Case Nos. 1600705/2018(V)
1601386/2018(V)
1600146/2019(V)

EMPLOYMENT TRIBUNALS

Claimant: Mr R Moon

Respondent: Slater and Gordon UK Limited

Heard: by video **On:** 12, 15, 16, 17, 18 & 19 March 2021

Before: Employment Judge S Jenkins
Mrs A Fine
Mr C Stephenson

Representation:
Claimant: In person
Respondent: Mr R Quickfall (Counsel)

RESERVED JUDGMENT

1. The Claimant's claim of unfair dismissal, pursuant to section 94(1) of the Employment Rights Act 1996 ("ERA"), succeeds, but only in respect of the lack of any ability on the part of the Claimant to appeal against his dismissal. In respect of that, it is not considered just and equitable to make any compensatory award pursuant to section 123(1) ERA.

2. The Claimant's other claims: of unfair dismissal, pursuant to section 104(1) ERA; unauthorised deductions from wages, pursuant to section 13(1) ERA; discrimination arising from disability, pursuant to section 15 Equality Act 2010 ("EqA"); failure to make reasonable adjustments, pursuant to sections 20 and 21 EqA; harassment on the ground of disability, pursuant to section 26 EqA; and victimisation, pursuant to section 27 EqA; all fail and are dismissed.

REASONS

Background

1. The hearing was to consider various claims brought by the Claimant, arising from three separate claim forms issued on 14 May 2018, 28 September 2018, and 5 February 2019, the former two issued whilst he was still

employed, with the third having been issued following his dismissal.

2. Eight preliminary hearings had taken place in this case, which had led to a judgment striking out one of the Claimant's claims, to various other claims, or elements of them, being dismissed on withdrawal, and to a judgment confirming that the Claimant was, at the relevant times, a disabled person within the definition set out at section 6 of the Equality Act 2010 ("EqA").

3. The result of the various preliminary hearings was that the following claims remained for consideration: unfair dismissal, pursuant to section 94 Employment Rights Act 1996 ("ERA"); unfair dismissal, pursuant to section 104 ERA; unauthorised deductions from wages, pursuant to section 13 ERA; discrimination arising from disability, pursuant to section 15 EqA; failure to make reasonable adjustments, pursuant to sections 20 and 21 EqA; harassment on the ground of disability, pursuant to section 26 EqA; and victimisation, pursuant to section 27 EqA.

4. We heard evidence from the Claimant on his own behalf, and from three witnesses on behalf of the Respondent; Mr Robert Morris, currently Head of Compass Cost solutions; Ms Niva Reitz, HR Business Partner; and Ms Ravinder Grewal, HR Director. We considered the documents in the hearing bundle spanning 1354 pages to which our attention was drawn, and we were able to consider a, very largely agreed, cast list, and separate chronologies prepared by both parties.

Issues

5. An agreed list of the issues to be determined, very largely based on a list of issues identified following a preliminary hearing before Employment Judge Frazer on 5 November 2019, was provided to us, and its terms are set out as follows.

Time limit/limitation

a) Were the Claimant's complaints presented within the time limits set out in Sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")?

b) Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures and whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc.

Unfair dismissal

a) What was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was a reason relating to redundancy. The Claimant contends that it was a sham redundancy and that the Respondent does not have a potentially fair reason.

b) As to reasonableness, the Claimant contends that there was inadequate (or no meaningful) consultation, that he did not have the right of appeal and that the Respondent did not take reasonable steps to find him alternative employment.

Remedy for unfair dismissal

a) If the Claimant was unfairly dismissed and the remedy is compensation:

i. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would have been dismissed had a fair and reasonable procedure been followed? [See: Polkey v AE Daytron Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; Credit Agricole Corporate and Investment Bank v Wardle- [2011] IRLR 604]

ii. The Claimant asserts that he is entitled to an uplift under the ACAS Code of Practice on the basis that the Respondent did not follow its grievance procedure.

iii. If the dismissal was substantively unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would have been fairly dismissed at a later date for an alternative reason? The Respondent contends there is a possibility that the Claimant's employment could have been fairly terminated on the grounds of capability (ill health).

EQA, section 15: discrimination arising from disability

a) Did the Respondent treat the Claimant unfavourably as follows (no comparator is needed):

i. By dismissing him

b) Did the following thing arise in consequence of the Claimant's disability:

i. The Claimant's sickness absence, which the Claimant asserts was the real reason for his dismissal.

c) Did the Respondent treat the Claimant unfavourably e.g. did the

Respondent dismiss the Claimant because of his absence from work?

d) If so, has the Respondent shown that the unfavourable treatment e.g. dismissing the Claimant was a proportionate means of achieving a legitimate aim?

e) Alternatively, has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

EQA, sections 20 & 21: reasonable adjustments (for disability)

The Bonus Claim

a) Did the Respondent apply to the Claimant a PCP namely a requirement to be at work/performing work duties in order to earn a bonus/any salary increments?

b) Did that PCP put the Claimant at a substantial disadvantage in comparison to non-disabled employees (because he was off sick for a disability-related sickness and as a consequence, was not in receipt of his two bonuses in 2018)?

c) If the duty arises, were there any steps that would have been reasonable for the Respondent to take to avoid the disadvantage? The Claimant asserts that he ought to have been paid his bonuses.

Communication

a) Did the Respondent apply to the Claimant a PCP namely a requirement to communicate with them directly (either by telephone or face to face) about the following matters: allocation of work; national salaries and recruitment targets?

b) Did such a requirement put the Claimant at a substantial disadvantage in comparison to persons who were not disabled. The Claimant says that he was not able to cope with direct communication because it exacerbated his anxiety symptoms.

c) If the duty arises, were there any steps that would have been reasonable for the Respondent to take to avoid the disadvantage? For example, the Claimant says that discussions via mediation, delegation of communication to someone else or some sort of other positive resolution of the issues would have removed the disadvantage.

The Claimant asserts that the Respondent suggested Mr Browne as an intermediary for communication but that it failed to make reasonable adjustments by failing to use Mr Browne on at least five occasions between 16th February 2018 and 10th March 2018.

Work Allocation

a) Did the Respondent apply a PCP, namely the allocation of all high value work to the Respondent's offices save for the Cardiff office?

b) Did that put the Claimant at a substantial disadvantage because it exacerbated his anxiety symptoms?

c) What steps would it have been reasonable for the Respondent to have taken in order to avoid that disadvantage? For example, the Claimant contends that either the Respondent could have corrected the imbalance by distributing the work fairly as between offices or could have provided him with a clear rationale as to why there was an inequality in the allocation of work.

Return to Work

4th January 2018

a) Did the Respondent have a PCP, namely having no work plan or pre-arranged schedule for an employee returning from sick leave?

b) Did that put the Claimant at a substantial disadvantage, namely by exacerbating his symptoms of anxiety and stress and leaving him feeling undervalued?

c) What steps would it have been reasonable for the Respondent to have taken in order to avoid that disadvantage? The Claimant contends that it would have been reasonable for the Respondent to have already prepared a return to work plan/procedure for his return to work which would have included a fully operational PC.

Reduction of Pay for AWOL

a) The PCP is the Respondent's practice or policy of making deductions from pay for absence without leave.

b) Did the PCP put the Claimant at a substantial disadvantage in comparison to non-disabled employees owing to his anxiety symptoms and the financial disadvantage that would ensue if he did not notify?

c) What steps would it have been reasonable for the Respondent to have taken in order to avoid that disadvantage? The Claimant asserts that given that it knew of his sickness absence history the Respondent ought to have investigated the reasons for his absence before making the reduction in pay. He contends that the duty to adjust crystallised on the day when his employer sent an email to him querying his absence.

OH Advice

a) The PCP is the Respondent's practice of not following occupational health advice.

b) Did the PCP put the Claimant at a substantial disadvantage in comparison to non-disabled employees? The Claimant contends that this PCP exacerbated his anxiety symptoms and left him without a resolution.

c) What steps would it have been reasonable for the Respondent to have taken in order to avoid that disadvantage? The Claimant suggests that the Respondent ought to have followed the advice in the OH report dated 20th September 2018 which was redeployment and mediation.

Arranging meetings during sick leave

a) The PCP is the Respondent's practice of holding face to face meetings in the workplace, which were relevant or important to employees (including those off sick)?

b) Did the PCP put the Claimant at a substantial disadvantage because he was unable to attend the meetings in person on 28th June 2018 and on 10th July 2018 owing to his mental health impairment? The Claimant contends he was also disadvantaged because he did not have the information that other employees had and that this affected him.

c) What steps would it have been reasonable for the Respondent to have taken in order to avoid that disadvantage? The Claimant suggests that the Respondent ought to have scheduled those meetings to take place at a time when he was able to attend and/or provided him with full details of the information which had been disseminated to the employees who attended.

The reduction of sick pay

a) The PCP is the Respondent's sick pay policy insofar as it provides for a reduction of pay at certain chronological trigger points.

b) Did the PCP put the Claimant at a substantial disadvantage (financially)?

c) Was it reasonable for the Respondent to have adjusted the trigger points so that the Claimant was in receipt of full pay for the entirety of his sickness absence?

EQA, section 26: harassment

a) Did the Respondent engage in conduct as follows:

i. The conduct of the meeting on 16th February 2018, specifically by accusing the Claimant of insubordination, accusing him of failing to

communicate appropriately and y putting him to his election as to whether he was fit for work on the spot.

b) If so, was that conduct unwanted?

c) If so, did it relate to the protected characteristic of disability?

d) Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

e) Did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? (Whether conduct has this effect involves taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.)

Unauthorised deductions

Did the Respondent make unauthorised deductions from the Claimant's wages (Section 13 ERA) by failing to pay him bonuses and if so how much was deducted? The Claimant claims deductions of £20,830 for October 2017 and £20,830 for the end of year June 2018. The Claimant also claims an amount due between 1st July 2018 and 31st December 2018.

[Note: by email dated 1st March 2021 to the Respondent's representative, the Claimant has stated that he claims deductions of £20,990.58 for October 2017 and £21,424 (as capped at 40% of salary) for the end of year June 2018]

EQA, section 27: victimisation

a) Did the Claimant do a "protected act"?

The Claimant relies upon the grievance he submitted by way of email to the Respondent on 26th September 2018 (11.34) in which he contends he complained of the continued failure to make reasonable adjustments.

b) Did the Respondent subject the Claimant to detriment/s as follows:

i. subjecting him to a fabricated or 'sham' redundancy process; and

ii. dismissal.

c) If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

Automatic unfair dismissal s.104 ERA

The claim

The Claimant claims automatic unfair dismissal both s.104(1)(a) and 104(1)(b) ERA and is claiming that the reason (or principal reason) for his dismissal is that he:

a) Brought proceedings against the Respondent to enforce a right of his which is a relevant statutory right, in that his second claim, issued on 28th September 2018, claim number 1601386/2018 ("Second Claim") brought claims for unlawful deduction from wages under s.13 ERA (s.104(1)(a) ERA).

b) Alleged the Respondent had infringed a right of his which is a relevant statutory right, in that in his grievance of 26th September 2018 the Claimant alleged that there had been an unlawful deduction from wages (s.104(1)(b) ERA).

The issues

a) What was the reason or principal reason for dismissal?

b) Was the reason or principal reason for dismissal:

i. that the Claimant brought proceedings to enforce a relevant statutory right? The Claimant relies on his Second Claim;

ii. that the Claimant alleged that the Respondent had infringed a relevant statutory right? The Claimant relies on his complaint in his grievance of 26th September 2018 that there had been unlawful deduction form wages.

c) If so, the Claimant will be regarded as unfairly dismissed.

Admissibility of pre-termination negotiations

The Claimant seeks to rely on the contents of a pre-termination negotiation in support of his claim. This was a discussion between the Claimant and Adam Baker on behalf of the Respondent on 27th March 2018 when the offer of a settlement agreement was made to the Claimant and which if accepted by the Claimant would have resulted in the termination of his employment. The Respondent contends that the content of the discussion is inadmissible generally by reference to without prejudice privilege and/or s.111A ERA (in relation to the complaint of ordinary unfair dismissal).

a) Was the Respondent's offer of a settlement agreement to the Claimant without prejudice:

i. was there an existing dispute between the Claimant and the Respondent at the time that the offer of a settlement agreement was

made i.e. had a claim been brought or was a claim in reasonable contemplation as at 27th March 2018?

b) Was the Respondent's offer of a settlement agreement to the Claimant a pre-termination negotiation for the purposes of s.111A(2) ERA?

c) If so, has the protection afforded by s111A(1) ERA been lost due to any improper conduct by the Respondent such that the material is admissible (the tribunal directed the parties to paragraphs 15 to 22 of the Acas Code of Practice number 4, entitled "Settlement Agreements" as to the meaning of improper conduct):

i. what was the conduct complained of?

ii. was that conduct improper?

iii. if there was improper conduct does the tribunal consider it just that s111A(1) shall apply?

