EMPLOYMENT TRIBUNALS

Claimant:	**Mr J Zarembok**
Respondents:	**(1) BP PLC** **(2) Mr J Mottashed** **(3) D Wise** **(4) Ms S Skerry** **(5) Ms J Knights** **(6) Ms N Hegarty**
Heard at:	**East London Hearing Centre**
On:	**14, 15, 16, 17, 20, 21, 22, 23, 24, 28, 29, 30 September, 1, 5, 6, 7, 8, 12, 15, 18, 19, 20, 21, 22, 26, 27 28 October 22 & 23 November 2021**
Before:	**Employment Judge Crosfill**
Members:	**Mrs M Legg** **Mr L Bowman**
Representation	
Claimant:	**Mr Craig Rajgopaul and Ms Emmeline Plews of Counsel instructed by Alexandra Worden of Worden Richmond Limited**
Respondents:	**Akash Nawbatt KC and Sam Way of Counsel instructed by Diane Nicol of Pinsent Masons**

JUDGMENT

1. **The Claimant's claim for unfair dismissal brought under part X of the Employment Rights Act 1996 is not well founded and is dismissed.**
2. **The Claimant's claims that he suffered detriments contrary to Section 47B and 48 of the Employment Rights Act 1996 are not well founded and are dismissed.**
3. **The Claimant's claims that he suffered detriments contrary to Sections 47C and 48 of the Employment Rights Act 1996 are not well founded and are dismissed.**

REASONS

Introduction

1. Jonathan Zarembok ('the Claimant'), started work with the First Respondent ('BP') in July 2004. Over his career he was gradually promoted and, from 1 January 2013, he acted as the Book Leader of Low Sulphur Crude Oil Trading.

2. In 2016 BP lost a substantial sum of money due to the insolvency of a trading party in what before us, the parties referred to as the 'Taleveras incident'. The Claimant was unhappy about some aspects of this incident, and raised his concerns with others

3. BP buys and sells oil originating in Nigeria. In 2017 it was seeking to buy oil from the Nigeria National Petroleum Corporation, ('NNPC') and there were discussions about using a local agent in order to secure contracts. The Claimant was concerned about the use of local agents and, as we find below, discussed these concerns with others. He says that during these discussions he made protected disclosures conveying information that the use of agents was likely to involve unlawful conduct. In the event BP did not use the agent that had been discussed and the transaction did not proceed.

4. The Claimant has a young family and in January 2018 he took a period of parental leave returning in April. In June 2018 the Claimant made an application for 'good leaver' status which would have entailed him leaving BP's employment but with the benefit of significant rights under the bonus schemes in place. No formal agreement as to the terms of the Claimant's departure was ever reached.

5. On 24 September 2018 the Claimant brought a broad ranging grievance. Amongst the matters raised was an allegation that he had been forced out of his position because of the concerns that he had raised and/or the fact that he had taken parental leave. On 6 November 2018 The Claimant withdrew his application for good leaver status. It is his case that this grievance was a further protected disclosure that both repeated his earlier disclosures and further complained that BP's treatment of him was unlawful. There were then discussions between the parties about whether and in what capacity the Claimant might continue to work. No resolution was reached.

6. On 18 March 2019 the Claimant presented his first claim to the Employment Tribunal. His claims were essentially that he had been forced out of his role and then not offered a suitable job when he decided to stay, all of which were said to be detriments on the grounds that he had made protected disclosures and/or taken parental leave.

7. The question of whether, and in what capacity, the Claimant would continue to work for BP continued through 2019. No role was found. The Claimant brought further grievances (which he says are further protected disclosures) and two further claims in the employment tribunal.

8. On 10 April 2020 BP dismissed the Claimant stating that the efforts to find him a role had failed and that his conduct had led to a breakdown in trust and confidence. The Claimant has brought a fourth claim in which, amongst other things, he complains about his dismissal.

The headlines

9. This is an extraordinarily long judgment. The parties provided us with a huge amount of material. We have tried to do justice to that material. The Claimant has not succeeded in any of his claims. For any reader who wants a simple digest of our reasons we include the following summary:

9.1. We have found that for entirely proper reasons the Claimant raised concerns about a practice of using local agents in Nigeria to secure business but that his concerns did not meet the test for a protected disclosure as he knew and ought reasonably to have known that his concerns did not tend to show that any wrongdoing was likely rather than merely possible; and

9.2. We have found that when the Claimant raised his grievances those too did not amount to protected disclosures principally because the Claimant did not at the time hold a belief that making the disclosures was in the public interest although if he had thought about it he could have done.

9.3. We have gone on to look at the reasons for the treatment complained of (where we have accepted it occurred) and concluded that in all respects bar one the treatment was in no material sense on the ground that the Claimant had taken or was to take parental leave.

9.4. In respect of the one allegation where the Claimant was subjected to a detriment for taking parental leave we find that the Claimant has waited too long to bring this claim and we do not have the jurisdiction to hear it or give any remedy.

9.5. We have accepted that the reason for the Claimant's dismissal was that the Respondent reasonably believed that his suspicion of those he dealt with (described as a lack of trust) and the fact that he had been displaced from his role for over a year without a realistic prospect of a suitable role in the near future.

9.6. We have accepted that the reason set out above was a sufficient reason to dismiss the Claimant.

9.7. It should be noted that it was not our function to decide whether there was any wrongdoing in respect of transactions that took place in Nigeria.

Relevant procedural history

10. In respect of his first claim, Case No: 3200630/2019 the Claimant contacted ACAS for the purposes of early conciliation on 9 January 2019 naming the First Respondent and then16 January 2019 in respect of Jon Mottashed and 22 January in respect of Dan Wise. He presented his first claim to the Tribunal on 18 March 2019 naming those three parties as Respondents. The claims advanced were claims brought under section 47B and 48 of the Employment Rights Act 1996 (being subjected to a detriment on the grounds of having made protected disclosures). And a claim brought under Regulation 19 of the Maternity and Parental Leave Regulations 1999 read with Section 47C of the Employment Rights Act 1996 (being subjected to a detriment on the grounds of having availed himself of his right to

parental leave).

11. The Respondents served requests for further information on 1 May 2019 which were mainly directed towards ascertaining the Claimant's position in respect of his alleged protected disclosures but sought some information about alleged detriments. The Claimant responded on 30 May 2019. A further request for information was made on 24 June 2019. Again this request was directed towards the alleged protected disclosures and detriments. The Claimant responded on 5 July 2019 following the preliminary hearing mentioned below.

12. On 24 June 2019 a preliminary hearing took place before EJ Specker OBE. The matter was listed for case management purposes. The first claim was listed for a hearing of 20 days commencing 16 July 2020. At the hearing EJ Specker listed a further preliminary hearing to take place on 10 and 11 October 2019 to deal with cross applications by the parties including an application by the Claimant to strike out some parts of the Respondents' response as being inadmissible because they referred to matters said to have been 'without prejudice'.

13. On 4 July 2019 the Claimant issued his second claim, Case no: 3201960/2019. That claim was brought against BP and Jon Mottashed only. Again the complaints were that the Claimant had been subjected to further detriments on the grounds that he had made protected disclosures or that he had exercised a right to take parental leave.

14. The preliminary hearing on 10 and 11 October 2019 was before EJ Russell. She ruled upon the applications by the parties. Her decisions and her reasons for those decisions were set out in a judgment. EJ Crosfill has seen the judgment but has taken care never to read it. The judgment and reasons were not included in the agreed bundle and were never seen by the Tribunal members. What the Tribunal were told was that as a consequence of the rulings made by EJ Russell the Respondents were ordered to amend their ET3. The amended ET3 refers to the fact that there were some without prejudice discussions between the Claimant and BP but not the nature or content of those discussions. EJ Russell made a case management order on 11 October 2019. In her case management summary she noted that the parties had co-operated in agreeing a list of issues leaving her with a single point of dispute. She made case management orders aimed at ensuring that the trial commencing 16 July 2020 would be effective.

15. On 15 February 2020 the Claimant issued his third claim Case No: 3200550/2020. That claim is brought against BP, Samantha Skerry and Janine Knights. The Claimant had obtained additional ACAS early conciliation certificates for that purpose. The legal basis of the claims was the same as the two earlier claims. A decision that all three claims should be consolidated was made by REJ Taylor on 27 February 2020 without hearing any representations from the parties. Initially both parties objected on the basis that the final hearing might not be effective but their objections were overtaken by events.

16. A telephone case management hearing took place on 14 April 2020. This took place during the first enforced lockdown due to the Covid pandemic. EJ Russell postponed the final hearing and she recorded that the parties had dropped their objections to the claims being heard together. By this point the Claimant had been dismissed and a fourth claim was intimated. EJ Russell listed a further preliminary hearing in anticipation of that fourth claim.

17. On 22 June 2019 the Claimant presented his fourth claim. That claim is brought

against BP and Niamh Hegarty (the Claimant having obtained an ACAS early conciliation certificate). The Claimant set out various acts that he said were detriments inflicted on the ground he made protected disclosures. In addition he brought a claim of unfair dismissal. He claimed that his dismissal was for the automatically unfair reason that he had made protected disclosures but that if wrong about that his dismissal was unfair on ordinary principles.

18. A direction that the fourth claim would be heard together with the other three claims was made by REJ Taylor on 17July 2020. On 21 July 2020 a further preliminary hearing was conducted by EJ Crosfill. At that hearing the parties sought an extension to the listing to 34 days. That request was refused on the basis that it was disproportionate to list the matter for a hearing of that length. The Tribunal agreed to list the matter for a hearing of 24 days commencing on 14 September 2021. That listing was provisional as EJ Crosfill agreed that the matter could be reviewed after the exchange of witness statements. The parties had agreed a list of issues. Case management orders were made to prepare the matter for a final hearing.

19. A final preliminary hearing took place on 24 May 2021. On 7 April 2021 the Claimant's solicitor had written to the Tribunal indicating that he had reduced the scope of his claims principally by withdrawing allegations that any detriment was on the ground that he had made protected disclosures concerning the Taleveras incident but also deleting references to various detriments that he had previously relied upon. Despite this it was the Claimant's position that a further 10 days of hearing time were required. The tribunal declined to add hearing dates at that stage undertaking to review matters if it transpired that the listing was inadequate. A further preliminary hearing was fixed for the purposes of resolving a dispute about whether parts of witness statements exchanged by the Respondents were inadmissible. In the event that dispute was resolved by agreement.

20. In advance of the final hearing the Claimant further refined the list of issues further reducing the scope of his claims. On 22 July 2021 the Claimant's solicitors wrote to the Tribunal to notify it that the Claimant was withdrawing all claims made personally against Sam Skerry although the same claims were maintained against BP. A revised list of issues was sent to the Tribunal to reflect those changes.

21. The parties had agreed a bundle of documents for use at the final hearing. That bundle ran to 4716 pages. The bundle was provided electronically with hard copies available if necessary.

<u>The final hearing</u>

22. In advance of the final hearing the advocates had agreed a trial timetable that gave the Tribunal 4 days to read the witness statements and the documents referred to by the parties. There were 961 pages of witness statements. During the first 4 days of the hearing we were able to complete most (but in some cases not all) of the reading. Insofar as any of us had reading left to do that was completed in the evenings and non-sitting days before any witness gave evidence.

23. The case was heard at a time when there was still concern about social distancing. To deal with this the case was allocated two adjoining tribunal rooms with a partition wall slid open. We could safely accommodate around 20 people whilst maintaining social

distancing.

24. Again in advance of the hearing the Respondents applied to have some of the witnesses give evidence via CVP. No objection was made by the Claimant. In order that those witnesses and members of the public could attend the hearing was converted to a hybrid hearing. Using a large screen the tribunal could see and be seen by witnesses and members of the public. The use of the CVP screen became routine and enabled many more people to observe than could have been accommodated in the hearing room.

25. The Claimant had sought and was granted permission to engage the services of a company to provide a transcript of the evidence. To facilitate this the tribunal permitted access to the employees of that company who installed additional microphones and screens. We were provided with a simultaneous transcript of the proceedings which was circulated by e-mail on a daily basis with a final complete transcript being provided at the end. The tribunal would like to acknowledge the very high degree of professionalism demonstrated by the transcribers. Having that transcript was of assistance to the tribunal and the advocates.

26. Shortly before the hearing the Claimant had produced an amended witness statement where he made some changes to what he had originally written. The Claimant was permitted to rely upon this amended statement although the Respondents reserved the right to cross examine the Claimant on any changes and indicated that they would argue that the changes damaged the Claimant's credibility.

27. During the hearing we heard from the Claimant and then from 28 witnesses for the Respondents. We shall not list those witnesses here but shall refer to their evidence where it is important to our decisions below. To assist any reader who did not attend the hearing we attach the agreed cast list as schedule 2 to this judgment. The Claimant elected not to challenge the evidence of Laura Milanovic and Alberto Challita we therefore had regard to the contents of their witness statements. Some witnesses gave evidence via video. The CVP link proved sufficiently robust and there were no significant difficulties with any connection (or at least none which were not swiftly resolved).

28. In the course of the hearing the Employment Judge indicated to the parties that he had printed for himself and the members a standard self-direction setting out the law relating to protected disclosures. He offered to share that with the advocates on the basis that it reflected a provisional view of the tests to be applied. The advocates agreed that that should be shared and that they would have an opportunity to suggest changes and additions during their submissions. Below we set out a final version of that self-direction having listened to the submissions made by the parties and having had regard to the additional authorities they referred to. We record that there was broad agreement as to the legal principles that we needed to apply.

