Case No: 2202698/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr A Morris

Respondent: Royal Bank of Canada (London Branch)

Heard at: London Central

On: 22, 23, 24, 27, 28, 29 30 June, 1, 4, 5, 6 & 8 July 2022
15 &16 Sept 2022
(in chambers)

Before: Employment Judge H Grewal
Ms C Ihnatowicz and Mr I McLaughlin

Representation

Claimant: Ms D Romney, QC

Respondent: Ms J McCafferty, QC and Ms K Balmer, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal does not have jurisdiction to consider the complaints of having been subjected to detriments on the grounds of having made protected disclosures or raised health and safety concerns in respect of any acts or omissions that occurred before 6 December 2019;

2 The complaints of having been subjected to detriments on or after 6 December 2019 on the grounds of having made protected disclosures are not well-founded;

3 The complaints of having been subjected to detriments on or after 6 December 2019 on the grounds of having raised health and safety concerns are not well-founded; and

4 The complaint of unfair dismissal under section 103A of the Employment Rights Act 1996 is not well-founded

REASONS

1 In a claim form presented on 7 May 2020 the Claimant complained of having been subjected to detriments because he had raised health and safety concerns and made protected disclosures and unfair dismissal for having made protected disclosures. The Claimant commenced Early Conciliation ("EC") on 5 March 2020 and the EC certificate was granted on 15 April 2020.

The Issues

2 The issues to be determined were agreed at a preliminary hearing on 10 March 2021 and were as follows.

Health and safety detriments

2.1 Whether on 8 and 11 November 2019 the Claimant ("C") told Sarah Clifford/Travers ("SCT") that her instruction to him to rotate desks breached Health and Safety Regulations;

2.2 If so, whether that fell within section 44(1)(c) of the Employment Rights Act 1996 ("ERA 1996");

2.3 Whether the following acts/omissions occurred:

(a) On 11 November 2019 SCT threatened to move C away from the area where the business unit that he supported was located;

(b) On 17 December 2019 SCT refused C's home working request.

2.4 If they did, whether they amounted to detriments;

2.5 If so, whether C was subjected to those detriments because he had raised health and safety concerns.

2.6 Whether the Tribunal has jurisdiction to consider complaints about any acts/omissions that occurred before 6 December 2019.

Protected Disclosure (whistleblowing) detriments

2.7 Whether the Claimant made the following disclosures:

(a) On 7 August 2019 C gave Mr Jones information about client M orally followed up by an email on the same date to the FIU and SCT;

(b) On 16 September 2019 C gave SCT and the AML team information orally at a lunch in Nando's restaurant about the dissemination of inside information within the Capital Markets team;

(c) On 1, 15, 23 and 30 October (and at another team meeting in late October 2019) and 6, 8, 12, 13 and 28 November, 4 and 12 December 2019 and 7 January 2020 C gave information to SCT and Mr S Currin ("SC") about client relationships not being recorded as UK client relationships and being classed as offshore relationships;

(d) On 8 and 11 November 2029 C told SCT that her instructions to him to rotate desks breached Health and Safety regulations;

(e) On 11 November 2019 C gave information in an email to SCT and Mr Jones about money laundering within the Capital Markets business and further disclosures about client G and associated individuals and entitles;

(f) On 12 November 2019 at a meeting C gave SCT and SC information about the Respondent ("R") being in breach of regulations by incorrectly not classifying client relationships as onshore (UK client) relationships, R not complying with its obligations properly in respect "Know Your Client" and "Client Due Diligence" documents for beneficial owners of more complex ownership structures, client M and the SEP Project;

(g) On 20 November 2019 at a meeting C gave Mr Jones and other members of the High Risk Client Management team information about client M and breaches of the 2017 Regulations;

(h) On 22 November 2019 in an email C gave information to SCT and Mr Jones about client M and breaches of the Money Laundering Regulations 2017.

2.8 If he did, whether they amounted to qualifying disclosures under section 43B(1)(a) or (b), and in the case of 2.7(d) above under section 43B(1)(d), ERA 1996.

2.9 Whether the following acts/omissions occurred and, if they did, whether they amounted to detriments:

(a) From in or about September 2019 SCT's attitude towards C became more defensive and/or hostile;

(b) From in or about September 2019 SCT's communication style became more formal than it had been previously;

(c) On 11 November 2019 SCT threatened to move C from the business unit location;

(d) On 22 and 28 November 2019 SCT challenged C for working from home although he had previously been working at home on Fridays for months, and she had previously told him that she had no objections to people working from home;

(e) On 10 December 2019 SCT and SC declined to increase C's salary when it was reviewed;

(f) On 10 December 2019 SCT and SC declined to award C a fair bonus when this was reviewed;

(g) On 10 December 2019 SCT and SC decided to extend C's probation period in a meeting on 17 December 2019 and subsequently, purportedly on the grounds of his performance;

(h) Prior to 10 December 2019 SCT and SC failed to advise C of any alleged performance issues in advance of the decision to extend his probation period;

(i) On 17 December 2019 SCT refused C's home working request;

(j) On 13 and 17 January 2020 and 24 March 2020 SC excluded C from seeing work related emails that he would normally have received;

(k) On 3 February 2020 SCT sent C a Work Plan that contained elements that were designed to be unachievable within the prescribed time for completion;

(l) On 23 March 2020 SC chased C on an item of work from the Work Plan very shortly after C received the Work Plan and without C having been given a proper opportunity to deal with that item of work;

(m) Between 22 January and 30 April 2020 Sean Taor handled and investigated the Claimant's grievance of 22 January 2020 in a wholly unsatisfactory manner, in particular, by failing to explore any question of detriment with SCT or SC and unreasonable delaying sending out the grievance outcome letter to C;

(n) On 30 April 2020 S Taor failed to uphold C's grievance without thoroughly or genuinely attempting considering with the grievance complaints were merited;

(o) Between 11 June 2020 and 17 November 2020 D Uden handled and investigated C's grievance appeals of 6 and 20 May 2020 in a wholly unsatisfactory manner, in particular, by engaging an independent investigator to investigate C's grievances but not permitting C to see any relevant documents related to her appointment, not requiring the independent investigator to speak to C and unreasonably delaying in sending out the grievance appeal outcome;

(p) On 17 November 2020 D Uden failed to uphold C's grievance appeals without any genuine attempt to consider the substance of the grievance appeals.

2.10 If any of them did, whether the Claimant was subjected to the detriments because he had made any of the alleged protected disclosures at paragraph 2.7 (above);

2.11 Whether the Tribunal has jurisdiction to consider complaints about any acts/omissions that occurred before 6 December 2019.

Unfair Dismissal

2.12 Whether the Claimant made protected disclosures alleged at paragraphs 2.7 and 2.8 (above);

2.13 Whether the Claimant was constructively dismissed, in particular, whether there was a fundamental breach of the implied term of trust and confidence by the Respondent and the Claimant resigned in response to that breach;

2.14 If the Claimant was dismissal, whether the sole or principal reason for the dismissal was that he had mad ethe protected disclosures.

The Law

3 Section 43B(1) of the Employment Rights Act 1996 ("ERA 1996") provides,

"*In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*
(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.
…
(d) that the health and safety of any individual has been, is being or is likely to be endangered.
…"

A qualifying disclosure is a protected disclosure if the worker makes the disclosure to his employer.

4 The onus is on the claimant to establish all the elements of section 43B(1) ERA 1996. In **Boulding v Land Securities Trillium (Media Services) [2006] UKEAT/0023/06/0305** HHJ McMullen said,

"*As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following.*
(a) There was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or likely to fail to comply with any legal obligation to which he is subject.

25. "Likely" is concisely summarised in the headnote to Kraus v Penna PLC 2004 IRLR 26- EAT Cox J and members:

In this context "likely" requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant obligation. If the claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply."

5 In **Kilraine v LB of Wandsworth [2018] EWCA Civ 1436** Sales LJ stated,

"*The question on each case in relation to section 43B(1) (as it stood prior to the amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)*

… If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief." .

6 In **Darnton v University of Surrey [2003] IRLR** HHJ Serota in the EAT stated,

"*for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken."*

7 In **Korashi v Abertawe Bro Morgannwg University Health Board [2012] IRLR 4** HHJ McMullen said that in considering whether a person's belief if "reasonable" one needs to consider the personal circumstances of that individual. He continued,

"*To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might*

take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table… It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material before making such a disclosure."

8 Section 47B(1) ERA 1996 provides,

"*A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."*

9 In **Fecitt and others and Public Concern at Work v NHS Manchester [2012] IRLR 64** the Court of Appeal held that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.

10 Section 48 ERA 1996 provides,

"…
(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
…
(2) On a complaint under subsection …(1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
…
(3) An employment tribunal shall not consider a complaint presented under this section unless it is presented –
(a) before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
(4) For the purposes of subsection (3) –
(a) where an act extends over a period, the "date of the act" means the last day of that period, and
(b) a deliberate failure to act shall be treated as done when it was decided on."

Section 207B ERA 1996 provides for an extension of time to bring a claim in order to facilitate Early Conciliation.

11 Section 103A ERA 1996 provides,

"*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."*

Section 95(1)(c) ERA 1996 provides that an employee is dismissed if the employee terminates the contract under which he is employed (with or without notice) in which he is entitled to terminate it without notice by reason of the employer's conduct.

12 In **Salisbury NHS Foundation Trust v Wyeth UKEAT/0061/15/JOJ** HHJ Eady (as she then was) stated,

> "*Where an ET has to identify whether a protected disclosure was the reason or principal reason in constructive dismissal case, it will be important to ensure that the correct focus is maintained. As was held in Berriman v Delabole State Ltd … "…It is the employers' reasons for their conduct not the employee's reaction to that conduct which is important…"*
>
> *In such a case, the ET will have identified the fundamental breaches of contract that caused the employee to resign in circumstances in which she was entitled to have been constructively dismissed. Where no reason capable of being fair for s 98 purposes has been established by the employer, the constructive dismissal will be unfair. Where, however, the reason remains in issue because there is a dispute as to whether it was such as to render the dismissal automatically unfair, the ET has to ask what was the reason why the Respondent behaved in the way that gave rise to the fundamental breaches of contract. The Claimant's perception, although relevant to why she left her employment (her acceptance of the repudiatory breach), does not answer that question."*

13 In order for a claim under section 103A to succeed the Tribunal must be satisfied that the protected disclosure was the sole or principal reason for the dismissal. That is a different test from the one applied under section 47B(1) where the Tribunal has to be satisfied that the protected disclosure materially influenced the employer's detrimental treatment of the claimant – **Fecitt (cited above), Eiger Securities LLP v Korshunova [2017] IRLR 115**.

14 In **Oxford Said Business School & another v Heslop UKEAT/1001/21/VP** the Employment Tribunal had concluded that the claimant had been subjected to detriments under section 47B, she had been constructively dismissed and her dismissal was unfair under section 98 ERA 1996 but not automatically unfair under section 103A ERA 1996. On appeal the Respondent argued that there was an "inexplicable tension" between the Tribunal's conclusions on the section 47B and section 103A claims. Griffiths J in the EAT stated,

> "*I see no tension, let alone contradiction, between the Liability decision's reasoned conclusion that the protected disclosures more than materially influenced the imposition of various detriments, and its subsequent conclusion that the protected disclosures were not "the reason or principal reason for the claimant's dismissal …*
>
> *When it came to automatically unfair dismissal, the burden lay on the Claimant on the balance of probabilities and, moreover, it was the burden of showing, not only that the protected disclosures "materially influenced" the dismissal in accordance with Fecitt v Manchester NHS Trust … but that it was "the principal reason" "*

The Evidence

15 The Claimant and Sujagan Sivananthan (Former Associate Director, AML Advisory team) gave evidence in support of the claim. Mr Sivananthan did not attend to give evidence as the Respondent indicated that it did not wish to ask him any questions. The following witnesses gave evidence on behalf of the Respondent (their job titles given in brackets are of the positions that they held at the relevant time) – Michael Jones (Head of Financial Investigation Unit and High Risk Client Management, Director), Scott Currin (Head of Anti-Money Laundering for Europe and Asia Pacific, Managing Director), Sarah Travers (nee Clifford) (Director, Anti-Money Laundering), Louisa Lambert (HR Business Partner), Sean Taor (European Head of Debt Capital Markets and Syndicate, Managing Director), Darrell Uden (Head of European Equity Capital Markets and Corporate Banking and joint Global Co-Head of ECM, Managing Director) and Zoe Wigan (Solicitor and Director of Optimise HR Ltd). The witness statements comprised 359 pages. The documentary evidence in the case ran into fourteen lever-arched files. Having considered all the oral and documentary evidence the Tribunal made the following findings of fact.

Findings of Fact

16 The Respondent is a branch of the Royal Bank of Canada ("RBC"), a Canadian financial services company which provides personal and commercial banking, wealth management, insurance, investor services and capital markets products and services. It is regulated and authorised in the UK by the Financial Conduct Authority ("FCA") and the Prudential Regulation Authority ("PRA").

17 In 2019 Scott Currin (Head of AML for Europe and Asia Pacific) led the UK Anti-Money Laundering ("AML") Compliance Team. Mr Currin was the Respondent's Money Laundering Reporting Officer ("MLRO"). The UK AML team was divided into four sub-teams, two of which feature in this case. They are the AML Advisory Team (headed by Sarah Clifford/Travers) and the Financial Investigations Unit ("FIU") and the High Risk Client Management ("HRCM") team headed by Michael Jones. Michael Jones was the nominated officer for all RBC UK entities that had reporting obligations under the Proceeds of Crime Act 2002 and/or the Terrorism Act 2000. [We use Ms Travers' former and current surnames together to avoid confusion because in many of the documents in this case she is referred to by her former surname]. The level of seniority at the Respondent is indicated by Director titles. Mr Currin was at Managing Director level, and Ms Clifford/Travers and Mr Jones at Director level. Ms Clifford/Travers and Mr Jones both reported to Mr Currin.

18 The AML Advisory Team covered RBC's Wealth Management ("WM"), Global Asset Management ("GAM"), Capital Markets ("CM") and Investor and Treasury Services ("ITS") businesses for UK and Europe. The work of the AML Advisory Team was to ensure that RBC had the correct policies, procedures, systems and controls in place to prevent money laundering and criminal activity and to detect and report such activity, to ensure that such policies and procedures were effectively implemented within the various businesses (through training and other means), to be the face of the AML function to the business and to report and escalate any money laundering or criminal activity that it detected.

