



EMPLOYMENT TRIBUNALS

Claimant: Mr P Kilonzo

Respondent: MUFG Bank Ltd

Heard at: Central London (by CVP videolink)

On: 1- 5, 8 – 11 & 16 November 2021
& 17 -19 November 2021 (In Chambers)

Before: EJ Brown

Representation

Claimant: Ms A Brown (Counsel)

Respondent: Ms C Darwin (Counsel)

JUDGMENT

The Judgment of the Tribunal is that:

- 1. The Claimant made protected disclosures but the Respondent did not dismiss the Claimant automatically unfairly on the grounds of his protected disclosures.**

REASONS

1. By a claim form presented on 28 August 2019 the Claimant brought a complaint of automatic unfair dismissal on the grounds of protected disclosures under s103A ERA 1996 against the Respondent, his former employer.

2. The List of Issues had been agreed as follows:

A. Qualifying Disclosures

1. Did the Claimant make one or more Qualifying Disclosures within s.43B(1)(b)ERA 1996?

(1) Did the Claimant draft or otherwise author the specific passages he relies on

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(as set out in the appended table (the "Table") in the following 21 reports?

- (a) The London KYC 2018 - Systems Testing Report (Draft) of March 2019;
- (b) The London KYC 2018 - Systems Testing Report (Draft) of March 2019;
- (c) The London KYC 2018 - Systems Testing Report (Final) of 29 March 2019;
- (d) The MUFG Securities EMEA PLC (MUSE) Transaction Monitoring Testing Report (Draft) of 21 January 2019;
- (e) The MUSE Transaction Monitoring Testing Report (Draft) of 21 March 2019;
- (f) The MUSE Transaction Monitoring Testing Report (Draft) of 29 March 2019;
- (g) The MUSE Transaction Monitoring Testing Report (Final) of 29 March 2019.
- (h) The MUSE Sanctions Testing 2018 Report (Executive Summary) of 27 March 2019;
- (i) The MUSE Sanctions Testing 2018 Report (Draft Detailed List) undated;
- (j) The MUSE Sanctions Testing 2018 Report (Executive Summary) of 27 March 2019;
- (k) The MUSE Sanctions Testing 2018 Report (Detailed List) of 27 March 2019;
- (l) The MUSE Sanctions Testing 2018 Report (Executive Summary) of 27 March 2019;
- (m) The MUSE Sanctions Testing 2018 Report (Draft Detailed List) of 27 March 2019;
- (n) The MUSE Sanctions Testing 2018 Report (Draft Detailed List of 2019);
- (o) The MUSE Sanctions Testing 2018 Report (Executive Summary) of 29 March 2019;
- (p) The MUSE Sanctions Testing 2018 Report (Draft) of 5 April 2019;
- (q) The MUSE Sanctions Testing 2018 Report (Executive Summary) of 5 April 2019;
- (r) The MUSE Sanctions Testing 2018 Report (Draft Detailed List) of 5 April 2019;
- (s) The MUSE Sanctions Testing 2018 Report (Draft) of 5 April 2019;
- (t) The MUSE Sanctions Testing 2018 Report (Draft) of 10 April 2010;
- (u) The MUSE Sanctions Testing 2018 Report (Draft) of 10 April 2019.

2. If so, did this amount to a disclosure of information by the Claimant to the Respondent on the specific dates that the reports were sent? (The Claimant says he made disclosures to the people included in the distribution lists contained in the reports on the specific dates that they were sent (as set out above))?

B. Protected Disclosure

3. Was any qualifying disclosure made in accordance with any of sections 43C to 43H ERA 1996?

4. It is accepted that any qualifying disclosure (as defined by section 43B ERA 1996) that the Claimant succeeds in proving he made in any

of the 21 reports as per the above which was made to a more senior member of the Respondent's staff than the Claimant, would have been made in accordance with s.43C(1)(a) ERA 1996.

C. Automatic unfair Dismissal

5. Has the Claimant proved on the balance of probabilities that the reason for his dismissal and/or the principal reason for his dismissal was that he made a protected disclosure? (See *Ross v Eddie Stobart Ltd* EAT 0068/13 and *IDS Handbook on Whistleblowing* at 10.20 on the burden of proof in s.103A ERA 1996 cases in which an employee lacks qualifying service to bring an ordinary unfair dismissal claim.)

6. The Respondent says the Claimant was dismissed for failing to meet the required standards of performance / behaviour during his probationary period.

D. Remedy

7. If the ET finds that the Claimant's dismissal was automatically unfair, applying *Polkey*, would the Claimant have been dismissed fairly in any event?

8. If the Claimant was unfairly dismissed, was his dismissal to any extent caused or contributed to by any action of the Claimant?

9. If so, what reduction to the compensatory award would it be just and equitable for the ET to make having regard to that finding?

10. Was the Claimant's conduct before the dismissal such that it would be just and equitable to reduce the basic award?

3. The Claimant relied on 21 different testing reports, on 3 themes, in saying he made protected disclosures to the Respondent. He had produced a Disclosure Mapping Table, quoting each part of each report on which he relied as a protected disclosure. He relied on each highlighted part of each report as separate disclosure. The Claimant therefore relied on 310 disclosures in total.
4. The Claimant's disclosure mapping table is appended to this judgment.
5. At the start of the hearing, Ms Darwin for the Respondent made clear that, if the Tribunal found that the Claimant had disclosed the information in the reports, then it was NOT in dispute that the Claimant had a reasonable belief that the information disclosed in the reports tended to show that the Respondent was in breach of a legal obligation to which it was subject and that the disclosure was in the public interest.
6. What was in dispute, as was clear from the List of Issues, was whether the Claimant had himself disclosed the information in the reports and, if he had, whether he had disclosed it to a more senior officer than himself, and therefore to his employer, rather than to colleagues at the same level in the organisation.

7. The Tribunal heard evidence from the Claimant. It heard evidence from:
 - 7.1. Colleen Stack, Managing Director, EMEA Regional Head of Financial Crimes in the Respondent's Global Financial Crimes Division and the Claimant's line manager;
 - 7.2. Douglas Tucker, the Respondent's EMEA Head of Compliance;
 - 7.3. Cassia Murphy, Director and Deputy Head of HR Advisory in the Respondent's Human Resources team;
 - 7.4. Jessica Quinn, Senior Audit Manager; and
 - 7.5. Yulia Tynes, Vice President in the Respondent's EMEA (i.e. Europe, Middle East and Africa) Financial Crimes Testing Team (the "Testing Team") in the Respondent's Global Financial Crimes EMEA Division, for the Respondent.

8. The Tribunal had the following documents:
 - 8.1. Core hearing bundle
 - 8.2. Main hearing bundle
 - 8.3. Correspondence bundle
 - 8.4. Witness statement bundle
 - 8.5. Specific disclosure bundle
 - 8.6. Agreed Cast List
 - 8.7. Agreed Acronyms List
 - 8.8. Chronology
 - 8.9. Claimant's Disclosure Mapping Table
 - 8.10. Extracts from the Respondent's 1 January 2019 handbook relating to Performance reviews, Disciplinary policy, Capability policy, Grievance policy, Anti-discrimination and harassment policy
 - 8.11. Extracts from Regulations (provided by the Claimant)
 - 8.12. Respondent's Procedure and Standard for the Annual Testing Plan

9. Page numbers in this judgment refer to the Main Bundle unless otherwise stated. Both parties made written and oral submissions. During submissions, the Tribunal was also given a Bundle of Authorities, Respondent's Summary of its position on Qualifying Disclosures and an agreed reconciliation between the page references used by the Claimant in his disclosure mapping table and the page references for those reports in the Main Bundle. During the hearing, I ordered some specific disclosure sought by the Claimant and refused other applications for specific disclosure. I gave oral reasons for my decisions at the time. The Respondent complied with the specific disclosure orders I made.

10. I reserved my judgment.

Relevant Facts

11. The Respondent is part of the Mitsubishi UFJ Financial Group ("MUFG") which is headquartered in Tokyo, Japan. MUFG is a leading financial services organisation, providing commercial, retail and investment banking, wealth management, trust, capital markets and transactional banking services. The Respondent is a Japanese incorporated bank, which operates in England through its London branch.

12. The Claimant commenced employment with the Respondent as EMEA (Europe, Middle East and Africa) Regional Head of Financial Crimes Testing

in MUFG's Global Financial Crimes Division on 12 November 2018. His corporate grade was "Director".

13. The Claimant had over 16 years' experience in similar roles at large international organisations before joining the Respondent.

14. Under the Claimant's contract of employment, the Claimant was subject to a 6 month probationary period:

"2.1 You are required to complete a probationary period of six months from the date of commencement of employment (the "Probationary Period"). ...

2.2 If during the Probationary Period the Bank is dissatisfied with your performance, your employment may be terminated at any time by the Bank on one month's written notice or the Probationary Period may be extended, by written notice, for the better assessment of your performance." Pp139-147.

15. MUFG's Employee Handbook provided, p2439,

"1.1 Probation

New joiners subject to a probation period, as expressed in their Employment Contract, will have their individual performance and suitability for the role assessed during this time.

All employees are required to achieve and maintain high standards of performance in their role. Therefore, MUFG will seek to ensure that such standards and the requirements of the role are communicated to the employee at the commencement of employment. Performance will be monitored and the employee will be given such training and support as the Company considers appropriate in order for them to carry out their role successfully.

If performance and conduct is deemed satisfactory, the appointment will be confirmed at the end of the probationary period.

If, however, an employee's performance or conduct are deemed unsatisfactory during the probationary period ...the Company may elect to terminate their employment. Dismissal may take place during or at the end of the probationary period and the employee will be given appropriate notice as contained in their contract of employment.

The Company may elect not to follow any of the policies or procedures set out in this handbook during the probationary period if it considers it appropriate to do so.

Where further time is required to meet the required standards, the probationary period may be extended by the Company by whatever period is deemed appropriate by the employee's line manager in consultation with HR."