29. In advance of the hearing the Claimant had reviewed his witness statement and decided that some parts of his statement were inaccurate. We permitted the Claimant to adopt a revised statement and Mr Nawbatt had the opportunity to cross examine the Claimant on the need to make these changes. We were provided with a copy of the statement that highlighted where changes had been made.

30. In the course of his evidence the Claimant decided to withdraw his claims against

Jon Mottashed insofar as they sought to impose liability on him personally. We refer below to his actions in this respect.

31. The advocates were keen to have a clear day between the conclusion of the oral evidence and their final submissions. In particular Mr Rajgopaul, who had the heavy task of cross examining a large number of witnesses requested that they be excused attendance on 21 October 2021 to prepare submissions. The tribunal used this day to refresh our memories as to the evidence we heard.

32. We heard submissions from the parties on 22 October 2021. Both sides had prepared thorough written submissions (running to about 200 pages per side) which were of great assistance to us during our deliberations. Both parties made oral submissions to flesh out and supplement their written submissions. We shall not attempt to summarise those submissions here but refer to those we consider the most important below.

33. It is customary to thank advocates for their assistance and at times that appears to be done as a formality. In this case the Tribunal would like to record its gratitude to the legal teams of both parties. This case was complex and was appropriately hard fought. The time allocated by the Tribunal required the parties to approach the matter in a proportionate way. We are very pleased to say that they did so. We were greatly assisted by the efficient way the parties conducted the litigation sticking more or less to their agreed timetable and cutting their cloth to ensure that the case could finish on time.

34. As indicated above the Tribunal did need some additional time to deliberate. This judgment has taken a great deal of time to write. Unfortunately it has had to be prepared around other duties and cases. Nevertheless the Employment Judge is well aware that he has kept the parties waiting and apologises for this.

General findings of fact

35. Before setting out our findings of fact we remind ourselves of the proper approach to fact finding. We were invited by both sides to find the other parties witnesses were unreliable. We were dealing with events that took place a number of years ago. A great deal has happened in the intervening years. People who were once colleagues now find themselves on opposing sides. The parties have been engaged in litigation for years and their witnesses man their trenches. We are alive to the fallibility of human memory, Lord Bingham, with characteristic wisdom, quoted with approval in one of his essays in *"The Business of Judging", "The Judge as Juror: The Judicial Interpretation of Factual Issues"*, Lord Justice Browne's apt observation:

> *'The human capacity for honestly believing something which bears no relation to what actually happened is unlimited.'*

36. Of great assistance to us in this case is the description which Leggatt J set out in *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC 3560 (Comm) (15 November 2013), paras 15-21, in relation to testimony based on memory:

> *'An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.*

> *While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.*
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> *Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. […]*
>
> *Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.*
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> *The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.*
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> *Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. […]*'

37. In order to reduce the risk of being repetitive in this section we shall make findings of fact which are of broad application to the issues we need to decide. In our discussions and conclusions we deal with all of the issues in turn and where necessary make additional findings of fact. We shall indicate where we do that. In particular we shall not in this section deal with the reasons for any treatment. We should make it clear that in taking this approach we have not compartmentalised the evidence and we have had regard to all of the evidence when making our findings.

<u>BP and its stated approach to corruption and whistleblowing</u>

38. In his witness statement and submissions the Claimant argues that, as BP takes the public stance that it makes every effort to combat corruption and retaliation against whistleblowers, there is a public interest in drawing attention to any failure to live up to the

standards BP professes to hold.

39. The evidence about BP's public stance towards matters of business ethics was not in dispute. BP has a Code of Conduct. It was common ground that that code sets out the standards that BP professes to uphold both internally and externally. The Claimant drew attention to the following statements contained in the code:

39.1. *"We respect the world in which we operate. It begins with compliance with laws and regulations. We hold ourselves to the highest ethical standards and behave in ways that earn the trust of others."*

39.2. *"What we do is rarely easy. Achieving the best outcomes often requires the courage to face difficulty, to speak up and stand by what we believe. We always strive to do the right thing… We aim for an enduring legacy, despite the short-term priorities of our world"*

39.3. *"Each of us has a responsibility to speak up if we see something unsafe, unethical or potentially harmful"*

39.4. *BP has "Zero tolerance" for retaliation and "consider[s] acts of retaliation to be misconduct"*

39.5. *"BP gains its competitive advantages through strong performance rather than through unethical or illegal business practices" and*

39.6. *"We do not tolerate bribery and corruption in any of its forms in our business. We comply with anti-bribery and corruption laws and regulations and support efforts to eliminate bribery and corruption worldwide. We work to make sure that our business partners share our commitment"*

40. In the course of the evidence we heard from Bradley Berwick a Senior Investigations Manager in BP's Business Integrity team. In his witness statement he set out BP's approach to corruption as follows:

> *'The First Respondent takes allegations of bribery and corruption very seriously. All employees' and suppliers' behaviour is governed by the BP Global Code of Conduct (Page 412 - 439). Failure to adhere to it can result in serious consequences for employees and third parties and, in the case of employees, dismissal is not uncommon.*
>
> *Allegations of breaches of the Code of Conduct and any other serious concerns are passed to the Business Integrity team in a variety of ways. For example, we have a confidential reporting line called "Opentalk" where employees can raise concerns, including concerns about bribery and corruption. Concerns are also passed to our team by the First Respondent's Ethics and Compliance team or by Legal or Human Resources.'*

41. The nature of BP's business is that its public stance on matters of business ethics and in particular bribery and corruption are an important facet of its public image. Whilst we had no direct evidence on the point we infer that maintaining this public image is important in order to secure further business opportunities and investment. The evidence does not

suggest that BP maintain that their employees never make errors but they do take the public stance that the company does not tolerate unethical activity and that it has put in place robust arrangements to stamp out such activity and to protect those who speak up against it.

The Claimant, his work and his role in the team prior to 2018.

42. When the Claimant joined BP in 2004 he aimed to forge a career as a commodities trader. At the times we are concerned with the Claimant worked within the Integrated Supply and Trading Division of BP (the 'IST'). The IST's principal task was the purchase and sale of oil, gas and electricity. Those activities are carried out both to support BP as a producer/refiner/distributer of gas/oil/electricity but also on an entrepreneurial basis essentially betting against movements in commodity prices.

43. Dan Wise joined BP directly after he left school. After a few years he became an Oil Trader and then was gradually promoted to leadership roles within the Crude Trading Team being appointed to the role of Global Commodity Head for Crude Oil Trading ('GCH') in December 2015.

44. The Claimant worked in Chicago from 2009 to 2013. During that period he worked alongside Dan Wise with the Claimant in a more senior position. Upon his return to London the Claimant took up a role as the Book Leader for Low Sulphur (known as 'sweet oil'). He was responsible for managing sweet oil trading for Europe, West Africa and the Mediterranean. In 2014 Dan Wise assumed line management responsibility for the Claimant which continued after Dan Wise became the GCH. In early 2018 the Claimant had 4 more junior traders who reported to him.

45. The London team was divided into three areas of responsibility. Sweet physical trading (the trading of low sulphur crude oil), sour physical trading (the trading of high sulphur crude oil and paper trading (which concerned the trading of derivative products such as oil futures and the like).

Remuneration

46. The Claimant was paid a basic salary. In 2013 that was £120,000. We assume that there were annual increases but that is immaterial. Whilst for many the basic salary would seem a large sum of money the reality was that the vast part of the remuneration that a trader would expect to receive was by means of an annual bonus. The Claimant was awarded bonuses of $3.5m in 2014; $3.35m in 2015; and $3.75m in 2016. The award of a bonus did not usually result in an immediate cash benefit for the entire sum. BP published a policy setting out how and when bonuses would be paid.

47. The bonus scheme was published in a document entitled the BT Trader and Originator Bonus Plan. The earliest version we were provided with was published in 2013. On its face the Bonus Plan states that the payment of bonuses is at the discretion of BP. We did not understand anybody to be disputing that the declaration of a bonus was a discretionary exercise but that once declared the payment of the bonus was subject to the terms set out in the policy only some of which were discretionary.

48. We were provided with Annual bonus plans for 2015 to 2017. We need only deal

with the most recent plan. The scheme provides that for an employee awarded a bonus, some proportion of that bonus would be allocated in 'restricted share units' ('RSU'). Those share units could be sold or traded until they formally 'vested'. In the 2018 scheme one third of the RSUs vested after 12 months and two thirds after 2 years. Once they vested, tax was deducted, and they would usually be converted into shares that could be sold. The schemes for other years had some variations.

49. Unless and until shares vested in an employee they were of no value. The scheme provides that if an employee leaves, unless in specified circumstances, the employee will lose the benefit of any RSUs that have not vested. The circumstances providing an exception include redundancy, ill health (or death) or a change of employer. A further exception is included and that provides that the right to have shares vest will not be lost if the employment is ended by mutual agreement, at least 6 months' notice is given and BP elects at its discretion to permit the shares to vest on the usual dates. The scheme provides that any unvested RSUs may not vest in certain conditions. Amongst those conditions are circumstances where the employee engages in conduct contrary to the legitimate expectations of BP. In those circumstances the right to the RSUs is forfeited

50. In the bundle of documents we were provided with a form which an employee would need to complete if they wished to leave BP's employment with the benefit of unvested RSUs. It is a very simple form that requires the employee to certify that they have given 6 months' notice and documented and agreed a management of change process. The form provides for approval to be given by the Head of Global Equity Operations.

Promotion, performance management and termination

51. There were some aspects of the ways of working or expectations in the IST (and perhaps wider in BP) which are unusual and which are relevant to our other decisions. Having regard to all of the evidence we heard we make the following findings. We find that there was a widespread view within BP that being a trader at a high level was a job that the vast majority of people would do only for so long. When the Claimant was giving evidence he was asked by the Employment Judge whether people would apply for good leaver status and leave well before the state retirement age. The Claimant agreed that was the case. He said that sometimes people burn out and others have simply done well enough to retire at an early age. He accepted that this happened frequently and that questions about how long Traders would stay for were commonplace.

52. We have already set out the level of bonuses that the Claimant was allocated over a number of years. That level of bonus was paid only to senior traders like the Claimant. Whilst non-traders were well paid they did not receive sums anything like as high as the traders received. Our clear impression was that the Traders were regarded by other employees as being driven individuals motivated in great part by the vast sums that they were paid for doing their job.

53. We heard a great deal of evidence about the steps that were taken to encourage and bring on new traders through the ranks. We find that the Claimant took his responsibilities to train and bring up through the ranks the employees who reported to him very seriously indeed. In his 2017 'My Plan', which is the name used for the annual appraisal, the Claimant said in the section designed to list his achievements, *'..I am proud of the progress that Tara and Oliver have made this year both in terms of understanding*

and future personal growth'. That was a reference to Tara Behtash and Oliver Stanford who were two traders that reported to the Claimant. Dan Wise responded on the same appraisal form saying: *'In 2018 I would like to see JZ continuing to develop the talent he has in his team, both Tara and Oliver are book leaders of the future and need structured coaching / mentoring to nurture that talent.'*

54. We find that the expectation was that new traders would be trained and brought up through the ranks with an expectation that they would move up to a level where they too were commanding the levels of remuneration enjoyed by the Claimant. This was done to enable BP to draw on its home-grown expertise. Dan Wise told us, and we accept, that keeping the newer traders incentivised with increasing bonuses was seen as a way of retaining their loyalty rather than allowing them to be head hunted by commercial rivals.

55. Before leaving the general culture we shall set out our findings in relation to how BP generally dealt with performance issues with traders which was unusual. Dan Wise told us, and we accept, that it would be highly unusual for a trader to be placed on a performance improvement plan. He said that more often than not if a trader left it would be under a 'separation agreement'. An issue that might be addressed in a settlement agreement would be whether the departing trader would be granted 'good leaver' status.

Grading and the Box system

56. As we have understood it BP designates a grade to each employee which is intended to reflect the level of responsibility that the role requires as well as the skills and attributes of the employee. Those grades are designated a letter A being the most senior. In addition within IST employees were given a 'box'. This represented their level of seniority. The Claimant was a grade F box 8 trader. We asked a number of questions about whether the grading of an employee corresponded with a pay scale. We find that for traders there was a rough correlation between grade and pay. In particular the higher the box number the more likely it was that a trader would get a large bonus. Sarah Pearson told us, and we accept, that there was a substantial differences between the overall remuneration of traders and non-traders. She was a senior employee with considerable responsibility but earned very much less than a trader.

Authority Governance and Compliance within the IST

57. BP has put in place various structures designed to ensure that transactions are not entered into beyond the level of delegated authority. Furthermore it subjects sizeable transactions to scrutiny. In his witness statement, Andrew Milnes, set out basic arrangements. There was no material difference between his account and that of the Claimant and we accept what he says. His account was as follows:

> *'5. The First Respondent had put in place structures around compliance in a way that allowed the risk and reward profile of every deal to be kept in balance. The risks considered were not limited to illegal behaviours, but also included behaviours with which the First Respondent simply would not want to be associated. Every deal had to be approved at the appropriate level - either at a Deal Governance Board or at the Commitments Committee.*
>
> *6. The Deal Governance Board is a regional meeting and comprises the Regional*

Business Unit Leader, the Chief Financial Officer and the heads of the various functions. Within IST the teams have "delegations of authority" which set limits on the deals they can enter into. When I refer to a "deal" I am not referring to an individual trade but rather a longer term commitment, such as a deal to buy a certain amount of cargoes a month.

7. Those proposing a deal outside of the applicable delegation of authority must attend a Deal Governance Board to promote it. The Deal Governance Board examines each deal and explores the risks. Ahead of a meeting, a paper is prepared in respect of each deal which records the commercial justification for the deal and contains a section for each function setting out the risks and mitigations. The CFO and I would review this and check if we were comfortable, seeking clarifications where necessary.