6. At the outset of the hearing, we indicated that the section 104 claim needed to be considered alongside the section 94 claim, as each stood in the alternative to the other.

7. We also noted that then Regional Employment Judge Clarke had directed, at a preliminary hearing on 25 July 2019, that the question of admissibility of certain documents, whether by reference to without prejudice privilege or section 111A ERA, would be decided as part and parcel of this hearing, and that if the decision was that the evidence was not admissible that we would, in the interests of pragmatism, simply put it out of our minds.

8. The Respondent confirmed that the issue of time limits in relation to the discrimination claims was no longer pursued.

9. During the course of the hearing the Claimant indicated that he withdrew two elements of his reasonable adjustments claim, namely the "Bonus Claim" and the "Reduction of Pay for AWOL".

Law

10. Much of the prevailing law was encapsulated within the list of issues. We were however, conscious of the following additional matters.

Unfair dismissal

11. A key focus for us was on the reason for dismissal. If the Respondent satisfied us that the reason for the Claimant's dismissal was redundancy, as it contended, then that would mean that the reason for dismissal was not the assertion of a statutory right, as contended by the Claimant, in the form of the right not to have unauthorised deductions made from wages. If that was the case then we would need to move on to assessing the fairness of

dismissal by reason of redundancy. Conversely, if we were satisfied that the reason or principal reason for the Claimant's dismissal was his assertion of a statutory right then his unfair dismissal claim would automatically succeed without any assessment of fairness.

12. The reason for dismissal also had a bearing on the Claimant's discrimination arising from disability claim, and his harassment and victimisation claims, as he was contending that it was primarily the act of dismissal which amounted to the unfavourable treatment arising from his disability, for the purposes of section 15 EqA, and the detrimental act, for the purposes of section 27 EqA.

13. With regard to the question of the reason for dismissal, we were conscious that the burden of establishing that the dismissal was for a potentially fair reason, i.e. in this case redundancy, fell on the Respondent.

14. With regard to that, we were conscious of the need to apply the terms of section 139(1)(b)(ii) ERA, which provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the employer's business for employees to carry out work of a particular kind in the place where the employee was employed have ceased or diminished or are expected to cease or diminish.

15. In considering whether that state of affairs prevailed, we were conscious of the guidance provided by the Employment Appeal Tribunal ("EAT"), in Safeway Stores plc v Burrell [1997] ICR 523, that a three stage test needed to be applied:

    (i) Was the employee dismissed?
    (ii) If so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
    (iii) If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

    In that case, the EAT made it clear that the focus is on the reduction in the requirement for employees to carry out work of a particular kind, and not necessarily a reduction in the underlying work required to be done.

16. If we accepted that the reason for dismissal was redundancy then, in considering whether dismissal for that reason was fair in all the circumstances, we would have to have regard to the guidelines set down by the EAT in Williams and others v Compair Maxam Ltd [1982] ICR 156. In that case, the EAT put forward four factors that a reasonable employer might be expected to consider in such circumstances, one of which, relating to consultation with the union, had no relevance for this case. The remaining three were

    (i) Whether the selection criteria were objectively chosen and fairly

applied.

In this case, we were conscious that the Respondent had approached matters from the perspective that it considered that the Claimant was in a "pool of one". We therefore considered that this element of the guidance should be expanded to consider whether the pool of employees from which selection would be made was reasonably selected and, bearing in mind, in light of its approach, that the Respondent had not undertaken any form of selection, that the specific element of this part of the Compair Maxam guidance would not apply.

(ii) Whether the employee was warned and consulted about the redundancy.

(iii) Whether any alternative work was available.

17. We were conscious that the burden of proof in relation to assessing the fairness of any dismissal by reason of redundancy, if we were indeed satisfied that dismissal was for that reason, was neutral, and we would need to assess matters from the perspective of section 98(4) ERA by considering whether the dismissal was fair or unfair, taking into account all the circumstances, and determining the question in accordance with equity and the substantial merits of the case.

18. In that regard, we were conscious that the assessment of fairness would not involve consideration of whether the Respondent's actions were correct, but an assessment of whether the actions taken were open to a reasonable employer, acting reasonably, in the circumstances. Our overriding approach was to consider whether the Respondent's actions, at each step of its conduct of the redundancy process, fell within the range of reasonable responses.

Reasonable adjustments

19. in respect of the remaining six elements of this claim, we needed to consider, in each case, whether the Respondent had applied a provision, criterion or practice ("PCP"). If so, we then had to consider whether that had put the Claimant at a substantial disadvantage in comparison to non-disabled employees, and, if so, whether there were any steps that it would have been reasonable for the Respondent to have taken to avoid the disadvantage.

Unauthorised deductions

20. The Claimant's claims in this regard were in respect of bonuses, to which he said he was entitled in respect of the financial years ending 2017 and 2018. His contention was that he was contractually entitled to bonuses at the levels claimed, whereas the Respondent contended that any bonus entitlement was subject to its discretion, and thus did not amount to wages

properly payable to the Claimant, which is a prerequisite of such a claim. The focus of our decision was therefore on whether the Claimant had a contractual right to a quantifiable bonus or not.

Discrimination arising from disability

21. We were conscious, with regard to this claim, of the guidance provided by the EAT in Pnaiser v NHS England and another (UKEAT/0137/15), which is to apply a three stage test of: (i) identifying whether the claimant was treated unfavourably; (ii) determining what caused that treatment, and (iii) determining whether the reason for the treatment was "something arising in consequence of the Claimant's disability."

22. In this regard, the potential for dismissal to be unfavourable treatment was self-evident, and the focus was therefore on the cause of that dismissal and, in particular, whether it whether it was because of something arising in consequence of the Claimant's disability, i.e. his sickness absence.

23. If we considered that there had been unfavourable treatment of the Claimant because of something arising from his disability, we then had to consider whether that was nevertheless a proportionate means of achieving a legitimate aim, the aim relied upon by the Respondent in this regard being business efficiency through the saving of cost.

Victimisation

24. With regard to this claim, we needed to be satisfied that the Claimant had done a protected act, i.e. had made an allegation, whether or not express, that the Respondent or another person had contravened the Equality Act 2010. In this regard, the Claimant relied upon a grievance submitted by email on 26 September 2018, in which he contended that he complained of the continued failure to make reasonable adjustments.

25. If we were satisfied that that indeed amounted to a protected act, we then needed to consider whether the Respondent had treated the Claimant to his detriment as a result, the detriments asserted being the subjection of the Claimant to a fabricated or sham redundancy process, and his dismissal.

Preliminary issue on admissibility

26. With regard to the application of the “without prejudice” rule, we needed to consider whether there had been an existing dispute between the parties and, if so, whether any discussions between the parties were for the purpose of achieving a settlement of the dispute between them. If we were satisfied that that was the case then the documents and discussion between the parties in relation to such matters would not be admissible unless one of the exceptions to that, without prejudice rule, namely unambiguous impropriety, applied.

27. With regard to section 111A ERA, we were conscious that the provisions of

that section only applied in relation to "ordinary" unfair dismissal claims whereas in this case the Claimant had brought automatic unfair dismissal claims, together with a number of claims under the Equality Act. Any decision in respect of section 111A therefore only applied in respect of the Claimant's claim under section 94 ERA.

28. In respect of that, we had to be satisfied that there had been "pre-termination negotiations", meaning an offer made or discussions held before the termination of the employment in question, with a view to it being terminated on terms agreed between the parties. If we were so satisfied, then evidence of any such pre-termination negotiations would be inadmissible unless we considered that there had been improper conduct.

Findings

29. Our findings, on a balance of probabilities where there was any dispute, were as follows.

30. The Claimant was, for many years, a costs drafter, and commenced employment with the firm of solicitors, Leo Abse & Cohen, in Cardiff in November 2012. The Claimant confirmed that he had worked in managerial positions, and not as a technical costs drafter, for some eight years prior to the termination of his employment with the Respondent, which occurred in December 2018, and therefore our presumption was that the Claimant had been recruited by Leo Abse & Cohen in a managerial position.

31. On 1 May 2015, the practice of Leo Abse & Cohen was acquired by another firm of solicitors, Slater and Gordon, and the Claimant became employed by Slater and Gordon (UK) 1 Ltd in terms of the employing legal entity. Prior to the acquisition, the Claimant was provided with a letter containing the terms of a contract of employment with Slater and Gordon, which had, attached to it as an appendix, a schedule setting out the core salary and benefits of his employment with Leo Abse & Cohen, and the proposed salary and benefits at Slater and Gordon.

32. The Claimant confirmed in his evidence to us that, notwithstanding that his transfer from Leo Abse & Cohen to Slater and Gordon was subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”), the terms proposed by Slater and Gordon were improvements on the terms he previously enjoyed with Leo Abse and Cohen, and therefore he was happy to accept them and did not rely on any transferred provision of his Leo Abse & Cohen terms.

33. Relevant to the claims before us, the schedule included the following wording in relation to bonuses:

S and G are currently reviewing their bonus schemes as part of their remuneration strategy project. S&G is looking to establish a balanced scorecard approach which encourages a broader range of behaviours to support culture, clients and practice development. At the beginning of the

scheme year, managers will determine the weightings ascribed to each balanced scorecard element for individuals. At the end of the scheme year, managers will be required to assess an individual against the objectives set. The level at which the scheme pays out is determined by achievement against the objectives, and payments could range from 5% to 40% of base salary. The scheme is currently awaiting final approval by the S&G governance group and the outcome of staff consultation. It is proposed that the new scheme would be effective from 1 July 2015. S&G's bonus schemes are discretionary and noncontractual and participation is subject to eligibility.

34. On 30 April 2016, there was a further TUPE transfer, following what appears to have been an internal restructure within the Slater and Gordon group, and the Claimant's employment transferred from Slater and Gordon (UK) 1 Limited to Slater and Gordon Solutions Legal Limited. The latter company subsequently changed its name to Slater and Gordon UK Limited, the Respondent in these proceedings.

35. It does not appear that any further contractual changes were made following the transfer on 30 April 2016, with the contract entered into in February 2015, continuing to apply.

36. The Respondent operated its costs drafting business under the trading name of Compass Costs Solutions from 2016 onwards. The Claimant was employed in that business, initially as a Costs Manager, and then with the job title of Costs Resolution Manager (CRM"), although it does not appear that the substance of his role changed. He was, at all times, based in the Respondent's Cardiff office.

37. The Compass team operated nationally and, by 2017, operated with a head office based in Prescot, near Liverpool, with other offices in Manchester, London, Cambridge and Birmingham. The last three offices were collectively referred to as the "Southern" offices and were managed by one CRM, based in London. The Prescot office was substantially the largest and had between two and four CRMs. The Manchester office, similar to Cardiff, had one CRM.

38. By the time of the events relevant to this case, the Cardiff office was operating with the Claimant as CRM and six other staff, the Southern offices were operating with a CRM and ten other staff, the Manchester office was operating with a CRM (in fact another employee acting up on secondment) and approximately thirteen other staff, with the Prescot office operating with four CRMs and sixty other staff.

39. Before matters relevant to the claims before us came to a head, we noted that the Claimant received a gross bonus payment of £20,830 in October 2016 in respect of the preceding financial year, 1 July 2015 to 30 June 2016. He then received, in January 2018, a gross bonus payment of £3400 in respect of the financial year ended 30 June 2017. His basic annual salary at the point of termination of his employment was some £53,560.00.

40. The Compass business was managed by an executive team which, in 2016, comprised: Tony Armstrong, Chief Executive Officer; Frank Wade, Chief Operating Officer; Hazel Leyland, National Head of Operations; and Chris Johnson, Business Development Manager. Ms Leyland was initially the Claimant's line manager until her employment ended, at which point Mr Wade took up that role, until his employment ended in September 2018. From 16 September 2018 until 30 November 2018, the Claimant was line managed by Matt Jarvis, the Managing Director of Slater and Gordon Personal Injury Services, i.e. someone who worked on the solicitors' side of the group, and not purely the costs side. From 1 December 2018, Mr Morris took over as Head of Costs for the Compass part of the group.