16. At the time of the Claimant's employment with MUFG, its Global Financial Crimes Division was a relatively new function. It had been established as an independent division from the Compliance Division in November 2017. The Claimant was the first person to be recruited to the role of EMEA Regional Head of Financial Crimes Testing. In his role, the Claimant managed the Testing Team, which is comprised of financial crimes compliance testing professionals.
17. The Testing Team's duties include: developing and implementing MUFG's global financial crimes compliance testing program; developing and executing its annual testing plan; providing reports on testing findings and testing reviews; and escalating financial crimes compliance testing findings.
18. The Claimant's job description provided that the main purpose of his role was, "... leading financial crimes compliance testing activities, including execution of the EMEA Financial Crimes Compliance test plan ... and providing local reporting oversight... This includes leading and managing a team, engaging with key ... personnel across EMEA including the Regional Financial Crimes Compliance Head... .", p398.
19. His job description said that the Claimant was required, amongst other things, to, "Oversee and lead a team of financial crimes compliance testing professionals to perform complex effectiveness reviews and enterprise IT application(s) testing.. " and "Escalate testing concerns and exceptions requests to the Global Head of Financial Crimes Compliance Testing in a timely manner." P399.
20. It was therefore the Claimant's responsibility, when providing reports on testing findings, to escalate the findings to the responsible individuals, so that the findings could be addressed appropriately.
21. The Claimant had a dual reporting line to :
 - 21.1. Colleen Stack, Managing Director and EMEA Regional Head of Financial Crimes in the Respondent's Global Financial Crimes Division; and to
 - 21.2. Donald Carbaugh, Managing Director and Global Head of Financial Crimes Compliance Testing & Issues Management – New York. Ms Stack was the Claimant's local (London) Line Manager and Mr Carbaugh was the Claimant's Line Manager in the United States.
22. I accepted Ms Stack's evidence that the Claimant would typically raise issues concerning tests being undertaken in the region to Ms Stack, while issues relating to functional matters on testing methodology and requirements were more appropriately raised with Mr Carbaugh.
23. Ms Stack is approved by the UK Financial Conduct Authority ("FCA") as the Respondent's Money Laundering Reporting Officer for the UK and is also the designated SMF-17 in accordance with the FCA's Senior Managers Regime. She is subject to the regulatory duties associated with these responsibilities.
24. Ms Stack told the Tribunal that, "the Testing Team was a relatively new function and many of the team members were either new to the Bank or junior, so it was expected that the Claimant would need to play an active management role in guiding, teaching, and overseeing the work of team members and their

engagement with stakeholders in order to establish the credibility of the team.” She also told the Tribunal that, “The preparation of a testing report would involve several individuals from the team working to complete one report within a deadline and so it was important for the team to be able to work collaboratively.”

25. The Claimant’s probation objectives, Main Bundle pp 623-626, included: “Recruit staff, develop talent, train, coach as necessary and build an effective testing team to support delivery of testing activities”.. “Develop effective stakeholder relationships and understanding of the business” and “Develop a solid working relationship with Internal Audit”.

The Start of the Claimant’s Employment

26. The Claimant arranged to meet Cassia Murphy, Deputy Head of HR Advisory, on 11 December 2018. During the meeting, the Claimant discussed performance concerns that he had with Mr U Mirza and Ms A Balasubramanian, who were both members of the Claimant’s team. He said that he believed that he would need to performance manage a number of individuals out of the team.
27. On 11 January 2019 Mr U Mirza, then Assistant Vice President, Financial Crimes – GCCT, spoke to Ms Stack by telephone, raising concerns about the Claimant. Ms Stack had previously worked directly with Mr Mirza for about 3 months. In the telephone call, Mr Mirza expressed concerns about the Claimant’s management and behaviour towards Mr Mirza.
28. Ms Stack took brief handwritten notes of the telephone call, Main Bundle p480. Mr Mirza said that he felt as though everything he did was wrong and that the Claimant had chastised him in front of others “on the floor”. Mr Mirza also said that he had been working long hours but the Claimant was confrontational and demeaning, saying things in a 1-2-1 like “I can get rid of people if I don’t get what I need”. Mr Mirza reported that he found the Claimant’s behaviour severely demotivating, and was causing him a great deal of stress.
29. Ms Stack told the Tribunal, and I accepted, that Mr Mirza appeared very distressed on the call and Ms Stack observed a considerable change from his formerly self-confident and relaxed demeanour. She also told the Tribunal, and I accepted, that Mr Mirza asked that his name should not be disclosed to the Claimant, as he was fearful of a backlash from the Claimant and career implications.
30. Ms Stack told Mr Mirza that it could be challenging to adjust to a new manager’s style and asked him to redouble his efforts to make things work with the Claimant. Mr Mirza agreed to do so. They agreed that if things did not improve, Mr Mirza would revert to Ms Stack.
31. Later on 11 January 2019, Ms Stack emailed the Claimant to arrange a meeting with him and the Claimant also emailed Ms Stack, saying he wanted to discuss Mr Mirza’s performance with her, pp482-483. The two spoke on the afternoon of 11 January, p481. The Claimant was critical of Mr Mirza, saying that he was not performing to the required standard, that his work needed to be fundamentally reconstructed and that he did not respond well to feedback. During their conversation Ms Stack did not challenge the Claimants description of Mr Mirza’s performance. She told the Tribunal, and I accepted, that she talked to the Claimant about how he could manage his team successfully.

32. On 13 January 2019 Mr Mirza email Ms Stack saying that he had had a 1-2-1 meeting with the Claimant, during which he had raised his concerns, and the Claimant had agreed to adjust his approach, p488. Ms Stack replied, saying that she was pleased that the Claimant appeared to have taken the feedback on board, p488.
33. However, on 6 February 2019, Mr Mirza emailed Ms Stack to say that the situation had deteriorated quite significantly. He said that he was “slowly unravelling”, pp 494-498. Ms Stack met with Mr Mirza on 8 February 2019, when he was distressed and emotional. Mr Mirza said that the Claimant’s behaviour towards him was damaging his mental health and that he felt he could no longer work with the Claimant.
34. Ms Stack agreed with Ms Murphy that Mr Mirza should be moved away from the Claimant’s Testing team, on a 6 month secondment to the Respondent’s Centre of Excellence, p501. She subsequently told the Claimant that she considered that the relationship between Mr Mirza and the Claimant had broken down on both sides and that the Claimant had permission to hire a replacement for Mr Mirza.

Testing Reports and Alleged Disclosures

35. The Claimant’s team was responsible for producing Testing Reports which, broadly speaking, identified risks within the Respondent’s control framework and assessed the materiality of these risks.
36. Each finding identified in the Testing Reports is assigned a rating which is intended to assist the Respondent in evaluating the breadth, impact and severity of each finding and therefore in prioritizing the remediation required. The matters are rated as low, moderate or high severity.
37. The Respondent’s Global Financial Crimes Compliance Testing Standard explains these ratings, p542. A low-severity finding is one that poses inconsequential, yet relevant, risk which requires remedial action. A moderate-severity finding is one which poses a risk to the Bank that is more than inconsequential and requires prompt corrective action. This rating would be appropriate for a non-existent or poorly designed control, or a control that is not operating the way it should. A high-severity rating is one determined to pose potentially significant risk to the Bank, whether financial, legal, or reputational, such that it requires immediate, effective remediation, p542.
38. In addition to the individual testing findings, the overall testing reviews must also be rated: Satisfactory, or, Some Improvements Needed, or, Significant Improvements Needed, or, Unsatisfactory.
39. Ms Stack told the Tribunal that, under the Respondent’s Global Financial Crimes Compliance Testing Standard, the Global Head of Financial Crimes Compliance Testing receives reporting on all the testing reviews and is responsible for reporting testing reviews which are rated “significant improvements needed” and “unsatisfactory” to the Global Head of Financial Crimes, pp543 & 544.

40. The Claimant relies on 21 different versions of three reports in saying that he made protected disclosures to the Respondent. The reports are: The MUSE Transaction Monitoring Report (the “MUSE Transaction Report”); The MUSE Sanctions Testing 2018 Report (the “MUSE Sanctions Report”); and The London KYC 2018 - System Testing Report (the “KYC Report”).
41. Draft versions of Testing Reports are discussed and agreed with the appropriate stakeholders within the Respondent. The factual accuracy of the findings is validated by relevant subject matter experts. Several versions of a testing report will therefore exist as the document evolves through the validation process.
42. Ms Stack told the Tribunal that she and/or Mr Carbaugh, and/or William Langford (Global Head of Financial Crimes Compliance (GFCD)), and/or Douglas Tucker (EMEA Head of Compliance) were sent only 9 out of the 21 versions of the Testing Reports in which the Claimant alleged he made disclosures. These 9 versions of the Testing Reports were: (1) pp676-727 draft Transaction Monitoring Report dated 21 January 2019; (2) pp875-924 draft Transaction Monitoring Report dated 21 March 2019); (3) pp1058-1073 draft KYC Systems Testing Report attached to an email dated 25 March 2019; (4) pp1162-1165 draft Sanctions Report - Executive Summary and (5) pp1166-1210 draft Sanctions Report - Detailed Version both attached to an email dated 27 March 2019; (6) pp1487-1504 Final KYC Systems Testing Report dated 29 March 2019; (7) pp1588-1628 draft Sanctions Report – Detailed Version and (8) pp1629-1632 draft Sanctions Report – Executive Summary, circulated on 1 April 2019; and (9) pp1635-1658 Final Transaction Monitoring Testing Report dated 29 March 2019.
43. It was not in dispute, however, that many of the sections of these 21 versions of the reports, on which the Claimant relied in saying he had made protected disclosures, were materially the same.
44. What was in dispute was whether the Claimant himself disclosed information to the Respondent on the specific dates that the reports were sent. In respect of some of the reports, it was also in dispute as to whether the information was disclosed to officers of the Respondent who were more senior than the Claimant, and, therefore, whether (if the Claimant disclosed the information) the Claimant disclosed it to his employer. As stated in the List of Issues, the Respondent accepted that any qualifying disclosure (as defined by section 43B ERA 1996) which the Claimant succeeded in proving he made in any of the 21 reports which was made to a more senior member of the Respondent’s staff than the Claimant, would have been made in accordance with s.43C(1)(a) ERA 1996.