19 The FIU was responsible for investigating client activity in relation to AML, terrorist financing and proceeds of crime issues. These investigations ordinarily arose in one

of two ways – either through alerts generated automatically by RBC's automated transaction monitoring systems or through the escalation of concerns by staff and other RBC control functions with suspicions or concerns regarding financial crime, often by means of an unusual transaction report ("UTR"). The FIU also initiated thematic investigations based on trends in recent escalations or intelligence gathered from law enforcement agencies. The HRCM team was primarily responsible for conducting enhanced due diligence ("EDD") on high risk clients using information provided by the client, public sources and paid sources to compile a detailed risk assessment, which would then be passed to the AML Advisory team for review and approval. The decision as to whether to accept such a client was made by a business-led committee comprising senior individuals within Wealth Management.

20 The Claimant commenced employment with the Respondent on 1 July 2019 as Associate Director in the AML Advisory team primarily responsible for the UK Wealth Management business. He reported to Ms Clifford/Travers. They had both worked together previously at Bank of America Merrill Lynch ("BAML") (albeit not in the same team) and had stayed in touch as friends. The Claimant had worked in AML Compliance at BAML from the time he left university in 2000 until his employment was terminated by BAML in November 2016. From April 2017 to July 2018 he had worked in AML for Citibank. Between the two jobs and after his job at Citibank ended he had travelled in Asia and Australia and had contemplating working in those areas, but had not been able to secure employment in the area of his expertise. When a vacancy arose in in Ms Clifford/Travers' team in May 2019 she contacted the Claimant and asked him whether he was interested in the role. He indicated that he was and she passed on his CV to Mr Currin. Mr Currin interviewed the Claimant by telephone while he was still in Singapore. The interview was not as vigorous as it might have been had Ms Clifford/Travers not indicated that she thought that the Claimant was a good fit for the role.

21 The Claimant's job description stated that his role was to "*primarily support the UK Wealth Management platform in managing financial crime risk; including money laundering, terrorist financing, economics sanctions and bribery & corruption through advising, monitoring, testing and investigating adherence to relevant regulatory rules and industry standards."* The role was also to deputise for Ms Clifford/Travers in her absence. The Claimant's primary responsibilities include the following:

> "*Provide counsel and guidance to UK Wealth Management Relationship Managers/Client Service Support functions, Compliance, Legal, Operations and other WM functions in respect of RBC's AML Compliance framework.*
>
> *Development and implementation of WM policies and procedures to ensure appropriate local policies and procedures meet with Enterprise Policy, Control Standards and Guidance.*
>
> *Tracking and resolving regulatory, audit and internal compliance findings.*
>
> *Support client risk rating to ensure all clients are appropriately risk rated in line with risk rating methodology and providing counsel and guidance to Senior Management where necessary.*
> *…*

To work with AML Policy and Reporting function to review, implement and deliver training and educational material."

22 The Claimant's contract of employment provided that his normal place of work was the Respondent's office in London EC4 and that his appointment would commence with a probationary period of up to six months, during which time his performance would be closely monitored by his manager and that the period could be extended if his performance did not meet the standards required by the Respondent.

23 When the Claimant commenced employment, the AML team sat in an office on the first floor. The HRCM team rotated and split their time between the office where the AML team sat and the Wealth Management business area on the third floor. There was no spare desk available in the AML office when the Claimant started, and it was suggested that as a temporary measure he should sit with the KYC/Client Due Diligence team for the WM business on the third floor. That appeared to be a good solution to the problem as it would give him a chance to get to know the business better and to get to know the HRCM team. Unfortunately, there was not a permanent desk available in the WM team either and the Claimant had to move from desk to desk which was not ideal. Although the Claimant did not sit with the AML team he was a part of that team and the expectation was that he would regularly come to the area where the team sat and would interact with them.

24 On 5 July 2019, following the conviction of an ex-compliance officer at another bank for insider dealing, Chloe Yu, a Compliance Officer in AML sent Mr Currin an email asking him whether in light of that case the Respondent would be reviewing its confidential information process. She said that they received a fair amount of potential deals coming though the inbox which sometimes contained price sensitive information. She asked whether he would consider restricting access to such information to a smaller audience within the team on a need to know basis to minimise the risk exposure.

25 On 25 July 2019 Ms Clifford/Travers and the Claimant agreed his objectives/goals for the period until the end of October 2019 (the Respondent's financial year ran from 1 November to 31 October). These included assisting with the strategy, development and work plan within the AML Advisory team, ensuring that the work plans remained on track to complete in a timely manner, assisting with and taking a lead role in the completion of the AML advisory projects and tasks within the 2019 work plan, developing relationships with key stakeholders within the WM business and support functions, maintaining responsibility for the AML oversight of the WM business and having responsibility for the development and delivery of tailored AML training to the WM business and business support functions e.g. KYC (Know Your Client) teams. The Claimant was also to provide AML advisory support to the other businesses – Capital Markets, Investor and Treasury Services and Global Asset Management.

26 In 2019 all employees of the Respondent were normally required to work at the office. There was flexibility to work from home on an ad hoc or occasional basis if the need arose. In order to do so, the employee was required to ask his/her manager in advance whether that was acceptable and to ensure that it did not interfere with the employee's ability to perform his/her role. If, however, an employee wished to work from home on a regular basis, for example on a certain day of the week, the employee was required to make a formal flexible working request under the Respondent's Flexible Working Policy and Procedures. In an instant messaging

conversation on 25 July about working from home, Ms Clifford/Travers asked the Claimant whether he was going to submit a request to work one day a week from home after his probation ended, and he replied that he was. He asked her whether there was anything to stop him working the occasional days from home during the probation and she said that she had no issue with it. It was, however, clear to the Claimant that if he wished to do that on any particular day he had to ask her in advance whether it was alright for him to do so. He asked her whether he could work from home on 31 July and 20 August 2019.

27 The Claimant's predecessor, Michael Bly, had been absent from the office between October 2018 and the termination of his employment on 29 June 2019. During his absence and after the termination of his employment Ms Clifford/Travers and Ross Martyn-Fisher (Manager in HRCM) had provided AML support to the Relationship Managers (RMs) and support staff in WM. Following the appointment of the Claimant, some RMs and support staff still turned to Mr Martyn-Fisher for advice and information.

28 On 6 August Mr Anand, a Relationship Manager in WM, asked Mr Martyn-Fisher for some information in respect of clients HZ and M as he was due to meet client HZ on 8 August. Client HZ was an individual and client M an associated company. Mr Martyn-Fisher copied the Claimant in into his reply. At 9.05 the following morning the Claimant sent Mr Anand an email saying that it was one that "*definitely needs revisiting".* At 9.12 Mr Martyn-Fisher sent the Claimant the risk assessment that had been completed on clients HZ and M when they had been approved by the Respondent and pointed out that AML had had concerns around them at the approval stage. They had been clients who had been brought onboard by a previous Relationship Manager, Ms S, who no longer worked for the Respondent. Mr Martyn-Fisher forwarded his email to Mr Jones and told him that he might get a referral from the Claimant about those clients. He said that the only activity on client M's account had had been to receive a sum of money which had immediately been sent out again. Mr Jones' response was,

"*Yes if you get him to, if not you may need to raise the UTR."*

Mr Martyn-Fisher also told Mr Jones that he had suggested to the Claimant that they should do a full review of all the clients that Ms S had brought onboard as he had not liked any of her prospects that had been referred to them.

29 Around 10 a.m. the Claimant had a brief conversation in passing with Mr Jones about clients HZ and M. The Claimant mentioned the money that had been paid into the account of client M and straight out again and said that the website of company V, a subsidiary of client M, was of poor quality which indicated that it was a front company. This was followed by a short instant messaging conversation on Skype between the Claimant and Mr Jones. Mr Jones agreed that the matter needed investigating and advised the Claimant to submit a UTR so that his team could do an investigation. He also said that any review of Ms S's clients would have to go through Corporate Investigation Services ("CIS"). Towards the end of the conversation the Claimant sent Mr Jones a link to a BBC news article reporting that an unnamed Northern Irish woman with suspected links to paramilitaries had been served with an Unexplained Wealth Order. He said that there was a Northern Irish female signatory on the client M account and commented "*I wouldn't bet against it"* (i.e. her being the woman in the BBC news story).

30 The Claimant did not submit a UTR as he had been advised to do by Mr Jones. Instead, shortly after 3 p.m. he sent a half-page email to the FIU team, copied to Ms Clifford/Travers. He said that he was escalating the matter because there were "*a number of red flags"* that warranted a deeper investigation into client M and its associates. He said that onboarding the relationship had taken a long time - approximately 9 months - and AML had had concerns at the approval stage. He said that the individuals listed as authorised signatory and nominee shareholder of client M and a number of other individuals formed part of Company C and that Company C "*are no strangers to controversy and often feature in international scandals i.e Magnitsky and the Slovakian tax fraud Jan Kuciak was investigating."* The third point that he made was that the website of Company V, which had made two deposits into client M's accounts was "*very questionable and should be, in my mind, considered a sham."* He also "*questioned"* the legitimacy of the financial accounts provided by Company V. He said that he would carry on looking through the documents but it would be great if FIU could in the meantime start an investigation and put a block on client M's accounts.

31 The Claimant did not say in his email that Company C was a corporate services provider which, he accepted in evidence, was a relevant factor. Corporate service providers usually provide services to a large number of companies and the fact that there may be AML concerns about one client of the corporate services provider does not necessarily mean that there are AML concerns about the service provider itself or any of its other clients. The Claimant did not say how or in what way Company C had featured in the Magnitsky or Slovakian tax fraud scandals. He did not give any detail about what caused him to question Company V's accounts. It was clear from the Claimant's email that he had escalated the matter before he had finished looking at all the relevant information. His email contained a number of broad generalised views and opinions which were not substantiated or supported by any concrete facts. In spite of the shortcomings of the escalation, Mr Jones treated it as a UTR.

32 The client had been approved by the High Risk Business Clients and Politically Exposed Persons Committee in September 2018. Mr Currin had been a member of that committee. Various concerns had been raised and discussed and in the end the Committee had approved proceeding with the relationship with H1 risk rating and certain conditions attached to it.

33 Later that day Mr Jones informed the Claimant that client M was a Channel Island (offshore) account, which meant that any investigation into it would have to be conducted by the equivalent of his team in Channel Islands, which was headed by Carly Williams and Steve Parker. He met the Claimant to discuss that. The Claimant said that they should tell Mr Anand that the nominee on the account could be linked to the IRA and that he should not attend the meeting alone as his personal safety might be at risk. Mr Jones pointed out that there was no evidence to suggest that the nominee on the client M account was the person who had been referred to in the BBC news article.

34 Mr Jones forwarded the Claimant's email to Ms Williams and Mr Parker and told them that the Claimant had recently joined the AML team. Mr Parker responded immediately that he would look at it and welcomed the Claimant.

35 On 8 August the Claimant and Mr Jones met with Mr Anand before he attended a meeting with client HZ. The Claimant was not able to give Mr Anand any detailed information about the client's business and the monetary flows that had given rise to concerns or any AML advice as to how he should deal with the client. Following his meeting with client HZ, Mr Anand sent the Claimant a file note of the meeting.

36 On 9 August the Claimant contacted an external investigator and provided him with the names of clients M, HZ, Company V and others associated with them, and asked him whether they meant anything to him. The response was that they did not.

37 Mr Parker was not happy that the Claimant and Mr Jones had met with Mr Anand without involving the Channel Islands team and asked to speak to the Claimant about it. about it.

38 Ms Clifford/Travers had weekly catch up meetings with her direct reports, including the Claimant. At a meeting on 29 August 2019 Ms Clifford/Travers raised the issue of WM AML training, which was one of the Claimant's objectives, with him and queried whether he had discussed it with Mr Jones.

39 At the beginning of September 2019 Mr Currin asked the Claimant to draft a proposal of what actions would be taken when a WM client was overdue a refresh in order to close off audit points that had arisen (i.e. the refresh had not been done within the prescribed period). At the weekly catch up meeting on 9 September and in an email on that day Ms Clifford/Travers reminded the Claimant that she needed that by the end of that day. The Claimant responded at 12.26 that he had not drafted anything yet and asked her whether there had been any response to her email making recommendations about the review process on 19 August. Ms Clifford/Travers responded two minutes later enclosing a short email that she had received and pointed out that her email had been about when reviews should take place rather than outlining the actions that should be taken when it was overdue. The Claimant did not produce his draft by the end of that day or on the following day. On 10 September Ms Clifford/Travers chased him up on it and he said that it would be done by that evening or the following morning. He produced his first draft of it on the morning of 11 September.

40 On 11 September Ms Clifford/Travers noticed that the Claimant was not at work and asked him on an IM chat whether he had told her that he would be working from home that day. The Claimant responded that it had been a last minute decision to get the draft proposal done by lunch, so he probably had not told her. She asked him in future to let her know beforehand.

41 On the same day Ms Clifford/Travers asked Mr Jones in an IM chat whether the Claimant had engaged with him on AML training for WM. Mr Jones responded that he had not and asked why. She responded that he was starting to be managed and to do things that she wanted him to do rather than what he wanted. She said that she was going to put everything in email. She said that he did not like coming into the Compliance area and had decided to work from home that day without telling her. She said that she was going to take him off Capital Markets so that he could focus on WM and that would separate him from Suj (Mr Sivanathan). She said that he needed to engage with others and to pick up the advisory work rather than leaving Mr Martyn-Fisher to do it. Mr Sivananthan had started working in AML Advisory for Capital Markets and ITS in August 2019, initially as a contractor and later as an

employee at Associate Director level. He had been introduced to Ms Clifford/Travers by the Claimant.

42 Later that day Ms Clifford/Travers asked the Claimant to liaise with Mr Jones in respect of the AML Training. She said that the business had not received any tailored AML training for some time and she was looking to have the training delivered by 30 November. The Claimant asked Mr Parker whether he had any AML training decks available to share. He said that he did not want to plagiarise material but did not want to start contradicting what other teams had said. Mr Parker provided him with what he had on the same day.

43 On 13 September the Claimant sent Mr Jones an email about an individual referred to as client G. Client G was not a client of RBC but the Claimant suggested that Client G was linked to various people who were RBC clients. These were predominantly Capital Markets clients. He started the email by saying,

> "*I started putting this together a while go for you and your team to kick around with but was then sidetracked. I'll add some more context and background over the next few days and send to your team so this is more of a heads up at this stage. Below I have listed a number of entities and individuals who have been on my radar for the best part of 15 years. "*

In respect of client G, he said,

> "*Client G has a lot of history and was on the radar of another US institution… who had similar concerns with client G and the rest of his crowd. To cut a long story short, client G along with a group of Russian individuals (who I recall had links to organised crime) were operating a boiler room in the US [redacted word] Company A. Client G was subsequently charged and barred from operating in the US Securities industry for life."*

He concluded by saying,

> "*Anyway, I'll stop rambling there for now and hopefully it kind of makes sense so far. I'll plug away at filling some gaps (I think I might have some notes with more of the entries buried somewhere at home) but there appears to be numerous touchpoints to various RBC offices and entities."*

44 Mr Jones responded within minutes of receiving the email. He said that he had already got rid of three of the individuals mentioned a couple of years earlier. He said that he would definitely be interested in sitting down with the Claimant and running through it with him when he returned from leave. He did not receive any further information from the Claimant over the next two months.

