an invidious position. Managers like Mrs Barnard ought to be able to make their own assessment of their employees' skills. The Tribunal accepted Ms Barnard's evidence that the Teams Leaders had very long service and a great deal of experience. It was reasonable for Mr Johnson and Mrs Barnard to decide that such Team Leaders should be able to take on further management responsibilities in the absence of the Claimant.

518. Further, while Mr Johnson and Mrs Barnard were incorrectly told that the profit figures for Paris should be reduced by around £230,000 because of a rebate from the landlord in Paris, Progressis' profits in the 6 months leading to the dismissal were nothing to do with that rebate. The Tribunal found that the last 6 months' figures which were main driver for deciding the Claimant's role was redundant. The mistake over Paris rebate did not make that decision unfair.

519. In the same way, Mr Johnson and Mrs Barnard were not provided with Mr Horsley's "Divisional League Table", which showed profits for Progressis of £179,762 as of 6 August 2019. However, these were annual profits and did not identify the losses in the last 6 months of the year.

520. Likewise, while it appeared that Mr Johnson was not told that the First Respondent had bought other businesses around the time of the Claimant's dismissal, the Tribunal was satisfied that these acquisitions were cost neutral or money-saving. They were not relevant to the decision to make the Claimant redundant.

Appeal

521. Mr Hawkins' appeal did not reconsider the pool process or conduct consultation into alternative roles. It did not cure the defects in the process.

522. The dismissal was unfair because of the failure to consider the pool within the International Division at all and because of the failure to consult about alternatives to dismissal. Each of these failures compounded the other.

Time Limits – Protected Disclosure and Victimisation Detriments

523. The Claimant succeeded in his claims of victimisation and protected disclosure detriment in respect of the following actions of the First and Second Respondents:

a. On 10 July 2019 the Second Respondent said to Ms Goodall words to the effect that: she and Ms Doling "should not have

supported [the Claimant] during the investigation"; she and Ms Doling should not have attended the meetings with Mr Confrey as they "could be responsible for the company going under"; he knew "about the WhatsApp group" and would ask for it to be used in court; she should be "in court with" the Second Respondent to "support" him;

b. The First Respondent failed to put in place proper measures to prevent intimidation of Ms Goodall by the Second Respondent;

c. On 9 and 12 August 2019 the Claimant not being permitted to return to the First Respondent's building;

d. On or about 9 August the Second Respondent told employees not to contact the Claimant or to give him information.

524. The Tribunal decided that these detriments formed part of a course of continuing acts, or series of linked events, the last of which was in time. All detriments were perpetrated over a short period of time; and were done because of the Claimant's protected acts and protected disclosures. All were done to ostracise the Claimant, to ensure that he did not have support from fellow employees, and to ensure that employees did not provide full and truthful accounts in relation to his allegations. All detriments were therefore in brought to the Tribunal time.

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Employment Judge **Brown**

Date: 21 January 2021

SENT to the PARTIES ON

25th Jan 2021

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FOR THE TRIBUNAL OFFICE