The KYC report (Reports 1 – 3)

45. The Claimant relied on 3 versions of the KYC reports in contending he made protected disclosures.
46. The first KYC report was dated 11 March 2019, p796 – 815, and was emailed by Vinay Wilfred, Vice President - EMEA Head of Financial Crimes Division – London, to the Tapan Puntikura, Director - Global Financial Crimes Compliance Testing Department – New York, and Krishna Tyagi, copied to the Claimant on 11 March 2019 at 19.36. Mr Wilfred addressed Messrs Puntikura and Tyagi specifically, saying, “Please find attached the draft report for London KYC

testing... Compared to the pre-Report management briefing, I have now dropped Observation 5 .. as this has now been fixed and no further gaps exist.” P795.

47. The second KYC report was dated 25 March 2019, pp 1058 – 1076. This was emailed by Mr Wilfred on 25 March 2019 to Ms Stack and the Claimant, amongst others. In his email, Mr Wilfred specifically addressed Ms Stack, saying that he was attaching the documents used in the meeting they had had that day. Mr Wilfred recorded Ms Stack’s requests from the meeting, including her request that “Timelines for findings resolution be added to the Testing report” and, regarding “Validation”, her request for “more clarity and consistency on performing validation after the issue has been fixed.” P1056.
48. The third and final KYC report was dated 29 March 2019, p1489 – 1504. Mr Wilfred sent it by email to Mr Carbaugh, Mr Puntikura, Ms Stack and the Claimant, amongst others, on that day, p1487. He said, “Please find attached the final report for GFCCT's testing of London KYC systems, done as part of FY 2018 Global Annual Test Plan. 3 high, 4 moderate and 3 low risks were identified during the testing, which has been shared and discussed with stakeholders in FCOE and E50.”
49. In evidence, the Claimant agreed that these 3 reports were systems and technology testing reports. He agreed that they concerned data integrity and data flow between the bank’s systems.
50. The Claimant denied that the reports were drafted by the Respondent’s Global Systems and Technology Testing Unit. He was asked about the second report, KYC report which was entitled, “GFCCT – Systems Testing Unit”, p 1058. The Claimant told the Tribunal that the report was an EMEA report and was drafted by Vinay Wilfred, who had a dual reporting line and reported to the Claimant.
51. The Claimant was asked about the Respondent’s “Global Financial Crimes Compliance Testing - EMEA Unit” Organogram at p522, which showed that Mr Wilfred had a single reporting line to Mr Puntikura in New York and that Mr Wilfred was in the Respondent’s “Systems and Technology” team, not the Claimant’s “Program Testing” team. The Claimant told the Tribunal that, from the Claimant’s job description, the Claimant was part of the Systems and Technology team because he had oversight of systems and testing of systems in EMEA and was managing the team in the EMEA region.
52. The Claimant told the Tribunal that Mr Carbaugh would have had “sign off” on the KYC reports. He denied that Mr Puntikura was responsible for signing off the report, but said that Ms Stack, as regional head, would need to approve the KTC report. He also said that, before the report went to Ms Stack, the Claimant would need to be happy with it.
53. The Claimant agreed that Mr Wilfred was “leading on” the KYC report.
54. I noted that, on 1 March 2019, Mr Puntikura emailed Mr Carbaugh, copied to the Claimant, saying “Please find attached a summary of our London findings.” Mr Puntikura set out what the findings were, P668.
55. I also noted that the “Pre-Final Management Briefing on the KYC Report, from the “System & Technology EMEA Unit”, appeared to have been drafted by Mr

Wilfred and Mr Puntikura. The Claimant told the Tribunal that he had attended a meeting to discuss the presentation.

56. I noted that, when Mr Arshan Rahman emailed Mr Wilfred, copied to the Claimant, on 14 March 2019, at p832, following a meeting with Ms Stack, he addressed Mr Wilfred specifically and talked about “your test results” and “your report”.
57. I concluded, from all the evidence, that Mr Wilfred drafted the KYC reports and, in doing so, reported to Mr Puntikura. That was clear from the organogram, the emails and the presentation documents that the report was drafted by Mr Wilfred as part of Mr Puntikura’s “Systems and Technology” team, not the Claimant’s “Program Testing” Team. I concluded from all the evidence that the Claimant’s input into these reports was nominal only.
58. The Executive Summary of the KYC Report on 6 March 2019 had concluded that the review rating was “Unsatisfactory”, in that the control, risk management and governance processes contained critical or systematic deficiencies, p740.
59. The Claimant attended a meeting about this report on 6 March 2019 with Ms Stack and Mr Wilfred, Vice President - EMEA Head of Financial Crimes Division, amongst others, pp731 – 732. During this meeting, the findings in the draft KYC Report were discussed.
60. The Claimant told the Tribunal that, during this meeting, he said that the matters identified in the report should be raised with the FCA.
61. Ms Stack denied that the Claimant had ever suggested that the potential findings should be reported to the FCA. She commented that it would have been inappropriate to report the findings to the FCA at that point, given that there were outstanding questions about the validity of those findings.
62. On 25 March 2019, the Claimant attended a meeting with Ms Stack and Scott Hornsby, EMEA Regional Head of AML, amongst others, to discuss the second KYC Report. Ms Stack took notes of the meeting, p1020 -1. Ms Stack told the Tribunal that the discussions concerned the need for further factual validation to understand the materiality of the issues raised.
63. The final KYC Report dated 29 March 2019 was sent by Mr Wilfred entitled “GFCCI’ - London KYC Systems Testing 2018 - Final Report” to the Claimant and Ms Stack, amongst others, at 3.57PM that day.
64. The Claimant also emailed the final version of the report to Mr Carbaugh, Ms Stack and Mr Puntimura, amongst others, on 29 March 2019, pp1550-1551. He said that he was attaching the final test report for “MUFG Bank London Branch KYC testing conducted by the EMEA GFCD Regional Testing Unit” and signed himself “EMEA Regional Head of Testing”. He said, “The test report is rated as “Significant Improvements Needed” primarily driven by certain aspects of the KYC control framework that require enhancement. The review identified 3 high risk, 3 moderate risk and 1 low risk issues. The high risk findings relate to training and client risk ratings in CISNET.” P1551.
65. The Respondent disputed that the Claimant had sent the relevant final report to Ms Stack and others; it contended that Mr Wilfred had done so.

MUSE Transaction Monitoring Reports (Reports 4 – 7)

66. The first MUSE Transaction Monitoring Report (Report 4) was dated 21 January 2019, p676 – 727. On 21 January 2019 Giedre Tuinylaite sent this report to Kamini Grainger, Director Global Financial Crimes Division EMEA Head of KYC – London, the Claimant and others p729-730. Ms Tuinylaite was one of the Claimant’s direct reports in his Testing Team. Ms Tuinylaite referred to a meeting at which the draft had been discussed and said, “we have amended the wording of our finding No.1 to provide a more practical overview of the issue .. All the other findings remain the same..” , p729.
67. There was a meeting to discuss this draft report on 24 January 2019, following which Ms Tuinylaite chased the participants for a response on 4 February, p728. In reply, Ms Grainger addressed the Claimant, saying, “Peter, Know I still owe you this... I have drafted some actions plans...” .p727.
68. The second MUSE Transaction Monitoring Report (Report 5) was dated 21 March 2019, p875 - 924. On 21 March 2019 Ms Tuinylaite sent this report to the Claimant, saying, “Please see the latest version of MUSE TM report with the updates as per Scott’s spreadsheet. Please let me know if it is ok.” P874.
69. There Claimant told the Tribunal that there was a version of this report which contained more than 900 tracked changes which the Claimant himself made. He said it had not been disclosed by the Respondent. The Respondent denied that it had failed to disclose any such document.
70. I accepted the Claimant’s evidence that he had made numerous tracked changes to the MUSE Transaction Monitoring Report. It was clear to me, from Ms Tuinylaite’s 21 March 2019 email, that the Claimant was carefully guiding the drafting of this report. It was also clear to me that Ms Grainger, who was not in the Claimant’s team, understood the Claimant to be responsible for the production of the report, as she saw him as the person to whom she needed to provide feedback on it.
71. The Claimant told the Tribunal that Ms Stack and Stephen Tyler directed “derogatory behaviour” towards him in relation to the MUSE Transaction Monitoring Report between December 2018 and January 2019. He asked the Tribunal to refer to emails between Ms Stack, Arshad Rahman and Stephen Tyler, p428.
72. I looked at this email exchange. In it, Mr Tyler said on 7 December 2018,
- “Today I sat down with Peter, Kerry, Kamini and the rest of testing team responsible for producing the first draft of the MUS(EMEA) Transaction Monitoring draft testing report and I want to highlight a concern and point to consider ahead of your meeting with Peter re. this report on Monday.

There are 12 findings, 6 high risk. The majority of issues identified relate to minor procedural updates/enhancements (there or thereabouts).

...

My biggest concern is with the #1 high risk finding and in the way it has been described to me as to how/why it became a finding; The idea of transferring TM activities from MUS fin crime to the AML investigations team and has become a high risk finding.

...

In my view the idea of transferring TM activities in to the one AML team should be part of the agreed action in order to close the actual findings identified in the testing report of the current state, not made into a finding itself.

When I challenged this I was told that our idea has been made a finding to essentially 'lock in' and ensure the move happens, and be the catalyst for closing the remaining issues identified. In my opinion that is not what the scope of the testing report should cover and to me the reasons behind including this as a finding questions the integrity of the report.

...

[The Claimant] confirmed the due date to finalize action plans and target dates is 21st December. Similarly to the bank TM testing report this is a very aggressive deadline. I told [the Claimant] I am out of office until next Thursday and that you are only in for a few days next week ... I suggested ... given these circumstances we ask for a more realistic deadline, [the Claimant] did agree with this." P428.