45 On 13 September Mr Parker sent Mr Anand his investigation report on Client M. He said that he had not found any AML concerns and would take it back to someone called Anne-Marie to see what she wanted to do from a business perspective. The report stated that there had so far been a limited number of transactions on the account which had been in line with the anticipated transaction profile of the account. It was unusual that virtually no information could be obtained from the public domain to verify the business activities and source of wealth of one of the individuals involved ("client A"). However, the lack of independent verification had been identified at the

onboarding stage in the AML Risk Assessment to the Committee who had accepted it with certain stipulations. The conclusion was that no Suspicious Activity Report ("SAR") was warranted as there was no evidence of financial crime being undertaken through the accounts or any negative information in the public domain. Mr Parker also updated the Claimant on the conclusions of investigation and said that he was speaking to Anne Marie about the next steps.

46 On 16 September Mr Parker told Mr Anand that Anne Marie's view was that it was a business decision whether to keep or exit the relationship. She had advised that Mr Anand should try and meet client A. The previous RM, Ms S, claimed to have met client A but there was not much information on this. He said that they were not making money on the relationship whilst running the risk of not having met with the client. He suggested that they speak to discuss the matter. On 19 September Mr Parker forwarded that to the Claimant. He said that he had spoken to Mr Anand and he was considering what to do next.

47 On the morning of 16 September the Claimant and Mr Sivananthan referred in an IM chat to MNPI (Material Non-Public Information) floating around among the KYC employees and said that he would raise it with Compliance. That was a reference to the same issue that Chloe Yu had raised on 5 July. The AML Compliance team went to lunch at Nando's on 16 September. While walking back from lunch Mr Sivananthan and the Claimant asked Ms Clifford/Travers which teams were included as recipients on RBC's generic KYC emails. They explained that they were asking because they were concerned about the number of people who might have access to inside information and whether there were processes in place to prevent the information being used improperly. Ms Clifford/Travers suggested that they should speak to Compliance about it because Compliance (and not AML) was responsible for avoiding insider dealing in the Bank.

48 On 19 September the Claimant asked Ms Clifford/Travers whether he could work from home the following day (Friday). She said that he could and asked him whether he could work on the desktop procedure for WM. She said that she would email him what had been done for CM and ITS as it would need to follow the same format. AML Compliance had initially had a single desktop procedure across all the businesses but had decided to create separate and bespoke procedures for each of the three business units. She followed it up with an email asking him to do it the following week while she was away. It was work that could easily have been completed within that timeframe.

49 By the end of September the Claimant had not prepared the WM AML training or the WM Desktop Procedure. He hardly spent any time in the AML Compliance area. He only went down to the first floor for team meetings or to meet with Ms Clifford/Travers for the weekly catch up meetings. The latter normally took place in the break out area. The contemporaneous swipe cards showed that the Claimant had only been to the office on the first floor on four occasions in September 2019. Ms Clifford/Travers got the impression that he was reluctant to visit the Compliance area and engage with the Compliance team.

50 Ms Clifford/Travers discussed the above with Mr Currin and they agreed that the Claimant should spend some time in the AML Compliance office. On 1 October Ms Clifford/Travers sent the Claimant an email asking him to spend at least one day a week in the AML Compliance office. At the weekly catch up meeting on the same day

she chased the Claimant for the WM AML training and the WM desktop procedure.

51 On 3 October at 4.41 pm the Claimant sent Ms Clifford/Travers an email asking her whether he could work from home the following day (Friday). She responded that there was a WM meeting to cover outstanding action points, Mr Currin was attending and she really needed him to attend that meeting. The Claimant did not attend work the next day.

52 At the weekly catch up meeting on 8 October Ms Clifford/Travers spoke to the Claimant about the AML training. The Claimant said that he got anxious about delivering training sessions and that it would help if Mr Sivananthan could be there to support him. On 10 October Ms Clifford/Travers sent the Claimant an email that, having looked at the work plan for Capital Markets for the rest of the year, she thought that Mr Sivananthan would be tied up with that and that he would have to look to deliver the training without him. She asked him to provide the training slides to Mr Jones by the following Wed (16 October) and said that she was looking to review the WM desktop procedure on Monday. She also asked him to review the PEP (Politically Exposed Persons) Register for the WM business to ensure that all the necessary information, including the KYC and EDD reports, was up to date.

53 The Claimant responded that it was unfortunate that Mr Sivananthan would not be able to attend as it would have been good to have his support. He said that he would prepare a few slides for the middle of the following week and that he would finalise the desktop procedure by Monday. He said that the PEP register review could potentially be a "*time consuming/labour intensive exercise"* given some of the issues that he had already highlighted. Miss Clifford/Travers responded that if he was concerned about delivering the training Messrs Jones and Martyn-Fisher would be there to cover FIU and HRCM and that she was more than happy to attend and provide support if he wanted her to.

54 On 10 October the Claimant emailed Ms Clifford/Travers at about 4.10 pm that he was leaving work early as he was not feeling well. On the following morning (Friday) he sent her an email at 6.40 a.m. that he was "*still not feeling 100%"* and would, therefore, take the opportunity to work from home. He said he would let his colleagues know where he was. Ms Clifford/Travers was on annual leave that day and did not see the email. The Claimant did not tell Mr Currin or any of his AML colleagues that he was not coming into work. The Claimant and Mr Currin were due to be attending a meeting at 10.30 that morning with colleagues from the Channel Islands. At 9.40 the Claimant contacted one of the colleagues in the Channel Islands and tried to rearrange the meeting, but the person facilitating the meeting decided that it should go ahead. The Claimant asked for dialling in details at 10.31. He had still not joined in by 10.39 and Mr Currin sent him an email telling him that he was waiting for him in a particular room. The Claimant responded that he was working from home.

55 On 11 October the Claimant said that he would forward some draft slides for the training to Mr Jones by the middle of the following week and said that he would try and formulate a strategy for addressing the PEP register review by the end of the following week.

56 On 13 October the Claimant sent Ms Clifford/Travers a draft "interim" WM AML desktop procedure. He said that it was "interim" because it would need to be updated

the following year when he had "*more familiarity of UK Wealth systems"* and because he had still not updated certain sections. The Claimant had essentially used the Capital Markets desktop procedure and amended it by deleting and adding some material. However, he had failed to delete all the information that was relevant to CM but did not apply to WM. He had left all the track changes on the document. Ms Clifford/Travers was not impressed with the quality of the work which was produced over two weeks after the Claimant was due to deliver it.

57 The Respondent conducts end of year performance appraisals for its employee in mid to late October prior to the end of its financial year on 31 October. The Claimant's appraisal meeting with Ms Clifford/Travers was scheduled for 16 October. Ms Clifford/Travers and Mr Currin had a discussion about it on 14 October and, as they both had concerns about certain aspects of the Claimant's performance, they decided to seek some advice from HR before the appraisal meeting. Ms Clifford/Travers also wanted to seek guidance on how best to deal with what the Claimant had said about his anxiety around delivering training. On 14 October Ms Clifford/Travers sent an email to Louise Lambert, HR Business Partner. She said that they had a "*potential issue"* on which they wanted some guidance.

58 They met with her the following day. They said that they had concerns about the Claimant's performance. These were largely related to his failure to deliver on project-based policy and procedure work. There were delays in producing the work and what was produced was not of the quality they expected. They also raised the fact that the Claimant had said that he felt anxious about delivering face to face training, which was an important part of his role. Ms Clifford/Travers sought advice as to what support they could provide to ensure that he could fulfil that part of his role. They also said that while he had developed a good relationship with junior and middle management staff within WM, he had not done so with the senior management in the team. They also raised the fact that he often worked from home on Fridays and sometimes did so either without asking Ms Clifford/Travers or telling her at the last minute that he would not be attending. Ms Lambert advised that they should be clear with him as to what their expectations were, especially in relation to the policy and procedure work. She advised them to provide him with email summaries of discussions they had with him about the work they expected him to provide and clear timescales of when they expected the work to be delivered. She advised Ms Clifford/Travers to look at what training could be provided to the Claimant to help him overcome his anxiety about delivering training.

59 The Respondent's performance appraisal process involves the employee doing a self-assessment in advance which is then reviewed by the manager doing the appraisal. The manager then enters his/her ratings and comments and discusses them with the employee at the appraisal meeting. The Claimant was rated on the seven objectives and goals that Ms Clifford/Travers had set for him on 25 July. There are five potential ratings – exceptional, outstanding, high performance, developing and low performance. The Claimant gave himself a rating of "high performance" for all the goals. "High performance" is defined as "*consistently achieves goals, meets all job expectations, and sometimes exceeds these expectations relative to peers".* Ms Clifford/Travers rated him as "developing", which is defined as "*capable and shows progress towards high performance results relating to peers. Targets/plans not fully achieved*." She made positive comments about the things on which he had made a good start but highlighted the areas in which she expected to see development. Her overall comments are a good illustration of this. She said,

> "*Andy has made a promising start to his career at RBC and has settled well. He has begun to build a network of contacts within the business and is establishing good working relationships with other members of AML Compliance, KYC and the RMs. Andy has already been involved in some tasks and projects e.g. review of KYC on funds, addressing an audit issue. Going forward into 2020 I would like to see Andy develop in his role so he can take the lead and be proactive in managing the AML programme and framework for the wealth management business and self-generating work which isn't only liaising with the RMs and KYC on prospects and overdues but also getting involved in reviews processes, systems and controls in place for the business and assessing whether enhancements or changes need to be completed, management of completion of the annual financial crime and ABAC risk assessments, identifying training needs where required as well as assisting the AML team with other more general tasks and projects. I can then see my role as a manager for Andy more being providing support and guidance rather than allocating work."*

60 In the comments that she made on the individual goals she said that she wanted to see the Claimant establish himself as the "go to" person within WM for AML Advisory and to take more of a lead role in creating his own workload, in order to help build relationships with the AML team he would be spending one day a week sitting along with the AML Compliance team and that he was expected to deliver tailored face to face training before the end of 2019.

61 There was also a rating for leadership behaviours which were identified as being "drive to impact", "adapt quickly, always learn", "speak up for the good of RBC" and "unlock the potential of our people". Ms Clifford/Travers' comment on that included,

> "*Andy has only been with RBC for 3 months, however he is starting to demonstrate that he can speak up when he has identified issues and challenging the business."*

Ms Clifford/Travers sent Mr Currin a draft of her appraisal to review.

62 Ms Clifford/Travers met with the Claimant on 16 October to discuss his performance appraisal. She went through the appraisal with him and explained why she had given him the ratings that she had. She said that in the short time that he had been with RBC he had not demonstrated enough for her to give him a higher rating. She tried to give the feedback in a positive constructive way but she made clear the areas in which she expected to see development and what she expected to see.

63 At about the same time Ms Clifford/Travers asked the Claimant to send her weekly summaries of what he had been doing in advance their weekly one-to-one meetings. On 22 October the Claimant sent her an email summarising his work from the week before. One of the things that he said that he had done was,

> "*Had some preliminary conversations with CQ and review team members re offshore accounts that are managed by onshore relationship managers and are potentially not being included from the UK client population. Next steps is for the BIDA team to produce a report on such client numbers as this will be a*

clear business relationship here in the UK under the ML Regs and COBS"

He also said that he was continuing to monitor and review the client M relationship and had a meeting scheduled with Mr Anand to see whether they could accelerate the exit of that undesirable relationship in a sensitive manner.

64 In his summary on 29 October the Claimant noted that the WM AML training was pencilled in for 18 November and that the slides still needed to be completed and sent to FIU/HMRC.

65 At the one-to-one meeting with Ms Clifford/Travers on 30 October the Claimant raised the issue of whether off-shore assets with onshore Relationship Managers were being classified as offshore accounts and whether that was correct. They agreed that the Claimant would take it forward by requesting a report on the number of offshore accounts with onshore RMs so that he had the data to assess the situation and to determine whether there was an issue.

66 On 31 October the Claimant requested information on the issue from someone in Client Services Support. On 4 November they informed the Claimant that that the information would need to be requested from IT. In his weekly work summary to Ms Clifford/Travers on 5 November the Claimant said,

> "*I will submit an IT request this week to determine the number of offshore accounts currently supported by onshore Relationship Managers (to see if they are systematically being considered UK clients). Dependent on findings, this may also be a priority for 2020."*

67 On 21 October Ms Clifford/Travers returned to the Claimant his draft overdue client review process with her comments and amendments. She asked him to finalise it and to take the proposals forward with certain individuals. On 5 November the Claimant sent an email to Mr Currin and Ms Clifford/Travers that he did not want to introduce new onerous requirements when the number of overdue reviews had been brought down and a new technology solution was going to be introduced in 2020 which would provide a more adaptable platform for reviews and would be designed with automated chasers and escalations built in. Ms Clifford/Travers responded that even if the numbers had reduced they still needed to document a process for the follow up of overdue reviews as there was no set process in place for that. She said that from her perspective the process could be split into two areas – what to do when the client has failed to provide the required information in a timely manner and what do where the RMs were not responding in a timely manner. She then expanded on both points and gave him indicators of what the process should include.

68 By the end of October Ms Clifford/Travers had not heard anything from the Claimant in respect the PEP register review. On 31 October she asked him whether any progress had been made in conducting a review of all PEPs in WM to ensure that they had up-to-date KYC and EDD risk assessments. The Claimant responded that all PEP relationships that had previously been identified would have a risk assessment in place and would have been checked through his manual review of all high risk relationships. He had not reviewed the KYC for all the those PEP relationships as that was an extremely time consuming piece of work. Ms Clifford/Travers told him that Ms Currin had specifically requested a review to be completed of the PEP register and the clients on it and to check whether they had

what they needed in terms of KYC and that the EDD risk assessment were up to date. The Claimant continued to push back on it and the work was eventually completed at the end of November 2019.

69 On 1 November (Friday) at 6.03 a.m. the Claimant asked Ms Clifford/Travers whether he could work from home that day. She responded that he could but asked him to ensure that from the following week he started spending one day a week with the AML team on the first floor. Although she had asked him to spend one day a week with the team on 1 October he had not done so. The Claimant responded that he would.

70 On 7 November, for the first time, the Claimant spent a day working on the first floor with the AML team. He was very unhappy about having to do that. At the end of the day the Claimant booked in a meeting with Ms Clifford/Travers on 11 November for a 5 minute chat.

71 By 7 November the Claimant had still not liaised with Mr Jones about the training and had not produced any slides for the training he was due to deliver on 18 November. Ms Clifford/Travers chased him for the slides on 7 November and again on 11 November. She offered again to help him provide the training. She gave him details of training that was available and which she had found useful. She made it clear that it was important for him to address this issue as it was part of his role to deliver AML face to face tailored training on an ongoing basis.