8. While the Deal Governance Board can refuse to approve a deal even if each of the functions (legal, compliance etc) were content with it, the reverse is not true – the Deal Governance Board cannot allow a deal to proceed if there were any concerns on the part of any of the functions. The Deal Governance Board has a fixed level of delegated authority. If that is exceeded by any given deal, the deal would be taken to the Commitments Committee. As Regional Business Unit Leader, I would be responsible for first reviewing the deal and then, if appropriate, taking it to the Commitments Committee to propose the opportunity.'

The Taleveras Incident

58. The Claimant withdrew all aspects of his claim that relied upon having made protected disclosures about the Taleveras incident by a letter from his solicitors sent on 4 April 2021. However, until then he had said that he had been treated badly because of raising these matters and because he included references to these matters in his grievances, which he says were protected disclosures in themselves, we shall briefly summarise the nature of the incident and the aftermath insofar as it affected the Claimant.

59. Taleveras was an Anguillan based company that bought and sold oil based products. In 2015 a decision was taken to develop the existing commercial arrangements by offering Taleveras credit on purchases of gasoline provided that the credit exposure was offset against sums owed for purchases of crude oil made by BP. The scheme was intended to increase the volume of sales without increasing the credit exposure which had been agreed as being limited to £30M.

60. The agreements to sell gasoline were reached by the GLights Team and was the particular responsibility of a trader called Tim Kaiser. The initial proposal was for the credit exposure caused by this sale to be offset against a purchase of crude oil. However, this turned out not to be possible because that purchase had been financed by a bank. A decision was taken that the sale would be offset against two further purchases. Contracts were drawn up but erroneously failed to include set off clauses. The effect of this was that BP were exposed to a loss of $85M.

61. Taleveras then proposed that it supply further crude oil from a terminal in South Africa. It turned out that Taleveras did not have good title to the oil that it was proposing to sell but not before BP had been exposed to further losses having contracted to transport

and sell the oil to a US refinery.

62. At about this point the tensions between the interests of the GLights team and the Crude team were beginning to show. Internal accounts were maintained for each team. The profits generated by a team had an impact on the potential bonuses that might be paid. A transaction causing a significant loss could therefore have a substantial effect on the team members' bonuses. BP has an internal policy, the loss Allocation Framework which provides for how loss is to be apportioned between the Credit function of the business and the trading teams. The general rule is that where a transaction brokered by a trading team causes loss, the team will have the first £2M of any loss attributed to their book and 20% of any additional loss. The balance is attributed to Credit.

63. Dan Wise was attempting to minimise any loss attributed to the Crude team. On 5 August 2015 he sent an e-mail to the team saying:

> *'Unfortunately this is a sh*t sandwich. Crude have been federal and acted to limit damages to BP but it appears now it is blowing up in our face. First and foremost we need to ensure the contract is honoured for a key customer. Secondly I will go into bat with [G]osman and carol tomorrow to argue that the costs of re-supply for PDVASA are not for crude's account.'*

64. The owner of Taleveras offered security for the debt by pledging a personal property portfolio. In the event the sale of the property did not fully discharge the debt and BP were left with a substantial loss.

65. An internal investigation into what had gone wrong was commissioned. We were provided with an incident report which was circulated in advance of a review meeting that was taking place on 27 October 2015. The incident report includes a timeline setting out the steps taken in the transactions and highlighting the errors made. It is very clear from that document that the authors considered that there had been some significant errors made by the originating 'GLights' team. There were also a number of other errors in particular a missed opportunity to block a payment to Taleveras.

66. It is clear from the e-mail that circulated the draft report that the Claimant was involved in the investigation and was invited to at least one meeting where the draft investigation report was discussed. In fact the Claimant did not attend that meeting although he had been invited to do so. Earlier in October the Claimant had been pressing for the apportionment of the losses caused by these transactions to be revisited. In the e-mail asking him to attend a meeting to discuss the incident report the Claimant was told that that meeting was not the time or place to discuss the apportionment of loss but that if he wished to raise that he could speak to Carol Howle who was at that point the Head of Supply and Trading – Global Oil Europe.

67. In his witness statement the Claimant had suggested that he was told by Christophe Pignal-Jacuard who had authored the report that senior managers had determined that the final report would be kept secret. It is not essential that we make a finding about whether the Claimant was told that or not. What is clear is that the draft of the report that the Claimant was sent was consistent with the conclusions actually reached by the Respondent. That report suggests that there were a number or serious errors made by a number of people. Given that the Claimant and others were consulted and had access to the investigation

report at the stage it was being discussed, we do not find that there was any secrecy or attempt to brush any failings under the carpet.

68. By mid-2016 the losses caused by the transactions had crystalised. They were slightly more extensive than had been anticipated due to the shortfall in the value of the property portfolio pledged as security. A meeting took place between members of the Crude team and the GLights team on 29 June 2016. Dan Wise, the Claimant, Sarah Pearson attended as members of the Crude team and Rob Gosman, the GCH of Gasoline Trading, Tim Kaiser and Brian Quartey attended as members of the GLights Team. What was discussed was the apportionment of the latest losses.

69. Our conclusion that the investigation was conducted openly is further reinforced when we look at a series of e-mails in the trial bundle generated after that meeting. Within those e-mails is an e-mail from Christophe Pignal-Jacuard on 29 June 2016 where he attached a short PowerPoint presentation which included the key conclusions and recommendations. The e-mail correspondence that we have seen shows that a number of members of the Crude team are protesting in strong terms that the balance of the losses should be borne by the GLights team. The Claimant is one of many voices taking the same stance.

70. On 29 June 2016 Sarah Pearson, who was at that time the European Crude Commercial Manager ('CCM'), circulated an e-mail to the team where she pushed back at any suggestion that the Crude team had contributed to the errors made. She said *'The buy/sell was a gasoline cargo where only the buy side was disclosed to credit'.* This was a reference to the actions of Tim Kaiser who had failed to make the full nature of the transaction clear to Credit. Later the Claimant has drawn on this as support for his belief that there was actual dishonesty by Tim Kaiser. That conclusion has never been adopted by BP in the initial or further investigations. It is unclear to us why the Claimant has concluded that dishonesty, rather than incompetence, is the only possible explanation.

71. After the meeting Rob Gosman sent an e-mail which show that whilst the GLights team accepted a great deal of the responsibility for the losses they pushed back at the suggestion that they were entirely responsible. Rob Gosman suggested that the Claimant played a part by releasing payment for gasoline when it might have been withheld.

72. Dan Wise told us that he took the view that the apportionment of loss was unlikely to be resolved between himself and Rob Gosman. They asked Sam Skerry, then the Regional Business Leader to arbitrate between the two competing positions. Sam Skerry determined that the losses should be apportioned 5/6 to the GLights team and 1/6 to the Crude team.

73. In an e-mail sent on 19 July 2016 the Claimant stated that he was 'confused and disturbed' by the decision to allocate Crude a proportion of the losses. He attached a letter in which he set out his account of how the losses were incurred. He suggested that *'it could be argued'* that Tim Kaiser knowingly misled Credit on the nature of the deal. He further complained that Tim Kaiser had completed deals on his mobile telephone which was not recorded. He went on to say that Brian Quartey had 'raised his hand' and accepted responsibility for errors. He then says that he believed that Brian Quartey had been blamed unfairly. He did not suggest, in clear terms that Rob Gosman, with the assistance of John Goodridge, the head of the Originating team had engaged in a cover up.

74. The Claimant has contended that Brian Quartey was a more junior employee than Tim Kaiser. Mr Nawbatt challenged the Claimant on this point during his cross examination. The Claimant did not disagree that Brian Quartey held a post at Grade F whereas Tin Kaiser had a grade H post. His stance was that Tim Kaiser, as a trader, would be paid more and would be perceived as having greater responsibility. We heard a great deal about the way BP remunerates it's staff. There does not appear to be the usual correlation between managerial responsibility/status and remuneration. Traders are paid far more than many of the people, even people who have managerial responsibility for them. We find that the Claimant was wrong to classify Brian Quartey as a subordinate. He was a senior employee.

75. The Claimant met with Sam Skerry on 20 July 2016. We find that Sam Skerry's willingness to meet with the Claimant and discuss his concerns was consistent with the way that BP had approached this matter overall. Concerns when raised were discussed in an open and transparent manner. There is nothing in this incident to support the suggestion that BP has a culture of covering up errors. There is no dispute that the Claimant raised the issues ha had referred to in his letter with Sam Skerry. The Claimant says that Sam Skerry acknowledged that Tim Kaiser deceived the credit team. He says that she told him that BP had taken 'appropriate action' at the time. Sam Skerry does not set out a great deal of detail of what was said in her witness statement. We are not surprised she cannot remember exactly what was said 5 years after a meeting where no minutes were taken. The Claimant suggests that he was told that Sam Skerry would look into his complaints and revert to him. He does not suggest that he ever followed this up nor did she. We infer that Sam Skerry assumed that the Claimant wanted to get matters off his chest rather than expecting any action.

76. Dan Wise told us, and we accept, that he met the Claimant in the summer of 2016 and had a drink outside in the area of Canary Wharf. He says that the Claimant remained so emotional that he was moved to tears when talking about this incident.

77. The Claimant, in his internal grievances and in these proceedings, maintained that the concerns he raised in his e-mail/letter of 19 July 2016 were protected disclosures. In the months before the hearing he has withdrawn any claims based on that e-mail. However, he did raise the matter again as part of his later grievances which we shall revisit below.

78. What the Claimant did not know at the time was that a decision was taken to reduce Tim Kaiser's bonus because of his involvement with this transaction.

79. It was suggested by the Respondents that, in common with many traders, the Claimant was driven by concerns about money. That is a component of the Respondent's arguments that all of the Claimant's claims and the behaviour giving rise to them was motivated by financial considerations. We do not accept that the Claimant's response to these events was motivated to any significant extent by any concern that the apportionment of loss would impact on him personally.

80. In his witness statement Dan Wise told us that in his experience the Claimant was very intense and had difficulty moving on from events where he perceived that he had been treated unfairly. He referred to the Claimant dwelling for years on a perceived injustice about a relocation allowance. It is clear from the e-mails that we have seen and from the evidence of Dan Wise that the Crude team agreed that the GLights team were to blame for the losses and that any allocation of loss to the Crude team was unfair. We find that it was the

unfairness which the Claimant was unable to accept rather than a concern about money. We find that the Claimant was unhappy at the time and that he has continued to stew on events. Over time his position has hardened moving from a suggestion that 'it could be argued' that Tim Kaiser had knowingly misled the Credit team to an assertion that he had. Moving from a complaint that the allocation of loss was unfair (which may have been justified) to taking the stance (in his later grievance) that BP had allocated the loss in some unlawful manner.

81. At around this stage the Claimant did approach Dan Wise and suggested he might need some time off. He also suggested that he could use some help with his relationships with the Originating and GLights teams. He made a further suggestion that he was paid a fixed percentage of his teams profits. This last suggestion would have been a significant departure from the bonus arrangements in place for the Claimant and for others and was never actioned or agreed to.

82. We find that, with some justification, these events left the Claimant bitterly upset. This was known to his managers and colleagues. We find that this upset left the Claimant deeply suspicious of the activities of the Origination team and soured relations with a number of individuals.

83. On 4 April 2021 the Claimant withdrew a claim found in his first ET1 that he had been subjected to a detriment by the origination team excluding him from important conversations/communications. The complaint was included in his first grievance.

<u>The aftermath of Taleveras</u>

84. The Claimant had suggested in his particulars of claim (first claim) that following the Taleveras events he had been ostracised by the origination team and in particular John Goodridge. He chose not to progress that part of the case and we shall restrict our findings in respect of that to the minimum necessary to deal with other aspects of the claim.

85. Prior to 2016 the Claimant had been working exceedingly long hours generally arriving at 7am and working through to 7pm. From a point at some time in 2016 the Claimant changed his routine and started to go the gym before going to work. After this he arrived around 45 minutes later than he had done previously.

86. We have already set out our findings that the Taleveras incident soured the relationship between the Claimant and the Origination team. John Goodridge told us, and we accept, that he was not aware of the Claimant's letter of 19 July 2016 to Sam Skerry or that the Claimant viewed him as being responsible for a cover up. In his witness statement he said that in his opinion he had a reasonable working relationship with the Claimant. He did suggest that the Claimant could be prickly and acknowledged that some of the team found the Claimant difficult to deal with.

87. We find that the working relationships between the Claimant and the originating team were poor. Given that the GLights and crude teams had engaged in a protracted discussion about who bore responsibility for the Taleveras losses it would be surprising if there were not some damage to relationships. Given the withdrawal of these parts of the Claim relying on protected disclosures concerning Taleveras we go no further than that.

The Claimant's Parental Leave request

88. The Claimant says in his witness statement that by Spring of 2017 he was considering taking a period of parental leave. He suggests that he had mixed reasons for this. He was finding it difficult to work with the Origination team. He was also wanting to spend some time with his family and friends and wished to support his wife in a potential business venture. The Claimant says he took soundings from friends in the industry as to how this might be perceived and then sought the advice of a Solicitor about the right to take leave.

89. Before the Claimant had made any request for Parental Leave he had been on leave and had been in the USA. Dan Wise had been expecting him to return to work on 12 April 2017. The Claimant did not arrive at work. Sarah Pearson initiated the following text message exchange;

> *Pearson, Sarah 09:42:*
> *Where's JZ?*
>
> *Wise, Daniel 09:42:*
> *feck knows*
> *am not happy*
> *i think he mi[ght] resign*
> *lets see*
>
> *Pearson, Sarah 09:43*
> *yeah, the signs aren't good*
> *have you heard from him at all?*
>
> *Wise, Daniel 09:43:*
> *no*

90. What we take from the text message above is that, prior to any protected disclosure relied on in these proceedings and prior to indicating that he wished to take parental leave Dan Wise and Sarah Pearson were speculating on whether or not the Claimant would retire in the near future. We find that this is consistent with the general expectation that traders would retire early.