73. I noted that Mr Tyler had given a reasoned explanation for his disagreement with the report's findings on issue 1. Mr Tyler's view, that a date in December, 14 days away, for finalizing actions plans and targets dates, when key personnel would not be in the office, also appeared reasonable. The tone of his email did not appear to support the Claimant's description of "derogatory behaviour" being directed towards him.
74. The Claimant told the Tribunal that Scott Hornsby, a Director responsible for AML — Transaction Monitoring, joined the Bank in January 2019. The Claimant said that Mr Hornsby coordinated with Ms Stack and Mr Tucker to pressure the Claimant to delete and water down the severity of the high-risk items found in the MUSE Transaction Monitoring reports on the basis that it was not ideal to let the FCA know of too many issues. The Claimant said that this behaviour violated FCA Conduct Rules on the requirement to act with integrity and being open and transparent with the Regulator and amounted to misconduct, which the Claimant declined to engage in. He said that, consequently, the report was delayed by over 3 months.
75. It was clear from emails sent between the Claimant and Ms Stack and Mr Hornsby around 22 March 2019, p1007, that Mr Hornsby did disagree with the risk rating for all the 6 high risk issues which were still in the MUSE Transaction Monitoring Report at that stage. However, the Claimant said, in an email on 22 March, p1007, that "other priorities and staff availabilities resulted in the >2 month delays in getting the stakeholders to get back to EMEA GRTU with the pending information so as to finalize and issue the report." He attributed the delay to the failure of stakeholders to get back to him with relevant information. The Claimant's own contemporaneous email contradicted the Claimant's assertion that delays were caused by attempts to water down the report.
76. On 28 March 2019, the Claimant emailed Mr Hornsby and Ms Stack concerning the MUSE Transaction Monitoring report, p1364 – 1365, thanking

them for their time and help with “striking a middle ground” in relation to the report. Ms Stack replied, saying, “I appreciate the open and constructive conversation we had today. I think it was fair outcome all around.” The Claimant replied further, saying that he “couldn’t agree more”. P1364.

77. The third MUSE Transaction Monitoring Report (Report 6) was dated 29 March 2019, p1435-1438. On 29 March 2019 the Claimant sent this report to Scott Hornsby, saying, “Apologies for the delay, had to go through our internal QC process plus got sidetracked to some other matters but please find attached the latest version which we will issue shortly. Please note that we’ve moved the issue numbers and list a bit and made some stylistic changes in addition to the core changes that we agreed yesterday.”, p1505.

78. The fourth and last MUSE Transaction Monitoring Final Report (Report 7) was also dated 29 March 2019, p1635 - 1658. On 29 March 2019 the Claimant sent this report to Douglas Tucker, Ms Stack and Mr Carbaugh, amongst many others. He said,

“ Please find attached the final test report for MUSE Transaction Monitoring testing conducted by the EMEA GFCD Regional Testing Unit as part of the FY 2018 Annual Test Plan.

The test report is rated as "Significant Improvements Needed" primarily driven by certain aspects of the MUSE TM control framework that require enhancement.

The review identified 3 high risk, 6 moderate risk and 1 low risk issues. The high risk findings relate to:

- o Insufficient rationale for alert review and disposition;
- o White List maintenance and approval processes in SironAMI. have not been established; and
- o insufficient suspicious activity reporting requirements in the procedures document

Please feel free to contact me in case you have any questions.” P1634.

79. It was clear to me that the Final MUSE Transaction Monitoring Final Report still contained numerous high and moderate risk findings and that the overall report was rated as "Significant Improvements Needed". Again, this did not support the Claimant’s description of Ms Stack and others suppressing important findings. Furthermore, the tone of the Claimant’s emails to Ms Stack and Mr Hornsby following their meeting on 28 March 2019 strongly suggested that the Claimant was happy with the final version of the report. It also suggested that he felt that the final version represented a fair reconciliation of their previously conflicting views on its risk findings.

MUSE Sanctions Testing Report

80. On 4 March 2019 the Claimant emailed Ms Stack saying that the Testing team had identified a sanctions screening gap in a subset of MUSE transactions. He explained the deficiency as “certain transactions namely securities movement and settlement instructions with SWIFT message type 540’s series are not subject to sanctions screening.” The Claimant forwarded his email to Mr Carbaugh and Mr Puntikura later that day, p657. He explained in a follow-up

email to Ms Stack that the issue had been identified as part of "our MUSE Sanctions Testing", which he said was 30% complete, p653-655.

81. Ms Stack asked that Mr Tucker's view also be sought on the matter.
82. Ms Stack met with the Claimant and Mr Rahman to discuss the matter on 6 March. She said that more work was needed to identify whether the gap was a breach of a regulatory requirement, or, less seriously, inconsistent with industry standards.
83. The Claimant told the Tribunal that the first part of the meeting focused on sanction screening issues, and that, after the Claimant had presented the issues, "both [Mr Rahman] and [Ms Stack] rejected them and fought back asserting that it is only incoming US dollar transactions that should be subject to Sanctions screening." The Claimant said that he had disagreed that MUSE plc was a low-risk entity for any Financial Crime risks. He said, " This infuriated and angered both [Ms Stack] and [Mr Rahman], who repeatedly wanted to know how I identified the issue due to the technical nuances involved and complexity of the matter generally..". The Claimant told the Tribunal that Ms Stack was in "fits of rage" throughout the meeting.
84. The Claimant also told the Tribunal that Ms Stack asked the Claimant to speak to Mr Tucker because she expected that Mr Tucker would "shut down" the Claimant's views and "draw a line under the issue so as to stop me being a bother".
85. Mr Tucker did meet the Claimant to discuss the matter on 7 March. He too asked the Claimant to investigate the underlying facts in order to determine the materiality of the issue. Mr Tucker confirmed to the Tribunal that his initial view was that the screening gap issue was not material, partly because it related to securities movements only between MUSE clients and these clients were already screened daily against sanctions lists. However, the Claimant agreed, in evidence, that Mr Tucker told him, at their meeting on 7 March 2019 that identifying the issue had been "a good spot" by the Claimant's team and that Mr Tucker had escalated the issue to more senior personnel.
86. On 7 March 2019 at 5.32PM Ms Stack emailed Mr Carbaugh and Mr Langford, copied to the Claimant, regarding the finding on MUSE Sanctions Screening. She said that the impact appeared to extend to the USA and Asia and said she was giving them a heads up, although the Claimant's team was continuing to investigate, p784. The Claimant replied, saying that he had already discussed the matter with Mr Carbaugh during their monthly testing governance call and that Mr Carbaugh had then escalated the matter to Mr Langford, p783. Ms Stack replied further saying that she would like to avoid Mr Carbaugh escalating such matters to Mr Langford in future because "the region" (EMEA) should be escalating matters first. The Claimant responded that he understood and would avoid doing this in future, p783.
87. On 18 March 2019, Ms Stack met the Claimant in a 1-2-1 meeting. She made handwritten notes of the meeting, pp 854 - 855. Ms Stack noted that out of 30,000 settlements, only 33 alerts had arisen, or 0.001% of the overall population. Ms Stack asked the Claimant to establish the number of third parties which would be impacted by the screening gap identified, in the circumstances that settlements involving third parties within MUSE was statistically very small.

88. On 22 March 2019, Jane Alimonda, Head of Audit, emailed Ms Stack saying that she had had a catch up with the Claimant who had mentioned “a number of potentially significant issues” arising out of “their recent review of MUSE sanctions”. She asked if there was anything so significant which might require informing any of MUFG’s regulators, pp947 - 948.
89. Ms Stack responded the same day, copying in the Claimant, saying that she had not yet been briefed on the potential additional findings, so it would be premature to “raise the red flag”. Ms Stack also said that she assumed that the Claimant had briefed Ms Alimona on the one sanctions screening issue which had been discussed and was being addressed. The Claimant replied further, also on 22 March, that he agreed with Ms Stack’s email and said, “we were still sizing the risk”, pp947-948.
90. The Claimant told the Tribunal that, after the Claimant told Ms Alimonda about the issues raised in the testing report and Ms Alimonda expressed her concern that the issues should be notified to regulators, “[Ms Stack] went into an uncontrolled rage and authoritatively expressed annoyance and dissatisfaction with me for notifying [Mr Carbaugh] and Internal Audit of the issues and went further to remind and warn me that any Financial Crime related matters in EMEA including regulatory notification were her sole decision as EMEA was “effectively her region””.
91. I noted that the Claimant’s email of 22 March 2019 did not contradict Ms Stack’s reply to Ms Alimonda, but agreed with it and said that the issue was still being investigated. This did not support the Claimant’s evidence that there was a vicious dispute between Ms Stack and the Claimant about the testing report at this stage.
92. On 27 March 2019 the Claimant emailed Ms Stack with the Sanction Testing Report Executive Summary and Sanction Testing Report p1161 - 1210 (reports 8 and 9, referred to in the hearing as reports 10 and 11). The executive summary had, in turn, been sent to the Claimant by Megumi Larke, of his team, earlier the same day, pp1133 – 1136.
93. On 28 March 2019 the Claimant sent Mr Carbaugh the MUSE Sanctions Test findings, p1252. He said that Ms Stack had agreed most of the testing findings and she had also agreed, “.. that the report will be rated unsatisfactory based on the nature and severity of the findings”.
94. On 29 March 2019, the Claimant met Mr Tucker, Ms Stack and Mr Wilfred and presented the MUSE Sanctions Testing Report. The Claimant proposed that the Respondent undertake a full lookback on 1.3 million securities transactions, to see if any sanctions breaches had been missed. Mr Tucker said that he did not agree that the SWIFT screening issue should be described as a “high-risk. He said that it would not be appropriate to do a time-consuming lookback when they had not identified any situation where the lack of screening of the securities leg would give rise to material risk. Mr Tucker told the Tribunal that, once he had explained his view as to why a lookback was not necessary, the Claimant, Ms Stack and he all agreed that the lookback was not needed.
95. Mr Tucker admitted to the Tribunal that, around this time, he also spoke separately with Ms Stack about the Claimant’s approach to the level of risk in the

MUSE Sanctions Testing Report. He told her that the issue screening issue was not as material as the Claimant was suggesting. He said that the Claimant was approaching the sanctions screening issue as if it had occurred in a Bank-business, whereas, for MUSE, the sanctions screening was a secondary control to augment the primary control of screening all clients daily.