72 On 8 November (Friday) the Claimant worked from home. He had not asked Ms Clifford/Travers whether he could do so.

73 When Ms Clifford/Travers saw that the Claimant had arranged a meeting with her she asked him whether everything was alright and the Claimant responded "*yes/no"* and said that he wanted to discuss "*all these desk rotations".* He said that it was disruptive and impacted productivity. Ms Clifford/Travers said that she did not see an issue with him working with the AML team one day and week but said that she would discuss it with him on Monday. The Claimant said that under the Respondent's policy they should be reviewing their workstation every time they changed desk locations – "*DSE Regulations and all that*". The Respondent's DSE Policy provided that all employees were responsible for completing workstation risk assessments for their workstations and they had to do so when their workstation changed. All that was required was for the person to check whether the equipment was in the right place and the screen and chair were at the right height. It only took a few minutes to do that.

74 On 11 November Ms Clifford/Travers met with the Claimant to discuss his concerns about sitting with the AML team. She explained to him why it was important for him to have face to face interaction with the team on a regular basis. She suggested two options to address his concerns. He could continue doing one day a week and take as much time as he needed to conduct his workstation assessments and could bring his personal belongings with him. Alternatively, she could arrange for him to have a permanent desk within AML Compliance and he could go up to WM for meetings.

75 On 11 November at 12.30 Ms Clifford/Travers asked the Claimant to send her the slides for the AML training and she said that she assumed that he still wanted her

assistance in delivering the training. She had still not received the slides at 3.46 pm and sent him a further email asking for them. The Claimant responded that she could see them when he had finished them and said that he had said he would get them to someone called Chris by Wednesday (13 November).

76 On 11 November Mr Jones wrote to the Claimant and said that he was following up on the Claimant's email of 13 September about client G. The Claimant had not provided him any further information since that date. He asked him whether he had documents or anything else in relation to RBC's clients which they could use in an investigation. The Claimant responded that he would check if he had anything and he would ask someone else as "*all these folks were on her radar when she was at GS back in the day"* and he provided links to various websites in the public domain. Mr Jones responded "*I meant more if you'd found any internal RBC docs/comms etc you found when you were cross checking that shows any red flags etc which we can get started with."* The Claimant responded that they should probably discuss it offline and then continued,

> "*I've just been through a couple of the files below to refresh my memory. I think there are questions that need posing (especially in terms of the business and client selection strategy and if they can truly demonstrate that they know who their client is in these instances. I guess all this touches on our conversation earlier re money laundering in global markets/sales & trading businesses."*

77 Around the beginning of November Ms Clifford/Travers and Mr Currin agreed that Mr Currin would attend the weekly one-to-ones with the Claimant as Ms Clifford/Travers felt that she was not getting improvement in Claimant's proactivity or productivity. Prior to her one-to-one meeting with the Claimant on 12 November Ms Clifford/Travers noted the areas in which work was outstanding and that she needed to discuss with the Claimant. She shared that with Mr Currin. The outstanding tasks included the overdue review process, the AML training slides and the PEP register review. She noted that in relation to offshore clients/onshore RMs the Claimant had said that he was going to get the data in respect of the number of cases in which this arose and that it might be a priority for 2020.

78 At the meeting on 12 November they discussed the matters that Ms Clifford/Travers had listed in her email to Mr Currin. Certain dates were agreed for the delivery of outstanding tasks. It was agreed that the Claimant would set up a meeting with the KYC team by 15 November to confirm the overdue reviews processes, would send Ms Clifford/Travers the AML training slides on 13 November, in respect of the PEPs would provide Ms Clifford/Travers and Mr Currin by 22 November with the dates on which each was subjected to a KYC refresh review, the date when the EDD risk assessment was last updated and the risk rating and by 31 January 2020 would complete the Tax Evasion risk assessments for all the UK businesses across Capital Markets, I&TS, GAM and Wealth. Ms Clifford/Travers provided the Claimant with a suggested training course and a link to a catalogue of training courses which might assist with his anxiety in delivering AML training face to face. They also touched on the issue of whether the Respondent was systematically incorrectly recording relationships where there were onshore RMs and offshore account as offshore relationships/clients. The Claimant said that if that was the case, the Respondent might not be complying with the UK Money Laundering Regulations 2017 (in terms of KYC documents) because they were not classified as UK clients.

Mr Currin pointed out to him that the Bank's internal processes for AML compliance, KYC and EDD applied across the UK and the Channel Islands, adopting for each aspect the standard of whichever jurisdiction had the most stringent requirements. Hence, the same process would be followed regardless of whether a client was classified as an onshore or offshore client. Mr Currin said that it was, nevethrless, important to get to the bottom of this as the Respondent had a duty to report annually to the FCA the number of UK PEPs. If PEP clients were incorrectly being classified as offshore clients, that could lead to an under-reporting of the Bank's UK PEPs. It was agreed that the Claimant should look into this in more detail to determine whether clients had been classified incorrectly and, if so, how many. There was also a brief discussion about client M when the Claimant updated his managers on the situation. He did not give any new information or allege any wrongdoing by the Respondent in relation to it. Following the meeting Ms Clifford/Travers sent the Claimant an email setting out a summary of what had been agreed in respect of the outstanding tasks. Her email did not refer to the onshore/offshore discussion or client M. The Claimant sent her an email pointing out that they had "*touched on"* those issues too. He said that client M was "*perhaps one to look back over when time permits for lessons learned, etc."*

79 On 13 November Mr Parker informed Mr Anand that he had spoken to the Claimant about client M and had advised him on the exit process to follow as they could not get the level of comfort required in respect of customer due diligence (CDD). Mr Currin asked Mr Jones to look at it from the onshore RM perspective to see whether any SAR needed to be made. Mr Jones replied that he had spoken to the Claimant and that he was going to produce a rundown of the issues and documents which he would treat as a UTR.

80 The Claimant provided the finalised version of his training slides on 15 November (the Friday before the Monday on which training was to take place). The Claimant recycled training slides that had been created by Mr Sivananthan for the Capital Markets training and others from an earlier Wealth Management training pack. In cross-examination he accepted that there was only one slide which he had created.

81 On 15 November the Claimant worked from home. Mr Jones asked Ms Clifford/Travers whether she was aware of it. She said that he had asked her the previous day whether he could. Mr Jones said that he only raised it because it had been mentioned to him that the Claimant had been doing it pretty much every week. At some stage after that Ms Clifford/Travers told the Claimant that if he wanted to work from home every Friday he needed to make an formal application under the Respondent's flexible working policy to do so,

82 The AML training took place on 18 November 2019. The Claimant started his presentation but froze after about 30 seconds and was unable to continue. Mr Jones continued the presentation and answered questions at the end. Mr Jones informed Ms Clifford/Travers and Mr Currin of what had happened.

83 On 19 November Mr Jones chased the Claimant for information about client M so that they could conduct the onshore investigation. The Claimant responded that he had "*a heap of documents"* in front of him and that he would try and get something over to him later that day. On the same day Mr Jones also asked to meet the Claimant to discuss client G.

84 On 20 November the Claimant called a meeting in relation to another client. The meeting was attended by Messrs Jones, Martyn-Fisher and Omid Mojabi. At the meeting client M was also discussed. The Claimant referred to client M as a set of "bad actors" and said that client M was breaching its account conditions relating to third party payments and replacing a nominee director. The Claimant also said that Ms S (the Relationship Manager) who was Sri Lankan might be connected to a Sri Lankan couple who had recently been convicted of money laundering and had been in the news. He said that they lived at an address with the same postcode prefix as her address, and they could be her parents or aunts and uncles.

85 On 22 November the Claimant sent Mr Jones limited information on client M which he said that he had gathered from the emails and communications that he had seen. Part of the information related to the possible connection between Ms S and the Sri Lankan couple with the same surname, who had recently been convicted of money laundering. He said that there had been no documentation to independently verify the clients' circumstances other than representations from *"dubious accountants in Singapore who have previously been on my radar through previous investigations."* The rest of it dealt with the activity on the account, namely the payment of school fees, which the Claimant said did not comply with one of the conditions attached to the account. Mr Jones thanked him for it and said that they would treat it as a UTR.

86 On 22 November (Friday) the Claimant was not at work and had not asked Ms Clifford/Travers whether he could work from home. At 10.42 she sent him an email to ask him whether he was working from home. He responded that it was "*a last minute thing"* as he had no keys to lock the flat or unlock his bike as his husband had taken both sets of keys to work. He also apologised for not having completed the forms to apply to work from home every Friday.

87 On 25 November Ms Clifford/Travers sent Mr Currin an email about the number of Fridays when the Claimant had worked from home. Between 20 September and 22 November the Claimant had worked from home on six out of eight Fridays. On a couple of occasions he had asked Ms Clifford/Travers the previous day whether he could work from home, in most cases he had informed her on the day that he would be working from home.

88 On 26 November (four days after the agreed date) the Claimant provided Mr Currin a review of the PEP relationship that WM UK held with the last review and AML risk assessment dates.

89 On 26 November Ms Clifford/Travers and Mr Currin held a one-to-one meeting with the Claimant. Prior to the meeting the Claimant sent them an update of what he had been doing. He said that he had started to conduct some research into offshore accounts and onshore managers and said again that it would be a priority for the 2020 WM work plan.

90 On 28 November Ms Clifford/Travers sent the Claimant an email about a number of things. She said that they had noticed that the Claimant had been working from home nearly every Friday on an authorised and unauthorised basis. She said that he could work from home on 29 November, but if he wanted to work from home on Fridays after that, it would need to requested through the formal process. She also asked him to respond to the two options that she had given him about working with

the AML team. He had not worked any day with the team that week. She also said that she had considered the recent workload of the team and wanted him to take over responsibility of GAM (Global Asset Management) from Mr Sivananthan because he was already at capacity with Capital Markets and ITS and GAM came under WM. The Claimant sent her a flexible working application with his response and said that he had intended to work with the AML team that day but had been unable to because of the work that he was doing with the people on the third floor. He also said "*understood re GAM".*

91 On 28 November Mr Jones met with the Claimant to discuss client G. The Claimant brought with him a sparse selection of KYC docs and did not have any concrete information to add to what he had said before. Mr Jones told him again to compile the relevant documentation (more extensive KYC documents and external ownership information) and to put together a comprehensive UTR so that his team could start an investigation.

92 On 4 December Ms Clifford/Travers asked the Claimant whether there was any update on the overdue review process. The Claimant responded that he had started to *"draft some verbiage for inclusion in the WM UK desktop procedures"* and that that would include monthly meetings with Sales Directors who had RMs who had overdue reviews. It was clear from the response that he had not started to draft the process which she had asked him to draft.

93 The Claimant's probationary period was due to expire on 1 January 2020. By the end of November 2019 Ms Clifford/Travers and Mr Currin had concerns because the Claimant was not delivering on the policy, audit and project type of work which was central to his role. They decided to seek advice from Louise Lambert. Ms Clifford/Travers drafted a timeline setting out how the various issues and concerns had arisen and shared that with Messrs Currin and Jones and Ms Lambert before the meeting. The issues highlighted in the timeline were the AML training for the WM business (the delays in producing the slides, the fact that the Claimant had not produced any slides but had recycled those produced by others and his inability to deliver the training), the Claimant not working one day a week with the AML team having been told that he had to do that, the failure to produce the overdue client reviews despite Ms Clifford/Travers having chased it many times, working from home, inappropriate contact with third party EDD vendors to discuss the Respondent's clients, raising issues without grounds (IRA connection, connection between Ms S and people convicted of money laundering) and delays in providing information to support investigations.

94 On 6 December Ms Clifford/Travers and Mr Currin met with Ms Lambert. Ms Lambert's advice was that they needed to be sure that the Claimant could complete the policy type of work and could do so in a timely manner before they confirmed his employment and he became a permanent employee. She advised them that there were two options – they could terminate the Claimant's employment for not having satisfactorily completed his probation period or they could extend it to give him the opportunity to demonstrate that he could deliver on that kind of work. They could extend it for three months and implement a structured work plan which would set out the tasks that the Claimant had to complete and the time within which they had to completed. She thought that that approach would be more productive than following the Respondent's Improving Performance Policy and instigating a formal performance improvement procedure. She also advised them against approving the

Claimant's application for flexible working as long as they had concerns about his performance. The Respondent's informal policy was that where there were concerns about an employee's performance, the employee should work in the office where he/she would be more likely to receive the supervision and support required to improve performance. Ms Clifford/Travers and Mr Currin did not want to terminate the Claimant's employment and favoured the idea of extending it with a work plan.

95 On 6 December 2019 Mr Jones chased the Claimant for the material that he had asked him to produce on client G to start the investigation.

96 On 10 December Mr Currin sent Ms Clifford/Travers a letter to send to the Claimant setting out his salary following a review at the end of the financial year on 31 October and his bonus. Mr Currin's decision was not to give the Claimant a salary increase and to award him a bonus of £3,000. At that stage the Claimant had been in post for four months, had received a performance rating of "developing" and his salary of £95,000 had been benchmarked when he had started in July 2019. In those circumstances, Mr Currin decided that there was no basis for increasing his salary at that stage. The amount of bonus awarded is discretionary. The bonus target for someone at the Claimant's level for 2019 was £25,000. All bonuses were reduced to 88% of target to reflect the Bank's performance (target reduced to £22,000). The Claimant's bonus was also pro-rated to reflect he had only been in post for four months (35%, which would have given £7,700). The Respondent's guidance recommends that someone with a "developing" rating should receive 80-90% of the target bonus. The £3,000 awarded to the Claimant was 39% of his target.