41. Concerns arose within the Cardiff costs team in 2017, which led to a collective grievance being raised by them on 24 July 2017. This encompassed matters such as recruitment and salaries, but, relevant to matters as they developed, also raised concerns about how work was allocated between the various offices.

42. In that regard, from about the start of 2017, all Noise Induced Hearing Loss ("NIHL") work was allocated to the Cardiff costs team at the behest of Mr Andrew Grech, the overall Slater and Gordon Group Managing Director at the time. By this time, the Group had undertaken a significant amount of this work, and our impression was that it was something of a pet project of Mr Grech's. The Cardiff office undertook some of this work on the legal side, and the Cardiff costs team appeared therefore to have gained an internal reputation as having particular expertise in NIHL work.

43. A consequence of the focus on NIHL work was that higher value work, which would lead to higher fees able to be charged by the Compass business, tended to be passed to the other offices. The concern of the Cardiff office was that this impacted upon the team's ability to hit its targets. Whilst the grievance was not upheld, with the outcome noting that the Prescot office dealt with other work which was also less lucrative, the policy of the allocation of NIHL work to the Cardiff exclusively was stopped in August 2017.

44. That was because Mr Morris, who at that time was the head of the Group NIHL department, i.e. in charge of the legal side, became concerned that the Cardiff office could not accommodate the volume of NIHL work and that backlogs had built up. By this time Mr Grech had left the business and therefore Mr Morris, effectively as the head of Compass' internal client, agreed with Compass that the NIHL files should be distributed amongst all of the Compass offices. That change was implemented in August 2017, and the allocation process was changed again in November 2017.

45. The Claimant pursued an appeal against the outcome of the grievance, which was pursued on an individual rather than a collective basis, but that was rejected on 20 September 2017.

46. The Claimant then suffered ill health, in the form of anxiety and depression, and commenced a period of sickness absence on 4 December 2017. It appears that this arose, or was at least contributed to, by his concerns over workplace matters, particularly what he perceived to be the unfair allocation of work and the impact that had on the Cardiff team's ability to hit its targets. Concerns also existed around recruitment into the team and salaries, with the Claimant being keen to ensure that the members of his team were appropriately remunerated.

47. We observe in passing that the period of 2016, 2017 and 2018 appears to have been one of significant financial turmoil for the Slater and Gordon group as a whole. The Claimant in his evidence confirmed that he feared for the group's future in 2017, although he understood that it had returned to a level of profitability in 2018. There also appear to have been many redundancies throughout the Group in 2018 and 2019. It appears to have been a time of great uncertainty within the Group as a whole and, as we have noted, the entire Compass executive team left within 2017 and 2018.

48. The Claimant was signed off as unfit for work for a period of one month from 4 December 2017 because of the depressive disorder. Jayne Ross, the HR manager who supported the Compass business, then wrote to the Claimant on 7 December 2017. In her letter she noted that the Claimant had been absent due to severe anxiety and had been signed off until 4 January 2018. She provided details to him of the Respondent's Employee Assistance Programme. She also indicated that, due to the potential duration and the nature of the Claimant's absence, she would like to refer him to their occupational health advisers, and enclosed a referral consent form for completion. She confirmed however, that she did not think that a meeting with occupational health would be required at that stage, but would be helpful closer to the Claimant's return, or if the duration of his absence continued beyond the expiry of the current Fit Note, and that being in receipt of the consent form at that stage would allow her to prepare the referral documentation.

49. Ms Ross is no longer employed by the Respondent, and did not provide any evidence to us, but it appeared that the Respondent's management had made a decision, due to the reason for the Claimant's absence, to suspend his IT access to avoid him being burdened with work emails whilst away from the office. By 18 December 2017, however, it transpired, due to a reply that the Claimant had sent to an email sent by one of his team members regarding the resignation of another, that that suspension of access had not taken place. Directions were then given to put that in place, and also to confirm that to the Claimant, and to indicate to him that it was being done so as not to bother him with any work-related matters whilst he was absent. An email was also sent to the member of the Claimant's team on 18 December, asking that work-related emails not be sent to the Claimant whilst he was away from the office.

50. It is not clear as to whether the Claimant was indeed informed that his IT access was being suspended whilst he was away, but he became aware

that it had indeed been suspended when he returned to the office on 5 January 2018. He was then unable to access the Respondent's systems, including his own email, and took steps to chase IT, HR, and ultimately senior management, in order to get that resolved. The access was then reinstated at around about lunchtime on 5 January. The Claimant then sent emails to his managers, Mr Johnson and Mr Wade, noting that he had found the day exceptionally hard, and that it may be best if he left for the rest of the day, and he did leave in the early afternoon.

51. The Claimant returned to work the following Monday, 8 January 2018, but, in answer to an email enquiry from Mr Johnson about how he was feeling, replied that he was "*Not good at all*", and, in a subsequent email, that he felt pressure with the simplest of things and that coming back had been very hard. Mr Johnson then spoke to the Claimant and recommended that he saw his GP the next day. Mr Wade, in an email that afternoon, confirmed the same, and indicated that if coming back had been possibly too much too soon, he was happy to agree on a phased return which might be better for the Claimant. The Claimant then provided a further Fit Note confirming that he was not fit for work from 10 January 2018 to 23 January 2018, again due to a depressive disorder.

52. The Claimant then returned to work following the expiry of that Fit Note on 24 January 2018. On that day. However, he sent an email to Mr Johnson and Mr Wade, noting that he had been hopeful that, following his last failed attempt to return, he would be met with something more positive, but that things in Cardiff appeared to have worsened. He commented that he continued to feel tired, isolated and continually anxious as Cardiff continued to suffer from a lack of support. He went on to say that he felt that, slowly but surely, he was approaching the day when he could no longer work there and would be forced to seek work elsewhere. He commented that he could not believe that it was fair for him to be subjected to these pressures and that it was not the first time that he had expressed that level of despondency.

53. Initially, the absence between 9 and 23 January 2018 was unpaid, as the Claimant failed to provide a GP Fit Note, but he did subsequently send one in, and company sick pay for the relevant period was subsequently paid.

54. The Claimant and Mr Wade had a return to work discussion on 25 January 2018, and, on the following day, the Claimant sent Mr Wade a lengthy email raising concerns about his position and that of the team. In this email, he confirmed that, whilst he suffered from anxiety, he did not feel that it was the illness that was causing him to suffer in the office, but rather that the office environment was causing his condition to worsen.

55. A fuller return to work meeting then took place between the Claimant, Ms Ross and Mr Wade, in the Cardiff office on 31 January 2018. No notes of that discussion were before us, but the Claimant in his statement described the meeting as "*surprisingly positive*", and that it gave him some hope that things may change.

56. On 15 February 2018, the Claimant sent Mr Wade an email, noting that he did not think that the new allocation process was working, or was even being implemented. The thrust of his email appeared to be that the Claimant felt that the Cardiff cost drafters were not being allocated work fairly, and that offices which indicated that they were too busy to deal with urgent files did not actually seem to be producing the figures to explain such busyness. Mr Wade replied within an hour, noting that the allocation policy had definitely been implemented and asking the Claimant to give the reference numbers on the particular costs budgets that he had indicated had been worked on by the various offices. He concluded by saying, "*In simple terms, what is the point that you are making*?", and asked the Claimant to ring him if it was easier.

57. The Claimant then sent a reply, three minutes later, saying that he, "*may be reading things wrong*" and, "*ignore me*", to which the Mr Wade shortly replied by saying that there was, "*no issue at all in looking into the matter*", and that it was just that he needed a bit more information. A few minutes later, the Claimant replied saying, "*Feel free to handle it however you see fit Frank. I'll bow out*". About an hour later, at 5:45pm, however, the Claimant sent Mr Moon an email asking him to stop sending him emails such as the two he had sent that day. He stated that he felt like he was being victimised and that his position was becoming completely unbearable again.

58. The next morning, 16 February 2018, the Claimant sent a variety of emails. At 10:29am, he sent an email to Emma Holt, a senior manager on the solicitors' side of the group, and someone the Claimant believed was responsible for compliance matters, noting that a formal grievance had been filed the year before and had been dismissed. He indicated in his email that there had been numerous breaches of policy and conduct requirements, both internally and externally throughout his time at Slater and Gordon, and that he had lost faith in those entrusted with the well-being of the team in Cardiff. He noted that he had been off work with anxiety and that his health was continuing to suffer, noting that he was shaking whilst typing the email and had completely ceased to function as a manager. The Claimant went on to say that, rather than leave and seek legal action or employment tribunal involvement, he had decided to stay in employment and to lodge formal complaints with the Solicitors Regulation Authority and the Association of Costs Lawyers in the hope that things would change.

59. Ms Holt emailed back at 10:53am, noting that Ken Fowlie had taken over responsibility for the Compass area of the business, and that it was best that he be made aware of the emails so that he could get back to the Claimant. She then immediately forwarded the email to Mr Fowlie, but Mr Moon himself forwarded his email to Mr Fowlie, at 10:57am, noting that he was "*currently chatting*" with the Legal Ombudsman and that the matter may be of, "*sufficient weight (discrimination and serious breach of a defined rule) to merit the involvement of the SRA*". Later on, at 12:46pm, the Claimant forwarded the email to Omar Yaqub, as he had just discovered that Mr Yaqub was the Respondent's new Head of Compliance.

60. At 10:48am on 16 February 2018, the Claimant also sent an email to Mr Armstrong and Mr Wade, copied to Ms Ross, noting that he had escalated matters, both internally and externally.

61. Mr Fowlie was out of the office on leave, but replied to the Claimant within the hour, noting that he would deal with the matter on his return the following week, but in the meantime, if the Claimant wished he could share information with Mr Yaqub and Adam Baker, the Respondent's overall Head of HR.

62. Mr Wade and Ms Ross were not witnesses before us, as both had left the Respondent's employment. It appears from the documents however, and from the Claimant's own statement, that they were keen to speak with him on 16 February 2018 about his emails, and that their intention was that they would speak with the Claimant by way of videoconference, with Ms Ross travelling from the Manchester office to the Prescot office for that purpose. It appears that no videoconference rooms were available in the Cardiff office but they did speak with the Claimant via telephone on the afternoon of 16 February.

63. There were no notes of the discussion before us, but the conversation was covered by the Claimant in Further and Better Particulars of his claim submitted on 19 October 2018. Those record the Claimant describing Ms Ross as telling him that he had a history of sending disrespectful emails and that it had to stop, otherwise the business would take action. Ms Ross is also reported as having said to the Claimant that he had a history of refusing to join in telephone calls, such as that one, and that such conduct was insubordination. The Claimant further recorded Mr Wade noting that the Claimant's reluctance may be due to his illness, but commenting that the emails from the night before, should not have triggered such a reaction. The document then records that the Claimant explained that there was far more to it than that, with a long history of problems being ignored, which led to him no longer trusting the Executive Team or HR. The document records Mr Wade replying that that was the first he had heard of that, and that he did not know why there was escalation internally and externally. The document then records that the Claimant became very upset, and that Ms Ross had insisted that the Claimant needed to make a decision there and then as to whether he was fit to go back to his desk and work, or take holidays, or go back to his GP. Ultimately, the Claimant hung up on the call.

64. The Respondent's Consolidated Grounds of Resistance, which we understood to have been prepared with the benefit of some input from Ms Ross, did not admit that the Claimant was accused of insubordination, although did confirm that a reference to insubordination had been made, noting that it had come up in the context of an observation to the Claimant that he sometimes spoke to the management team in an unprofessional manner and often refused to meet them in Prescot. The document records that Ms Ross mentioned that the Claimant's conduct in that regard could be deemed as insubordination.

65. The document also notes that it was not admitted that the Claimant was accused of failing to communicate appropriately, but it does note that the Claimant's communications were discussed, it being noted that the Claimant's unwillingness to engage with management who would want to discuss his communications with him meant that at times the management team were unclear how best to respond to him and to support him. The document also records that Ms Ross offered the Claimant a week's paid leave, should he wish to take a few days away from the office, noting that the offer was made out of concern for the Claimant's welfare and as a gesture to support him. The document notes that the call ended with the Claimant having not made a decision about whether to take time off.