96. On 1 April 2019, the Claimant emailed Ms Stack and Mr Tucker with the summary and detailed versions of the Sanctions Report as an “FYI” while he worked on the drafting, as agreed at the meeting on 29 March 2019 (report 14), p1587. He recorded the next steps as being to finalise issue and actions, determine owners and remediation timeframes, while preparing the draft test report, p1587. The draft findings still rated the severity of the SWIFT sanctions issue as ‘high’ and rated the report overall “significant improvements needed”.
97. After the Claimant left the Respondent, the final draft of the MUSE Sanctions Testing Report still had an “unsatisfactory” overall rating. However, the risk rating for a number of the individual issues was changed from high to moderate risk. In relation to the sanctions screening issue, the original rating had been “high”. Mr Tucker suggested the rating should, in fact, be “low”, p2308. The final rating was “Moderate”, pp 2347-2388.
98. Having heard the evidence of the Claimant, Ms Stack and Mr Tucker on the MUSE Sanctions report and their exchanges regarding it, I preferred Ms Stack and Mr Tucker’s evidence. I found that they had appropriately professional discussions about the MUSE Sanctions draft findings and the need to investigate the findings further and to establish their true significance. It was unsurprising that there would be discussions about the findings, and changes in the reports, as the investigations behind the reports continued.
99. There was clearly a difference of opinion between the Claimant, on the one hand, and Ms Stack and Mr Tucker, on the other, about the seriousness of the MUSE Sanctions issues identified. I decided that this difference of opinion was justified on Ms Stack and Mr Tucker’s part. They were able to explain to the Tribunal, referring to the Respondent’s structure and processes, why the potential regulatory issues identified by the testing team were not as significant as the Claimant believed.
100. I did not accept the Claimant’s evidence that Ms Stack was in “fits of rage” regarding the draft MUSE Sanctions test reports. I did not accept that the Claimant was put under inappropriate pressure to change the test reports. While the Claimant explained his assessment of the materiality of the findings to the Tribunal, so too did the Respondent’s witnesses. It seemed to me that there had been an appropriate exchange of views between professional colleagues. The exchanges between the witnesses had been substantially recorded by email. The emails did not support the Claimant’s description of angry, intemperate and intimidating behaviour by Ms Stack towards him.
101. Furthermore, if the Claimant had so strongly believed that the matters warranted FCA reporting, he could easily have stated this in one of the email exchanges. He did not.
102. Ms Stack told the Tribunal that she knew, at the time the reports were drafted, that the Claimant would have been involved in assigning the risk ratings to the

reports. She said, "I don't doubt that he was involved in the rating. My knowledge at the time was that [the Claimant] would have been involved in the ratings." Mr Tucker also agreed in evidence that it was part of the Claimant's job to rate the risks resulting from the testing findings.

The Claimant's Team

103. On 2 April 2019, Ms Balasubramanian, one of the Claimant's direct reports in his testing team, asked to speak to Ms Stack. They subsequently met on 5 April 2019, p1829, when Ms Balasubramanian told Ms Stack that, since Mr Mirza had left the team, the Claimant had redirected his negativity onto her; that she had seen what had happened to Mr Mirza and how he had been targeted. She said that the Claimant criticised her in front of the team and favoured more junior analysts, assigning them lead roles on tests, when Ms Balasubramanian was, in fact, the manager. She expressed the view that this was undermining her.
104. Ms Balasubramanian asked that her complaint remain confidential.
105. Ms Stack told the Tribunal that Ms Balasubramanian was visibly distressed during their conversation and anxious about her job security.
106. Ms Stack consulted Ms Murphy and they agreed that, when Ms Stack attended a 'skip level' breakfast with the testing team on 11 April 2019, which the Claimant would not be attending, Ms Stack would encourage open discussion of issues and morale on the team. Ms Stack did attend the breakfast, but no other issues about the Claimant's management style were raised at it.
107. Ms Stack also agreed in evidence that she had never witnessed the Claimant behaving inappropriately towards his team, despite having observed his interactions on a regular basis in the Respondent's open plan office.
108. However, by 9 April 2019, Ms Murphy had become aware that Ms Balasubramanian had raised her concerns about the Claimant directly with the HR team and with Ms Balasubramanian's former manager, Stelios Dymiotis (Director, Head of Internal Control Desk). Her complaints to Mr Dymiotis had also been shared with Mr Tucker. Ms Murphy disclosed all this information in an email to Ms Stack, p1963-1964.
109. Ms Stack responded, proposing that she speak with Mr Carbaugh on 11 April 2019, to consult him on the issues and that she then meet with the Claimant on 12 April 2019, before the Claimant went on annual leave, p1963. She spoke to Mr Carbaugh by telephone on 11 April 2019.
110. After this telephone call, Giedre Tuinylaite, Assistant Vice President, Financial Crime and another member of the Claimant's team, emailed Ms Stack, asking to speak privately with her. Ms Stack did so that day, and took brief handwritten notes of the conversation, p2036.
111. During this conversation, Ms Tuinylaite acknowledged that the Claimant liked Ms Tuinylaite. She said, however, that the Claimant would make critical comments to her about others in the team, which Ms Tuinylaite felt was inappropriate and which Ms Tuinylaite had repeatedly asked him not to do. Ms Tuinylaite stated that the Claimant would openly criticise her own manager, Ms Balasubramanian, and would instruct her not to give Ms Balasubramanian

information on the work she was doing. Ms Tuinylaithe said she believed that the Claimant was trying to “catch out” Ms Balasubramanian. Ms Tuinylaithe said she felt that the team was being pitted against each other and that, in fact, everyone on the team was protecting each other from the Claimant’s moods.

112. Ms Stack told the Tribunal that Ms Tuinylaithe was also very emotional as she spoke with Ms Stack.
113. Ms Balasubramanian once more approached Ms Stack on 11 April, saying that matters had deteriorated with the Claimant, who was targeting her and undermining her more than ever. She gave a recent example of the Claimant pointedly praising another team member, but failing to mention anything positive about Ms Balasubramanian. She said that the Claimant’s behaviour was having a negative impact on her marriage and on her health, and that she was not sleeping.
114. Later that evening, at 9.55PM on 11 April 2019, Ms Stack emailed Mr Carbaugh saying, “I had sincerely hoped that the situation with [Mr Mirza] was an isolated incident, but I now believe that the incident was more likely a pattern of bullying and intimidation in a misguided attempt to achieve results and force out perceived weaker performers. After you and I spoke today, another person from the team came to see me, also in tears and visibly fearful of possible repercussions for talking with me, and one of the individuals who had already spoken to me came back to tell me that the “targeting” and “bullying” ... had gotten materially worse since we last spoke.”, p2117.
115. Ms Stack commented, “ I am increasingly skeptical -- after hearing the third team member’s account this afternoon -- that Peter understands what is unacceptable about his behavior, or that he will change. However, as you said today, we are in a difficult position as we are only seeing positive results and output from a delivery perspective... Yet, I have no reason not to believe the members of the team who have come forward..”.
116. She proposed that she and Mr Carbaugh both speak to the Claimant the following day and tell him that they would have to take the concerns into account when they evaluated whether to pass his probation. Ms Stack said that she would ask the Claimant to consider the feedback on holiday and that she would meet him on his return “to understand whether he grasps the significance of these concerns and can persuade us that he is willing and able to make changes to how he interacts with his team.” p2118. Ms Stack set out a 2 page summary of the concerns which had been raised by team members.
117. Ms Stack also emailed Ms Murphy at 22.06 on 11 April 2019, forwarding her email to Mr Carbaugh, and saying that Mr Carbaugh and she had agreed that they would both speak to the Claimant the following day. She said, “I don’t think we are settled yet as to whether we will definitely not pass him out of probation, as I would like to speak with him when he gets back from vacation before making that decision.” P2117.
118. The Claimant was due to go on annual leave from 12 - 29 April 2019.
119. Ms Stack emailed Ms Murphy later, at 23.52, on 11 April 2019 attaching her proposed talking points for use in her meeting with the Claimant on 12 April 2019, p2111. These included stating that Ms Stack had received information,

corroborated from a number of sources, that the Claimant used fear, threats and favouritism to drive out poor performers, which Ms Stack said was an environment she would not tolerate, pp2110 – 2115. Ms Stack's note set out the same examples of unacceptable behaviour alleged against the Claimant as she had described to Mr Carbaugh. These examples ran to more than 2 pages and included, " Peter's mood swings from day to day .. his demands are capricious and difficult to predict, and team members live in fear of falling out of favor if they cross him as they have seen other members of the team ignored, bullied, and publicly humiliated (in staff meetings, on the floor) when they do not meet Peter's expectations."

120. Ms Murphy replied at 09.07 the following day, 12 April 2019, saying, "Having read the talking points, to be honest, it feels as though we should be moving straight to termination? Did you discuss that with Don [Carbaugh] at all?" p2116.
121. Later on 12 April, but before Ms Stack and Mr Carbaugh had spoken to the Claimant, Ms Stack emailed Mr Carbaugh saying that HR had suggested they discuss terminating the Claimant's employment p2132. Mr Carbaugh replied that they should "stick what we had discussed." He said, "Also, does HR/Employee Relations conduct investigations? That's the typical process here." P2132. Ms Stack replied further, agreeing, and saying, "I would agree — I would like to give him a chance to acknowledge that his behavior is unacceptable. We'll stick with what we discussed." P2131. She said that, when she had spoken to HR about an investigation regarding Mr Mirza, there was nothing formal in place. Ms Stack said that Ms Murphy was willing to carry out interviews and these would be needed if the Claimant was dismissed, p2131.
122. Both Ms Stack and Mr Carbaugh spoke with the Claimant on 12 April 2019. After his discussion with the Claimant, Mr Carbaugh emailed Ms Stack saying that he had counselled the Claimant that environment on his team needed to become "a positive one where he treats everyone with respect and there is focus on bringing the team together vs driving them apart." He relayed that he had asked the Claimant to outline the steps he would take to make positive changes in his approach and to then demonstrate them. Mr Carbaugh said, "Yes, if this progresses toward termination, it would be good for HR to conduct some interviews to substantiate the allegations." P2131.
123. After the Claimant had spoken with Mr Carbaugh, he sent an email to Ms Stack saying that he was keen to have a candid discussion about the exact behaviours that had been escalated to her, p2143. He said that acknowledged that things could be better from a management style perspective and said that he regretted that it had got to this situation. He said that the genuine concerns raised were fixable and said he would take steps restore trust within the team. The Claimant also said, "I will also handle performance issues in the most professional manner and with strictest confidentiality with the two members of the team involved." pp 2143-2144.
124. Ms Stack also met with the Claimant. She told the Tribunal that, although initially defensive, the Claimant agreed that when, he returned from annual leave, they would meet again and he would show a sustainable change in his behaviour and demonstrate that he had taken the concerns seriously.
125. The Claimant told the Tribunal that his meeting with Ms Stack was a, "one-sided flow of accusations from [Ms Stack] only countered by harsh attacks and

fits of rage each time I tried to speak e.g., asking for examples. It was continuous pumping of allegations by [Ms Stack] with no chance being given to me to respond, or engage meaningfully in a professional meeting.”