97 On 17 December 2019 Ms Clifford/Travers and Mr Currin had a probation review meeting with the Claimant. Ms Clifford/Travers asked him how he thought things were going. The Claimant said that he thought that it was going well, he enjoyed the role and had received positive feedback from the business and KYC on the relationship that he had built with them. Ms Clifford/Travers said that she and Mr Currin had some concerns about him and as a result they were going to extend the probation period for three months so that they could work with him on setting specific goals to address their concerns and to develop/improve his performance to get to a place where everyone was happy. Mr Currin said that he wanted to get the Claimant to the place we he was the "face" of AML and the "go to" person. The Claimant said that he had regular meetings and interactions with Sales Directors and RMs. Ms Clifford/Travers acknowledged that but said that AML advisory needed to take the lead in conversations with the business and that he needed to liaise with senior stakeholders such as Ross Jennings, Head of Sales and Relationship Management in WM (Managing Director). They also said that he needed to ensure collaboration between the Channel Islands and UK AML teams when making decisions on clients that may be shared to ensure consistency. Ms Clifford/Travers said that she also had concerns as to the responsibilities of AML Advisory and FIU and whether the Claimant knew when to hand over work that did not fall within his remit. She gave examples of him making assumptions about a client being linked with the IRA and starting to pursue a course of action with the business based on that assumption and the fact that he had been looking in to whether there was a link between a former employee of the Respondent and two persons who had the same surname. The Claimant said that both those matters were based on fact and he had referred them to FIU. Ms Clifford/Travers said that there were also concerns about his failure to complete work at all or within reasonable timescales. She gave as examples the overdue review process which was still not completed, delay in producing the training

slides which in fact turned out to be replications of the ones produced by Mr Sivananthan, updates to funds KYC, updates to PEPs section of WM AML policy. She asked him whether there were issues around understanding the work that they were setting and the Claimant replied that they were both vague in what they wanted and that he was not the only one who had issues with that. The Claimant appeared to be surprised that his probation was being extended and did not accept that there were reasons to do so. Ms Clifford/Travers told him that his flexible working request would not be considered during the probation extension. She raised with him as a separate issue as to whether she could provide any additional support to help him deliver face to face training as that was a key part of his role, as was being able to speak up in management mtgs from an AML perspective. The Claimant said that he needed time to contemplate what had been said at the meeting before providing a response. Ms Clifford/Travers said that they would need to complete a probation extension form and agree goal with him for the next three months.

98 On the following day the Claimant sent Mr Currin an email which he asked him not to share with Ms Clifford/Travers. He said that the probation extension had come as a great surprise and disappointment to him and all the "reasons" that had been put forward for the extension were new to him and had never been previously discussed with him. He also said that he had become concerned with Ms Clifford/Travers' behaviour and conduct towards him in the recent weeks and months, but did not provide any detail of the behaviour and conduct that had caused him concern. Mr Currin responded that there were a number of areas where it was considered that further development was required in meeting the requirements of his role and that he and Ms Clifford/Travers were keen to work with him in the next three months to help him achieve those requirements. He said that he wanted to ensure that the Claimant had a successful career at RBC but reminded him that it was a two way process.

99 Ms Clifford/Travers filled in the probation extension form and sent it to the Claimant on 20 December 2019. In her email to him she said,

> "*As stated, Scott and I are keen to work with you to improve in these areas and to ensure your success at RBC and hope that you are also fully engaged and committed to working with us on the same.*"

She asked him to review the goals set and to set out his comments, if he had any, and to sign the form and return it to her. She set out in the form the main concerns for extending the probation. These were,

> "*Andy's visibility to Senior Management and ensuring that he is the main contact and lead person within AML for the Wealth Management business;*
> *Ensuring that he remains working within his remit within AML Advisory and has an understanding of when to hand-over tasks to other RBC functions such as the AML FIU;*
> *Advice is provided to the business based on factual information; and*
> *Being able to complete tasks set by management and to do so in a timely manner and ask questions where required, for example, if clarification is required in relation to what is required.*"

Those were essentially the same concerns as those that had been conveyed to the Claimant at the meeting on 17 December. It was also recorded on the form that separately the Claimant had raised concerns about feeling anxious when delivering

face to face training. It made it clear that that had not been a reason for extending the probation but that they would work with the Claimant on providing additional support and making reasonable adjustments in relation to that as it was a core component of his role. That included identifying suitable training courses for him to attend and providing support in the delivery of AML training sessions. The five goals/objectives set related to each of the concerns that had been identified.

100 On 27 December Ms Clifford/Travers sent the Claimant his goals and objectives for 2020. There were two others in addition to the five set out in the Probation extension form. These were to take a lead role in the management of the AML programme and framework for the WM and GAM business in the UK, liaising with the Channel Island AML Compliance team to ensure consistency across the British Isles and to proactively lead and/or assist with the completion of HML advisory projects and task in 2020.

101 Ms Clifford/Travers had her first one-to-one meeting with the Claimant in 2020 on 7 January. Mr Currin also attended the meeting. The Claimant said that he was not in a position to sign the probation form as he did not agree with it and he was still waiting for more detailed examples to be provided formally in writing over and above what he had already been told. Ms Clifford/Travers asked him to provide by 16 January work plan items in relation to the financial crime programme for both WM and GAM. Mr Currin asked him to provide the UTRs to Mr Jones which Mr Jones had been requesting for some time. Ms Clifford/Travers asked him to re-review the desktop procedures for WM as she had noticed some inaccuracies where Capital Markets processes had been referenced which were not accurate for WM, and to review by 16 January the GAM desktop procs on which Mr Sivananthan had done an initial draft. Mr Currin asked the Claimant to provide specific examples of where they had onshore RMs for offshore a/cs.

102 Mr Currin chased up the last point in an email after the meeting. The Claimant responded that there were two that sprang to mind – clients M and DB. He said that he would check his emails/records the following day and that hopefully the WM analytics team would respond with the requested data soon and that they would have a much clearer idea of the population.

103 On 7 January Mr Jones followed up on his email of 6 December and asked the Claimant whether he had had a chance to review and recreate UTRs where they were required. The Claimant responded that he had nothing further to add from what had previously been discussed and he summarised that to list some of the “red flags” or “triggers”. Mr Jones reiterated to the Claimant that his understanding from the meeting had been that the Claimant was going to put together the relevant documents which he had which would form the basis of a report – i.e. internal KYC information, the external information that he had collected – beyond the new and poor websites. The Claimant responded that he had printed off certain documents and would drop them off to Mr Jones the following week. He said that in light of what he had bn told in December 2019 he did not want to upset people or cause offence by straying on other people’s turf.

104 On 8 January Ms Clifford/Travers asked the Claimant whether the overdue review process had bn finalised and, if so, where it was documented.

105 The Claimant was absent sick from 13 to 27 January 2020. He told his GP on

15 January that he had a lawyer helping him. His medical certificate stated that he was unfit to work because of stress.

106 As Mr Currin had not received anything from the Claimant about clients where they had onshore RMs but offshore accounts and he needed to do the regulatory return relating to the number of UK PEPs by 24 January, on 13 January he sought that information from someone in Data Analytics. He also asked Mr Jones for some documentation relating to client DB, who had been identified by the Claimant as someone falling into that category. He did not copy the Claimant into those emails.

107 On 17 January Mr Currin sent emails to Messrs Jones and Martyn-Fisher and Ms Omelcenko (FIU Manager) in respect of a particular client who had been the subject of a SAR with the instruction that they should inform him if the client tried to open another a/c. Mr Martyn-Fisher sent it to the Claimant to make sure that he was aware of it.

108 Having made inquiries of HR, Mr Currin informed Ms Omelcenko, who was conducting the onshore investigation into client M, that Ms S lived at an address 1.4 miles away from the individuals convicted of money laundering and that they were not her parents.

109 The onshore investigation report into client M was concluded on 22 Jan 2020 The report dealt with the various matters that had been highlighted by the Claimant and, having looked into all those matters, concluded that there were insufficient grounds to suspect money laundering in relation to the activity or behaviour of client M and that a SAR was, therefore, not recommended. It also said that as exit letters had already been sent to the client no further action was considered. Ms Omelcenko sent report to Messrs Currin and Jones on the same day.

110 On 22 January the Claimant sent Ms Lambert a formal grievance against Mr Currin and Ms Clifford/Travers. He said in the email to Ms Lambert that he had submitted various disclosures to them in the course of his employment and that there was a clear connection between the disclosures and the change in their behaviour and conduct towards him around the end of October 2019. He described their behaviour as being "*toxic, sordid and sinister*". He said that as far as he was aware he had complied with RBC's Whistleblowing Policy. The grievance comprised 20 typed pages and there were 19 documents annexed to it.

111 On 29 January, when the Claimant returned from sick leave, Ms Clifford/Travers and Mr Currin met with him (Mr Currin remotely) and he was given the probation extension letter. The letter set out the reasons why on 17 December 2019 his probation period had been extended by 3 months to 20 March 2020. The letter largely repeated what had been said on 17 December and set out in the probation extension form of 20 December. The letter concluded by saying that he would be sent separately a work plan which would set out achievable goals to assist him in addressing the areas of development that had been identified. Ms Clifford/Travers found the meeting difficult as the Claimant refused to engage with her and made it clear that he was not prepared to co-operate.

112 On 30 January Mr Jones sent the Claimant an email that they had concluded the investigation on his client M UTR and that as he had found insufficient grounds to suspect money laundering he would not be submitting a SAR and the case was now

closed.

113 Ms Clifford/Travers was due to have her weekly meeting with the Claimant on 4 February. On 3 February she sent him a draft work plan and said that they could go through the items and the timelines at the meeting on the following day and work together to create a finalised version. The draft plan set out a variety of tasks to be done over the next two months and explained in respect of each exactly what was required and the date by which it had to be completed. Many of the tasks on the work plan were tasks that the Claimant had been asked to do before the extension of his probation, for example, Tax Risk Assessments (it had been agreed on 12 November that the Claimant would complete that by 31 January 2020), procedures for overdue reviews and WM desktop procedures (outstanding from the previous year), there were tasks related to GAM, responsibility for which had passed to the Claimant at the end of November 2019. The work plan said that the Tax Risk Assessments should be concluded by 20 March 2020 (seven weeks after the initial date), the WM desktop procedures by 17 February 2020, the procedures for overdue reviews by 14 February 2020. The dates for completing the other tasks were all between 28 February and 31 March 2020.

114 The Claimant was absent sick from 4 to 7 February and again from 17 to 21 February. He was on holiday on 13 and 14 February.

115 On 4 February the Claimant responded to the extension of probation letter. He said that he had already told HR that he did not accept the reasons stated in the letter as it contained many factual inaccuracies and it was "*glaringly obvious"* that the reasons given for extending his probation were "*without merit."* He said that it was clear to him that the real reason for the extension was that he had made protected disclosures. He said that there were "*significant inconsistencies"* between what had been said at the meeting on 17 December, in the probation extension form and the letter of 29 January 2020. In the rest of the letter he highlighted what he saw as being the inconsistencies, factual inaccuracies and mischaracterisation. In his letter he referred to the formal grievance that he had raised on 22 January about the decision to extend his probation.

116 Ms Clifford/Travers was pregnant at the time and she found managing the Claimant, due to his reaction to the extension of his probation, stressful. It was decided that Mr Currin would take over the management of the Claimant.

117 On 18 February the Claimant sent Ms Lambert additional grounds to add to his grievance.

118 On 24 February Millie Devitt (Head of Employee Relations) wrote to the Claimant that the Whistleblowing Committee would confirm which matters were to be investigated as reportable/potentially reportable concerns by the Law Group. The Employee Relations team would investigate all the other matters in his grievance, namely whether Mr Currin and Ms Clifford/Travers had subjected him to retaliatory acts because he had raised various concerns.

119 On 24 February the Claimant returned to work and Mr Currin asked him to schedule a meeting with him. He told him that he would be conducting the weekly catch up mtgs with him and that Ms Clifford/Travers would not be attending them. As they were in a probation extension period Ms Lambert would attend them with him.

Ms Lambert provided Mr Currin a script to use at the meeting.

120 The meeting took place on 25 February. Following the meeting Ms Lambert provided them both with her notes of the meeting and gave them an opportunity to amend them. Mr Currin said that he was aware that Claimant had raised a grievance but that was a separate process and would not be discussed at the weekly work plan meetings. He said that would use the worl plan to focus on the tasks that had been assigned to the Claimant. The Claimant said that the work plan had not been agreed and Mr Curin explained that all the tasks on it were part of the Claimant's role and job description. They discussed the items on the work plan. They discussed the procedures for overdue reviews and Mr Currin repeated what Ms Clifford/Travers had already said a number of times, i.e that they needed to have a process to identify whether the delay lay with the client or the RM and what to do. The dates for WM and GAM desktop procedures was put back to 31 March 2020.

121 On 5 March the Claimant contacted ACAS and commenced Early Conciliation.

122 At the start of March 2020 Millie Devitt asked Sean Taor (European Head of Capital Markets and Syndicates, Managing Director) to hear the Claimant's grievance. She provided him with all the relevant documents and had a brief discussion with him. She explained to him that his role was to determine whether the Claimant had been subject to retaliatory action because of the concerns that he had raised.

123 On 11 March Mr Taor met with the Claimant to discuss his grievance. Ms Devitt was present at the meeting and the Claimant was accompanied by Mr Sivananthan. The Claimant's position in essence was that he had received a very favourable performance appraisal in the middle of October but that things had gone downhill after that, and in December Ms Clifford/Travers and M Currin had extended his probation as they were trying to remove him from the business. He believed that that had happened because he had become more vocal between October and December and had raised serious issues, including in relation to client M. The Claimant also said that Ms Clifford/Travers' attitude to his working from home had changed after he raised issues and the level of bonus awarded to him was also attributable to that. He said that the workload and timelines in the work plan were unrealistic and had been deliberately set as such so that he would fail. He said that he believed that his managers had behaved in the way that had in order to punish him for raising the issues that he had raised.

124 On 12 March 2020 Mr Currin had a second meeting with the Claimant to discuss the work plan. Ms Lambert attended the meeting. There was a discussion about the various tasks on the plan and the deadlines and in respect of almost all of them the existing timelines were confirmed. Mr Currin confirmed that the Claimant should prioritise and focus on the training plan for 2020 and the WM procedures for overdue reviews. It was agreed that these would be delivered by 20 March. The probation extension had been due to end on 20 March, but as the Claimant had been absent on sick leave and had booked annual leave in April, it was decided to extend the probation period to the end of April 2020. Ms Lambert confirmed that in a letter to the Claimant on 19 March.

125 A further meeting to discuss the work plan took place on 19 March. It was noted that the Claimant was on track to complete the tasks that were due to be completed

by 20 and 31 March.

126 On 23 March Mr Currin asked the Claimant for an update on two tasks that were due to have been completed by 20 March. These were the two tasks that Mr Currin had asked the Claimant on 12 March to prioritise – the draft WM training plan and the WM process for overdue reviews. The Claimant provided a draft training plan on 24 March. In respect of the overdue process, the Claimant provided a draft new chapter on customer due diligence and said that he was working on it and would provide the granular details in the WM UK desktop procedures.

127 On 23 March Mr Taor interviewed Ms Clifford/Travers as part of the grievance investigation. Following the interview, she sent Mr Taor documents to support what she had told him. Mr Taor interviewed Mr Currin on 27 March.

128 On 24 March Mr Currin sent six individuals certain policy updates. The Claimant questioned why he had not been included among the recipients of the policy updates. Mr Currin responded that that only five out of the fifteen members of the AML team had received the updates and that the reason for that was that they were involved in Policy updates which needed to completed to close out Audit or Compliance Monitoring testing points by the end of the month. He said that the changes would be discussed at the weekly AML meetings, which the Claimant attended, and a communication to the wider team would also be sent out later.