66. Following the call, Mr Moon sent an email to Ms Ross, Mr Wade and Mr Yaqub, describing the call as "*the most shocking thing*" he had ever been subjected to. The content of the email was, without wishing to be disrespectful to the Claimant, rather garbled, and it appeared to us that, at times of greatest stress, the Claimant did type and send emails which were rather incoherent and contained a number of typographical errors, in contrast to his usual emails which were properly typed and coherently expressed.

67. In the email, the Claimant made reference to not being insubordinate, not having a history of disrespectful emails, and not having to go back to his GP for more tablets and more time off. Those comments clearly reference those matters, which, in our view, confirmed that they had been discussed during the conversation. However, our conclusions were that the call was made by Mr Wade and Ms Ross with good intentions and without having any clear understanding of the Claimant's mental state at the time.

68. Whilst it may have been better for Ms Ross not to have made reference to insubordination or disrespectful emails, we noted that, even by the Claimant's own assertion in his further and better particulars document, Mr Wade indicated that it was understood that those matters could have arisen due to his illness. We also noted that the call arose following the Claimant's emails of the morning in which he had escalated matters to very high levels within the Respondent's group internally, and also indicated that he had notified external regulators. In our view therefore, it was not surprising that Ms Ross and Mr Wade may have been a little on the defensive in the call, and may have been keen to impress upon the Claimant that sending emails of that sort may not have been the best way of going about things.

69. With regard to the discussion about whether to stay in work, take leave, or go to the GP, we noted that, by this stage of the conversation, the Claimant himself confirmed that he was very upset. In our view, particularly bearing in mind that the Claimant was indeed shortly afterwards granted a further period of paid leave, the references made to the decision on the Claimant's part about staying in work, taking leave, or visiting his GP, were made with the best of intentions to try to ensure that the Claimant did what was best for his health at that time.

70. Following the conversation, Ms Ross and Mr Wade contacted John Browne, a senior solicitor based in the Cardiff office, and someone known to the Claimant, to ask him to check on the Claimant. After that discussion, the Claimant accepted the offer of one week's paid leave her and took leave between 19 and 23 February. It was also agreed that Mr Browne would assist with communications between the Claimant and the Compass management team.

71. The Claimant returned to work on 26 February 2018 and, at that point, learned that Mr Wade was due to be in the Cardiff office the following day. Due to his condition, that increased the Claimant's anxiety, and he did not attend work on 27 February and did not notify Mr Wade about his absence. Consequently, Mr Wade confirmed to Mr Moon, in an email on 28 February 2018, that 27 February would be recorded as an AWOL day and would be unpaid. The Claimant also put in a short notice holiday request for the remainder of the week which, although outside the Respondent's policy, was granted. In his email, Mr Wade indicated to Mr Moon that he would like to meet with him upon his return the following week. That was initially scheduled for 6 March 2018, but as the Claimant did not return to the office until 7 March 2018, it had to be rearranged.

72. There were no notes before us of the meeting, or any evidence about it other than the Claimant's statement, from which it seemed that the meeting was unremarkable. Mr Browne attended with the Claimant.

73. On 13 March 2018, the Claimant sent emails to Danielle Rowe, the Slater and Gordon General Counsel and COLP (Compliance Officer for Legal Practice), that had attached a lengthy document, entitled Complaint. The document ran to fifteen pages, and grouped the Claimant's concerns under the following headings: Grievance, Allocation, Salaries, Recruitment, Targets/Bonus, and General Poor Treatment.

74. Ultimately, in April, Ms Rowe replied to the Claimant that she felt the matters he had raised were largely HR grievance issues, and that she knew that Adam Baker, the Group's UK Head of HR, had been in contact with him. She referred to the Claimant having raised an issue of fraud, which was a compliance matter, and would therefore be of interest to her, but she pointed out that she did not yet have any information that helped her to understand the nature of the alleged fraud.

75. The Claimant was absent due to sickness on 12 March 2018 and the documents indicate that, whilst in work, he left early on several days during the month of March, although it does not appear that these were recorded as sickness absences. He then commenced a period of sickness absence from 26 March 2018, which lasted until 8 June 2018.

76. On 28 March 2018, the Claimant first contacted ACAS for the purposes of early conciliation.

77. On 9 March 2018, Ms Ross wrote to the Claimant, indicating that the Respondent wished to refer him to occupational health to provide information and recommendations to help both parties. A referral consent form was provided.

78. The occupational health report was issued on 9 April 2018. It reported that the Claimant was considered unfit for work at that time, and that it was considered unlikely that he would return to work within the next four weeks, and possibly longer, depending on his response to treatment. It noted that the Claimant had a complete loss of confidence and loss of trust with regard to the support provided by management and HR. It did not include any specific recommendations as to what might be done to assist the Claimant.

79. A further referral to occupational health was then made, and a second report was produced dated 14 May 2018. The report again recorded that the Claimant felt that he had been unfairly treated at work, and that there had been a breakdown in the relationship between the Claimant and his senior colleagues. It recorded that if that could be satisfactorily resolved, it would very likely have a positive effect and enable him to continue his recovery. The report went on to say that consideration could be given to redeploying the Claimant into a role where he reported to alternative line management, if that was possible. The adviser recorded that she felt that the Claimant was fit to attend a welfare meeting and that she had encouraged him to do that if it could be arranged, as it would be the way forward for him to regain fitness for work.

80. On 14 May 2018, the Claimant issued his first claim form.

81. A welfare meeting was arranged, and took place on 24 May 2018. The meeting was undertaken by Mr Browne, with Melanie Hetherington, a senior HR adviser, taking notes. A letter summarising the meeting was sent to the Claimant on 4 June 2018 by Ms Hetherington. This recorded that redeployment had been discussed, with only two roles being available within the Cardiff office, one for a Wills and Probate solicitor and one for a costs drafter, and that the Claimant had indicated that being a costs drafter would be a demotion. Ms Hetherington confirmed that she would continue to review Cardiff vacancies and make the Claimant aware of any new roles that arose.

82. She further recorded that the Claimant had suggested that the Respondent should create a new role for him, as an Equality and Diversity Officer, and confirmed that there was no requirement for such a role and therefore one was not able to be created. She recorded that the Claimant's view had been that if the role could not be created then he wished to return as the CRM.

83. The letter further recorded that a phased return had been discussed, and that it had been agreed that, when the Claimant was fit to return, he would work between the hours of 9:00am to 12:30pm for his first week, and that the situation would then be reviewed. It was agreed that any targets for the

Claimant with regard to his work would be removed during his phased return, and would be reinstated gradually once the phased pattern ended, or after four weeks, whichever was the sooner.

84. Ms Hetherington noted that a discussion had taken place about communication with the Claimant, and that he had indicated that he did not wish to engage in communication with the management team via telephone, face-to-face meetings or video conference meetings, and also did not want to travel to the Prescot office. He had therefore asked for all forms of communication with the management team to be conducted by email. Ms Hetherington responded that, as a CRM, the role required him to be available by telephone, videoconference, and occasionally to travel to other company offices. She noted that it was a busy role and therefore it was essential to have all forms of communication open and available, which would include casual telephone calls and one-to-one meetings. She concluded therefore that the request to cease forms of communication except for emails could not be agreed. We observed however that most of the communication between the Claimant and his managers, up to the period of consultation over redundancy in November and December 2018, did appear to take place by email from that point onwards.

85. The letter also recorded that a discussion had taken place regarding sick pay, and Ms Hetherington recorded the range of discretionary payments that had been made to the Claimant, which effectively led to him receiving full pay up to 6 April 2018, ten days' further half pay up to 20 April 2018, and then SSP after that. She noted that this was far above and beyond what would normally be paid during a period of absence after occupational sick pay (in the Claimant's case, twenty days) had been exhausted, but that the payments had been approved as a gesture of goodwill. Ms Hetherington confirmed that no further enhanced payments would be made during the Claimant's absence.

86. The Claimant then returned to work on 11 June 2018 on the phased hours indicated, and that increased from 26 June 2018 to working between 9:00am to 1:30pm.

87. Discussions took place with the Claimant and the Slater and Gordon recruitment team over possible opportunities for redeployment, but none were available which were suitable for the Claimant at or near his salary level. The Claimant applied for several roles outside of the Cardiff office, but on the basis that he would either undertake the work from Cardiff or from his home, but in all cases the hiring manager confirmed that the role needed to be undertaken from the particular location, particularly where it involved elements of training and supervision of the Claimant.

88. On 28 June 2018, communication of changes within the Compass business, specifically the departure of Mr Armstrong, was planned. This was initially arranged to be by way of a telephone call to CRMs at 1:00pm, followed by a face-to-face meeting with employees at the Prescot office at 2:00pm, and then a call with employees in the other offices at 2:30pm. However, before it

was due to start, the first stage meeting had to be delayed and was pushed back to 1:30pm. At 12:47pm, Mr Wade sent an email to the Claimant saying, "*Sorry Rob, just remembered that you finish at 1.30pm, would you mind jumping on the call anyway, should be no more than 20 mins, as it's important.*"

89. The Claimant replied by email at 1:09pm, saying that he considered it most inappropriate to ask him to "jump on the call", that his line manager forgetting his only adjustment was far from comforting, and that casually asking him to step outside that adjustment because of forgetfulness "beggared belief". He went on to say that he felt that the scheduling of an important call outside his phased return was a clear act of discrimination.

90. Mr Wade replied six minutes later, noting that he had apologised at the start of his message and had asked the Claimant if he would mind joining, and not that he must join. He indicated that he would ask one of the senior drafters in the team to join the call in the Claimant's absence. He concluded by saying that there was no discrimination against the Claimant and that he would catch up with him on the following day.

91. Early on the morning of 28 June 2018, the Claimant sent an email to Lynda Greenshields, the Respondent's Chief HR officer, noting that he had attempted to contact Mr Baker but understood that he had now left the firm. He indicated that he wished to raise a formal grievance outside of the Compass Group and that he was concerned that the Respondent had failed to make reasonable adjustments for him following his return to work in early June. The Claimant then forwarded his exchange of emails with Mr Wade around lunchtime on 28 June 2018.

92. Ms Greenshields referred the matter to Ms Grewal, who had recently been appointed as head of HR for the Respondent's Personal Injury division. She contacted the Claimant on 2 July, and they had a telephone discussion on 3 July 2018.

93. On 10 July 2018, Mr Wade arranged a call with CRMs at 2:30pm. The Claimant declined the meeting invitation just over an hour before the meeting was due to start, and sent an email to Mr Wade at 1:26pm, noting that his phased return hours ended at 2:30pm, and that he would therefore be precluded from attending the meeting, but would make sure that one of his senior drafters would attend. Whilst, as we have noted, Mr Wade was not present to give evidence before us, it appears from the subsequent grievance investigation that he simply overlooked the fact that the Claimant was due to finish work at 2:30pm on the particular day. The Claimant emailed Mr Wade further, at 1:43pm, noting that he was struggling a little today with things, so was going to leave a little earlier to clear his head for the following day. Mr Wade replied ten minutes later, saying, "*Okay, Rob, take care.*" The Claimant subsequently forwarded the meeting request to Ms Grewal, saying that he considered the matter to be indirect discrimination.

94. The Claimant's evidence about his meeting with Ms Grewal on 3 July 2018, was that his interaction with her had been promising, that they agreed on many issues, and that he felt supported. They met again on 12 July 2018, via video conference, during which the desirability of getting further occupational health was advice was discussed and, following which, the Claimant provided a further consent form.

95. On 23 July 2018, the Claimant sent Ms Grewal a formal grievance. In this, he indicated that he wished to press on with his grievance dated 28 June 2018, and wished to raise further problems surrounding indirect discrimination, harassment, victimisation and insufficient reasonable adjustments.

96. By the end of July, the Claimant had returned to his full time hours.

97. A meeting was arranged to consider the Claimant's grievance on 9 August 2018 via video conference. This was chaired by Lindsay Holt, one of the Respondent's principal lawyers, who was supported by Ms Reitz in an HR capacity and as notetaker. The outcome letter following the meeting was sent to the Claimant on 20 August 2018.