91. The Claimant requested a period of parental leave from January to March 2018. He says, and we accept that when it became known one of his colleagues Chris Taggart asked him if he intended to retire. He says that Dan Wise and Sarah Pearson were more professional.

92. On 23 June 2017 there is a text message exchange between Dan Wise and Sarah Pearson as follows:

> *'Pearson, Sarah 15:45:*
> *Just a quick one on JZ. ..*
>
> *It is a simple form he needs to fill in*

Wise, Daniel 15:45;
k

Pearson, Sarah 15 :45:
assuming we are supporting

Wise, Daniel 1 5:45:
yes we have Z [2]?

Pearson, Sarah 15:45:
which I asume we are?

Wise, Daniel 15:45:
i would quite like some parental leave at this juncture

Pearson, Sarah 15 :45:
yep, thought so, just checking before we got ourselves in this mess
get yourself knocked up
*[*into a mess]*

Wise, Daniel 15:46:
i already have the start of the bump
could probably own it

Pearson, Sarah 15:47:
i can't stop eating
I will look like a weeble'

93. The Claimant refers to the comment by Dan Wise *'yes we have to'* and suggests that this shows that there is some unwillingness or disapproval. We do not consider that that comment taken in the context of the whole chat does suggest disapproval. Dan Wise told us that he was envious of the Claimant. We find that that is more consistent with what he said at the time in the unguarded chat. Sarah Pearson's self-deprecating reference to her weight reflects the fact that she was pregnant and about to take maternity leave.

94. The Claimant's request for parental leave was granted.

<u>The NNPC transactions and putative protected disclosures</u>

95. It is the Claimant's case that he made a series of protected disclosures relating to BP's use of agents when dealing with the Nigerian National Petroleum Corporation (the 'NNPC'). The NNPC was a state-owned corporation which exclusively manages the exploitation of oil and gas in Nigeria whether by itself or through joint ventures. It is not our function to decide whether the transactions undertaken or contemplated by BP in Nigeria involved any illegality. The questions for us are more limited. We need to decide whether or not the Claimant actually and reasonably believed that some wrongdoing had occurred or was likely to do so. We have therefore limited our findings to those necessary to answer those questions.

96. It is the practice of the NNPC to sell oil at the 'Official Selling Price' ('OSP). The

OSP was typically 70 to 80 cents per barrel less than the open market price. This difference meant that companies who were able to buy oil at the OSP stood to make a significant profit when the oil was resold. Perhaps as often as annually the NNPC invited companies to compete to join the list of purchasers permitted to buy oil at the OPS. Prior to 2016 BP had never succeeded in persuading the NNPC to sell it oil directly. It did buy oil from Nigeria but did so through middlemen making less profit than had it been able to buy at the OSP.

97. Nigeria has enacted legislation referred to as the Local Content Act which regulates how contracts in the oil and gas industries are awarded. The NNPC would not directly contract with any entity unless that entity satisfied the Local Content Act. The Local Content Act required a level of indigenous participation in any transaction by the NNPC in the oil and gas field which to all intents and purposes meant that transactions would only be undertaken with companies with more than 50% local ownership or with a company in partnership with another locally owned company. There was no restriction on subsequent transactions.

98. On 11 July 2016 there was a meeting of the IST Commitments Committee which was headed by Paul Reed (CEO Integrated Supply and Trading at that time). As we have indicated above, the purpose of the Commitments Committee was to review transactions both for commercial and compliance purposes. We note that the minutes of the meeting were submitted for review by the legal department. One item on the agenda at that meeting was a proposal to appoint a Nigerian based company Alsaa as a non-exclusive agent. We were provided with minutes of that meeting. The proposal to appoint Alsaa as an agent was advanced by Sam Skerry. The following matters were discussed in that meeting:

98.1. Sam Skerry explained that the intention was for Alsaa to be used mainly on NNPC business where there was currently *a 'lack of traction'.*

98.2. It was acknowledged by Sam Skerry that the fees demanded by Alsaa were significantly higher than those paid by BP in other jurisdictions. An explanation was put forward that whilst the fees were high in comparison to other jurisdictions they were consistent with the fees demanded by other agents in Nigeria. The minutes record an action point for a table of fees to be provided at a later date.

98.3. It is acknowledged during the meeting that one cause of the high rates of fees demanded by agents in Nigeria was the need to fulfil the Local Content requirement. Paul Reid is recorded as describing this as a *'take it or leave it'* style of negotiation by local agents which was uncomfortable.

98.4. One matter explored during the meeting is the question of whether BP should endeavour to obtain some equity in Alsaa as a condition of doing business. No decision was taken at that meeting to impose that condition.

98.5. The minutes disclose that enquiries were made as to how Alsaa became known to BP. It was revealed that BP had sought out Alsaa following feedback from a failed tender bid. Paul Reed asked whether in addition to the standard checks which all agents were subjected to how well anybody in BP had got to know the personnel behind Alsaa and he was told that two members of the local team had met the Alsaa principals face-to-face.

99. The outcome of the meeting was that there was a decision to appoint Alsaa as a

non-exclusive agent for a period of 12 months. We find that appointment of Alsaa was subjected to some considerable scrutiny. Throughout the minutes Alsaa are referred to as a 'high-risk agent'. It is apparent that the demands of Nigerian agents for high levels of remuneration was subject to scrutiny. The requirement to fulfil the local content conditions provided an explanation for the agents being able to demand fees much higher than paid in other jurisdictions on what was accurately described as a *'take it or leave it basis*'.

100. In November 2016 Mychael Obaseki, moved to Nigeria and took up the role of Head of Origination. The core of his role was to seek out and negotiate deals which he would present to the trading teams. In late 2016 the team in Nigeria identified local agents, including but not limited to Alsaa, with whom BP could partner in order to purchase products directly from the NNPC. This strategy was successful as the NNPC approved the structure of the proposed transactions.

101. In transactions completed in 2016/2017 agreement was reached with local agents to pay them a commission for each barrel of oil purchased. The Claimant was directly involved in an agreement to purchase two cargoes of crude oil. The local agents selected for this transaction was called 'DSV'. That company negotiated a commission of 50 cents per barrel. No objection was made by the Claimant to that particular transaction at the time. The Claimant suggested in his witness statement that he had only ever approved a commission of 45 cents. He suggests that the increase was agreed without his authority. We do not have to decide on this point but do not consider it probable that the Claimant is correct. All of the evidence suggested that before the Crude team entered any transaction proposed by the Originating team the deal would have had to be approved by the Deal Governance board and finally signed off by the Crude team. The Claimant has not explained how he says that that was bypassed in this case. There may well have been a non-binding agreement made by the Origination team with the agent but ultimately that would have had to be endorsed by the Crude team however reluctantly.

102. It was universally acknowledged that there were risks involved in using agents. In particular it was recognised that the remuneration of any agent could facilitate or disguise a bribe being paid either to the NNPC or to any politician. In many documents which we have seen such agents are described as 'High Risk Agents'. Before any local agent was approved by BP there was a vetting process. That vetting process included a business case being made out for the use of an agent, the proposal being considered by the Anti-Money Laundering, Compliance and Legal teams. The approval of any agent was reviewed by the Deal Governance Board. The Deal Governance Board ('DGB') included participants from Compliance, Legal and Anti-Money Laundering. Its purpose was to approve or reject transactions.

103. We were shown an e-mail representing the minutes of a DGB meeting of 2 August 2017. During that meeting Mychael Obaseki sought approval for the renewal of approval to use a Nigerian entity Alsaa as an agent. Alsaa is referred to as a 'High Risk Agent'. The minutes disclose that Mychael Obaseki explained that the use of agents was necessary both to comply with the Local Content Act and for commercial reasons. Lina Lee, the Head of Commercial Development is recorded as explaining that the renewal is subject to a requirement that the fee for any transaction was subject to approval by the relevant bench. Approval was given for the continued use of agents. The minutes record but Sarah Pearson, the European Crude Commercial Manager and Dan Abodunrin, the Global Head of Anti-Money Laundering emphasising that the fees paid to Agents must be justifiable on

commercial grounds. In particular Dan Abodunrin is noted as referring to the fact that Agents in Nigeria were paid more than in other regions and required to be justified. This was something that had been discussed at the level of the Commitments Committee the year before

Mychael Obaseki's e-mail of 14 September 2017

104. On 14 September 2017 Mychael Obaseki sent an e-mail to traders on the GLights and Crude benches including the Claimant. The E-mail read as follows:

> *'Just heard that from my insiders that nnpc crude tender process starts in 3 wks they are expecting to only have 10-12 companies on the list. The current plan is that Duke oil/nnpc trading will get 75-80% of the crude oil volumes.*
>
> *2018 is an election prep year so we understand what that means. And if you dont, i will explain it to you in person.'*

105. John Goodridge learned of the circulation of that e-mail and telephoned Mychael Obaseki to raise a concern that the e-mail was capable of being read as suggesting that BP might exploit the fact that it was an election year. He and Mychael Obaseki told us and we accept that he was concerned at the poor communication skills demonstrated by this e-mail.

106. On 25 September 2017 Mychael Obaseki sent a further e-mail apologising for his earlier e-mail. He explained as follows:

> *'After internal discussions last week with John and Liz and upon reflection on my email below; I will like to express my apologies for the lack of clarity and how it could have been misconstrued.*
>
> *Although the email below reads as though there is an unprincipled intent, I can assure you that my intent was upright and ethical - it was a case of slothful communication.*
>
> *[W]hat I meant in my message was that our BP registered agents who are frequently inside the NNPC towers and provide me with BP related updates/potential opportunities also shared the potential impact of the upcoming Nigerian elections on business for next year - since I was going to be in London the following week, I felt it made sense to share details during the face to face group meeting in London so that people can ask questions.*
>
> *Everything I intended was discussed during the scheduled group meeting and I will endeavour to be clearer with my communication in the future. I have closed the loop with Liz and John'.*

107. The Claimant has suggested that his receipt of these e-mails had caused him to review his position on the use of agents in Nigeria. He says in his witness statement that *'the obvious inference was that, in the forthcoming election year some Nigerian contacts would be seeking to use their influence to exhort monies from foreign companies into political campaigns – in other words there would be pressure to pay bribes'.* When Mychael Obaseki gave evidence he said that he was not specifically referring to the possibility of people seeking bribes but accepted that that was amongst the wider concerns that he had about doing business in an election year.

18 September 2017

108. Prior to seeing the clarification from Mychael Obaseki the Claimant sent an e-mail to Dan Abodunrin asking for a meeting. The subject line is *'High Risk Agent'*. It is common ground that that meeting took place. There are no minutes or records of that meeting.

109. The Claimant has said in his first grievance and in his witness statement (which has been compiled reproducing many paragraphs of his grievance) that what was discussed in that meeting was the use of high-risk agents and the potential that gave for bribery or other wrongdoing. Dan Abodunrin agrees that the use of an agent was discussed but suggests that the Claimant's concerns were limited to concerns that the level of remuneration paid to the agents rendered the deals unprofitable/uncommercial. It is necessary for us to resolve that dispute.

110. We look first at the contemporaneous documents. After the meeting on 18 September 2017 the Claimant sent an e-mail to Mychael Obaseki in the following terms:

> *'Hi Mychael*
>
> *In preparation for our discussion about who to use for the 2018 NNPC crude term liftings please note the following on econs:*
>
> *NNPC OSPs have been significantly higher this year so the trading opportunities are smaller. While we still want the bbls we shouldn't pay more than 30-35 cents for an agent. Let's discuss in more details when we determine who we want to use but please keep this in mind.'*

111. Once he had sent that e-mail the Claimant forwarded it to Dan Abodunrin suggesting that it was in line with what we discussed. Dan Abodunrin responds with the message '*supported and many thanks'*.

112. Chronologically the next document that deals with this meeting is the Claimant's first grievance. In that grievance the Claimant asserts that the agent that had been used in 2016 to secure the purchase of crude oil was Alsaa. He accepts that he was wrong about that and that it was another agent. In our view this is a perfectly understandable error of recollection rather than anything sinister but it does impact upon our view of how much weight we can place on the Claimant's recollection.

113. The next account given by the Claimant was when he was interviewed as part of a 'Business Integrity' investigation which was commissioned as a consequence of the Claimant's grievances. There are handwritten notes of that meeting taken by Helen Turner, a Senior Investigator and typed notes of the meeting made by Brad Berwick who was leading the investigation. The handwritten notes, whilst not always easy to read, are more full than the typed notes. The Claimant is recorded as saying that he discussed with Dan Abodunrin the use of agents on 18 September 2017 and that he had suggested that the rates that had been agreed at the compliance meeting (we assume the meeting in August 2017) were too high. He referred back to the transactions in 2016 and said that the sums agreed to be paid to the agents were too high. He was asked whether he had expressly referred to Anti Bribery and Corruption and said that he had not done so but had referred to 'legal and reputational risk'. The Claimant was asked whether he had any evidence that the

processes for the appointment of any agent had been circumvented and is recorded as stating that he did not.