129 On 24 March Ross Martyn-Fisher completed and sent to Mr Jones a High Risk client assessment in respect of the Claimant's UTR relating to client G. It was based on review against "open source" and internal KYC data. The risk rating was "High 1" which denoted that it was "within risk appetite." He confirmed, as had been stated by the Claimant, that client G had been fined and barred for life from operating in the US securities industry and that ACCA had withdrawn the practice certificate to conduct audit work from Accountants AJ. The sole practitioner and owner of the firm was person DC. Mr Martyn-Fisher found that the majority of the entities investigated had limited public profiles and a nexus to the accountant firm AJ. In addition a large number of the companies had as their registered address the office of company LT, which was owned by person DC's wife. The address was the same as that for accountants AJ. Many of them had current or former relationships with the Respondent's Capital Markets. Mr Martyn-Fisher concluded that while there were deficiencies in the KYC held by Capital Markets on a number of the entities and there were legitimate questions around the profiles of the clients that Capital Markets should be targeting, there did not appear to be any obvious AML/Financial Crime issues from the open source information that he had identified.

130 There was a further meeting in respect of the work plan on 26 March. The Claimant questioned why Mr Currin had chased him up on tasks that were overdue by a couple of days. Mr Currin said that if the Claimant was not going to complete a task by the deadline, the Claimant should raise it with him. In respect of the procedures for overdue reviews, the Claimant said that he did not think that the granular detail was needed in the overdue procedures but it would be included in the WM UK desktop procedures. Mr Currin disagreed – he said where the document was housed was a separate issue, but a document with all the details needed to be created. It was agreed that the Claiamnt should get that across to him by 1 April. It had already been pointed out that the Claimant needed to include training content in the training plan. The deadline for that was moved from 31 April to 15 May as the

Claimant was taking some annual leave in April.

131 The Claimant amended the notes of that meeting. He added that he did not see any valid reason why he should not have received the policy updates at the same time as the others and he did not think that other members of his team would have been chased up on the work plan items the next business day after they were due. He felt that he was being treated differently from others in his team. Ms Lambert suggested that he raised those two matter with M Devitt to be dealt with as part of his grievance. The Claimant did that by forwarding the emails to M Devitt on 27 March.

132 The Claimant was absent on sick leave from 31 March to 9 April and on annual leave from 14 April to 27 April 2020. Due to the Claimant's absences and the ongoing grievance process, on 27 April the Claimant's probation was extended to 29 May 2020.

133 On 15 April 2020 Early Conciliation was concluded and the EC certificate was granted.

134 The Claimant had a long period of sickness absence (because of stress, anxiety, fatigue and depression) from 28 April to 2 October 2020. He was on annual leave from 5 to 16 October 2020. When the Claimant provided a medical certificate from his GP on 28 May that he was unfit to work until 6 July 2020, his probation was extended to 31 July. As a result of the Claimant's prolonged absence some of the items on his work plan were allocated to others as the work needed to be completed and Mr Currin and Ms Lambert agreed that they would revisit the work plan when he was ready to return to work.

135 Mr Taor sent the Claimant the outcome of his grievance on 30 April 2020. He dealt with each of the fifteen acts that the Claimant had said had been "retaliatory acts" as a result of his having raised various concerns, He did not uphold the Claimant's grievance in respect of any of them. He advised the Claimant of his right to appeal the grievance outcome. When drafting the outcome letter Mr Taor realised that he had inadvertently overlooked the two additional matters raised on 27 March. Ms Devitt interviewed the Claimant about them on 7 May and forwarded the interview notes to Mr Taor. He advised her of his outcome on those issues and she drafted the outcome letter for him which he sent to the Claimant on 18 May 2020. They were not upheld.

136 The Claimant appealed on 6 May 2020 and raised further grounds of appal on 20 May 2020. The original grounds of appeal comprise twenty typed pages. Darrell Uden (Head of European Equity Capital Markets ("ECM") and Corporate Broking and joint Global Co-Head of ECM, Man Director) was asked to chair the Claimant's grievance appeal.

137 In light of the questions raised in Mr Martyn-Fisher's risk assessment of client G and related entities, Mr Jones decided in April 2020 to dig deeper and review the trading activity held on RBC's clients connected to client G. He personally examined both active and non-active trading data for any UK RBC clients identified in the UTR. He identified a number of features and patterns in the data that were indicative of money laundering. On 22 April and 21 May 2020 FIU's automated transaction monitoring system generated alerts relating to the client G network. Mr Jones involved their counterparts in the US and Australia because a number of the entitles

in the network had active products in the US and Australia. Mr Jones produced twelve detailed intelligence charts and investigation reports setting out the trading activity, which when viewed as a whole, was suspicious. On 27 May Mr Jones sought approval to demarket the six active relationships that they had in the UK that were linked to the client G network. On 3 June 2020 RBC filed seven SARS (Suspicious Activity Reports) in relation to entities connected with client G that held accounts with RBC.

138 On 7 May 2020 the Claimant presented his claim to the ET.

139 On 11 June 2020 the Claimant attended the grievance appeal hearing. Mr Uden was advised by Kerry Morris, HR Business Partner, and the Claimant was accompanied by Manijeh Koolani. The Claimant was informed that the appeal was not a re-hearing but to consider his grounds for saying that original decision should not be upheld. The Claimant was asked to expand upon or clarify matters that he had raised in his appeal letters. He provided some answers but in respect of other matters said that he would get back to them in writing. Following the hearing, the Respondent had to chase the Claimant several times for the responses that he had said that he would provide in writing. On 10 July the Claimant sent Mr Udin a four page spreadsheet which he said set out the answers to the questions that he had been asked. He referred to Ms Morris having said that they wanted to complete the appeal in a timely manner and said,

> "*However, given the very serious nature of my grievance and the potential ramifications for some of the individuals who are the focus of my grievance, I think completing the appeal in a thorough and forensic manner is far more appropriate in the circumstances, as opposed to another slapdash effort."*

He continued,

> "*I have started to give thought and draft some scripts relating to my grievance. These will put together various strands of my grievance and associated submissions and will hopefully connect the dots viz-a-viz my protected disclosures and subsequent punishments and detriments that I have suffered. I am planning on creating something more sophisticated than Powerpoint and instead creating various timelines, potentially using motion graphics, to relay convey the whole purpose of and narrative of my grievance… What I am planning will take some time and will not be completed by next Wednesday."*

He had marked up some questions on his spreadsheet in red and asked Mr Uden to let him his comments on those as soon as possible.

140 Mr Uden felt that the Claimant was refusing to answer simple questions and was seeking to expand his grievance and to make him deal with matters that were not within his remit. He raised with HR that he did not have the time to deal in detail with the large number of matters that the Claimant was raising and that he wanted someone with legal expertise to review all the points that the Claimant was making. HR (Ms Devitt and Ms Morris) agreed that they would instruct an independent external investigator to investigate the matters raised by the Claimant and present his/her findings in a coherent and comprehensive format to Mr Uden, who would them make a final decision on the appeal.

141 On 18 July 2020, due to the Claimant's sick leave and ongoing grievance, the Claimant's probationary period was extended to 30 October 2020. It was later extended to 27 November 2020.

142 On 29 July Mr Uein informed the Claimant that they had appointed an external independent investigator to review the original grievance and conduct additional investigations, as required and as directed by him, for the appeal process. He said that the independent investigator would agree the terms of reference of the investigation with him and would provide him with his/her findings, and that he would then determine the outcome of the grievance appeal.

143 Zoe Wigan, a solicitor and a former Partner in the employment department at DAC Beachcroft LLP, was appointed the external independent investigator. Ms Devitt provided her with all the relevant documentation. Ms Wigan spoke to Mr Uden and Ms Morris on 31 July about the investigation. Her initial view, which did not change, was that she did not need to interview the Claimant as part of her investigation. She was not conducting a re-hearing and the Claimant had been interviewed by Mr Uden and had provided a large quantity of documentation in support of his grievance and grievance appeal. On 4 August Ms Wigan agreed the terms of reference for her investigation with the Respondent. In essence they were:

(a) The investigation would cover the two grounds of appeal set out in the Claimant's appeal, which were:

(i) The outcome letter contained so many factual errors and other flaws that its conclusions could not be relied upon; and

(ii) The grievance investigation had not been fair, reasonable or complete and, therefore, its conclusions could not be relied on.

(b) She was not required to reinvestigate the original grievance or provide any opinion on whether the Claimant had suffered any acts of retaliation, However, if she considered that there had been any errors/deficiencies in the outcome letter or original letter that would benefit from further investigation, she would discuss that with Mr Uden and Ms Morris before conducting further investigation.

(c) Initially, she proposed to interview Mr Taor, Ms Devitt and Ms Lambert.

(d) The written investigation report would summarise key evidence, her findings and conclusions, and would be submitted to Mr Uden and Ms Morris.

The Claimant requested the terms of reference and they were provided to him on 11 August 2020.

144 Ms Wigan produced a 23-page interim report on 28 September 2020 and met with Mr Uden and Ms Morris on 29 September to discuss it. In respect of the first ground of appeal, she looked at 31 specific points made by the Claimant and set out her conclusion on each of them. She concluded that there had been some factual errors and omissions in the outcome letter, but these were not sufficiently material to undermine the integrity of the outcome overall or to suggest that Mr Taor's approach had lacked due care, skill or diligence. She recommended that certain matters be reconsidered. In respect of the second ground of appeal, she considered 16 points made by the Claimant. Her conclusion was that overall the investigation had been fair, reasonable and thorough, but that there were areas where further investigation,

to test the evidence given by Mr Currin and Ms Clifford/Travers, would have been beneficial. It was agreed that Ms Wigan would conduct the further investigation, and that would involve interviewing Mr Currin and Mike Jones.

145 Ms Wigan conducted the further investigation and produced her final report on 11 October. She met with Mr Uden and Ms Morris on 13 October to discuss her report. Ms Morris asked Ms Wigan to draft a grievance response based on her report. Ms Wigan sent her draft to Ms Morris on 21 October. On 30 October Ms Morris sent the draft to Mr Uden, having added her own comments, and she asked him to review it and add any further comments that he wanted to add. Mr Uden made several comments and asked some questions. Mr Uden, Ms Morris and Ms Wigan met on 2 November to discuss the appeal outcome letter. There was a limited amount of additional investigation and a further circulation of the draft of the letter.

146 Mr Uden sent the Claimant the outcome of the grievance appeal on 17 November 2020. It was a detailed letter (14.5 typed pages) that addressed all the points that had been raised by the Claimant. The appeal was not upheld.

147 On 21 November 2020 the Claimant resigned with immediate effect. He said that having considered the grievance appeal outcome letter, he had decided that he had no option but to resign. He had felt that Mr Currin and Ms Clifford/Travers had decided to "manage" him out so that he left because her had reported a number of concerns to them regarding the effectiveness and methods of the Respondent's efforts to prevent money laundering. He considered that the way that he had been treated during the grievance and appeal process another detriment levelled at him because he had raised concerns about the bank's failures in AML. He was resigning as a direct response of the treatment to which he had been subjected as a whistleblower.

Conclusions

Protected Disclosures (set out at paragraph 2.7 (above))

Protected Disclosure 1 (paragraph 2.7(a))

148 What the Claimant said orally to Mr Jones and in his email on 7 August 2019 is set out at paragraphs 29 and 30 (above). In those two communications, the Claimant disclosed some information in relation to client M - a sum of money had gone into client M's account and very soon after had gone out, the website of company V (a subsidiary of client M) was of very poor quality which indicated that it was a front company, the authorised signatory and nominee shareholder of client M formed part of company C which had featured in international scandals - Magnitsky and a Slovakian tax fraud being investigated by Jan Kuciak. He did not point out that Company C was a corporate services provider and did not say how it featured in either of the two scandals to which he referred. That was the only factual information which he gave in those two communications.

149 The Claimant's case was that he reasonably believed that the information which he gave tended to show that the Respondent (the Bank) had failed or was failing to comply with its legal obligations under the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 Regulations") and various FCA Guidelines and/or that it had committed or was

committing criminal offences under the 2017 Regulations, the Proceeds of Crime Act 2002 and the Terrorism Act 2000. The Respondent had legal obligations under the 2017 Regulations to identify and asses the risks of money laundering and terrorist financing to which the business was subject, to establish and maintain policies, controls and procedures to mitigate and manage the risks of money laundering and terrorist financing, to provide training to its employees on the above, to apply customer due diligence and enhanced due diligence in respect of high risk clients. The Respondent was obliged under the Proceeds of Crime Act 2002 and the Terrorism Act 2000 to make Suspicious Activity Reports if it knew or suspected or reasonably believed that someone was engaged in money laundering or terrorist activity.

150 The Claimant did not in those communications on 7 August give any information about any failures by the Respondent to comply with its obligations. For instance, he did not say that they had failed to carry out risk assessments or customer due diligence or that they did not have the correct policies and controls in place. On the contrary, he acknowledged that the onboarding process had taken a long time and AML had had concerns. Those concerns had been considered by a Committee dealing with High Risk and PEP clients and the client had been approved with a H1 risk rating and with certain conditions attached. The information that the Claimant gave did not tend to show that the Respondent had failed or was failing to comply with its legal obligations. What it showed was that the Claimant believed that client M was highly suspicious and might be engaged in some kind of unlawful activity. We accept that the Claimant genuinely believed that and, although the belief was based on very few concrete facts, it was reasonable. The fact that the Respondent wished to pursue it shows that it did not consider it to be unreasonable. We think it is unlikely that at that time the Claimant genuinely believed that there had been failure by the Respondent to comply with its legal obligations or the commission of any criminal offence by it. If he did have such a belief, we concluded that, on the basis of what he knew and the information that he conveyed to the Respondent, such a belief could not have been reasonable. He could not have reasonably believed that the information which he disclosed tended to show the commission of any criminal offence or breach of legal obligations by the Bank. We conclude that he did not make the protected disclosure which he claimed he had made.

Protected Disclosure 2 (paragraph 2.7 (b))

151 What the Claimant and Mr Sivananthan said to Ms Clifford/Travers is set out at paragraph 47 above. They did not give any information about the Respondent being or having been in breach of any legal obligations or committing any criminal offence, but asked questions about the number of people who had access to certain information and whether there were any processes in place to prevent that information being used improperly. They had the same concerns as the ones that Chloe Yu had expressed on 5 July 2019 and, like her, they felt that it was a matter that needed to be looked into. We concluded that the Claimant asking those questions did not amount to a qualifying disclosure.

Protected Disclosure 3 and part of protected Disclosure 6 (paragraph 2.7(c) and (f))

152 It is the Claimant's case that on various dates between 1 October 2019 and 7 January 2020 he disclosed information to Ms Clifford/Travers and Mr Currin that client relationships were systematically not being recorded and treated as UK client

relationships which he reasonably believed tended to show that the Respondent was in breach of its legal obligations under the 2017 Regulations and was committing criminal offences under the 2017 Regulations, the Proceeds of Crime Act 2002 and the Terrorism Act 2000.