126. He told the Tribunal that he asked Ms Stack to provide him with very specific details and instances when each allegation had occurred but that, when he did so, Ms Stack became irritated, ignored him and moved on to the next allegation.
127. In cross examination, Ms Stack said that all the members of the Claimant's team who had approached her wanted to remain anonymous.
128. I accepted that Ms Stack did not provide the Claimant with further details of the allegations against him, save those set out in her points for discussion document. As her email exchanges with Ms Carbaugh demonstrated, the Claimant's managers wanted the Claimant to show that he appreciated the issues and wanted to change his management style; they did not want him to interrogate the details of individual complaints against him.
129. On 14 April 2019 the Claimant emailed Ms Stack asking for more detail of the allegations against him. He also asked that collegiality be reinforced more broadly in the Division, as he said that there had been unprofessional criticisms made of the testing team and its reports, p2182 -3.
130. Ms Stack responded on 16 April, asking that the Claimant focus on how he would address the concerns which had been raised about his behaviour, p2181.
131. On 15 April 2019, Yulia Tynes, another member of the Claimant's team, sent an email to Ms Murphy and Ms Stack pp 2148-2151. She asked to be transferred to another manager, saying that he had been unfair during her performance review, in that he dismissed her valid responses to feedback. She that the Claimant had let his team know that he could “get rid of people”.
132. Ms Stack was on annual leave and did not immediately respond to Ms Tynes.
133. On 24 April 2019, Ms Stack had a 1-2-1 meeting with Jane Alimonda, EMEA Head of Financial Crimes Audit. Ms Stack told the Tribunal that, in the meeting Ms Alimonda reported that the Claimant had always been informative and demonstrated strong knowledge.
134. However, Ms Alimonda also said that Jessica Quinn, Audit Director within the Bank's Global Financial Crimes Division for EMEA, a member of Ms Alimonda's team, had told Ms Alimonda about the Claimant's behaviour during a meeting on 12 April 2019. The Claimant had allegedly displayed a high level of aggression, raised his voice repeatedly and was so angry that he was visibly shaking. Ms Quinn told Ms Alimonda that she terminated the meeting because she and her junior colleague felt intimidated. Ms Stack also told the Tribunal that Ms Alimonda further noted that the Claimant had made several derogatory statements about members of his own team in Audit meetings, often in the presence of junior members of the Claimant's team who were involved in the work that he was denigrating.
135. Ms Alimonda emailed Ms Stack some time later, on 5 July 2019, pp 2398-9. She said, “ - Two complaints were received from my team members regarding a difficult interaction held with Peter. While I did not witness this, the accounts from

them included: A high level of aggression given the professional setting. Peter raised his voice repeatedly at my direct reports, and was so angry he was physically shaking. One of my colleagues reported being fearful and extremely intimidated by his behaviour. Colleagues reported behaviour being unreasonable and Peter was unwilling to listen. The raised tone of voice from him attracted the attention of colleagues outside the meeting room (from quite a distance) who jumped in to see if colleagues were ok.”

136. Ms Alimonda did not make a contemporaneous record of Ms Quinn’s account of the meeting of 12 April 2019. There was clearly a dispute between the parties at the Tribunal hearing about what happened in the meeting on 12 April 2019.
137. On 24 April 2019, Ms Balasubramanian emailed Ms Stack again, saying that she was feeling anxious about a meeting she had scheduled with the Claimant upon his return to the office, p 2158-9. Ms Stack responded, saying her concerns were being taken very seriously.
138. Ms Stack told the Tribunal that, following her discussion with Ms Alimonda from the Audit Department, she felt that the issue of the Claimant’s conduct was not confined to the Claimant’s team, but that other departments were also witnessing unacceptable bullying behaviour and loss of temper by the Claimant. She said that the Claimant “doing so as a representative of the function – and of me – with another part of the organization was a red line for me, and could not be tolerated.”
139. On 24 April 2019, the same day she had had the meeting with Ms Alimoda, Ms Stack emailed Mr Carbaugh in the following terms, “Since we last spoke, I have received in writing another escalation from another team member, ... which is unfortunately consistent with what I have learned from other team members. Today, I also took the opportunity to request objective feedback from Audit. According to the new regional head of FC Audit for EMEA, PK has always been informative and demonstrated strong SME knowledge in her engagements. However, she said that ... PK had a meeting with members of her Audit team just before he went on holiday, and .. PK reportedly became “very aggressive, to the point that he was shaking”, and the Audit team cut the meeting short because they felt intimidated.” p2146. She forwarded the email to Ms Murphy on 25 April, p2153-4.
140. Ms Stack told the Tribunal that she decided that the Claimant should be dismissed and spoke about this separately to Ms Murphy, Mr Tucker, Mr Carbaugh and Mr Langford on Friday, 26 April 2019. Ms Stack told the Tribunal that these conversations addressed the Claimant’s behaviour and management style and not the Claimant’s work output and/or the Testing Reports.
141. At the Tribunal, Ms Murphy and Mr Tucker corroborated Ms Stack’s evidence that, by 26 April 2019, they were firmly of the view that the Claimant’s probation should not be extended but that he should be dismissed.
142. Ms Stack told the Tribunal that both Mr Langford and Mr Carbaugh supported the decision to dismiss the Claimant.
143. On 28 April 2019 Ms Stack email Ms Murphy a draft of a statement she proposed to make in a meeting with the Claimant the following day, p2167. The draft said that a fourth member of the Claimant’s team had come forward with

complaints of bullying and harsh management tactics, that members of the Audit team had felt intimidated by the Claimant in a meeting on 12 April and that Ms Murphy had been disappointed with the Claimant's email of 14 April. Ms Stack's draft said that the Claimant email had been , "more focused on identifying who had raised the concerns and deflecting the conversation from the issues at hand to behaviour of others in the team." Ms Stack's draft said, " this sent a message to me that you were not fully grasping the seriousness of the issues raised and not willing to make material changes. ... I have decided that I must put my duty of care to the team first, and I simply can't tolerate behaviour that leaves members of staff feeling fearful and intimidated to come to work. These concerns have now been raised by multiple people, both within and outside the team, and their complaints clearly reveal a consistent pattern of behaviour that cannot be accepted. I have discussed this with Don, William, Douglas, and HR, and we are all in agreement that we have a zero tolerance for the behaviour that has come to our attention, and unfortunately, we are terminating your employment, effective immediately." P2168.

144. However, neither Ms Stack nor Ms Murphy took formal statements from any of the alleged complainants. This was despite Mr Carbaugh suggesting that statements be taken and Ms Stack telling him that Ms Murphy was willing to do so. As a result, such statements were not shared with the Claimant before a decision was made to dismiss him.
145. Furthermore, while Ms Stack told the Claimant on 12 April 2019 about the allegations made by Ms Tuinylaitte and Ms Balasubramanian, he was never given an opportunity to improve his performance as he went on leave immediately afterwards. The Claimant was not told about Ms Tynes' or Ms Quinn's allegations at all before a decision was made to dismiss him.
146. It was clear that the Respondent did not follow its full disciplinary procedure in deciding on the appropriate action to take in relation to the allegations.
147. The Claimant told the Tribunal that, despite repeated requests, he has never been provided with full details of the complaints against him.
148. Ms Murphy told the Tribunal that the Respondent does not typically follow its full disciplinary procedure for employees whose performance does not meet the required standards during the probationary period. She said that, in such circumstances, either the probationary period is extended or the employee's employment is terminated during, or at the end of, the probationary period.
149. Ms Stack told the Tribunal that she considered that she acted "fairly" in relation to the Claimant because she had told him about the concerns Mr Mirza had raised and had therefore given the Claimant the opportunity to improve his management.
150. Ms Stack scheduled a meeting with the Claimant for 29 April 2019.
151. On 26 April 2019 Ms Stack received an email from Ms Balasubramanian, attaching a spreadsheet prepared by the Claimant outlining issues surrounding Ms Balasubramanian's performance, pp 2163-2166. Ms Balasubramanian said that it demonstrated the personal nature of his attacks on her.

152. The Claimant's spreadsheet contained headings describing Ms Balasubramanian's conduct such as, "4. Disrespectful conduct that undermines the Head of Testing", and gave examples of this such as, "repeatedly stating and drumming up the notion that I favour two members of the team, namely Giedre and Megum - attacking and engaging in confrontational conduct with, and using accusatory language to the Head of Testing publically (sic). Making unhelpful statements such as relationship with husband has totally broken down resulting in no talking terms due to Testing demands." It also included, under the heading "Time management - unnecessary meetings", comments such as, "Many meeting requests and catch-ups which certain team members believe are mostly not productive, unnecessarily long and no more than waste of time - Desire to attend virtually all meetings including governance calls. Getting emotional and unhappy when a different approach is taken."
153. I noted that the tone of this document appeared to be critical and retaliatory. It was not a document which sought to promote mutual understanding or reconciliation.
154. On Sunday 28 April 2019, Ms Stack sent Ms Murphy her draft talking points for the meeting with the Claimant the next day, pp 2167 - 2168. Ms Murphy responded on 29 April 2019 with her comments, pp 2173 – 2175.
155. Ms Stack's talking points said that new concerns had come to light since her discussion with the Claimant on 12 April, specifically that a fourth member of the team had come forward with "detailed complaints of bullying, intimidation, and harsh management tactics, making this four people who have requested to be moved out of your team since you joined in November." The talking points included, "concerns were raised by Audit about a meeting that took place on the 12 of April, where you allegedly lost your temper to the point that those in the meeting felt intimidated and cut the meeting short".
156. The talking points concluded, "I have decided that I must put my duty of care to the team first, and I simply can't tolerate behaviour that leaves members of staff feeling fearful and intimidated to come to work. These concerns have now been raised .. both within and outside the team, and .. clearly reveal a consistent pattern of behaviour that cannot be accepted. I have discussed this with Don, William, Douglas, and HR, and we are all in agreement that we have a zero tolerance for the behaviour that has come to our attention, and unfortunately, we are terminating your employment, effective immediately." P2168.
157. On 29 April the Claimant sent Ms Stack a spreadsheet addressing the issues raised with him, p2187. Ms Stack said, in evidence, that she did not take this into account in the decision to dismiss the Claimant. However, she said that, when she did read the document, she considered that the Claimant had failed to accept accountability because he continued his focus on those who he had assumed had raised the complaints, rather than on his own behaviours.
158. I considered that Ms Stack's observation in this regard appeared reasonable. I accepted that the example which Ms Stark gave of the Claimant appearing to blame the people who had made complaints, rather than trying to resolve the issues. In response to the feedback that the Claimant was using favouritism to achieve results and drive out perceived poor performance, the Claimant's spreadsheet said, "This matter has been flagged by Aarthi multiple times since I joined the Firm. Aarthi has been repeatedly stating and drumming up the notion

that I favour two members of the team, namely Giedre and Megumi. This is an ongoing misconception based on the fact that between Dec 2018 and Jan 2018, I spent a significant amount of time with the two members of staff in question...”, p2187.