114. Dan Abodunrin was interviewed by Brad Berwick as part of the Business Integrity investigation on 12 December 2018 15 months after the event. Again we were provided with two sets of notes. In respect of the meeting on 18 September 2017 Dan Abodunrin's responses to questions about the meeting of 18 September 2017 are vague. He was able to say that he had had conversations with the Claimant but could not recall when. He agreed that at some point the Claimant had raised the 2016 deal with him and said that he did not want to pay that much in the future. He said that he thought that the Claimant was motivated by commercial concerns. He is then recorded as saying that he had already and did on a further occasion raise the issue in DGB meetings that the rates paid to agents required to be commercially justified. He was then asked about a further meeting he had with the Claimant on 22 November 2017. He said in the business integrity meeting that the topic raised by the Claimant at that meeting was *'exiting the deal with Alsaa'.*

115. In his witness statement and in his oral evidence Dan Abodunrin said that the topic raised by the Claimant at the meeting on 18 September 2017 was the forthcoming 'Producer Finance deal' which we address below. He said that a subsequent meeting in November was a general discussion about agents. In their written submissions Counsel on behalf of the Claimant say that it is clear that Dan Abodunrin is mixing up the two meetings. We agree. We find that Dan Abodunrin has no clear recollection of either meeting. It is clear from the e-mail sent by the Claimant after the meeting of 18 September 2017 that the core topic of conversation was the rates of remuneration that should be paid to agents for any further transactions similar in nature to the deals done in 2016. Dan Abodunrin's recollection of the November meeting given during the Business Integrity Investigation is much more closely aligned to that of the Claimant and sits more comfortably with the later documents and the chronology. Mr Rajgopaul was at pains in his written submissions to stress that he was not alleging that Dan Abodunrin was attempting to deceive the Tribunal. We consider that concession to be rightly made. We find that Dan Abodunrin has not got a strong independent memory or these events. That was acknowledged by the Respondents in their closing submissions.

116. Whilst nether attendee appears to have a perfect recollection of what was discussed at the meeting on 18 September 2017 the contemporaneous documents do allow us to find that the core area of discussion was the sums that should be paid to agents. The Claimant accepts that he did not specifically say that a high rate of remuneration was equivalent to bribery or corruption. The question remains whether the issue of agents' remuneration was raised in the context of discussions about 'legal and reputational risks' or as Dan Abodunrin and the Respondents have maintained a purely commercial concern raised by the Claimant who, they suggest, was motivated only by a concern that any deal was profitable for his bench with a resulting impact on his own bonus.

117. Dan Abodunrin accepted in cross examination that in his role he would have no input into commercial decisions such as whether a deal was or was not sufficiently profitable. His role was focused on compliance with a particular emphasis on Anti Money Laundering. The Claimant said in his witness statement that he was very clear that that was the case. In the light of that it is unlikely that the Claimant would have wished to talk to Dan Abodunrin about purely commercial matters. Dan Abodunrin did suggest, for the first time, in cross-examination that he has expressly suggested to the Claimant that he was talking

to the wrong person about commercial matters. We do not accept that this was said. We find that Dan Abodunrin is filling gaps in his memory to suit what is now his own genuine belief about the nature of the conversation.

118. In his witness statement the Claimant suggested that he had provided Dan Abodunrin with a copy of the e-mail sent by Mychael Obaseki referring to elections. Mr Nawbatt challenged the Claimant on his recollection of this. He pointed out that the Claimant had not mentioned this in his grievance or in the business integrity investigation. We accept the point made that had the e-mail been presented to Dan Abodunrin the Claimant would have said so much earlier when things were fresher in his memory. We are not satisfied that any documents were supplied to Dan Abodunrin.

119. In his ET1 the Claimant says that he told Dan *Abodunrin 'BP should be avoiding payments to agents in Nigeria if possible'*. In cross examination the Claimant accepted that he had not suggested that BP should not use agents in Nigeria. He said that he had suggested that a joint venture arrangement would be preferrable. We accept that that may have been discussed. It is clear from the Claimant's e-mail that followed the meeting that he was not suggesting that agents should not be used at all.

120. It is clear to the Tribunal that, in the context of the use of agents, there is not a clear boundary between commercial concerns and concerns about bribery and corruption. As acknowledged by Dan Abodunrin in the DGB meeting in August 2017 there is a link between the amount paid to an agent and the possibility that the monies will be used improperly. An assessment of the risk requires any fee paid to be *'commercially justified'*. Any criticism of a fee paid to an agent might therefore be either because the fee is thought to be too high for pure commercial reasons or because of a concern about the fee being paid or used for improper purposes.

121. We have already said that we are satisfied that the topic of conversation at the meeting between the Claimant and Dan Abodunrin was the rate that would be paid to agents in the future. We are satisfied that the purposes of the Claimant raising the issue was his concerns that the fees could not be commercially justified and because of that might give rise to a risk of bribery or corruption or reputational damage. We can see no other reasonable explanation for the Claimant taking his concerns to Dan Abodunrin whom he knew had no commercial expertise or influence. Having regard to all of the evidence this tips the balance in favour of the Claimant.

122. We are satisfied that the Claimant said words to the effect that payment of 50 cents per barrel was not commercially justified and might lead to legal and reputational risks. We are satisfied that there would have been some reference made by the Claimant to the earlier transaction in 2016 where a figure of $0.50 per barrel was paid.

123. We are not satisfied that the Claimant asked Mr Abodunrin to help him to ensure that this was not repeated, and suggested that to meet the "local content" requirements, BP should be pursuing real joint ventures in Nigeria, not paying agents. Mr Zarembok emphasised that BP should be avoiding payments to agents in Nigeria if possible. Those two statements are inconsistent with the e-mail that the Claimant sent shortly after the meeting where the future use of agents is plainly contemplated.

124. Before leaving this matter we make the following findings about Dan Abodunrin's perception of the meeting. We have already found that his recollection of the meeting was poor by the time of the Business Integrity meeting and before us. In the Business Integrity investigation he was asked whether the Claimant had raised the issue of Bribery. He is recorded as emphatically denying that stating that had an allegation of bribery been made he would have taken action.

125. In the amendments to his witness statement the Claimant has diluted a suggestion that he had *'objected'* to the practice of paying excessive fees to say that he had told Dan Abodunrin that he had *'serious concerns'*. He has accepted that he did not say that it *'was not acceptable'* to pay an agent unjustifiable sums to satisfy a local content requirement to say that it *'probably wasn't acceptable'*. Both of these concessions are consistent with the fact that Dan Abodunrin did not believe he was being told that immediate action relating to bribery was necessary. In his oral evidence the Claimant said that he had asked to meet Dan Abodunrin to *'bounce things off him'*. We consider that the more general the conversation the less likely it was to be memorable. We find that this was a very general conversation.

126. We find that Dan Abodunrin did not recognise during the meeting on 18 September 2017 that the Claimant's primary concern was to reduce the risk of bribery. The fact that the Claimant may have referred to fees needing to be commercially justified and to the fact that agents were being used only to satisfy the local content requirements were matters that were well known and recognised. We do not find it sinister that the overall impression retained by Dan Abodunrin was that the concerns were 'purely' commercial even though we find that he is wrong about that. After the Business Integrity interview he refreshed his memory from the e-mail sent by the Claimant. There is nothing in that e-mail that would have prompted him to believe that the instruction the Claimant gave to Mychael Obaseki was not purely concerned with issues of profit.

<u>The producer finance deal</u>

127. In September 2017 NNPC invited tenders for a 'producer finance deal'. The basis of the proposed transaction was that those tendering would lend NNPC money in order to finance the exploitation of an oil field by NNPC and in return would receive the right to purchase oil at a favourable price. NNPC had instructed Standard Chartered Bank deal with the tender process. A short summary of the intended structure was included in the trial bundle. Amongst the requirements listed for those proposing to submit a tender was a requirement to show how they would comply with the Local Content Act.

128. It appears that the possibility of BP being selected as an 'anchor partner' for the NNPC was first raised by the Standard Chartered Bank. It is a matter of some controversy, which we do not need to resolve, whether that approach was a consequence of previously working with Alsaa. It is clear from the evidence that we heard that there were mixed views about whether Alsaa had any legitimate claim to have introduced this transaction.

129. The origination team have the responsibility for investigating and negotiating any possible deal. That team was headed by John Goodridge and included Mychael Obaseki. A new member of the team, Xavier Venereau, was asked to assist because he had particular expertise with banking and finance.

130. At some point, probably in September 2017, John Goodridge and Xavier Venereau met with the Claimant and Sarah Pearson. The purpose of the meeting was to introduce the possibility of the producer finance deal. The Claimant and John Goodridge agree that there was a discussion about the potential profits that could be made during which the Claimant took a conservative stance and John Goodridge a more optimistic view. It was accepted by both that there was nothing unusual about this level of horse trading between origination and the crude bench.

131. A point of controversy relates to the question of whether John Goodridge and Xavier Venereau concealed the fact that they had already contemplated using a local agent in order to facilitate the transaction. The Claimant says in his witness statement that the first he learnt of this was shortly before the proposal was due to be discussed at a Dual Governance Board meeting when he learnt that what was proposed was the use of Aslaa who would be paid a fee of $0.10 per barrel in respect of any oil supplied. He says that Sarah Pearson was frustrated and upset by what is described as a lack of candour. Sarah Pearson disagrees. John Goodridge in his witness statement accepts that he may not at this stage have mentioned that an agent was necessary to fulfil the local content requirement. We find that the Claimant's distrust of the Origination Team had tainted his view of whether there was any improper conduct. He accepts in his witness statement that it is at least possible that he was not told about the involvement of an agent because the origination team thought it was obvious. We find that to be a sensible concession. The Claimant ought to have known that BP had only recently been able to do business with the NNPC with the involvement of a local agent.

132. The Claimant says in his witness statement: *'it would have been inappropriate for Xavier and John to unilaterally determine the size of the agents fee without consulting me'*. Again we find this statement is tainted by the Claimant's mistrust of the Origination Team. The Claimant would know that no fee could be 'determined' without the agreement of the crude bench as well as the deal governance board. What he appears to be objecting to is that there had been any proposal at all about the remuneration for the agent without consulting him. We find that role of negotiating fees with an agent was principally that of the Origination Team and that the Claimant could not reasonably have been surprised that a proposal, and that is all that it could have been, was put before the Deal Governance Board.

133. Whether or not the Claimant's view was reasonable, we do find that he was genuinely concerned about the activities of the Origination Team seeking to involve a local agent in the transaction.

134. It appears to be common ground that the Deal Governance Board approved the Origination Team entering into negotiations to enter the producer finance agreement using Alsaa as a local agent subject to a cap on the fee that could be paid of $0.10 per barrel. The Claimant does not suggest that he raised any concerns with that particular proposal.

135. On 6 November 2017 Dan Wise forwarded an email chain to the Claimant, Sarah Pearson and Oliver Stanford a trader on the crude bench who reported to the Claimant. We summarise the early parts of that chain as follows:

135.1. On 23 October 2017 Wale Otegbola, who was described as the 'principal'

behind Alsaa sent an email to Mychael Okaseki and Xavier Venereau. His email had the heading 'BP Pre-financing arranged by Alsaa'. Within that email he essentially complained that BP had met directly with NNPC without mentioning the fact that they had a local partnership with Alsaa. He questioned the commitment of BP to the relationship.

135.2. Mychael Okaseki responded on 24 October 2017 suggesting that the tone of the email was unnecessary and that BP had always been transparent in their engagement of Alsaa as an agent. He suggested that the existence of nondisclosure agreements would explain the fact that Alsaa had not been included in the meetings.

135.3. There was a further exchange of emails before Mychael Obaseki suggested that in order to avoid misunderstandings a face-to-face meeting would be appropriate.

135.4. On 4 October 2017 Wale Otegbola sent an email to Mychael Obaseki copied to John Goodridge and Xavier Venereau in which he said that NNPC had asked that things were moved forward and that agreements were put in place between BP and Alsaa in order to evidence the local content requirements. Stated that the NNPC and the Local Content Board would request evidence of the role and remuneration of Alsaa. He went on to suggest a fee of $.20 per barrel as payment for professional services including securing dates, amending letters of credit, dealing with the grades of oil supplied and any local operational issues with vessels. He sought a further lump sum payment referred to as an 'arrangement fee' which was understood as being a finder's fee for introducing the transaction.

136. On 4 November 2017, Xavier Venereau forwarded that email chain to Dan Wise and Chris Schemers the Head of Marketing and Origination. He said:

FYI, This is rather good sign !

We had previously indicated 10 cents. There is probably room to negotiate and key subject to discuss is going to be the grades and discount to OSP

We shall indeed be very careful in documenting this local content arrangement.... would be good to deconnect from the transaction if we can. Just a bilateral BP – Alsaa agreement

Timing of your visit to Nigeria is perfect !

Alsaa is clearly misrepresenting its role but we have no choice and it is too late to find an alternative

Cheers from Cornwall

137. Between paragraphs 81 and 86 of his witness statement the Claimant sets out what he says concerned him about this email . His concerns can be summarised as follows:

137.1. that he was not initially copied into the email and thought he was being bypassed; and

137.2. that he considered that Xavier Venereau was evidencing a willingness to negotiate a rate of remuneration in excess of the $.10 per barrel agreed by the deal governance board; and

137.3. he thought the email demonstrated little concern about the potential bribery and corruption concerns if a fee was not commercially justified something which he did not consider it was; and

137.4. he noted that the rate of remuneration was going to be revealed to the NNPC and thought that this was a red flag for bribery and corruption concerns; and

137.5. he was concerned that negotiations would be ongoing where the Origination Team considered that Alsaa were misrepresenting their involvement and entitlement to a finder's fee.