98. With regard to the Claimant's concerns about indirect discrimination, harassment and victimisation, which related to the scheduling of two meetings outside the Claimant's phased return hours, Ms Holt concluded that she was partially upholding the Claimant's grievance in relation to the first meeting, and that she recommended a mediation meeting between the Claimant and Mr Wade to resolve the potential breakdown in their relationship. She confirmed that mediation was voluntary and that she would ask Ms Grewal to explore that option with him further. Ms Holt indicated she did not uphold the Claimant's grievance in respect of the second group meeting, but acknowledged that there were some learnings to be taken from the process, and that Mr Wade could have made more attempts to schedule the meeting during the Claimant's phased hours.

99. With regard to the Claimant's concerns over reasonable adjustments, Ms Holt recorded that she believed that the Respondent had taken reasonable steps to ensure that the Claimant was supported in the workplace, and therefore, she was unable to uphold that aspect.

100. The Claimant commenced a period of sickness absence on 22 August 2018 and returned to work on 28 August 2018. A return to work between the Claimant and Mr Wade took place that day. An email in the bundle summarised Mr Wade's brief notes of the meeting, which included that the third occupational health report was awaited, that the Cardiff team required minimal management from the Claimant, and that he was waiting for redeployment.

101. On the morning of 28 August 2018 however, the Claimant submitted an appeal against the grievance outcome to Ms Grewal. The appeal was considered by Martin James, National Head of Practice for road traffic

collisions, supported by Leanne Banks HR manager on 10 September 2018. Mr James did not uphold any part of the appeal, with the outcome letter being issued on 28 September 2018.

102. In the meantime, Mr Wade left the Respondent's employment on 16 September 2018.

103. The Claimant attended a further occupational health appointment, with a different adviser, on 14 September 2018, and the report from the adviser was issued on 20 September 2018. The report recorded that the Claimant felt that certain duties were triggering symptoms of low mood and anxiety, in particular the areas of recruitment, bonuses, salaries and allocation of workload, and that he had not been undertaking those tasks since his return in June. He reported that the Claimant had said that his time was mainly taken up with management information and reporting duties.

104. The adviser indicated that some form of resolution to the Claimant's perceptions that work was a significant trigger for his mental health status would be a determinant factor in how long the effect might last. He noted that mediation had been discussed previously, but not enacted, that the Claimant was understood to be open to mediation, and that medically he felt that the Claimant was fit to attend such a mediation should the company decide to follow that route.

105. With regard to the question of what further adjustments (beyond phased return, removal of targets and assistance in redeployment) would be considered necessary, the adviser noted the various elements of the Claimant's role which were causing an issue for him and which he was not undertaking, and suggested that those restrictions remain in place temporarily for the next few weeks. He commented that he believed there was every possibility that the Claimant could improve symptom-wise to the point where he would be able to resume the full duties of his job.

106. He summarised his recommendation that the Respondent should consider mediation to try and restore relationships between the Claimant and management, based on his perception of that having broken down to some extent, that he recommended that the Claimant continue in work rather than started a prolonged absence, with the restrictions on his duties as indicated, as he believed that doing some work for him was better than remaining at home and absent.

107. Following the departure of Mr Wade, Matt Jarvis, Managing Director, Personal Injury Services, took over the management of the Compass business on a temporary basis. He emailed all Compass staff on 26 September 2018, noting that he proposed to put in place a Head of Practice, Legal Costs Services, primarily based in Prescot. He invited expressions of interest for the position with a closing date of 3 October 2018.

108. At approximately the same time, Mr Morris, as head of NIHL, had become

concerned about his long-term future. The Respondent had taken the decision not to take on any more NIHL work and to run down the existing caseload in a managed way. During this period, Mr Morris took charge of a collective consultation process with the Leeds NIHL team with a view to making the entire team redundant. Mr Morris was concerned that, in light of the downturn in NIHL work, he would have no role within the Respondent, and he therefore spoke to Mr Jarvis, raising his concerns and seeking additional duties.

109. Whilst we did not hear directly from Mr Jarvis, it appears that he considered that Mr Morris would be an ideal candidate to take on the role of Head of Practice of the legal costs service, and discussed this with him, and then followed an internal process with a view to appointing him to that role. Mr Morris took up the position of the Head of Compass Cost Solutions on 1 December 2018, with his first practical day in the role being 3 December 2018.

110. On 26 September 2018, the Claimant emailed Ms Reitz, indicating that he was issuing a third grievance. This referred to four headings: unlawful deduction of salary, referring to the fact that he had still not received any notification as to his position with regard to his bonus and that he could only assume that he was not being given a bonus; continued failure to make reasonable adjustments, following which he stated "*I have no idea what is happening with my line manager Frank Wade but I assume he has left. Given Frank was the sole surviving member of the original Compass Executive Team and that (save for Jayne Ross/Chris Johnson) Frank was the only remaining "line management" from whom I needed to be redeployed, the position could be vital to my role.*"; the grievance appeal, noting that he was still to receive the decision; and victimisation, commenting that he felt that he was being ignored and excluded following his return from annual leave that week.

111. On 28 September 2018, Ms Grewal contacted the Claimant by email, asking if he would be up for a call, and, following a brief exchange of emails, the Claimant sent a longer email to Ms Grewal, copied to Mr Jarvis, Ms Reitz and Mr Browne, commenting that, without a structured plan to help him he would continue to struggle greatly. He commented that his role had devalued to such a degree that he now played absolutely no active or helpful part in the running of any element of the firm whatsoever, and that not a single soul appeared to care. On the same day, the Claimant issued his second employment tribunal claim.

112. In a later email the Claimant requested some paid leave, noting that he had exhausted nearly all of his annual leave and his sick leave. Ms Grewal replied soon after, confirming that the Respondent could accommodate two weeks' paid leave with effect from Monday, 1 October 2018. The Claimant was then absent until 15 October 2018.

113. Ms Grewal and the Claimant met on 15 October 2018, and, on the following day, the Claimant emailed Ms Grewal with what he described as "a slight

resurgence of drive" with a summary of recruitment needs within the Cardiff office, a repetition of his wish to communicate in writing, his disappointment that no plan had ever been developed for his reintroduction to the workplace, that his bonus in 2017, had been £3,400.00 when he felt it should have been £20,990.58, and that his bonus for 2018 should be £21,424.00, but that he had had no communication on it at all, and that salaries within the Cardiff team needed to be increased.

114. On 18 October 2018. Ms Grewal notified the Claimant that his bonus for the financial year ended 2018 would be £3267.16, and would be payable to him on 24 December 2018, in line with that for all other eligible staff, who earned over £50,000 per annum. She confirmed that staff who earned less than that threshold would receive their bonus in October. She explained that the Claimant's bonus had been calculated on the basis that he was eligible for 10% of his annual salary, which was the maximum percentage that could be awarded, and that it had been pro-rated to 61% to take into account his absences.

115. On 21 October 2018. Ms Grewal emailed the Claimant, indicating that she would come back to him on his grievance in the next few days, but the Claimant sent an email to Ms Reitz the following day, noting that he understood that Ms Grewal was on annual leave until 29 October, and asking if someone could have a look at his grievance of 26 September. Ms Reitz then replied on 24 October. In this, she commented that the grievance the Claimant had raised was "not in keeping" with the grievance procedure, but that his questions had been looked into and she provided answers.

116. She noted that the bonus payment was now being processed and that the Claimant had been provided with details of his bonus figure, which had been done ahead of other CRMs. With regard to reasonable adjustments, she commented that the Claimant was aware that Mr Wade had left the business and asked him to inform her if he felt that any further adjustments were required. With regard to the grievance appeal, she noted that a letter confirming the decision had been posted to him on 28 September 2018. Finally, with regard to victimisation, she commented that she would like to understand if the Claimant had specific examples of this, noting that the Respondent certainly did not want the Claimant to feel that way.

117. The Claimant responded the following day, commenting on the various points, but noting that he considered his grievance to be entirely valid and that it should not been withdrawn. The Claimant was then subsequently invited to a grievance hearing, which took place in November.

118. In the meantime however, following budgetary discussions as part of the Respondent's normal budget forecast process in August and September, the Respondent's Personal Injury division had been tasked with reviewing and reducing the overall headcount to maximise efficiency. This included the Compass costs team. Mr Jarvis, as the Managing Director for Personal Injury Services, supported by Ms Grewal, undertook this review.

119. He noted that the ratio of team members to the CRM in Cardiff was smaller than the ratios in the other offices. In Cardiff, the CRM was in charge of a team of approximately six; in Manchester, the CRM was in charge of a team of approximately 14; and in Liverpool, two CRMs were in charge of approximately 23 team members. The three southern offices, amounting to 11 employees, were managed by one CRM based in London.

120. Although not expressly put forward in Ms Grewal's statement, it seemed to us that the decision was also influenced by the fact that the two senior costs drafters in Cardiff had managed the team during the Claimant's two periods of sickness absence alongside their drafting duties, with no discernible impact on the quality of the team's performance, and also the Claimant's own indication that he was not undertaking many aspects of his role, such as recruitment and work allocation.

121. Ms Reitz responded to the Claimant's email on 2 November 2018, noting that his grievance lacked the particularity that was required with any grievance. With regard to the grievance appeal outcome, she indicated that it would not be appropriate to raise a further grievance about the appeal, and that the Claimant must accept that that grievance procedure was at and end. She invited the Claimant to provide further information in relation to the three other points.

122. Following the identification of the potential to make the role of CRM in Cardiff redundant being confirmed, Mr Morris was contacted by Ms Ross to take charge of the consultation with the Claimant. This appears to have been done due to Mr Morris' experience of dealing with internal HR matters, including redundancies. A note taken by Mr Morris of his discussion with Ms Ross noted that Ms Ross had explained that the Claimant had brought three grievances and two tribunal claims, and had been through occupational health processes and had been very unwell. The note recorded that Ms Ross told Mr Morris that the Claimant could not deal with some duties, and that two senior drafters were running the office. The note also recorded the other CRMs in the other offices and stated that that structure was not in place in Cardiff.

123. Mr Morris' evidence, which we accepted, was that he was extremely reluctant to undertake the consultation. He was focusing on his role as Head of NIHL, which included, at that time, the management of the collective redundancies in Leeds. His evidence was also that he was unhappy that he was being asked to undertake such a role due to the fact that other managers had not been trained up to perform it. Ultimately however, following Ms Ross' explanation about the issues that had arisen with the Claimant in recent times, Mr Morris accepted that he would undertake the role of managing the redundancy consultation process with him.

124. Ms Ross sent an email to Mr Morris that day, setting out a scripted announcement, a communications plan, an at risk letter, a meeting invite

letter, a job description, a headcount report, and a rationale. The email was also copied in to Ms Reitz, who was to support Mr Morris from an HR perspective.

125. Mr Morris and Ms Reitz attended the Cardiff office on 8 November 2018, and handed the Claimant a letter notifying him of his potential redundancy and that an individual consultation meeting would take place on Monday, 12 November 2018. One of the senior costs drafters in the Cardiff team attended with the Claimant.

126. Mr Morris read out the rationale, and explained to the Claimant that he did not need to attend work during the consultation period. He handed over the letter inviting him to the first consultation meeting. Mr Morris also indicated that he proposed to meet the Cardiff costs team immediately following the meeting to make them aware that the CRM role was at risk. The Claimant took a number of his personal belongings away following the meeting, although he was not required to do so by Mr Morris or Ms Reitz.

127. The first consultation meeting was put back to 19 November 2018 at the Claimant's request. In the meantime, Ms Reitz wrote to the Claimant on 12 November, inviting him to a meeting in relation to his grievance on 14 November with Lynne Dineen, Chief Operations Director, who would be supported by Tanya Farry, HR Manager.

128. Ms Dineen provided her response to the grievance by letter dated 26 November 2018, noting that she did not uphold the Claimant's grievances. The letter indicated that the Claimant was able to appeal the outcome, but it appears that the redundancy process rather overtook events and that no appeal was made.

129. In advance of the consultation meeting, the Claimant asked for some further detail to help him understand how the redundancy had come about. Ms Reitz passed that enquiry on to Ms Ross and, on 19 November 2018, she emailed Ms Reitz and Mr Morris with further information. In this, she referenced that the business was proposing that the Cardiff office did not need someone at the level of CRM due to the size and scale of the site, and that the key responsibilities of the CRM had easily been picked up by the two senior drafters. She went on to say that the Prescot and Manchester offices were much larger, and therefore needed CRMs, and that London had more complex work, with a number of senior drafters and therefore needed a CRM. She commented that Cardiff was also very limited in its ability to find senior drafters as the region did not have the talent pool. She confirmed that they were at that point looking to recruit trainees to train them up, but that it would be expected that it would take around five years before any trainees would be able to do senior level work.