159. Ms Stack dismissed the Claimant at the meeting on 29 April 2019. She read from her discussion point document. She did not give the Claimant an opportunity to answer the allegations against him, but simply told him that a decision to dismiss him had been made. In response to the Claimant’s request to reconsider, Ms Stack made clear that the decision would not be changed.
160. The Claimant told the Tribunal that, once Ms Stack told the Claimant he had been dismissed, Mr Carbaugh, who had attended the meeting by telephone, dropped off the call without having said anything at all.
161. Ms Stack handed the Claimant a letter dated 29 April 2019, which confirmed the decision to terminate his employment, pp2195-2198. The letter said that the Claimant had a right to appeal the decision. It appears that the Claimant left the letter on his desk when he left the building later that day.
162. The Claimant’s last day of employment was 30 April 2019. He was paid in lieu for the balance of his one-month contractual notice period.

Relevant Law

Protected Disclosure

163. An employee who makes a "protected disclosure" is given protection against his employer dismissing him because he has made such a protected disclosure.
164. "Protected disclosure" is defined in s43A Employment Rights Act 1996: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.
165. "Qualifying disclosures" are defined by s43B ERA 1996,
166. "43B Disclosures qualifying for protection
 - (1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
 -
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject...".
167. The disclosure must be a disclosure of information, of facts, rather than opinion or allegation (although it may disclose both information and opinions/allegations). Although there is no strict dichotomy between an allegation and the disclosure of information, a bare assertion, devoid of factual content, such as, “You are not complying with health and safety requirements”, will not constitute a valid protected disclosure, Cavendish Munro Professional Risk Management v Geldud [2010] ICR 325 [24] – [25].

168. In order for a statement to be a qualifying disclosure for the purposes of s43B(1) ERA, it has to have sufficient factual content and specificity capable of tending to show one of the matters listed in paragraphs (a) –(f) of that section, *Kilraine v LB Wandsworth* [2016] IRLR 422.
169. Therefore, an assessment of whether there has been a qualifying disclosure involves five questions. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in s43B(1)(a) - (f). Fifthly, if the worker does hold such a belief, it must be reasonably held, *Williams v Michelle Brown* AM UKEAT/0044/19/OO.
170. s 43L ERA 1996 provides that a disclosure of information will also take place where the information is provided to a person who is already aware of that information.
171. A qualifying disclosure is a protected disclosure if it is made to the employee's employer, s43C(1)(a) ERA 1996.
172. The ERA 1996 does not specify to whom a disclosure should be made in order for it to be regarded as having been made to the worker's 'employer'. The IDS Handbook on Whistleblowing suggests at §4.13 that: '.... a sensible construction of S.43C(1)(a) would surely be that a disclosure made to any person senior to the worker with express or implied authority over the worker should be regarded as having been made to the employer. A disclosure made to a junior colleague, or even one of equal status, on the other hand, would be unlikely to be covered (unless that person was specifically authorised to receive qualifying disclosures)'

Automatic Unfair Dismissal

173. By s103A ERA 1996, "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."
174. Where a Claimant does not have 2 years' service in order to bring an ordinary unfair dismissal claim, the burden of proof is on the Claimant to establish on the balance of probabilities that the sole or principal reason for his dismissal was that he had made protected disclosure/s, *Kuzel v Roche Products Ltd* [2007] IRLR 309 (EAT) at [27 - 28], endorsed by the Court of Appeal in *Kuzel v Roche Products Ltd* [2008] IRLR 530.
175. In *Beatt v Croydon Health Services NHS Trust* at [30], Underhill LJ said that, when considering a s 103A claim, as with any unfair dismissal claim, the "reason" for the dismissal "connotes the factor or factors operating on the mind of the decision-maker which causes them to take the decision."

Discussion and Decision

176. I took into account all the facts in coming to my decision.

Protected Disclosures

177. I considered, first, whether the Claimant had made protected disclosures to the Respondents in the 21 reports on which he relied.
178. I agreed with the Respondent's contention that a disclosure of information would only be made to an employer if the disclosure was made to a more senior to the worker, with express or implied authority over the worker (unless the person was specifically authorised to receive qualifying disclosures). A more senior worker, with authority over a worker, would normally be understood as the representative of the employer for the purposes of the worker's employment.
179. One significant feature of this case was that the Claimant relied on the reports themselves as his protected disclosures, and not on statements he made in the accompanying emails to which they were attached, nor in the meetings at which the reports were discussed.

Reports Sent by the Claimant to More Senior Officers

180. In order for the Claimant to establish that he had disclosed the information in the reports, it therefore seemed to me that he needed, either to have sent the reports himself to more senior officers, or to have been responsible for the content of the reports.
181. In the latter case, he would have disclosed the information in the report when the report was sent to more senior officers at the Respondent, whether he sent the report, or someone else had sent the report.
182. This was because, on the facts, the Respondent clearly envisages that the reports inform senior officers in the bank about the failures or gaps in the Respondent's regulatory mechanisms, so that these officers can take action to address the failures.
183. For example, the Respondent's Global Financial Crimes Compliance Testing Standard provides that the Global Head of Financial Crimes Compliance Testing receives reporting on all the testing reviews and is responsible for reporting testing reviews which are rated "significant improvements needed" and "unsatisfactory" to the Global Head of Financial Crimes, pp 543 and 544. This is clearly with a view to the Global Head ensuring that action is taken on such reports.
184. The Respondent agreed that the Claimant had, himself, sent the following reports to a person more senior than him within the Respondent organisation – and therefore to employer within the meaning of s43C (1)(a) ERA 1996:
- 184.1. report 7, MUSE Transaction Monitoring of 29 March 2019;
 - 184.2. report 8, MUSE Sanction Testing Report (Executive Summary of 27 March 2019);
 - 184.3. report 9, MUSE Sanction Testing Report (Report of 27 March 2019);
 - 184.4. report 14, Sanction Testing Report (Report of 1 April 2019); and
 - 184.5. report 15, Sanction Testing Report (Executive Summary of 29 March 2019).
185. It seemed to me that, in respect of these reports, the Claimant did disclose the information in them. I relied on s 43L ERA 1996, which provides that a

disclosure of information will also take place where the information is provided to a person who is already aware of that information. Even if others also sent the reports, or drafted the reports, the Claimant sent the information in them to more senior officers when he emailed the reports to them. In any event, it was clear from the Claimant's accompanying emails that he was communicating the contents of the reports to the email recipients.

186. On my findings of fact also, I found that the Claimant sent the final KVC report to Mr Carbaugh, Ms Stack and Mr Puntimura, amongst others, on 29 March 2019, pp1550-1551. He said that he was attaching the final test report for "MUFG Bank London Branch KYC testing conducted by the EMEA GFCD Regional Testing Unit" and signed himself "EMEA Regional Head of Testing". He said, "The test report is rated as "Significant Improvements Needed" primarily driven by certain aspects of the KYC control framework that require enhancement. The review identified 3 high risk, 3 moderate risk and 1 low risk issues. The high risk findings relate to training and client risk ratings in CISNET." P1551.

187. Even if Mr Wilfred had drafted the report and had already circulated it, I decided that the Claimant also disclosed the information in the final KYC report (report 3) when he sent it. Again, 43L ERA 1996 applied. While the Claimant did not rely on his 29 March 2019 email as making a separate disclosure, it was clear from that accompanying email that the Claimant was communicating the information contained in the attached report to the recipients of the email.

Reports Drafted by the Claimant's Program Testing Team - MUSE Transaction Monitoring Reports and MUSE Sanctions Testing Report

188. Furthermore, The Claimant contended that, in his role as Director, he was responsible for leading financial crimes compliance testing activities and that he had the direct responsibility for assessing the risk rating to be assigned to issues discovered through the testing process.

189. I accepted this contention, as set out below.

190. I rejected the Respondent's contention that the Claimant needed to have drafted (or otherwise authored) the specific passages in the reports he relied on, in order for him to have disclosed the information contained in the reports.

191. The Claimant's job description provided that the main purpose of his role was, "... leading financial crimes compliance testing activities, including execution of the EMEA Financial Crimes Compliance test plan ... and providing local reporting oversight... This includes leading and managing a team, engaging with key ... personnel across EMEA including the Regional Financial Crimes Compliance Head... .", p398.

192. His job description said that the Claimant was required, amongst other things, to, "Oversee and lead a team of financial crimes compliance testing professionals to perform complex effectiveness reviews and enterprise IT application(s) testing.. " and "Escalate testing concerns and exceptions requests to the Global Head of Financial Crimes Compliance Testing in a timely manner." P399.

193. In the Claimant's job description, therefore, it was he who was responsible for escalating the findings to the responsible individuals, so that the findings could be

addressed appropriately. The Claimant was seen by the Respondent as the person who would transmit the information in the reports to senior officers.