138. Broadly speaking we accept that the Claimant did have the concerns that he set out in his witness statement. We have no doubt that some aspects of those concerns have been refined in his mind over the course of the events that followed and in preparation for the litigation. In particular, we do not consider there is sufficient evidence to allow us to conclude that the Claimant specifically linked the fact that the NNPC would require to know of the level of the agent's commission to a concern of bribery in any of his protected disclosures. That is not to dilute our finding that the Claimant was concerned in a more general way about potential corruption. Whilst the Claimant was concerned about corruption he would have been well aware that the Origination Team could not have agreed any rate of remuneration for Alsaa which exceeded that authorised by the Deal Governance Board and which either he or Dan Wise had agreed to.

139. We consider that, reading the email for ourselves, it was clearly intended to indicate that progress had been made in securing a producer finance deal but that some tough negotiations about the rate of remuneration would follow. John Goodrich in his witness statement describes the email sent by Xavier Venereau as being a little naive in failing to recognise the clear boundary that had been given of $0.10 per barrel. We think that is a fair description.

140. The Claimant has taken the reference to Alsaa misrepresenting its role as providing a starting point for his belief that Alsaa were untrustworthy. We consider that he could reasonably have believed that Alsaa were saying that they had brought the producer finance deal to BP when they had not. It is a stage further to infer from this that Alsaa were the type of organisation to act unlawfully. When Mychael Obaseki and Matthew East gave evidence they both acknowledged that Alsaa's claim to have introduced the deal to BP was a grey area. However in negotiations BP took the party line that there was no entitlement to a finder's fee.

7 November 2017- the meeting with Dan Wise and Sarah Pearson

141. It is common ground that on 7 November 2017 the Claimant met with Dan Wise and Sarah Pearson to discuss the producer finance deal. The Claimant says that in the course of this meeting he made his second protected disclosure that we need to deal with. He sets out his account of that meeting between paragraphs 87 and 90 of his witness statement.

142. In paragraph 88 and 89 the Claimant sets out what he says that he told Dan Wise and Sarah Pearson. At paragraph 90 he says that he cannot recall much about what they said to him. The meeting was not minuted. We are unsurprised that none of the participants have any clear memory about what was discussed. For the reasons set out below we are satisfied that the Claimant did raise the following concerns identified in his witness statement:

142.1. the concern that Wale Otegbola was misrepresenting his role in the transaction. Although the Claimant seems to assume in his witness statement that that misrepresentation relates to the tasks that would be undertaken by Alsaa in the future. We think it more likely that he recognised, as did everybody else, that the alleged misrepresentation related to whether or not Alsaa had introduced the business and was therefore entitled to a finder's fee; and

142.2. that he was concerned that the fee of $0.20 per barrel was not justified by the level of services described; and

142.3. The concern that Wale Otegbola was asking for a fee in excess of that authorised by the Deal Governance Board and that the email from Xavier Venereau did not appear to regard that as a nonstarter; and

142.4. a more general complaint that the Claimant was not being fully consulted by the Origination Team and had not been copied into the original emails.

143. In her witness statement Sarah Pearson sets out other commercial concerns that she had discussed with the Claimant. There was a trade-off between the risk of providing finance and the profit that could be made from buying and selling the crude oil. Sarah Pearson says that the transaction that had been proposed was towards the riskier end of what might be acceptable. In dealing with whether or not the Claimant raised any compliance concerns at the meeting on 7 November 2017, Sarah Pearson says that he did not. She does accept that the Claimant raised what she categorises as commercial concerns. She sets out in her witness statement that raising compliance concerns was a regular occurrence both for her and for the Claimant. He said she got on well with the Claimant and sat close to him in the office. She also points out that there was a weekly meeting chaired by 'Commodity Risk' where the Claimant could have raised any formal concerns. Whilst we accept Sarah Pearson's evidence about how compliance concerns could be raised formally it does not assist us in deciding whether or not the Claimant raised the matters that he did. The Claimant does not claim in his witness statement that he expressly linked the concerns he did raise to allegations of bribery and corruption. It would therefore not be surprising in our view that Sarah Pearson did not get the impression that that was what the Claimant was drawing attention to and we find that she honestly did not.

144. Dan Wise in his witness statement accepted that there had been a meeting at which the Claimant had raised his concerns at the level of remuneration paid to the agent. He says that it was an ad hoc meeting on the same day as the email from Xavier Venereau had been circulated. He also has described the concerns raised by the Claimant as only being commercial concerns. Again we do not think there is anything sinister in this because the Claimant did not spell out in terms that he was linking the rate of remuneration to concerns about bribery and corruption.

145. When cross-examined neither Sarah Pearson nor Dan Wise had a clear recollection of what the Claimant said during this meeting. We do not find that at all surprising. Sarah Pearson accepted that the Claimant might have raised the issues set out in his witness statement. As all of the issues the Claimant has claimed to have raised do arise directly from the emails circulated earlier on the same day we accept the Claimant's account of the meeting. The fact that the Claimant did not expressly make allegations of corruption or bribery in our view goes some way to explain why this conversation was not memorable for the other participants.

146. In our discussions and conclusions below we return to the question about what the Claimant actually believed when he had this conversation with Dan Wise and Sarah Pearson.

The meeting with John Goodridge and Mychael Obaseki

147. The Claimant recalls a meeting taking place where he attended with Dan Wise and Sarah Pearson (from the Crude Bench) and John Goodridge and Mychael Obaseki attended (from the Origination Team). This meeting was not minuted and there are no contemporaneous documents to shed any light upon what was discussed other than the e-mail from Xavier Venereau sent on 4 September 2017. Dan Wise recalls calling the meeting to discuss the progress of the producer finance deal and says that he arranged the meeting. The Claimant cannot recall when the meeting took place. It is not essential that we make a finding about the date of the meeting. Dan Wise says that the meeting took place very shortly after 7 November 2017. That seems probable. Our findings about what was discussed at the meeting would suggest it took place prior to the Originating Team meeting with Wale Otegbola to discuss his proposals. That meeting took place on 10 November 2017.

148. The Claimant says that during the meeting he and Sarah Pearson raised the fact that Xavier Venereau's e-mail appeared to countenance paying Alsaa more than the $0.10 per barrel that had been approved by the DGB. We find that this was a likely topic of conversation. Dan Wise, who does set out his recollections of the meeting in his witness statement accepts that the issue of the rate of commission was a topic of conversation and says that he shared the Claimant's concerns about even paying as much as $0.10. Whilst the others who attended had only a general recollection about what was discussed the consensus was that the rate of remuneration was one part of the discussion.

149. The Claimant says that he raised the issue of whether Wale Otegbola had misrepresented his role as the person who had introduced the producer finance deal. We find that was an area of discussion. At the later meeting on 10 November 2017 the Originating Team told Wale Otegbola that BP would not pay a finder's fee. It seems improbable that if the fees payable to Alsaa were being discussed it is likely that the entirety of Wale Otegbola's proposals would be discussed including Xavier Venereau's response that he was misrepresenting his entitlement to a finder's fee. We find it probable that the Claimant would have picked up and raised this at the meeting.

150. The Claimant says that he recalled Mychael Obaseki saying that he did not trust Wale Otegbola. Mychael Obaseki has no recollection of saying that. In his evidence he explained that he did not 'trust' any of the agents or counterparties he dealt with. As we

understand it he says that his attitude reflects the reality that any other party to a business transaction would be negotiating for their own benefit. As he put it, they were not on the same team. We find it probable that Mychael Obaseki would have expressed such sentiments during this meeting.

151. The Claimant says that he linked his concerns about the rate of remuneration with the absence of any commercial justification for paying such a substantial commission. Dan Wise agrees that the commercial aspects of the fee were discussed.

152. All the other participants in the meeting, insofar as they recall any detail, categorise the Claimant as raising purely commercial concerns. The Claimant does not say that he made any express reference to bribery, corruption or any unlawful activity. In those circumstances we do not find it surprising that the other participants in the meeting did not appreciate that the Claimant was concerned that the level of remuneration to be paid to Alsaa might result in bribes being paid. However, having regard to the evidence as a whole, and in particular the steps taken by the Claimant to speak of these matters to Dan Abodunrin, Matthew East and Philip Llewellyn, all of whom were responsible for matters of compliance rather than commercial concerns, we are satisfied that the Claimant had internally linked what he regarded as excessive remuneration with the possibility of wrongdoing.

153. The Claimant in his witness statement says that he made it clear during this meeting that $0.10 per barrel was a 'hard limit' as far as the Crude Team was concerned. He further states that this was a decision for the Crude Team. Dan Wise said in his witness statement that he supported the Claimant's position. The Claimant says that his concerns about remuneration were shared by Sarah Pearson. It appears to us that the Crude Team, which as the Claimant knew had a veto over any proposed transaction, was speaking with one voice.

154. On 10 November 2017 the Origination Team comprising John Goodrich, Mychael Obaseki and Chris Schemers met with Wale Otegbola in Abuja. The Claimant has suggested that he was excluded from that meeting. We find that the fact that the Claimant was not invited to that meeting is unsurprising. We accept the evidence given by John Goodridge that in general the Originating Team is the team charged with matters such as negotiating with agents. The meeting took place in Abuja, Nigeria. Only a few days before the Crude team had set the parameters for the negotiations. The fact that there would be further negotiation with Wale Otegbola was known to the Claimant and the Crude Team.

155. On 11 November 2019 Mychael Obaseki sent an e-mail to Sarah Pearson setting out a summary of the discussions. He did not copy the Claimant into that e-mail but within the e-mail itself records that the next steps will be to have a meeting with the Crude Team to make sure that 'we are aligned'. Sara Pearson promptly forwarded the e-mail to the Claimant. We do not find that there was any attempt to hide the fact that there had been a meeting from the Claimant. The Claimant knew that there would be further negotiations and knew that before any deal could proceed he would need to know what was proposed.

156. Mychael Obaseki's e-mail records that BP had told Wale Otegbola that no finder's fee would be paid. It records that Wale Otegbola had asked for a standard fee and a

preference grade incentive fee. The e-mail records that the origination team told Wale Otegbola that BP would consider that. We were told that oil is sold in various grades and that some grades were more profitable than others. Mychael Obaseki's record of the meeting suggests that Wale Otegbola was suggesting that if he were able to secure higher grades of oil Alsaa should get a higher commission. It appears that Wale Otegbola was told no more than this would be considered by BP.

157. The Claimant suggests in his witness statement that he was concerned when he read this e-mail. He says that his concerns had fallen on deaf ears. We do not understand why he should have been concerned. He knew that there were going to be further negotiations with Alsaa. The e-mail evidenced an ongoing negotiation and makes it clear on its face that no deal would proceed before agreement was reached with the Crude Team.

Discussions arising from further meetings with NNPC

158. On 13 November 2017 an Executive Director of the Standard Chartered Bank invited members of the BP Origination Team to a meeting with the NNPC. The purpose of the meeting was to discuss whether NNPC wished to proceed with the appointment of BP as an 'anchor partner' in the Producer Finance deal. From the e-mails that were circulated in response we infer that had a mutual decision been made to proceed BP would have to act swiftly. This e-mail was forwarded by Xavier Venereau to the Claimant, Dan Wise and others with a brief description of what was likely to be discussed at the meeting. One of the other recipients of that e-mail was Alpert Arnold who was a member of the Credit team. Alpert Arnold sent an e-mail indicating that he considered it appropriate to secure an option to purchase credit insurance in case the deal progressed at a fast pace. That e-mail was not sent to the Claimant but it was promptly forwarded by Sarah Pearson.

159. John Goodridge then responded to the e-mail chain. He wanted to be sure that Dan Wise was available to make a decision about purchasing an insurance option unless the Claimant had the necessary 'DOA' (delegation of authority). He asked what the likely cost would be. The Claimant responded to that e-mail in these terms:

> *'Let's not run before we can walk.*
>
> *At the moment I'm not completely sold on this deal so I I'm not ready to sell it to Dan anyway.*
>
> *Let's discuss.*

160. John Goodridge stated in his witness statement that he was irritated by this e-mail as he well understood that any transaction would need to be approved by the Crude Bench before it could proceed.

161. Having sent that e-mail to the Origination Team, and some other recipients, The Claimant sent an e-mail to Dan Wise saying*: 'I took a lot of people off the distribution list so as not to embarrass John but I'm not comfortable with how this is developing so I'm going to push back.'*. This e-mail is consistent with the fact that the Claimant knew that if he wished he could push back against the deal proceeding and also that he considered

that he could discuss any reservations he had with Dan Wise. The Claimant recalls that there was a discussion between himself and Dan Wise the following day. We accept that there was.

162. The Claimant was justifiably annoyed that a decision to purchase an insurance option had been taken by the Credit Team without his authority. That has no bearing on the issues we need to decide.

The discussion with Andrew Milnes – 14 November 2017

163. In November 2017 Andrew Milnes was the Interim Regional Business Unit Leader for Europe and Africa covering for Sam Skerry whilst she was on maternity leave. Andrew Milnes had provided a witness statement in these proceedings. Unfortunately he was suffering from a bad back and required strong medication to cope with the pain. We permitted him to give evidence via the CVP link to accommodate these difficulties and interposed his evidence in order that he would not be overly affected by his medication.

164. Andrew Milnes told us, and we accept, that he would regularly walk around the Trading floor in order to keep himself up to date with the trading activities. He said that he would speak regularly with the Claimant.

165. The Claimant says that on 14 November 2014 he spoke to Andrew Milnes who had passed by the trading desk. He says that in the course of that conversation he made a protected disclosure concerning the producer finance deal. In his witness statement Andrew Milnes did not claim to have any clear recollection of the encounter. On the same day, the Claimant sent Dan Wise an e-mail in the following terms (with emphasis added):

'Hey mate

Andy came by the bench and asked what you wanted to discuss in regards to NNPC. I said I think you wanted to understand what profit we need to justify the loan and you probably wanted to discuss the agent.