130. Mr Morris and Ms Reitz then met the Claimant on 19 November 2018 by video conference. The Claimant had intended for Mr Browne to accompany him, but had not been able to get hold of him, and indicated that he was happy to proceed unaccompanied. The notes of the meeting indicate that

Mr Morris explained the rationale almost in the identical terms set out by Ms Ross, stated that further consultation meetings would take place as required, and that, with regard to redeployment, Ms Reitz would provide the Claimant with an up-to-date list of vacancies and that he should apply for any he felt were of interest. Ms Reitz confirmed also that there was outplacement support available in relation to CV writing and interviewing skills. It was confirmed that a further meeting would take place on 22 November 2018.

131. The Claimant asked two specific questions. The first was who had made the proposal, to which Mr Morris replied that it was the senior management of the Personal Injury practice. The second was whether Mr Morris felt that the decision was fair, to which Miss Morris replied that it was a proposal. The Claimant confirmed that he would send Mr Morris questions in advance of the second meeting.

132. In advance of the second consultation meeting, on 21 November 2018, the Claimant provided a list of questions. These were subdivided into five areas: pre-consultation investigation; "envisaged picking up" of CRM key responsibilities; role options; redeployment/bumping; and redundancy. Including subsidiary questions, there were 52 questions in all. Ms Reitz replied, indicating that she and Mr Morris may not be able to answer all questions straight away but would come back to the Claimant subsequently. The Claimant questioned whether it would be better to provide full answers before meeting, but, soon after, sent a further email indicating he would attend the meeting regardless.

133. The meeting again took place by video conference on 22 November 2018. The Claimant confirmed that Mr Browne had not responded to him, but that he was again happy to continue unaccompanied. During the meeting, Mr Morris went through each of the questions, and provided an answer to most of them, noting, in relation to some, that they would be considered and answers subsequently provided. It was agreed that they would meet again on 28 November 2018.

134. One particular question that the Claimant had asked related to the CRM position in Manchester. The Claimant queried whether that role was included within the review, the implication being that the Claimant could move to undertake the Manchester CRM role. The role was being covered by one of the Manchester employees acting up on secondment following the departure of the previous CRM. Mr Morris indicated that they would look into that point and respond further. In fact, as confirmed by Miss Grewal in her evidence, which we accepted, the Respondent was, at the time, looking at the Manchester office and the costs team to see if a similar approach could be adopted in that office, i.e. that it could function without a CRM. In the event, due to the size of that team, which expanded further into 2019, it was decided that the CRM role would be retained and the individual acting up on a secondment basis was confirmed in that role as a permanent appointment on 1 May 2019. At the time of the consultation meetings with the Claimant however, the CRM role in Manchester was not available.

135. Ms Reitz provided answers to the questions that had not been answered during the second consultation meeting by email of 23 November 2018. The Claimant then sent an email to Ms Reitz on 26 November, with a further 39 questions. Ms Reitz then sent an email to the Claimant on 27 November, noting that, in light of the particular circumstances at the time, in the form of the Claimant's father suffering with his health, they would postpone the meeting to Tuesday 4 December 2018. In the meantime, Ms Reitz continued to provide the Claimant with updated vacancies, which included clarifying that several specific positions needed to be fulfilled from the identified locations and could not be undertaken from Cardiff.

136. The day before the meeting, Ms Reitz provided Mr Morris with proposed answers to the Claimant's further questions, and, at the meeting on 4 December, at which again the Claimant was unaccompanied, Mr Morris went through the answers.

137. The meeting commenced at 12:00pm and adjourned at approximately 12:30am, with an indication that it would reconvene in approximately an hour. The notes of the meeting indicate that it reconvened at 1:26pm. In the meantime, Miss Reitz had emailed Mr Morris at 12:26pm, with wording to be used in the event that he confirmed to the Claimant that the decision had been made that he should be made redundant. Ms Reitz explained in her evidence that this was sent by her in anticipation of the outcome, utilising standard precedent wording she had. She explained that whilst the first stage of the meeting concluded at 12:30pm, the last few minutes had not involved specific questions which needed noting, and that, at that time, she had sent the draft wording to Mr Morris.

138. During the adjournment, Mr Morris considered matters and concluded that the redundancy should be confirmed. On the Claimant's return, Mr Morris read out the wording that Ms Reitz had provided to him, which confirmed that his redundancy would be effective on 7 December 2018. A letter confirming the redundancy, prepared by Ms Reitz, was sent to the Claimant dated 6 December 2018. This was again based on a precedent document. It did not contain any reference to any ability on the Claimant's part to appeal. Indeed, the Respondent’s redundancy policy made no reference to such a stage in the process, and the evidence of Ms Reitz and Ms Grewal was that it was not something that the Respondent offered in respect of redundancy dismissals, bearing in mind that, in such circumstances, all matters would have been explored fully in the consultation process.

139. Subsequent to the dismissal, on 9 January 2019, the Claimant sent an email to Leanne Banks, another of the Respondent's HR managers. In this, he indicated that he was contemplating issuing a formal grievance regarding the redundancy decision and the procedure, and that, given the involvement of Ms Grewal, Mr Jarvis, Mr Morris and Ms Reitz, he would prefer the matter to be kept confidential between them. He also indicated that, as his previous grievances had all been dismissed, and in particular as the redundancy decision was made at such a senior level, he would prefer

the grievance to be handled by ACAS as mediators. On the same day, the Claimant also emailed Ms Grewal, noting that he was to be paid his annual bonus for 2018 December but had not received it.

140. Ms Banks ultimately replied on 21 January 2019, noting that, as the Claimant was no longer an employee, there was no option for him to raise a grievance. We observed that that was not strictly accurate, as the Respondent's grievance policy did indicate that grievances raised after employment had ended might still be considered, although we appreciated that this would not be an open-ended commitment and would depend on the particular circumstances.

141. Ultimately with regard to the question of bonus, it was confirmed to the Claimant that a condition of entitlement to the bonus was that the employee was in employment, and not under notice, at the point of payment. The bonus was due to be paid on 24 December 2018, and, as the Claimant's employment had ended by that date, he was no longer entitled to receive any bonus at that point, as had been made clear to the Claimant by Mr Wade in an email of 12 June 2018, which the Claimant had passed on to his team members on the same day.

Conclusions

142. Applying our findings to the issues to be determined, our conclusions were as follows.

Preliminary issue – admissibility

143. The Claimant sought to rely on the contents of settlement discussions with the Respondent prior to the termination of his employment, in fact, significantly prior to the termination of his employment, at the end of March 2018. The Respondent objected to the evidence being admitted, relying on the “without prejudice” rule, and, in relation to the "ordinary" unfair dismissal claim, on section 111A ERA.

144. As far as the without prejudice issue was concerned, we noted that, in order for the rule to apply and for evidence therefore to be ruled inadmissible, we needed to be satisfied that there was a dispute between the parties, and that the discussions amounted to a genuine attempt to settle the dispute. There are some exceptions to the rule, the one claimed to be relevant by the Claimant in this case being that of "unambiguous impropriety".

145. The Claimant accepted under cross examination that there was, at the relevant time, a dispute between him and the Respondent. Indeed, he had indicated, just prior to the discussions commencing, that he was going to contact ACAS for the purposes of early conciliation, i.e. as a precursor to a tribunal claim. We were therefore satisfied that there was a dispute between the parties at that point.

146. We were also then satisfied that the discussions were a genuine attempt on

the part of the Respondent to resolve that dispute. The Respondent put forward a proposed financial payment in return for the termination of the Claimant's employment and his waiver of claims, in circumstances where the Claimant had clearly expressed in emails that he was unhappy in his role, had lost trust and confidence in those managing him, and had raised, or was about to raise, his concerns externally, whether through regulators or via a tribunal claim. In our view, the Respondent's efforts were an attempt to see if a compromise could be reached, and, once its offer was rejected, with the indication from the Claimant being that any claim he might have would be worth considerably more, there was no further discussion.

147. The Claimant contended that the Respondent's conduct throughout the process was sufficiently poor to remove the without prejudice protection. However, we noted that the test of conduct amounting to unambiguous impropriety has a high threshold, and we did not consider that there was anything in the Respondent's conduct in relation to the discussions which approached that level.

148. As a consequence, we were satisfied that the without prejudice rule applied and therefore that the discussions were inadmissible.

149. That covered all claims, including the ordinary unfair dismissal claim, such that it was not necessary for us to decide the section 111A ERA point. However, had we needed to do so, we would have decided that section 111A applied, for the same reasons as led us to conclude that the without prejudice rule applied. The discussions were held before the termination of the employment, with a view to it being terminated on terms agreed, which engaged section 111A, and there was no improper behaviour, for the purposes of section 111A(4), which would have led to that the protection of the section being lost.

Unfair dismissal

150. As we identified at the outset, a key consideration for us was the reason for dismissal. The Respondent contended that a genuine redundancy existed and, therefore, that the reason for dismissal was redundancy. The Claimant disagreed and contended that the Respondent had been unable to demonstrate the reason for his dismissal.

151. We needed to consider the matter closely, as there was no documentary evidence before us of the discussions which led to the identification of the Claimant's role as potentially redundant, and nor did Mr Jarvis, the person principally involved in reaching that decision, appear before us to give evidence. However, we noted the evidence of Ms Grewal, who was involved in that stage of the discussions, that the identification of the Claimant's role as potentially redundant arose out of budgetary discussions which took place, as they did every year within the group, in August and September. We noted that that was in the context of the Respondent having undergone a very rocky financial period, and still being in a position where it needed to manage its financial position and, in particular, control costs. This included

looking at potential cost savings which, within a solicitors' firm, would largely involve looking at staff numbers.

152. The lack of documentation was not something that we found particularly surprising in the context of how the discussions arose. We noted, from incidental evidence provided by Ms Reitz, that there were approximately fifty redundancies across the Respondent's organisation in the period September 2018 to February 2019, in addition to the collective redundancies which took place in the NIHL team in Leeds. Those redundancies took place over some seventeen different areas of the practice, and we considered that most of them, including that relating to the Claimant, would have arisen as part of the budgetary process. Consequently, we did not consider that it was surprising that there was a paucity of direct written evidence of the rationale for redundancy. Overall therefore, notwithstanding the lack of written evidence, we were satisfied that the reason for the Claimant's dismissal had been redundancy.

153. We noted that the statutory definition of redundancy was made out in that there was a reduction in requirement for employees to carry out work of the particular kind carried out by the Claimant in the Cardiff office. In that respect, we noted the lower ratio within the Cardiff office of manager to other staff within the costs team, and also that the two senior drafters within the Cardiff team had taken on the Respondent's duties during his two lengthy periods of absence in December 2018 to January 2019, and June, July and August 2018. Indeed, as the Claimant had himself confirmed in his discussions with the occupational health adviser, and in other emails, even when he had returned, he was only undertaking a limited part of his duties, with the balance being managed by the two senior drafters.

154. In light of those points, and the overall drive within the Respondent's organisation to reduce costs and improve efficiencies wherever possible, we were satisfied that a redundancy situation existed, and therefore that redundancy was the reason for dismissal.

155. We noted the Claimant's contentions that the redundancy was, in effect, a sham, and that the underlying reason for dismissing him was either his health and his sickness absences, or the fact that he had raised grievances, and indeed brought tribunal claims, about his bonuses. We noted that he particularly felt that Ms Ross, the HR manager with responsibility for the costs business, was motivated to manipulate his dismissal in that regard. However, we took account of Mr Morris' evidence that he had to be persuaded to undertake the role of managing the redundancy consultation with the Claimant, and that he was "his own man", who had, in the past, reached decisions on internal HR matters which were not those that had been felt appropriate by immediate line management, e.g. he had upheld appeals against disciplinary sanctions. We considered that if there had been any underlying motivation from within the costs business itself, whether from Mr Jarvis or Ms Ross or both, then they would have managed the redundancy process themselves, and would not have brought in a relatively independent person to make the ultimate decision.

156. We also noted the evidence of Ms Grewal that Ms Ross played no part in the identification of the Claimant's role as potentially redundant, and would never have played any part in that decision, bearing in mind that HR's role was simply to assist with the implementation of strategic decisions reached by management. Overall therefore, whilst the Claimant's health and the concerns he had raised may have been in the background, and, in our view may have made it a little easier for the Respondent to take the decision that the termination of his employment by reason of redundancy should be explored, we were satisfied that redundancy was the reason, or certainly the principal reason, for his dismissal.