194. Ms Stack also told the Tribunal that, “the Testing Team was a relatively new function and many of the team members were either new to the Bank or junior, so it was expected that the Claimant would need to play an active management role in guiding, teaching, and overseeing the work of team members and their engagement with stakeholders in order to establish the credibility of the team.” She also told the Tribunal that, “The preparation of a testing report would involve several individuals from the team working to complete one report within a deadline and so it was important for the team to be able to work collaboratively.”
195. The Claimant was therefore expected actively to guide and oversee a team which worked collaboratively to produce reports.
196. Ms Stack told the Tribunal that she knew, at the time the reports were drafted, that the Claimant would have been involved in assigning the risk ratings to the reports. She said, “I don’t doubt that he was involved in the rating. My knowledge at the time was that [the Claimant] would have been involved in the ratings.” Mr Tucker also agreed in evidence that it was part of the Claimant’s job to rate the risks resulting from the testing findings.
197. On Ms Stack’s evidence, the Claimant was expected to be intimately involved in guiding his team to produce the relevant reports. The team was expected to work collaboratively and the Claimant was expected to lead them in doing so. As senior officers, Ms Stack and Mr Tucker knew that the Claimant would be specifically involved in deciding the risk ratings in the reports.
198. I accepted the Claimant’s evidence that he made 100s of tracked changes to the MUSE Transaction Monitoring Report. I found that other officers in the Respondent’s organisation, including Kamini Grainger, Director Global Financial Crimes Division EMEA Head of KYC – London, understood the Claimant to be responsible for the production of that report, as she saw him as the person to whom she needed to provide feedback on it.
199. On all the evidence, therefore, the Claimant was, in fact, involved in the production of his team’s reports. He was also understood by the Respondent’s officers, including its senior officers, to be involved in and overseeing the production of his team’s reports and the findings in them.
200. I decided, on the facts, that the Claimant, who partly drafted his team’s reports, by providing amendments to them, and assigning the risk ratings in them, disclosed the information in the reports when the reports were sent to senior officers. While there was no authority directly on the point, I considered that any member of a team, which worked collaboratively on producing a report containing information, would disclose the information when the report was sent to the employer.
201. I considered that it would negate the protection given to whistleblowers if a member of a team, which had jointly produced a report, needed to prove that they had individually authored the relevant parts of a report, in order to attract statutory protection from dismissal because of the report.

202. Furthermore, even if the Claimant had not drafted any of the words in the reports himself, he was the team leader and was seen in the organisation as being responsible for the work of the team. I considered that the appropriate construction of the statute was that the Claimant made a protected disclosure when the team, for which he was known to be responsible, produced a report containing protected disclosures. It would be likely that the team leader would be the individual who was most closely identified in the organisation with the findings of a report which their team had produced. As was the case with the Claimant, the team leader would be likely to be the individual who would be expected to justify, and to be challenged on, such a report. It would be contrary to the intention of the statute to construe it as providing that only the individual team members, who personally wrote the words, had made the protected disclosure contained in such a report, so that only they would be protected.
203. I therefore found that the Claimant also disclosed the information in reports 5 and 6 (MUSE Transaction reports) to the Respondent, because the contents of these reports were clearly known by Ms Stack in late March 2019. She was discussing the contents of these MUSE Transaction reports with the Claimant and others in meetings and in emails from 22- 28 March 2019. It was not entirely clear to me how these reports had come to her attention, nevertheless, I decided that these reports were disclosed to her and the Claimant was responsible for their contents.
204. I also found that the Claimant had disclosed the information in the earlier versions of the MUSE Sanctions Testing Report (reports 10 and 12) to his employer before 27 March 2019. It was not clear on the facts how these reports came to Ms Stack and Mr Tucker's attention, but they were already discussing the issues in the reports before 27 March 2019, when the Claimant sent reports 8 and 9 to Ms Stack.
205. However, I found that the Claimant did not make disclosures in reports 1 and 2 – the first and second versions of the KYC report. This is because I found that he neither drafted the reports, nor had responsibility for drafting them, nor did members of his team draft them, did he send those reports to his more senior officers.
206. I therefore found that the Claimant did disclose at least reports 3, 5, 6, 7, 8 , 9, 10 , 12, 14 and 15 to the Respondent.
207. I considered that it would have been a disproportionate exercise for the Tribunal to have gone through each alleged protected disclosure and to have identified each disclosure of information. I was satisfied that the Claimant had disclosed the information in these reports to more senior officers, whether by sending the reports himself, or the reports for which he was responsible coming to the attention of more senior officers. That was enough to find the Claimant had made protected disclosures, given the Respondent's concessions.
208. The same disclosures were repeated over many iterations of the same reports in a short space of time. It was inevitable that such disclosures would be repeated as the reports were refined and reworked, because the sections with disclosures would not necessarily be altered when different parts of the reports were refined.

Alleged Automatically Unfair Dismissal

209. I had to decide whether the Claimant's protected disclosures were the reason or the principal reason for his dismissal. The Claimant relied on the numerous protected disclosures in the relevant reports.
210. It was clear that Ms Stack and Mr Tucker and Mr Hornsby did disagree with the risk ratings which the Claimant had initially assigned in the MUSE transaction and MUSE sanctions testing reports. It was clear that some of the risk ratings in both these reports were later downgraded from High to Moderate in the final versions of the reports, contrary to the Claimant's initial assessments.
211. Furthermore, it was very clear to me that the Respondent did not comply with the normal requirements of fairness when it dismissed the Claimant on 29 April 2021. It did not give the Claimant an opportunity to improve after he was told about allegations against him on 12 April 2019 and he was not told of Ms Tynes' and Ms Quinns' allegations at all, before he was dismissed.
212. The Claimant strenuously denied the conduct allegations against him. There was no disciplinary hearing at which the truth of the allegations against him was established.
213. I considered very carefully whether I should infer, on the facts, that Ms Stack had dismissed the Claimant because of his numerous protected disclosures and not because of the purported conduct issues.
214. The Claimant noted that Ms Stack had not allowed the Claimant any answer to the later allegations arising from Audit meetings and from Ms Tynes. He pointed out that even the most basic element of fairness was missing, in that Ms Stack had not "heard the other side". The Claimant pointed out that Mr Carbaugh and Ms Stack had, at various times, acknowledged that statements should be taken, if dismissal was being contemplated.
215. The Claimant invited me to infer, from Ms Stack's wholesale disregard for the Respondent's normal disciplinary processes, that Ms Stack had seized upon the conduct allegations to dismiss the Claimant for the real reason that the Claimant had inconveniently made and maintained unfavourable risk ratings, which presented a risk to the Respondent.
216. However, as I have made clear in my findings of fact, I did not accept the Claimant's evidence that Ms Stack had been angry about the Claimant's protected disclosures, or had put undue pressure on him to change risk rating in the relevant reports.
217. Furthermore, I accepted Ms Murphy's evidence that the Respondent does not follow its full disciplinary processes when conduct issues are raised during an employee's probationary period. It seemed to me that this was part of the point of a probationary period – to allow an employer to consider an employee's conduct and performance, before confirming them in a role and according them the full contractual and procedural rights of employees. The Respondent's handbook specifically reserves the right not to follow its full procedures during a probationary period, p2439. The Claimant did not have 2 years' service and therefore did not have the right to bring a claim of ordinary unfair dismissal. I did not consider that the Respondent's failures to act fairly therefore indicated that the protected disclosures were the real reason for dismissal.

218. I was satisfied that, however many protected disclosures the Claimant may have made in the many iterations of the reports, these were not the principal reason Ms Stack dismissed the Claimant. I would have decided this whichever party had had the burden of proof to show the reason, or principal reason, for the Claimant's dismissal.
219. The April 2019 email history, which was unusually detailed, set out the evolution of Ms Stack's thought processes regarding the Claimant's dismissal.
220. I considered that the email trail was a reliable, contemporaneous record of Ms Stack's thought processes.
221. The email trail showed that it was the Claimant's team members' complaints and, later, the report about his meeting with the Audit team, which led Ms Stack to, first, contemplate dismissing the Claimant and, eventually, to decide to do so.
222. It was clear to me that, on 11 April 2019, Ms Stack and Mr Carbaugh had decided to give the Claimant an opportunity to show that he could change his management style and pass his probation. Ms Stack proposed to meet the Claimant after his holiday, "to understand whether he grasps the significance of these concerns and can persuade us that he is willing and able to make changes to how he interacts with his team." p2118.
223. Even when Ms Murphy suggested, on 12 April 2019, that Ms Stack might dismiss the Claimant immediately, p2116, because of the conduct issues, Ms Stack and Mr Carbaugh agreed to give the Claimant the chance to improve. On 12 April 2019 Ms Stack said to Mr Carbaugh, "I would agree — I would like to give him a chance to acknowledge that his behavior is unacceptable. We'll stick with what we discussed." P2131.
224. At the same time, the Claimant's performance in his role, which was essentially to identify potential flaws in the Respondent's compliance mechanisms, and where it might be breaching its legal obligations, was being praised. Ms Stack said to Mr Carbaugh on 11 April, apparently expressing their shared view, "However, as you said today, we are in a difficult position as we are only seeing positive results and output from a delivery perspective..." p2117.
225. Therefore, at the time of the Claimant's dismissal, and after he had made his protected disclosures, the Respondent's true opinion of the Claimant's other capabilities, was favourable. It was his conduct towards team members and other employees which was in issue.
226. I considered that Ms Stack's email of 28 April 2019, setting out the statement she proposed to make in the dismissal meeting, p2167, accurately reflected her reasons for dismissal. The draft said that a fourth member of the Claimant's team had come forward with complaints of bullying and harsh management tactics, that members of the Audit team had felt intimidated by the Claimant in a meeting on 12 April and that Ms Murphy had been disappointed with the Claimant's email of 14 April.
227. These were all matters which had occurred since Ms Stack had met the Claimant on 12 April. I found that they were the reasons that Ms Stack changed her approach and decided to dismiss the Claimant.

228. I accepted Ms Stack’s evidence that, following her discussion with Ms Alimonda from the Audit Department, Ms Stack felt that the issue of the Claimant’s conduct was not confined to the Claimant’s team, but that other departments were also witnessing unacceptable behaviour by the Claimant. She said that the Claimant “doing so as a representative of the function – and of me – with another part of the organization was a red line for me, and could not be tolerated.”

229. I decided that the Respondent had shown that the principal reason for dismissal was the Claimant’s conduct in failing to meet the required standards of performance / behaviour during his probationary period. While the Respondent did not conduct a fair disciplinary process before dismissing the Claimant for this reason, I was satisfied that this alleged conduct was indeed the principal reason for dismissal in Ms Stack’s mind.

230. The Claimant’s claim is dismissed.

Employment Judge Brown

Date 24 November 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

25 Nov. 21

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FOR THE TRIBUNAL OFFICE