His response

- 50c on 7m bbls is sufficient given our strategic growth objectives and

- he understands our concerns about the agent but there is a local content requirement and we have vetted the agent. He also said the agent risk is 'corporate' risk and not GCRUDE risk.

So he seems comfortable. Let's discuss tomorrow.'

166. Dan Wise told us in his witness statement that he had initiated this discussion. We accept that was the case as it is consistent with the opening sentence of the Claimant's subsequent e-mail. In his witness statement the Claimant sets out his account of what he can recall of the discussion. He says that part of the conversation concerned the risk/reward of the producer finance deal. He explains that he did not have a full grasp of the finance side of the proposed deal. Andrew Milnes accepted in his witness statement that the e-mail sent by the Claimant to Dan Wise probably accurately summarised the

discussion. He did not seek to dilute that in his oral evidence. We find that the e-mail sent shortly after the conversation is likely to be an accurate account of the discussion. It is very likely in our view that the Claimant would raise the risk/reward aspects of the proposed deal. In that context we understand 'risk' to have related to the risk that there would be insufficient profit to be made buying the crude oil to justify entering into the finance side of the deal. It would be fair to categorise these concerns as purely commercial.

167. The Claimant goes on in his witness statement to suggest that there were other aspects of the discussion that related to the use of an agent. Again, Andrew Milnes accepted that the e-mail sent later was likely to reflect the discussion. In his witness statement and oral evidence he accepted that there was some discussion about the use of an agent. The full account in the Claimant's witness statement was as follows:

> *'I explained to Andy in detail that Mr. Otegbola was not considered trustworthy, that he had not brought the 2017 Producer Finance Deal to BP, and that BP could not assume that Mr. Otegbola would operate in an ethical manner. I said that the amount of the agency fee was huge given that his services were not of any real value and that he hadn't in fact brought the deal to BP; I said that Mychael didn't like or trust Mr Otegbola; and that the Origination team's apparent willingness to pay more than the 10 cents per barrel approved by the trading team and the DGB was a real cause of concern for me. I also complained to Andy about the broader issue of the lack of communication between Origination and trading and I stressed that this was not the first time that the Origination team had seemed willing to exceed commercial limits imposed by the traders. I explained that in the previous year the Origination team had agreed to pay the agent a fee of 50 cents per barrel despite the fact that I had told Mychael not to exceed a fee of 45 cents per barrel.'*

168. We do not accept that the Claimant discussed his concerns in quite as much detail as he has included in his witness statement. It is not probable that the Claimant would have said that the Origination Team were willing to pay more per barrel than agreed by the Crude team or the DGB or had done so in the past. As Andrew Milnes has explained in his witness statement and as the Claimant has accepted the Crude Team had a veto on any transaction. Andrew Milnes gives a very plausible explanation of why in his view the Claimant's account of the Origination Team agreeing a figure of $0.50 per barrel when only $0.45 had been agreed is very unlikely. He explained how the matter would have been picked up on an audit with very serious ramifications for the Origination Team. We do not consider that the Claimant is trying to mislead us but find that he is mistaken about these matters.

169. What we do accept is that the Claimant did raise concerns about the use of an agent and Alsaa in particular. We find it very likely that he would have described Wale Otegbola as untrustworthy as that reflected his opinion having learned that Alsaa was seeking a finder's fee which BP considered unjustified. We are further satisfied that the Claimant would have raised the size of the fee sought by Alsaa and his view that the fee was high in comparison to the services provided. That was a view that he held and had expressed to others. In contrast to others Andrew Milnes very fairly recognised that concern about the amount of remuneration might be a purely commercial concern but it might also be a compliance issue. Once again the Claimant does not claim to have expressly stated that his concerns related to the potential for bribery or similar unlawful activity.

170. Andrew Milnes accepted that he did advise the Claimant that the use of an agent was necessary and that if anything were to go wrong that would not reflect on the Crude Bench and as such was a 'corporate risk'. Risk in that context cannot have been intended to refer to the risk of not making a profit but must have related to the risk of behaviour by the agent which might have a reputational or compliance impact.

171. Andrew Milnes provided a comprehensive explanation of the reasons for using agents in his witness statement which we accept. He says that BP's first choice would never be to use an agent but that in some jurisdictions it was necessary. That was the case in Nigeria to satisfy the Local Content Act. He describes the rationale behind the vetting process as follows:

> *'This process involved all agents being discussed and approved at the relevant level. The front office would propose an agent and a fee, and then the functions would check the agent, the agent's fee, and whether the relevant audits had been carried out. While agents can be difficult, they are not all bad. In some countries, national legislation means that you have to use them. The aim of our checks was to establish whether we were happy for the agent to represent the First Respondent. This was not only a case of reviewing their actions on our behalf, but also taking a wider view and verifying that the agent had not been acting improperly for any other clients. If an agent was to be proposed to the Deal Governance Board, a number of checks would have been carried out first and legal and compliance would have got themselves comfortable first. The Deal Governance Board would then sign off on the approved agent status and set a review period. While I am not specifically aware of the details of ALSAA's approved agent status, an agent of that type would be on a regular review (annual, if not more regular).'*

172. In his witness statement the Claimant says that he was left after the meeting feeling extremely nervous. He suggests that he did not understand how the use of an agent could be a 'corporate risk'. He goes on to say that it *'seemed like an incoherent attempt to palm off responsibility to our parent company, BP Plc. I felt Andy was trying to brush me off.'* Having had regard to the evidence as a whole, and in particular the Claimant's own e-mail to his team that we refer to below, we are not satisfied that the Claimant felt the way he has described at the time. Andrew Milnes' explanation of what he referred to as a corporate risk was clear and straightforward. We do not accept that the Claimant did not understand what he was being told. The fact that working with agents created a risk was universally acknowledged within BP. We refer again to the fact that agents in Nigeria were referred to as High Risk Agents. Because that risk was known there was a vetting process. The trading benches were not responsible for that process. If the vetting process failed to mitigate risk then the responsibility would not fall on the trading desk. The Claimant is highly intelligent and we are sure that he would have understood that this was what Andrew Milnes was saying.

173. When Andrew Milnes gave evidence he was asked by the Tribunal to attempt to quantify the risks of using an agent. We consider that he did his best to provide an answer. He acknowledged that 'there were sone bad actors' and he accepted that no vetting or compliance process would ever be fool proof. He said that when assessing risk the approach taken by BP was to never knowingly stray into any grey area.

174. Before leaving this meeting we note that the Claimant's e-mail to Dan Wise suggests that the Claimant had put forward concerns which he and Dan Wise shared. That is consistent with Dan Wise's evidence and we find that that was the case. Both the Claimant and Dan Wise were concerned about the use of Alsaa and in particular the high level of remuneration that was being discussed.

The 14 November 2017 meeting with Philip Llewellyn

175. Philip Llewellyn was in 2017 the Regional Compliance Director of GOE. This was a very senior position. Philip Llewellyn had very little interaction with the Claimant and prior to 2017 had never had any discussion with him about compliance issues. Philip Llewellyn set out in his witness statement an account of how the concerns about doing business in Nigeria were addressed by BP. We accept that account, which was not substantially challenged by the Claimant, which was set out in his witness statement as follows:

> *12. There was nervousness in the business about West Africa because it was (and is I believe) high on the Corruption Perception Index (CPI). Culturally, it is different to Europe in relation to what is considered appropriate business dealings. When we created the control framework we worked really hard to understand the culture, society and regulations. We wanted to understand what good and bad practices are and how things are done. We built a strong control framework there because we worked very closely with the marketing and origination teams in the IST business to do that.*
>
> *13. At least every three months a member of compliance would go to Abuja (now Lagos) and someone from there would come to London. There was a regular interface between the functions (including Compliance and legal), and key staff locally and in London. This was to reinforce the IST message and training, as Nigeria is very far away, and sometimes if you are working remotely you can get sucked into local practices. Due to the high CPI score, the framework was gold-plated. There was pushback from some in the business in the early days, especially around expecting people to travel. Eventually I said I wouldn't sign people off in relation to trading or visiting Nigeria until they signed up to my control framework. That ensured that everyone spent time in London or on the ground in Nigeria (including agents), got training face to face on compliance, and knew what the First Respondent's expectations were. Following brief protests from the business, it eventually said it was the best thing that we ever did, as it ensured people understood what was required. Relationships were also built because people were forced to be in the business for a month. A lot of respect was built between the business and Compliance, and the business was working smoothly when I was there. Of course there were bumps but that is the nature of the operation. The turn around in attitudes to the framework happened well before 2017 which was the timing of the NNPC deal.*
>
> *14. Local agents are a requirement in the NNPC. The NNPC require local content to stop big corporations coming in and taking over everything. They want to include locals, and they want to develop local people's understanding and improve training and education for them in business related activity. There is good logical rationale for it. The First Respondent has a detailed agents' policy and procedure which requires to be followed.*

176. In his ET1 and in his first grievance the Claimant has asserted that he 'escalated' his concerns to Philip Llewellyn after he had spoken to Dan Abodunrin. In his witness statement he accepts that he has got that wrong. Philip Llewellyn had taken a timed and dated note of the meeting he had with the Claimant. The Claimant accepts that the date was 14 November 2017. There is nothing surprising or sinister about the Claimant making mistakes in the chronology of events. Memory is not reliable. That said, we need to apply the same caution to the Claimant's recollection of what was said at the meeting. We find that the clearest guide to what was discussed is Philip Llewellyn's hand-written note.

177. A further concern about the Claimant's recollection concerns the changes he made to his witness statement in the weeks before the hearing. The Claimant had originally included a statement saying that he told Philip Llewellyn that Wale Otegbola had acted unethically. He later decided that he could not stand by that statement. Whilst he is not to be criticised for withdrawing a statement he does not believe to be true the fact that the statement was included in the first place leads the Tribunal to question how sure the Claimant is of quite what he told Philip Llewellyn. When pressed in cross examination about differences in the account in his original witness statement and his first grievance the Claimant acknowledged that he could not remember exactly what he said.

178. The Claimant says that he provided Philip Llewellyn with the e-mail chain he had received on 6 November 2017. Philip Llewellyn has no recollection of being passed any documents and has not recorded that in his notes. We are not satisfied that the Claimant did give Philip Llewellyn those e-mails.

179. There is some common ground between the Claimant and Philip Llewellyn about what was discussed. Both agree that the opening topic of conversation was the NNPC Producer Finance deal. They then agree that the Claimant raised the issue of the remuneration that Alsaa was seeking. Philip Llewellyn's note records the Claimant as saying that the agent might receive a fee of $7M for *'little or no work'*. The Claimant says that he raised the matter of the Origination Team apparently being willing to negotiate beyond the boundaries set by the DGB and not informing him of what was going on. That is again consistent with the note made by Philip Llewellyn who records that the Claimant said that the Origination team was drip feeding him information.

180. We are satisfied that the Claimant raised the issue of the agent's potential remuneration at least in part because he was concerned about the risk of bribery. Had he not had that concern we see no reason why he should, for the first time, seek a *'quiet word'* (as recorded by Philip Llewellyn) with the Head of Compliance.

181. The Claimant says in his witness statement that at one stage he said words to the effect of *"Phil, I'm the WAF book leader. I'm supposed to be begging for your permission to do this deal and I'm telling you I don't like it."*. We do not accept that the Claimant said these words or any similar words. Our reasons for this are that only 24 hours before in his e-mail to Dan Wise the Claimant had indicated that he was putting the brakes on the transaction as he was unhappy. On 27 November 2017 the Claimant indicates he is happy to proceed with a revised deal. Both of these actions show that the Claimant knew that it was within his gift to veto the deal subject only to the possibility that he would be overruled by Dan Wise. Dan Wise at this stage (and afterwards) had agreed with the Claimant's reservations and had organised a meeting to discuss them with the

Origination Team. The Claimant had no basis for believing that he would be overruled. Had the Claimant used the words he claimed were used it would have been inevitable that Philip Llewellyn would have said that he did not have to commit the bench to any deal he was unhappy with.

182. The Claimant has sought to argue that it was not open to him to veto the deal other than on commercial grounds. We do not accept that was the case and we return to that point below.

183. In his witness statement Philip Llewellyn appears to be reluctant to acknowledge that the Claimant was raising a compliance rather than a commercial concern about the Agent's fee. He says that he thought that the Claimant was trying to 'stir the pot' about the Origination team. We think he can be excused for that latter conclusion there was no love lost at this stage between the Claimant and the Origination Team. Viewed objectively many of the Claimant's complaints about the origination team appear thin. However, in respect of the failure of Philip Llewellyn to expressly acknowledge at least the possibility that the Claimant was raising a compliance concern we are surprised that he did not do so in his witness statement. In cross examination he readily accepted the fact that an apparently excessive fee might be a 'red flag' for any compliance concerns. We consider that the refusal to acknowledge that the Claimant had compliance concerns (or at least might have) exhibits an obstinacy rooted in tribalism.

184. We find that Philip Llewellyn indicated to the Claimant that he would look into what he had been told. Philip Llewellyn did ask one of his team to look into the correspondence generated by the Origination team. He was told that there was nothing untoward and he took the matter no further. Neither the Claimant or Philip Llewellyn anticipated that they would have any further discussions as neither followed up on the meeting. The Claimant was left with the impression that Philip Llewellyn was going to look at the arrangements with the agent. In fact that had never been the intention. The actual contractual arrangements were, Philip Llewellyn told us, outside his expertise.

<u>The meeting with Matthew East.</u>

185. It is common ground that at some point between 14 and 27 November the Claimant had a conversation with Matthew East about the Producer Finance deal. Matthew East is a Barrister and at the time was Senior Counsel in BP's Global Oil Europe team.