157. Having reached that conclusion, that effectively meant that the Claimant's claim of unfair dismissal pursuant to section 104 ERA failed, as, having decided that the reason for dismissal was redundancy, it followed that the reason or principal reason for the dismissal was not that the Claimant had raised a grievance or brought tribunal claims, asserting that his statutory right not to have unauthorised deductions from his wages had been infringed.

158. Turning to the consideration of whether the Claimant's dismissal by reason of redundancy was fair in all the circumstances, we considered the adjusted elements of the Compair Maxam guidance. First, with regard to pooling, we noted that the Respondent had proceeded on the basis that the Claimant was effectively in a "pool of one" in the role of CRM in the Cardiff office. Two possible pooling options were explored in the evidence put before us, with a third being raised by the Claimant during his cross-examination of Mr Morris.

159. The two that were explored were the possibility of the Claimant being pooled with the other CRMs in the other offices and, if, following selection, considered appropriate to be retained, moving to one of the other offices with the CRM who had come bottom of the selection process being made redundant. The second was the prospect of pooling the Claimant with the two senior drafters in the Cardiff office on the basis that, if successful in the selection process, he would then have moved to take on one of the senior drafter's roles, sharing the management of his former duties as CRM, with one of those senior drafters being redundant.

160. With regard to the former potential pooling option, we noted that the Claimant had, both in the redundancy consultation meetings, and in the prior discussions about redeployment more generally, very clearly indicated that he wished to work from the Cardiff office. He did raise the prospect in the redundancy consultation of the CRM position in Manchester being one that he could undertake, but at that time, and until May 2019, there was no individual directly fulfilling that role, with whom he could be pooled.

161. With regard to the latter potential pool, we noted that the Claimant in his own evidence had confirmed that he had not undertaken costs drafting work for some eight years, which predated the Jackson reforms and the

introduction of costs budgeting, which effected a significant change in the role of a costs drafter. We also noted that the two senior costs drafters were paid approximately £20,000 per annum less than the Claimant. and that he had indicated that he was looking to try to retain his salary at his previous level.

162. We were surprised that the Respondent had not formally explored with the Claimant either of the possible pooling options, and had not checked with him that he did not wish to relocate to one of the other offices or to take a lower role as a costs drafter within the Cardiff office. However, we were conscious that we needed to assess the Respondent's actions by reference to the range of reasonable responses, and we did not think that identifying the Claimant as being in a pool of one in the circumstances as they prevailed, was outside that range. We noted that a possible alternative position for the Claimant, one which arose both in the context of his potential redundancy, and had also arisen in the context of his more general redeployment discussions, was that of a costs drafter within the Cardiff office, and that the Claimant had indicated that he did not wish to be considered for such a role.

163. With regard to the potential pooling with Mr Morris himself, i.e. such that the Claimant could undertake the Head of Costs role, we noted that Mr Morris only moved into that role at the time that the Claimant was being made redundant. The discussions about him moving into that role would however have been undertaken at very much the same time as the discussions about the Claimant's potential redundancy. However, the role ultimately filled by Mr Morris was significantly more senior than the role carried out by the Claimant, and carried with it a salary of more than double. We did not therefore consider that there would ever have been any realistic prospect of the Claimant undertaking that role, and we also noted that he himself during the consultation process had not raised any query as to why he had not been considered for it. We also noted Mr Jarvis' email of September 2018, in which he had invited anyone interested in undertaking that role to apply, and that the Claimant had not submitted any application. We did not therefore consider that this was ever a realistic pooling option.

164. With regard to consultation, we noted that there were three separate consultation meetings, and, in advance of the last two, the Claimant provided a number of written questions to which answers were given. Whilst the Claimant indicated that the confirmation of his redundancy during the meeting on 4 December 2018 meant that he was denied the opportunity to consider the answers given to his questions at the start of the meeting on that day, we did not consider that this meant that there was less than effective consultation, and certainly that the lack of any further meeting took the consultation outside the range of reasonable responses. It seemed to us that, at the point that the decision was made to confirm that the Claimant should be dismissed by reason of redundancy, he had had a reasonable opportunity to raise questions and concerns about his identification as redundant and had received answers to them.

165. We were however, deeply concerned about the lack of any appeal. We noted that the Respondent's redundancy policy did not contain any reference to an appeal, although the policy did not cover the particular processes that would be followed, only saying that consultation will be carried out with individual colleagues as appropriate.

166. We also noted that there is no ACAS code of practice on the handling of redundancies, and that the ACAS code of practice on disciplinary and grievance procedures, which does contain the provision of an opportunity to appeal as a key element, does not apply to dismissals by reason of redundancy.

167. We also noted the lack of any direct case law on the question of whether an appeal should be allowed in the context of a dismissal by reason of redundancy. However, we did not that the EAT, in Afzal v East London Pizza Ltd t/a Dominos Pizza (UKEAT/0265/17/DA), had said, in the context of a dismissal on the "some other substantial reason" ground, that, "*There is no doubt that in modern employment relations practice the provision of an appeal is virtually universal*". In that case, HHJ Richardson went on to note that in disciplinary cases the ACAS Code says that an opportunity to appeal should be given, and that whether or not a case is classified as a disciplinary case, that is the starting point in applying section 98(4) ERA, and also that whether a dismissal is unfair is to be judged on the whole process, including any right of appeal.

168. We noted the Respondent's contention that there had been a comprehensive consultation process, which therefore meant, in its view, that there was no need for an appeal. Indeed, we noted the evidence of Ms Reitz and Ms Grewal that it was the Respondent's standard practice not to allow appeals against dismissals by reason of redundancy.

169. However, when assessing whether the Respondent's actions in this regard fell within the range of reasonable responses, we considered that a reasonable employer, acting reasonably in the circumstances, would have allowed the employee the opportunity to appeal against the redundancy decision. Notwithstanding that there had been a reasonable consultation process and that, in the circumstances of this case, a relatively independent manager had been brought in to manage the redundancy consultation process and to make the final decision as to whether the Claimant should be made redundant, we considered that it would have been appropriate for the Claimant to have had the opportunity to lodge an appeal against that decision and to have that appeal considered by another of the Respondent's managers.

170. With regard to the final element of the Compair Maxam guidance, we noted that the Respondent had provided the Claimant with details of all potential vacancies, and that the Claimant had explored the possibility of undertaking some of them. It appeared to us that many, indeed perhaps the majority of them, were not in any way suitable for the Claimant, being roles for which formal legal qualifications were required. For those that remained, none

were found to be suitable, due to the Claimant's lack of experience and qualifications in respect of the available roles and/or the need for them to be carried out at locations other than Cardiff. Overall, we considered that the Respondent's actions in respect of exploring alternative employment options were reasonable in the circumstances.

171. Ultimately, however, considering the question of fairness in the round, we considered that the lack of any appeal led to a conclusion that the dismissal of the Claimant was unfair.

172. Notwithstanding the indication that the hearing would be confined to matters of liability, with compensation being assessed at a subsequent hearing if required, we considered that it would be appropriate for us to consider whether our view was that, notwithstanding our decision that the dismissal of the Claimant was unfair by virtue of the lack of any appeal, there should nevertheless be any compensatory award, bearing in mind our conclusion that the dismissal, at the point of the decision to confirm the redundancy taken on 4 December 2018, was indeed fair. We did not consider that there would be any prejudice to either party in them not having had an opportunity to make submissions on this point.

173. With regard to potential compensation, we noted that the Claimant had received a redundancy payment which meant that, applying section 122(4)(b) ERA, that no basic award should be made.

174. With regard to the compensatory award, we noted that section 123(1) ERA indicates that the amounts of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer.

175. As we have noted, we concluded that the dismissal decision taken by Mr Morris on 4 December 2018 was fair in all the circumstances. We also did not see that the Claimant would have had any prospect of advancing any argument on appeal which would have undermined that decision and led to a different conclusion. In the circumstances, and notwithstanding our finding that the lack of an opportunity for the Claimant to appeal made the dismissal decision fundamentally unfair, we did not consider that any appeal would have made any difference to the dismissal decision and, therefore, we concluded that the Claimant would not have sustained any losses in consequence of that unfair dismissal. That led us to conclude that no compensatory award should be ordered.

<u>Discrimination arising from disability</u>

176. For the reasons we have identified above in relation to our conclusions on the unfair dismissal claim, we did not consider that the Claimant's sickness absence had any bearing on the decision to dismiss him. Therefore, we could not conclude that his dismissal had been because of something

arising in consequence of his disability. The Claimant's claim under section 15 EqA therefore failed.

Reasonable adjustments

Communication

177. We disagreed with the Respondent's contention that there was no PCP applied in the form of a requirement that the Claimant communicate with his managers directly, either by telephone or face-to-face about certain matters. We considered that the letter sent by Melanie Hetherington following the welfare meeting, which made it clear that the Claimant would be required to communicate either by telephone or face-to-face when required, amounted to a PCP.

178. We were also satisfied that the PCP was something which put the Claimant at a substantial disadvantage in comparison to persons who were not disabled, in that, due to the impact of his condition at the time, the Claimant found it difficult to communicate directly.

179. However, we were not satisfied that the Respondent failed to take reasonable steps to avoid the disadvantage. We noted that, whilst the Respondent did not agree that the Claimant could communicate only in writing, i.e. essentially via email, by far the largest part of communication with his managers from that point on, was indeed undertaken by email. We also noted, and agreed with, the Respondent's contention that the nature of the Claimant's managerial role meant that the possibility of direct verbal communication could not be removed entirely, and it would have been an unreasonable step to have required the Respondent to have confined its communications with the Claimant exclusively to writing.

Work allocation

180. We were not satisfied that the Respondent had applied a PCP in the way asserted in the list of issues, i.e. relating to the allocation of all high-value work to the Respondent's offices other than its Cardiff office. However, we noted that the Respondent did have a policy in the first half of 2017 of placing all NIHL work in the Cardiff office, which potentially indirectly meant that the Cardiff office was less able to undertake high-value work. We were therefore satisfied that a PCP, in the form of allocating NIHL cases solely to the Cardiff office, was applied.

181. However, we noted that that policy was only implemented in the first half of 2017, and that a new allocation policy was issued and implemented in August 2017. That was before the onset of the particular bout of anxiety and depression on the part of the Claimant, before he had any absence as a result of that, and before he sought medical assistance. We did not therefore consider that the policy had put him, at that time, at any substantial disadvantage due to a disability.

182. In any event, we noted that, whilst the Cardiff office was allocated the NIHL work, the Respondent's Prescot office itself also undertook less lucrative work which potentially impacted on its ability to reach its targets. We considered therefore that we would not have been satisfied that any substantial disadvantage arose, in fact, due to the impact of the allocation policy in the first half of 2017 and that, if it had, we would have been satisfied that any such disadvantage would have ceased to arise from August 2017.

Return to work

183. The contention here was that the Respondent applied a PCP in the form of having no work plan or prearranged schedule for an employee returning from sick leave. We were not however satisfied that the Respondent applied any such policy.

184. We noted the evidence of Ms Reitz, which was not challenged, that, where an employee has been absent for some four weeks or more, a return to work discussion would be held to assess whether any adjustments, such as a phased return, were required. Ms Reitz also noted in her evidence, which accorded with our experience, that contact may not be maintained with an employee absent with a stress or anxiety condition, as that may exacerbate that particular condition.

185. It appeared to us that the Claimant's particular concern in relation to his return to work was that his access to the Respondent's systems had not been reinstated. We certainly considered that access should have been reinstated in advance of his return, but we did not consider that this involved any application of a PCP. Instead, we considered that this was simply a human error at the time and, once it was brought to the attention of management, was fairly swiftly rectified. We noted that the Claimant's Fit Note expired the day before his return, and therefore that his return could have been anticipated by the Respondent's management, although equally, we noted that there had been no contact with the Respondent's management by the Claimant informing them that he was indeed going to return on 5 January 2018. Ultimately however, we considered that what happened on the day was simply down to human error.

186. Even if we had considered that a PCP had been applied, which put the Claimant at a substantial disadvantage, we did not consider that it would have been a reasonable step for the Respondent to have put in place any form of work plan or procedure on his return, and felt that that would have been something to address with the Claimant on his return in the context of a return to work meeting.