153 We have found that the first time that the Claimant referred to this was in his email of 22 October 2019 to Ms Clifford-Travers setting out the work he had done that week (see paragraph 63 above). He said that that he had had "*preliminary conversations"* with others in respect of offshore accounts managed by onshore managers that were "*potentially"* not being included in the UK population and that he needed to get the numbers of such clients as under the 2017 Regulations it would be a clear business relationship in the UK. The matter was discussed at his subsequent meeting with Ms Clifford/Travers on 30 October (see paragraph 65 above). At that stage the Claimant did not know how many accounts there were in that fell in that category. On 5 November the Claimant said that he would seek information from IT about the numbers of such accounts to see whether it was happening systematically. On 12 November it was made clear to the Claimant that in terms of complying with the KYC requirements under the 2017 Regulations it made no difference whether a client was classified as onshore or offshore. The same standards applied in both jurisdictions (see paragraph 78 above). It was important but for a different reason and the position remained the same – the Claimant was to find out how many, if any, clients had been classified incorrectly. By 7 January 2020 the Claimant had not provided that information. On 7 and 8 January Mr Currin asked him to provide specific examples of such accounts and the Claimant gave two examples – clients M and DB (see paragraphs 101 and102 above).

154 It is clear from the above that at no stage did the Claimant disclose information about relationships being systematically incorrectly recorded and treated as offshore relationships. He never had any idea how many relationships were recorded incorrectly, and over two months after he first looked into it he could only identify two possible relationships that might be in that category. Furthermore, it was made clear to him on 12 November 2019 (if it had not been obvious already) that the classification did not lead to any failure to comply with the obligations under the 2017 Regulations. Even if an offshore relationship had not been classified as a "business relationship" under the regulation 4 of the 2017 Regulations, the Respondent still applied the 2017 Regulations to it. The same minimum standards applied to all relationships in the UK and Channel Islands.

155 The Claimant did not disclose the information which he claims that he did. Furthermore he could not have reasonably believed that what he said on this tended to show that the Respondent was failing, had failed or was likely to fail to comply with its legal obligations or that it had committed, was committing or was likely to commit a criminal offence. The Claimant's comments on this issue between 22 October 2019 and 8 January 2020 were not qualifying disclosure within the meaning of section 43B(1) ERA 1996.

<u>Protected Disclosure 4 (paragraph 2.7 (d)</u>

156 Our findings about what was said on 8 and 11 November are at paragraphs 73 and 74 (above). Those communications followed the Claimant's first day worked on the first floor with AML and his unhappiness about that. The Claimant did not in his chat with Ms Clifford/Travers on 8 November or at the meeting on 11 November

disclose any information about the health and safety of anyone being endangered, nor could he have reasonably believed that anything that he said tended to show that. He did not bring to his employer's attention circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety. He did no more than express his view that he thought that desk rotations were disruptive and impacted productivity. He did that because he was not happy about having to sit on the first floor with the AML team once a week. What the Claimant said did not amount to a qualifying disclosure within section 43B(1) ERA 1996 and did not fall within section 44(1)(c) ERA 1996.

Protected disclosure 5 (paragraph 2.7(e)

157 The Claimant's case was that he made this protected disclosure in his second email of 11 November 2019 (see paragraph 76 above). In order to understand the context of that email, it is necessary to look at the email of 13 September, Mr Jones' email asking for more information and the Claimant's initial response to that. The contents of the email of 13 September are set out at paragraph 43 (above). His case was that he reasonably believed that the information that he gave tended to show that the Respondent had failed or was failing to comply with its legal obligations and had committed or was committing criminal offences under the legislation set out at paragraph 149 (above).

158 What is clear from the above that the Claimant did not give any information about any wrongdoing by the Respondent in his email of 13 September 2019. All he did was to list some entities and individuals who had been on his "radar" and gave information that G (who was not a client of the Respondent) had been barred by the US Securities for life. He did not give any further information for two months and when Mr Jones chased him for information on 11 November his response was that he would check if he had anything and would ask someone else (who was not an employee of the Respondent). In response to Mr Jones' question whether he had found anything among the Respondent's documents that showed any red flags, the Claimant replied that there were questions that needed posing in terms of business and client selection strategy and whether they could truly demonstrate that they knew who their client was and it touching on an earlier conversation about money laundering in global markets/sales and trading businesses.

159 What is clear from all those communications looked at together is that the Claimant gave very little information and the limited information he gave did not show any breach of any legal obligations or the commission of any criminal offences by the Respondent. If the Claimant believed that what he said tended to show such wrongdoing by the Respondent, such a belief was not reasonable. The Claimant's email of 11 November 2019 did not amount to a qualifying disclosure.

Protected Disclosure 6 (paragraph 2.7(f))

160 We have already dealt with the alleged protected disclosure about onshore/offshore clients at paragraphs 152-155 above). We deal with the alleged disclosure about client M below. The Claimant's case is that at the meeting on 12 November 2019 he also made protected disclosures about the Respondent not complying properly with its obligations in respect of "KYC" and "CDD" documents for beneficial owners of more complex ownership structures and the Strategic Enterprise Project (SEP). We have not found that the Claimant raised the issues which he

claimed that he did in respect of those matters at the meeting on 12 November. The Claimant did not make any protected disclosures about those issues.

Protected disclosures 6, 7 and 8 about client M (paragraph 2.7(f), (g) and (h))

161 The Claimant's case was that on 12, 20 and 22 November 2019 he gave information relating to client M which he reasonably believed tended to show the Respondent's failure to comply with its legal obligations or its commission of criminal offences under the legislation identified at paragraph 149 (above). What the Claimant said about client M on those dates is set out at paragraphs 78, 84 and 85 (above). It is significant that any information provided on 20 and 22 November was in direct response to Mr Jones seeking that information so that his team could conduct an investigation into client M. The Claimant provided limited information on 20 November about client M breaching two of the conditions and the fact that someone with the same surname as the RM who had onboarded the client had been convicted of money laundering. That information was repeated in the email on 22 November. He also repeated the information about client M breaching the conditions attached to the account and the fact that the client's circumstances had only been verified by representation from "*dubious accounts*" who had been on his "*radar from previous investigations*."

162 Much of what we have said at paragraph 150 (above) applies to the information given on these dates as well. The Claimant gave information which he reasonably believed tended to show that the client M was suspicious and might be involved in unlawful activities. Mr Jones asked him for that information so that he could investigate client M and decide whether it was necessary to submit a SAR. Those are the actions of a bank complying with its legal obligations. The Claimant did not give information which tended to show breach of its legal obligations or the commission of criminal offences by the Respondent, and the Claimant could not have reasonably believed that the information he gave tended to show that. Giving information tending to show that a client of the bank is suspicious or might be acting unlawfully is not in itself indicative of the Bank being in breach of its legal obligations or committing criminal offences. Banks recognise that some of their clients are high risk and that is reflected in the risk ratings that they are given and conditions that are attached to their accounts. A bank could comply with all its legal obligations but still end up with a client who then engages in unlawful activities. Hence, there is a continuing duty on banks to monitor the actions of their clients and if they notice anything suspicious to escalate the matter and to investigate it. The Claimant did not on these dates make protected disclosures about the Respondent being in breach of its legal obligations or committing criminal offences.

Detriments

163 As we have not found that the Claimant made any protected disclosures, it follows that his complaints of having been subjected to detriments for having made protected disclosures and automatic unfair dismissal under section 103S ERA 1996 cannot succeed. However, in case we are wrong in respect of any of our conclusion on the protected disclosures, we have gone on to consider whether the Claimant was subjected to the detriments of which he complains and, if he was, whether his raising the issues, which he claimed were protected disclosure, materially influenced the treatment to which he was subjected.

164 Before we deal with the individual detriments we think it is important to note the following. The Respondent expected the Claimant to report and escalate any money laundering and criminal activity that he detected because it was part of his role to do that. When the Claimant raised issues, such as about clients M and G and the onshore/offshore relationships, he expressed his views but very rarely supplied concrete facts to support his views. Notwithstanding that, the Respondent's employees took the concerns raised by him seriously and made it clear that they wanted to look further into them. Rather than brushing the Claimant off or ignoring his concerns, they asked him to provide further information so that they could investigate the matter and take action if required. The Respondent could not submit SARs based on the poor quality of the website of a client or the Claimant having had certain people on his radar for a number of years. They needed concrete facts. The Claimant, however, did not provide the further information and they chased him for it. Furthermore, the Claimant was not the only person who raised the issues that he claims were protected disclosures. Chloe Yu and Mr Sivananthan asked the same questions about sensitive commercial information, which could be used in insider dealing, being disseminated more widely than was necessary. Mr Martyn-Fisher suggested that they should do a full review of all the clients that Ms S had brought onboard as he had not liked any of her prospects that had been referred to them. There was no suggestion that any retaliatory action had been taken against them.

Detriments at paragraph 2.9(a) and (b) (above)

165 The Claimant's case is that from about September 2019 Ms Clifford/Travers' attitude toward him became defensive and/or hostile and her communication style became more formal than it had been previously and that she did that because of what he had said about client M on 7 August and the conversation he had had with her on 16 September on the way back from lunch at Nando's.

166 Ms Clifford/Travers had played no part in the onboarding of client M and she had no concerns about the Claimant raising an escalation to the FIU about client M because that was part of his role. As the Claimant was an experienced AML employee and a friend of hers, Ms Clifford/Travers' approach in managing him initially was to let him get on with what he had to do. However, by about 11 September she was beginning to have concerns that he was not doing what was expected of him and the things that he had been asked to do. The Claimant had been given objectives that on 25 July 2019 for the period up to 31 October 2019. One of the objectives was the development and delivery of tailored AML training to the WM business. By 29 August the Claimant had not started on it and Ms Clifford/Travers asked him whether he had discussed it with Mr Jones. On 11 September she asked Mr Jones whether he had spoken to him about it and he responded that he had not. At the beginning of September Mr Currin asked him to draft the process to be followed for overdue refreshes. On 9 September Ms Clifford/Travers told him that she needed it by the end of that day. He did not produce it by the end of the day and she had to chase him for it again on 10 September and the first draft was produced on 11 September. He did not go into the area where the rest of the AML team worked. On 11 September he decided to work from home without asking her whether he could or telling her that her was. Mr Martyn-Fisher was still have to deal with AML Advisory work. It was in those circumstances that Ms Clifford/Travers told Mr Jones on 11 September that she was starting to manage him more and was going to put everything in email.

167 Things did not get better. On 19 September Ms Clifford/Travers asked the Claimant to complete the desktop procedure for WM by the end of the following week. By the end of September (paragraph 49) the Claimant had not produced the AML WM training or the WM desktop procedure and in that month had only been in the AML office on four occasions. As the problems continued, Ms Clifford/Travers continued to monitor his performance and to manage it closely.

168 Ms Clifford/Travers did not become hostile or defensive in or from September 2019. She started to manage the Claimant more closely and to put communications with him about his work in writing. She did not subject the Claimant to a detriment by doing that. She did that because she was starting to have concerns about his work. It had nothing to do with his having raised issues about client M on 7 August 2019 or having asked questions about the dissemination of commercial information on 16 September 2019.

Detriment (2.9 (c))

169 The Claimant's case is that on 11 November Ms Clifford/Travers threatened to move him from the business unit location. If we do not find that the Claimant was subjected to any detriments for having made protected disclosures on or after 6 December 2019, we would only have jurisdiction to consider this complaint if the Claimant satisfied us that it was not reasonably practicable for the complaint tot have been presented within the three month period. The Claimant has not put forward any evidence to show that it was not reasonably practicable for him to have presented this complaint in time. We concluded that if it was not part of a series of similar acts, the last of which occurred after 6 December 2019, we did not have jurisdiction to consider it.

170 The AML team, of which the Claimant was a part sat in an office on the first floor. The only reason that the Claimant sat with the WM KYC/Client Due Diligence team on the third floor was because there was no desk available on the first floor (see paragraph 23 above). In any event, on 11 November 2019 Ms Clifford/Travers did not threaten to move him from the business unit (see paragraph 74 above). She gave him two options, one of which was to stay in the business unit on the third floor and work one day a week from the AML office. The other was to have a permanent desk in the AML office. She did not do what he has alleged. Even if she had told him that he had to work in the office with the AML team, it is difficult to see how a manager telling an employee that he had to sit in the office where his team sat could amount to a detriment. The Claimant was not subjected to the detriment of which he has complained.

Detriment 4 (2.9 (d))

171 What we have said about jurisdiction at paragraph 169 above applies equally to this complaint and we reached the same conclusion.

172 It is not correct, as alleged by the Claimant, that Ms Clifford/Travers told him that she had no objections to people working from home and that prior to 22 November 2019 she had never questioned or challenged his working from home. The Respondent's policy on working from home was clear (see paragraph 26 above) and Ms Clifford/Travers did not tell the Claimant anything different from that. The Claimant knew that he could work from home occasionally and that if he wanted to

he had had to ask Ms Clifford/Travers in advance. He did so on three occasions between 25 July and 4 September. On 11 September Ms Clifford-Travers noticed that he was not at work and asked him whether he had told her that he would not be at work that day. He said that he had not and she had reminded him that in future he must do so (paragraph 40 above); on 19 September the Claimant had asked her whether he could work from home on 20 September and she had agreed that he could (paragraph 48 above); on 3 October the Claimant had asked her whether he could work from home on the following day and she had said that he could not as she wanted him to attend a meeting the next day. The Claimant had not attended work the following day (paragraph 51); on 11 October the Claimant had informed her that he would be working from home as he was not feeling very well (paragraph 54); On 1 November the Claimant asked her whether he could work from home that day and she agreed that he could (paragraph 69); On 15 November Mr Jones told Ms Clifford/Travers that it had been mentioned to him that the Claimant was working from home almost every Friday and shortly after that she had made it clear to the Claimant that is he wished to work from home every Friday, he needed to make a formal application under the Respondent's flexible working policy.

173 On 22 November she contacted the Claimant at 10.42 a.m. to ask him whether he was working from home because he was not at work and had not sought her permission to work from home. She had made it clear to him that if he wanted to work from home, he had to ask her in advance. She was perfectly entitled to ask him on 22 November whether he was working from home. She did not subject him to a detriment by doing that. The Claimant apologised for not having made an application under the flexible working policy.

174 On 25 November she raised the matter with Mr Currin. She pointed out that between 20 September and 22 November the Claimant had worked from home on six out of eight Fridays. On a couple of occasions he had asked her in advance whether he could do so, on most occasions he had informed her on the day that he would be working from home. That is why she sent him the email on 28 November. She said that he could work from home the following day (which was a Friday) but that if he wanted to work from home on Fridays after that he would need to make the application under the policy. By remining him of the policy and asking him to comply with it, she did not subject him to a detriment.