OH advice

187. The contended PCP here was what was said to be the Respondent's practice of not following occupational health advice. However, we found no evidence of any such practice.

188. The first two reports did not, in our view, provide specific steps for the Respondent to take, beyond recommendation of mediation with management or redeployment. Mediation appeared to have been placed somewhat on the backburner following the welfare meeting in May 2018, where it appeared that the Claimant's preferred focus was on redeployment, and indeed there was a lot of discussion about redeployment opportunities in subsequent weeks and months, albeit with no realistic redeployment opportunities being identified. Mediation was then specifically and directly recommended in the occupational health report in September 2018, but, by that time, Mr Wade had left, and he was the last remaining member of the executive management team of the Compass business. As the Claimant himself appeared to appreciate in his emails, Mr Wade's departure significantly impacted on this element of his concerns, and, in our view, there was no one left then with whom mediation could have taken place by that stage. Consequently, even if we had considered that the Respondent had applied a PCP in the way alleged, in the context of the September occupational health report, the Claimant was not placed at any disadvantage as a result of any failure to pursue mediation at that time.

Arranging meetings during sick leave

189. The asserted PCP here was the Respondent's practice of holding face-to-face meetings in the workplace, which were relevant or important to employees. In our view however, the fundamentally claimed PCP here was not the holding of face-to-face meetings themselves, but the holding of face-to-face meetings outside the specified hours being worked by the Claimant at the time.

190. In that regard, we noted that two meetings had been arranged, and had ultimately taken place, outside the Claimant's restricted hours at the relevant times. The first took place at 1:30pm on 28 June 2018, at a time when the Claimant's phased hours ended at 1:30pm, with a second taking place at 2:30pm on 10 July 2018, at a time when the Claimant's phased hours ended at 2:30pm.

191. We were not satisfied, however, that there was any form of provision, criterion or practice applied by the Respondent in arranging those meetings. They were arranged during what would be considered to be usual work hours for virtually all employees, and only arose on two occasions. We did not therefore consider that they were held with sufficient regularity to amount to a PCP. We also noted that the Claimant was not required to attend the meetings, he was simply asked if he would mind "jumping on" the first call when it was realised that its delayed start meant that the call was to take place outside his hours, and when the Claimant indicated, with regard to the second call, that he would not attend but that one of his deputies would attend instead, no issue was taken by the Respondent.

192. We did not, in any event, consider that the Claimant was put at any substantial disadvantage as a result of the holding of those meetings at the

relevant times. The Claimant confirmed that one or other of the senior drafters would attend meetings occasionally in his place if he was absent, and that is what happened with regard to the second call. The first call was to notify staff about the departure of the then chief executive officer of the Compass business and the Claimant received that information later that day.

Reduction of sick pay

193. The contended PCP here was the application of the Respondent's sick pay policy, insofar as it provided for a reduction of pay at certain chronological trigger points. The Respondent contended that there was no such policy, but we disagreed with the Respondent's contention in that the Respondent did have a policy of only paying a limited amount of full company sick pay, which, in the Respondent's case was contractually set at twenty days. We also considered that that policy did potentially put the Claimant at a substantial disadvantage compared to non-disabled employees as he would be more likely to have longer sickness absences and thus be impacted by any restriction on company sick pay than others.

194. However, we noted that, whilst the Respondent did have a policy of not paying sick pay beyond a certain period of absence, they had not applied the policy in the Claimant's case, or certainly not to the degree indicated. The Claimant was allowed additional sick pay, or alternatively additional holiday or other paid leave, such that he was, in effect, paid for all his sickness absences up to April 2018, when the expectation under the Respondent's policy was that his company sick pay would have expired in January 2018. He was then given a further period of two weeks' half pay before being moved to statutory sick pay. Following the Claimant's return from a further lengthy absence in June 2018, he was given a further two weeks' paid leave in October.

195. We also noted that the Court of Appeal, in O'Hanlon v Revenue and Customs Commissioners [2007] ICR 1359, had upheld the decision of the Employment Appeal Tribunal, about the claimant's claim that extending sick pay would be a reasonable adjustment, in which it had said:

> "It was suggested that the claimant would suffer hardship as a result of the reduction in pay, but it was not alleged that she was in any essentially different position to others who were absent because of disability related sickness … it seems to us that it would be wholly invidious for an employer to have to determine whether to increase sick payments by assessing the financial hardship suffered by the employee, or the stress resulting from lack of money - stress which no doubt would be equally felt by a non-disabled person absent for a similar period."

196. Consequently, we felt that the discretion exercised by the Respondent on a number of occasions was a reasonable step to take to reduce the disadvantage caused by the potential impact of any policy applied by the Respondent. We also noted that the Respondent did not, at any stage, look

to take any action in respect of the Claimant's absence, which might otherwise have been triggered by it. Finally, we also noted the Claimant's own evidence under cross-examination that he would have been likely not to have returned had his company sick pay remained in place in June 2018.

Harassment

197. The Claimant's claim in this regard focused on the conduct of a meeting on 16 February 2018. Specifically, he contended that he was accused of insubordination and of failing to communicate appropriately, and was required, on the spot, to confirm whether or not he was fit for work. Our findings in respect of this are set out at paragraphs 62 to 69 above.

198. Considering the application of section 26 EqA, as noted at page 6 above, in stages, we were satisfied that references to the Claimant essentially being insubordinate and of having a history of inappropriate communications could be considered to be unwanted. We were not however satisfied that the questions about whether the Claimant was fit to be at work or should take paid leave or should seek medical assistance were unwanted, as it appeared to us that Ms Ross and Mr Wade were only seeking to do what was best for the Claimant in the circumstances.

199. We then considered whether the conduct, in the form of referencing the potential for the Claimant's actions to have been viewed as insubordination and the reference to him communicating inappropriately, was related to his disability. In broad terms, we were satisfied that it was. It seemed to us that the Claimant's email to Mr Wade on the evening of 15 February 2018, and the emails he sent to other of the Respondent's managers by way of escalation on 16 February 2018, which were the actions considered to potentially amount to insubordination and/or to be inappropriate communications, had been triggered by the Claimant's condition. In our view, had he not been suffering from anxiety in the way that he was at the time, he would not have taken the action he did or expressed himself in the way that he did. We were therefore satisfied that the matters raised related to his disability.

200. We then considered hostile, degrading, humiliating or offensive environment for him whether the conduct had the purpose or effect of violating the Claimant's dignity, or of creating an intimidating,. We saw no evidence of any motive or intent on the part of Ms Ross and Mr Wade to violate the Claimant's dignity or to create such an environment. With regard to effect, we considered that the Claimant certainly perceived that his dignity was being violated by virtue of the comments made at the meeting. However we were conscious that we also had to consider the other circumstances of the case and whether it was reasonable for the conduct to have had that effect.

201. In that regard, we were conscious of the context behind the meeting on 16 February 2018. We considered that the email exchange between the Claimant and Mr Wade on 15 February had been anodyne, and that Mr Wade and Ms Ross would have understandably been somewhat on the

defensive as a result of the allegations made by the Claimant to Mr Wade directly in his email on the evening of 15 February, and by the escalation of matters by the Claimant on 16 February to more senior people within the Respondent's organisation. Consequently, we felt that it was not unreasonable for Mr Wade and Ms Ross to wish to speak to the Claimant on 16 February. We also did not consider that it was unreasonable at that time for Ms Ross and Mr Wade to be somewhat critical of the Claimant's actions and to point out the way in which they could be perceived.

202. We noted that, by that stage, the Claimant had had a period of sickness absence by reason of anxiety and, therefore that Ms Ross and Mr Wade were aware of the Claimant's condition, but we did not consider that they would reasonably have been fully aware of the Claimant's difficulties at that time. We also noted, in the Claimant's summary of the meeting in his further and better particulars document, that Mr Wade indicated that the Claimant's condition might have caused his actions, and that ultimately the call moved on to discussing whether the Claimant was fit to be in work at that time. Whilst, as we have noted, the Claimant took issue with that discussion, in our view that was simply an attempt by Ms Ross and Mr Wade to check that the Claimant was fit to be in work, and we anticipate that this was largely driven by the Claimant's reaction at that time.

203. We also noted that, in the immediate aftermath of that meeting, in fact, on the same day, contact was made by Ms Ross with Mr Browne in the Respondent's Cardiff office, and that he was brought in to assist the Claimant with subsequent discussions with Mr Wade, albeit that that did not appear to have operated for a particularly long period of time.

204. Overall, in our view, we did not consider that, taking into account the overarching circumstances, it was reasonable to conclude that the Respondent's conduct, in the form of raising issues of potential insubordination and inappropriate communication, should be considered to have had the effect of violating the Claimant's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We considered that, had the Claimant's managers made similar comments subsequently, i.e. in circumstances when they would have been more on notice of the impact of their words on the Claimant, then a harassment claim would have been made out, but in the circumstances that applied on 16 February 2018, it was not.

<u>Unauthorised deductions</u>

205. We noted that the focus of the Claimant's claim in this regard, was on the wording of the appendix to the letter which formed his contract with the Respondent following the initial TUPE transfer from Leo Abse & Cohen in 2015, and the wording relating to bonus is set out at paragraph 33 above.

206. The essence of the Claimant's claim was that the reference to the bonus scheme and the range of payments meant that he was contractually entitled to such a bonus in respect of subsequent financial years. However, we

noted that the wording in the appendix included a sentence that the Respondent's bonus schemes were discretionary and non-contractual, and that participation was subject to eligibility.

207. In this regard, we agreed with the submission made on behalf of the Respondent that there cannot be a contractual right to a non-contractual bonus, save potentially where the employer's actions may be said to give rise to a contractual commitment, e.g. by virtue of custom and practice. We noted that the Claimant was not pursuing any argument that there had been any additional express or implied contractual promise, and we considered that any bonus payable was entirely discretionary.

208. In the absence then of any perversity, which was not a point pursued by the Claimant and was not something we considered had arisen, the Claimant was only entitled to the bonuses declared by the Respondent. In that regard, he received a bonus in 2017 of £3,400.00, in line with CRMs within the Respondent's business, and he would have been due to receive a bonus, albeit adjusted to reflect his time physically in work, in respect of 2018, had he remained in employment at the time of payment of 24 December 2018.

209. In that regard, the terms applied by the Respondent were clear, had been communicated to the Claimant, and, indeed, had been communicated onwards by the Claimant to those reporting to him, and meant, that in order to remain entitled to payment of the bonus, the individual employee had to remain employed, and indeed not have been under notice, at the point when bonuses were paid. In respect of 2018, the Claimant was simply not employed at the time bonuses were paid, and therefore he had no entitlement to payment. Consequently, we did not consider that there had been any unauthorised deductions from wages.

Victimisation

210. In relation to this claim, we first had to consider whether the Claimant had done a protected act for the purposes of section 27 EqA, with the Claimant asserting that the email he sent to Ms Reitz and Ms Grewal on 26 September 2018 amounted to such a protected act, in that he had complained of a continued failure to make reasonable adjustments. We noted that the heading to one of the Claimant's bullet points in that email did indeed refer to a continued failure to make reasonable adjustments. However, the subsequent content of that section made no reference at all to any such failure; it simply referred to the Claimant assuming that Mr Wade had left and that, given that Mr Wade had been the sole surviving member of the original Compass executive team and his only remaining line management from whom he needed to be redeployed, the position could be vital to his role.

211. In order for there to be a protected act, an employee must make an allegation that that there has been a contravention of the Equality Act 2010. We did not see that the content of the particular bullet point contained any

such allegation. We did not consider that a broad assertion in a heading of a continued failure to make reasonable adjustments amounted itself to an allegation. We did not therefore consider that the Claimant had made a protected act.

212. In any event, the Claimant contended that the detriments he suffered as a result of doing a protected act were being subjected to a fabricated or sham redundancy process and being dismissed. As we have noted above, we did not consider that there was a fabricated or sham redundancy process, and we considered that the reason for dismissal was redundancy. Therefore, had we considered that the Claimant had done a protected act in the way alleged, we would not have considered that he was treated to any detriment as a result of that protected act as we did not consider that it would have had any bearing on the Respondent's actions.

Employment Judge S Jenkins

Date: 8 April 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
21 April 2021
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FOR EMPLOYMENT TRIBUNALS