175 We concluded that Ms Clifford/Travers did not subject the Claimant to any detriment by sending him those two emails.

Detriments 2(9)(e) and (f)

176 It is not in dispute that Mr Currin made the decision not to increase the Claimant's salary on 10 December 2019. He made that decision because the Claimant's salary of £95,000 had been benchmarked only five months earlier, there had been concerns about the Claimant's performance, he had received a rating of "developing" and a decision had been made to extend his probation. The raising of various issues, which the Claimant claims were protected disclosures, played no part in Mr Currin's decision not to award the Claimant a salary rise.

177 Mr Currin decided to award the Claimant a bonus of £3,000 for the same reasons. The bonus award is discretionary. The amount awarded depends on a number of factors – the bonus target for someone at that level, the Bank's

performance, the proportion of the year worked by the employee and the employee's performance. There is guidance given as to how different performance ratings should be reflected in the bonus award, but it is guidance and not binding. Mr Currin decided that having taken into account all the relevant factors, £3,000 was the appropriate amount to award the Claimant. We are satisfied that the issues raised by the Claimant played no part in his decision as to the level of the bonus.

Detriments 2(9)(g) and (h)

178 The Claimant's case in essence is that there were no genuine concerns about his performance and that these were fabricated so as to manage him out of the business. His case is that no one had ever raised any concerns about his performance prior to the meeting to extend his probation on 10 December. That case is simply not borne out by the evidence and the contemporaneous documents.

179 One of the reasons that Ms Clifford/Travers gave on 17 December for extending the Claimant's probation was his failure to complete work at all or within reasonable timescales. There is contemporaneous documentary evidence to support all the examples she gave. There was a delay in producing the training slides and when the Claimant did produce them they were copies of slides that had been produced by Mr Sivananthan and someone else. (see paragraphs 25, 38, 41, 42, 49, 52, 55, 64, 71, 76 and 80 above). The overdue review processes had still not been completed despite the Claimant being given deadlines and chased on a number of occasions (see paragraphs 39, 67, 78, 91 above). The Claimant produced an interim draft of WM desktop procedure two weeks late and it was of poor quality (see paragraphs 48, 49, 52, 56 above). There was a delay in the review of the PEPs register to ensure that all the information on it was up to date (see paragraphs 52 and 68 above).

180 It should have been clear to the Claimant from his appraisal on 16 October 2019 that he was not performing to the standard that was expected (paragraphs 59-62 above). The "developing" rating denoted that he was not fully achieving targets and plans. One of the reasons given for extending his probation was that he needed to be the "face" of AML and the "go to" person. That point was clearly made in his performance appraisal. It was made clear that he needed to develop in the role so that he could take the lead and be proactive in managing the AML programme and framework for WM. Ms Clifford/Travers had also made it clear that he had to generate his own work which meant getting involved in reviews processes, systems and controls which were in place and assessing whether changes needed to be made and completing annual risk assessments. This was work that the Claimant should have been doing without having to be told to do it and then to be chased up to deliver on time. Ms Clifford/Travers made it clear that her role should have been to support him and not to allocate work to him.

181 The fact that the concerns were genuine and not fabricated is also indicated by the fact that Ms Clifford/Travers and Mr Currin shared them with Louise Lambert before the appraisal and sought her advice (paragraph 58). It should also have been clear to the Claimant that there were concerns because after the appraisal Ms Clifford/Travers asked the Claimant to provide her with summaries of what he had done every week prior to their meeting, and after the meeting she sent him summaries of what he was expected to do and by when. Furthermore, from 12 November Mr Currin started to sit in on the Claimant's one-to-one meetings with Ms Clifford/Travers.

182 We concluded that the Respondent extended the Claimant's probation because it was not satisfied that he was performing to the level that was expected in his role and, although the Respondent had not raised those concerns formally at a meeting with the Claimant, it had made it clear to him that there were areas in which he needed to develop. We were satisfied that the raising of the issues, which the Claimant considered to protected disclosures played no part in the decision to extend his probation. If the Respondent had wished to get rid of the Claimant because of the alleged protected disclosures, it could easily have terminated his employment because he had not satisfactorily completed his probation. It did not need to embark on a time and cost consuming process of extending his probation and setting him goals that could not be achieved.

Detriment 2.9(i)

183 The Respondent did not refuse the Claimant's flexible working application to work from home one day a week. Ms Clifford/Travers told him on 17 December that it would not be considered during the extended probation. She acted on advice given by HR. Where there are concerns about an employee's performance, it makes sense to require the employee to work in an environment where his work can be supervised and he can be supported. It made even more sense in light of the concerns that the Respondent had about the Claimant, namely that he needed to be the "face" of AML for WM and the "go to" person. We concluded that the application was not refused, its consideration was delayed pending the completion of the probationary period and that the alleged protected disclosures made by the Claimant played no part in the decision.

Detriment 2.9(j)

184 Mr Currin did not copy his emails on 13 January 2020 to the Claimant (paragraph 106). He was seeking information that he had asked the Claimant to obtain on a number of occasions and the Claimant had failed to do so. The Claimant was off sick at the time. There was no reason why Mr Currin should have copied them to the Claimant. It is not clear to see how not being copied into those emails subjects the Claimant to a detriment. Even if it does, we concluded that the Claimant's alleged protected disclosures played no part in it.

185 Mr Currin did not copy the email on 17 January 2020 to the Claimant (paragraph 1097) The Claimant was absent sick at the time. Mr Currin did not deliberately exclude the Claimant from the email and his failure to copy it to the Claimant had nothing to do with the Claimant's alleged protected disclosures.

186 The email of 24 March was sent to a limited number of people in the AML for a specific purpose. The Claimant did not fall into that category (paragraph 128 above). Mr Currin explained that to the Claimant at the time and said that he and all the other in the AML team would have been given the same information shortly after. It had nothing to do with the Claimant's alleged protected disclosures.

Detriment 2.9(k)

187 The detriment alleged by the Claimant is that on 3 February Ms Clifford/Travers sent him a work plan that contained elements that were "*designed to be*

unachievable within the prescribed time for completion." The work plan that Ms Clifford/Travers sent the Claimant was a draft plan and she made it clear to him that they would go through the items and the timelines the following days and work together to create a finalised version. In any events, none of the timelines that she had proposed in her draft plan were unachievable. Many of the tasks on the plan were tasks that the Claimant had been asked to do before his probation had been extended and he had not complied with the deadlines previously set. New deadlines were set (paragraph 113 above).

188 Ms Clifford/Travers and Mr Currin genuinely believed that the tasks set were achievable within the prescribed time. They believed that the Claimant would be able demonstrate that he was capable of doing those tasks and wanted him to succeed. If they had believed that he could not and they had not wanted him to succeed, rather than waste their time and effort, they could have just dismissed him. The Claimant was not subjected to the detriment of which he complains.

Detriment 2.9 (l)

189 The detriment of which the Claimant complains is that on 23 March Mr Currin chased him on an item on the work plan very shortly after he had received the work plan and without the Claimant having been given a proper opportunity to complete that item of work. That is factually not correct. Drafting the overdue review procedures and preparing the WM training plan were tasks set out in the draft work plan on 3 February 2020. The former was outstanding from the previous year. The Claimant was absent sick from 4 to 23 February. On 25 February it was agreed that the Claimant would complete those two tasks by 20 March 2020. At the work plan meeting on 12 March 2020 it was agreed that the Claimant should focus on those two tasks and that they should be delivered by 20 March (paragraph 124 above). Mr Currin did not receive those two pieces of work by that date, nor did he receive any communication from the Claimant saying that he required more time. On 23 March Mr Currin asked the Claimant for an update on those two tasks. The Claimant was not subjected to the detriment of which he complains. He was not subjected to any detriment in respect of those two tasks. Mr Currin seeking an update on tasks that should have been completed three days earlier had nothing to do with the Claimant's alleged protected disclosures.

Detriment 2.9 (m) and (n)

190 The Claimant complained of three detriments in respect of the grievance investigation by Mr Taor – the investigation was wholly unsatisfactory (in particular, because Mr Taor failed to "*explore any question of detriment"* with Ms Clifford/Travers and Mr Currin), there was an unreasonable delay in sending out the grievance outcome letter to the Claimant and Mr Taor failed to uphold the grievance without thoroughly or genuinely considering whether the complaints had any merit.

191 One of the Claimant's main complaints about the grievance process was that it did not look at the issue of whether he had in fact made protected disclosures but looked at the issue of whether he had been subjected to the detriments of which he complained because he had raised a number of issues which he claimed were protected disclosures. We do not accept that that made the investigation unfair. It looked at the central issue of whether there was any connection between the issues that the Claimant had raised and the treatment of which he complained. The

Claimant's grievance was that there was a clear connection between the disclosures that he had made and the change in his managers' conduct and behaviour towards him.

192 The Claimant's grievance was submitted on 22 January 2020. It was very detailed – it comprised twenty typed pages and had nineteen appendices. He added further grounds to it on 18 February. The Claimant was absent from work most of the time from 22 January to 24 February 2020. On 24 February the Head of Employee Relations informed the Claimant that the Whistleblowing Committee would consider what he claimed were his protected disclosures. Mr Taor was asked at the beginning of March 2020 to investigate the Claimant's grievance, i.e. whether he had been subjected to any retaliatory actions because of the concerns that he had raised. Mr Taor had to do that in addition to his normal job. On 12 March Mr Taor met with the Claimant and went through his grievance with him (paragraph 122 above). Mr Taor interviewed Ms Clifford/Travers on 23 March and she sent him further documents after the interview. Mr Taor interviewed Mr Currin on 27 March. Mr Taor sent the Claimant his grievance outcome on 30 April 2020. He dealt with each of the fifteen acts that the Claimant alleged were retaliatory acts.

193 Mr Taor interviewed the Claimant and the managers against whom he had raised his grievance. He asked all of them about the detriments to which the Claimant said he had been subjected. Having regard to all the information before him, he considered whether the Claimant had been subjected to the detriments of which he complained because he had raised the concerns and issues which he said were protected disclosures. The investigation was satisfactory. There was a time lapse of one month between the last interview and the outcome letter being sent to the Claimant. As we have said, the grievance was detailed and Mr Taor was dealing with it in addition to his normal job. A delay of one month in those circumstances is not unreasonable. Mr Taor carefully considered all the information before him and concluded that the Claimant had not been subjected to retaliatory acts for having raised concerns and issues about various matters. We concluded that the Claimant was not subjected to the detriments of which he complained in respect of the grievance process. Mr Taor's handling of the grievance was not influenced in any way by the fact that the Claimant had raised the issues which he claims were protected disclosures.

Detriments 2.9 (o) and (p)

194 The Claimant also complained that he was subjected to the detriments in the way in which the Respondent dealt with his grievance appeal. The alleged detriments were that Mr Uden handled and investigated the Claimant's grievance appeal in a wholly unsatisfactory manner (in particular by engaging an independent investigator, not permitting the Claimant to see any documents in relation to her appointment and not requiring her to speak to the Claimant|), unreasonably delaying in sending out the outcome and failing to uphold the appeal without genuinely considering the substance of the appeal.

195 The Claimant appealed the grievance outcome on 6 May 2020 and sent additional grounds of appeal on 20 May 2020. The grounds of appeal ran into over twenty typed pages. Mr Udin interviewed the Claimant on 11 June 2020 (paragraph 139 above). Mr Udin tried to get the Claimant to explain or clarify what he had said in his grounds of appeal, and the Claimant's response to many of the questions was

that he would respond to them in writing. Following the interview the Claimant provided more information in a spreadsheet and asked Mr Udin to provide his comments on some of that information. He also said that he was creating more documents to illustrate his grievance ("*something more sophisticated than Powerpoint"* and "*potentially using motion graphics")*. He said that what he was planning would take some time*.* He also said that he expected the appeal to be completed in a "*thorough and forensic manner"* as opposed to another "*slapdash effort"* (a reference to the investigation undertaken by Mr Taor).

196 As the Claimant's grounds of appeal were continuously expanding and he was expecting Mr Udin to deal with every minute detail that he raised, it is not surprising that Mr Udin felt that he needed some assistance from an independent professional to deal with it. It is difficult to see how using an experienced external employment solicitor to conduct the investigation leads to it being an unsatisfactory investigation. She had the legal expertise, forensic experience and time to deal with it, which Mr Udin did not have. It is also difficult to see how not sharing with the Claimant the documents in relation to her appointment subjected the Claimant to a detriment. The Claimant was provided with the terms of reference at his request.

197 Ms Wigan initially took the decision that she did not need to interview the three main protagonists (the Claimant, Ms Clifford/Travers and Mr Currin) because she was not conducting a rehearing but was investigating whether there was any substance to the Claimant's grounds of appeal. It was subsequently agreed that she would conduct a limited further investigation which would involve interviewing Messrs Jones and Currin. Her view remained that she did not need to interview the Claimant – she had his grievance and all the documents related to that, his grounds of appeal and the notes of Mr Udin's interview with him and the document that he had sent to Mr Udin after his interview. The Claimant was not subjected to a detriment by Ms Wigan not interviewing him.

198 The terms of reference were agreed on 4 August 2019. Ms Wigan produced her interim report on 29 September 2020. It comprised 23 pages and she considered the 47 specific points made by the Claimant in his grounds of appeal. She identified limited areas in which she felt that further investigation would have been beneficial and it was agreed that she should undertake that further investigation. She undertook the further investigation and produced her final report on 11 October 2020. There were further discussions and exchange of drafts of the outcome letter between Mr Udin, Ms Wigan and Ms Morris, and the final outcome letter was sent to the Claimant on 17 November 2020.

199 We do not accept that the Claimant was subjected to any detriment in the way the grievance appeal was handled or in its outcome. The matter was thoroughly investigated by an independent experienced employment solicitor. She looked at all the points made by the Claimant and dealt with all of them. She identified a few minor factual errors and omissions in the outcome letter, but concluded that these were not sufficiently material to undermine the integrity of the outcome letter. She identified limited areas in which further investigation would have bee helpful and conducted that investigation. There was a delay in the grievance appeal process being concluded. That was due in part to the Claimant's failure to answer Mr Udin's questions on 11 June and to his intention to supply more documentation which led to the appointment of an external investigator which led to further delay. The Respondent did not delay the grievance appeal outcome because the Claimant had

raised the concerns and issues that he had between 7 August and 22 November 2019.

Automatic unfair dismissal

200 As we have concluded that the Claimant was not subjected to any detriment for having made protected disclosures, it follows that the principal reason for his dismissal could not be because he had made protected disclosures. In ay event, we concluded that the Claimant was not constructively dismissed. There was no repudiatory breach of any express term of his contract or of the implied term of trust and confidence.

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Employment Judge - Grewal

23/09/2022
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

23/09/2022

FOR THE TRIBUNAL OFFICE