186. The Claimant in his witness statement says that he asked to have a meeting with Matthew East after he had spoken to Andrew Milnes. He says that he took a copy of the e-mail chain and e-mail sent by Xavier Venereau. He says that he raised Xavier's apparent willingness to pay more per barrel than authorised by the DGB. He says that he raised the lack of commercial justification for the fee demanded by Alsaa. He says that he raised the fact that Wale Otegbola had misrepresented an entitlement to a finder's fee.

187. For the same reasons as we have expressed above we do not accept that the Claimant would have said that Xavier Venereau was prepared to agree a fee in excess of that agreed by the Deal Governance Board. The Claimant would have known that this would not have been permitted and that he had a veto over any attempt to do any such thing. He may have expressed a concern that Xavier Venereau was prepared to

entertain the possibility of negotiating above the limit imposed (with the consequential need to seek further authorisation) but he would have gone no further as he understood the restraints on the Originating team.

188. Matthew East has no real recollection of the meeting. The Claimant does not suggest that he stated in terms that there was any actual bribery and corruption. That may go some way to explaining why Matthew East considered the meeting to be unremarkable. The Claimant does not say that he asked Matthew East to do anything. The Claimant simply sought advice. The Claimant says that Matthew East assured him that there was a robust process in place for vetting agents. Matthew East does not dispute that he may well have done so. In his witness statement he set out his account of how agents are vetted. He says:

> *'BP recognises that engaging agents in high risk jurisdictions such as Nigeria carries a risk. In order to mitigate this risk we do a number of things, including due diligence on the agent themselves, scrutinising and benchmarking the proposed fees to ensure that they are proportionate to the service to be carried out and consistent with market practice, requiring the agent to be trained on our code of conduct, and including a number of rights within the contract including in relation to internal review of their invoices, audit rights, and termination rights.*
>
> *18. BP's business case for use of an agent in a deal involves scrutiny as to whether the work justifies the fee. A key service provided by the agent is lobbying the supplier (in this case the NNPC) to provide grades of oil which are the most suitable. Export contracts with the NNPC in Nigeria permit the NNPC to deliver between 15 and 20 different qualities (or "grades") of crude oil, depending on the different export terminal that they originate from, some more valuable than others. NNPC's choice of which grade to deliver for a particular cargo is of significant value to the recipient. One of the roles of the agent is to lobby NNPC to persuade them to allocate the most valuable grades of oil. Other services may include operational services, such as delivery of specific documents that are required to be taken in person to NNPC under the export contract.'*

189. Broadly what Matthew East says in his witness statement is what the Claimant says that Matthew East told him save that it is the view of the Claimant that the Agents have little input into what grade of crude oil might be supplied and the opinion of Matthew East that an agent can add value. One matter to which the Claimant referred in his e-mail sent on 27 November 2017 was that agency agreements provided that BP could audit the agent's books. That reinforces our view that this was a matter discussed in this meeting.

190. It is clear to us that the Claimant's meeting with Matthew East was not to discuss merely commercial concerns. He would not have needed to turn to a member of the legal team to do that. We accept that the Claimant raised the level of remuneration demanded by Alsaa because of concerns about bribery or other unlawful conduct and not out of commercial self-interest. In fairness to Matthew East he never suggested otherwise.

<u>Negotiations with Alsaa are discontinued.</u>

191. In his witness statement the Claimant says *'At some point in the latter half of* November *2017, John Goodridge told me that the decision had been taken not to use Mr. Otegbola as the agent for the NNPC Producer Finance Deal. I do not know who, ultimately, took this decision, but I assume that it resulted from the concerns that I had repeatedly raised.'*

192. We note that the assumption that it was his concerns that caused negotiations to break off with Alsaa was not something asserted in the Claimant's first grievance, the structure and a large proportion of the content of which has emerged in his witness statement*, the Claimant says 'I don't know who, ultimately, took this decision – whether it was John Goodridge, or whether he was instructed not to do business with Mr Otegbola by someone senior to him, I do not know'.* We find that the assumption that the Claimant has made has emerged later and is a consequence of the hardening of attitudes during the litigation.

193. The impression the Claimant gives that he was a lone voice standing up to the appointment/negotiations with Alsaa does not stand up to scrutiny. It is clear from the e-mail chain forwarded to the Claimant on 6 November 2017 that the Origination team are struggling to have a productive negotiation with Wale Otegbola. Dan Wise had backed the Claimant setting a crystal clear limit on the negotiations of $0.10 per barrel as agreed by the Deal Governance Board. The minutes of the meeting of 10 November 2017 show some progress but still no agreement. At some point prior to 27 November 2017 the Origination Team found another local partner who was prepared to accept the terms proposed by BP.

194. John Goodridge in his witness statement says that the NNPC expressed reservations about Alsaa acting as an agent. Mychael Obaseki cites the refusal of *Alsaa* to accept the terms offered by BP as the reason for discontinuing negotiations. We do not see these matters as being inconsistent. The Claimant believed that his actions were what caused the negotiations with Alsaa to break off. We accept that the Claimant's insistence that the proposed remuneration not exceed the 0.10$ per barrel approved by the Deal Governance Board was a contributing factor but there were other sticking points in the negotiations not least the manner in which Wale Otegbola negotiated. The Claimant's stance in respect of remuneration was one supported by Dan Wise and Sarah Pearson. We find that the final decision not to proceed with Alsaa as an agent was taken by the Origination team.

195. Whilst it disrupts the chronology it is necessary to mention the fact that Wale Otegbola complained that BP were not complying with the local Content Act by switching agents. He complained to the relevant Nigerian Senate Committee and several BP employees were called to give evidence. This created some bad publicity for BP and travel to Nigeria was suspended for a period. The Claimant says that this was not discussed with him. We find that unsurprising. It was not his concern as a trader. The Claimant does not suggest that he made any enquiries about the scope or outcome of the hearings.

<u>The 22 November Meeting with Dan Abodunrin</u>

196. On 22 November 2017 the Claimant had a further meeting with Dan Abodunrin. We have previously commented upon the fact that Dan Abodunrin mixed up the two

meetings he had with the Claimant and appeared to have no independent recollection of the content of either meeting. It was conceded in the Respondents' written submissions that Dan Abodunrin's recollection of events was imperfect. There is no contemporaneous note of the meeting although the Claimant does reference what he says Dan Abodunrin told him in his e-mail of 27 November 2019.

197. The Claimant's account of the meeting is set out in his witness statement. The Claimant says that one of the matters discussed was the ability of BP to audit the books of its agents to ensure that their activities were lawful. We accept his evidence. He includes that in his e-mail of 27 November 2017. The Claimant accepted that during the business integrity investigation he had not expressly referred to bribery and corruption. In his witness statement he says that he told Dan Abodunrin that in his view there was no commercial justification for the fees demanded by the agent. We accept that something along those lines would have been discussed. We find that the Claimant actually believed that the Agent would have little work to do to earn his commission. We would accept that the Claimant raised his concerns about the integrity of Wale Otegbola as he believed that 'misrepresenting' the right to claim a finders' fee was sharp practice. We shall not at this stage comment upon whether those beliefs were reasonable but having found that they were held, it makes the Claimant's account of the meeting probable.

198. The Claimant does not suggest that he asked Dan Abodunrin to take any action. He says that Dan Abodunrin appeared to consider that given the mitigating steps that BP had in place the use of Alsaa on the producer finance deal was no different to other transactions. We find that that was Dan Abodunrin's view. We accept that Dan Abodunrin genuinely has no independent recollection of the meetings he had with the Claimant over this period. We find that his lack or recollection is consistent with the fact that he regarded the conversation as unremarkable.

The Claimant's e-mail of 23 November 2017

199. On 23 November 2017 the Claimant sent an e-mail to members of the Glights team to discuss trading activity with the NNPC. The e-mail concerned proposals for linked sales of gasoline and purchases of crude oil. The Claimant makes it clear to the GLights team that he is concerned about whether the profits that the Crude bench might obtain justifies the commercial risk of the transaction. There is no suggestion that the Claimant has any concerns per se about doing business with the NNPC despite the fact that he would have known that this would involve the use of an agent. The Claimant takes a robust stance with the GLights team and is clearly prepared to stand up to that team.

200. Once he had sent the e-mail he forwarded a copy to Dan Wise who responded saying '*Great email'*.

The Claimant's e-mail of 27 November 2017

201. By 27 November 2017 the Claimant had been told that the Origination Team were no longer negotiating with Alsaa but instead were dealing with a Nigerian entity DSV. The Claimant sent the following e-mail to the members of the crude bench including Dan Wise.

'Just a quick update on all the conversations we've had lately on Nigerian agents…

Background

As you are aware, while we prefer not to use agents in high risk jurisdictions, Nigerian law requires that we have a 'local content' partner for all NNPC business. Origination (with guidance from Legal) have determined that using agency agreements is the best way to tick that box. Given the large volumes and the long tenor of the deals we are currently discussing, I thought it was worth making extra sure that we are comfortable with our agents, our agency agreements, and that we have in place sufficient risk mitigation to prevent any possible issues that might arise down the road. Also, given the upcoming holiday season and my upcoming leave I wanted to make sure to close out any major issues or concerns before I go.

NNPC Prefinance (DSV as agent)

Dan, Sarah Pearson and I had a telcon with John Goodridge and Mychael Obaseki to make it crystal clear that under no circumstances will we exceed the agreed agency fee of 10 cents per bbl, and in exchange we expect first class administrative support with all NNPC related ops matters and we expect the agent to lobby effective on our behalf to secure our preferred load dates and preferred grades from NNPC.

In addition, given the significant volume and tenor I also had the following conversations as well:

1. I asked Phill Llewellyn to take a look and make sure that he was comfortable with the agent and the agency agreement

2. After learning from Mathew East that we have the right to audit the agent's books I spoke to Dan Abodunrin and made sure that we actually intend to do that. He assured me that over the 7 year term we would certainly audit the agent's books multiple times.

3. Both Mathew East and Andy Milnes stressed to me that our high risk agency process is robust and that the crude book shouldn't feel that its our responsibility to vet and approve the agent

2018 NNPC Crude Tender (AYM as agent)

2018 DSDP NNPC swap deal (AYM as agent)

I spoke with Dan Abodunrin about the intended deal structure (a 30 cent fee and a 50% profit share). Dan felt that this arrangement makes sense and that the profit share creates a proper JV arrangement which should incentivize AYM to lobby on our behalf for grades and dates and facilitate any other commercial matters with NNPC. Unlike some of the other agents, AYM shows strong potential to grow into a significant commercial partner for BP. They have some 50 retail stations and an import terminal and show promising growth prospects within the country. Forming a close with a company of their size in the early stages of their growth could prove to be a long term strategic win for BP in Nigeria.

Nigeria is a high risk jurisdiction and the use of an agent always carries some risk but I believe we are in a good place now. The HRA approval process for AYM has begun and so far everyone I have spoken to seems comfortable that they will be approved. I think the bench has done everything it can to support the assurance process but if anyone has any new thoughts please let me know and I will action them.'

202. The Claimant has sought to say that the intent behind this e-mail was to set out the product of his discussions with others essentially to cover himself and his team in case there were any repercussions. He says in his witness statement that at this point*: 'I was hopeful that I had raised sufficient concerns that the deal wouldn't survive any subsequent governance milestones if it were to progress further in its current form.*' In fact the Claimant got a prompt response from Marco Candeloro, who had taken over some of Sarah Pearson's responsibilities as she was on maternity leave, informing him that in the light of the content of the Claimant's e-mail he would be supporting the deal at the Deal Governance Board meeting on 29 November 2017.

203. We would accept that the Claimant's e-mail refers to, and acknowledges risk, from using a local agent. He acknowledges that he has been told of robust steps that are routinely taken to mitigate that risk. The tenor of the closing passages of that e-mail are not consistent with the Claimant being reluctant for the deal to proceed with the new agent. We find that the Claimant still believed there was some risk but was satisfied that the risk had been mitigated to an acceptable level. When he was cross examined the Claimant accepted that nobody reading his e-mail would have any inkling that he was concerned about the progression of the producer finance deal. He further accepted that he was aware that Marco Candelora would be presenting the proposed deal at the Deal Governance Board.

204. One aspect of this e-mail that did not sit comfortably with the way the Claimant put his case before us is that, in his e-mail, the Claimant appears to accept that a local agent would have some role lobbying for grades (as the Respondents' witnesses agreed). We find that at the time the Claimant accepted that a local agent could and might be expected to lobby for good grades of oil.

205. In the event the producer finance deal did not proceed at all. We are not entirely clear of the reasons for that and it is unnecessary for us to reach any conclusion. It appears that the decision was taken at the highest levels and nobody suggests that the Claimant's concerns were the reason that the deal not proceed.

<u>The first putative disclosures – some factual conclusions</u>

206. The findings above make it clear that we have not accepted one aspect of the Respondent's case namely the suggestion that the matters raised by the Claimant reflected purely commercial aspects of the deals/proposed deals with the NNPC. A concern about the use of and the remuneration paid to a local agent might give rise to both purely commercial and compliance concerns. At an early stage, where the Claimant is talking to members of his own team and/or the Originating Team those who he spoke to may well have misunderstood the nature of the Claimant's subjective concerns as the Claimant accepts that he did not say in terms that any money used to pay an agent would be (in the terms he uses later) *'a disgusting bribe'*. The Claimant was an

experienced trader. Paying a substantial commission would impact on the profits made on any deal. We have no doubt that the Claimant would have had that aspect of the arrangement in mind in addition to any concerns about compliance/bribery. As the Claimant moved to speaking with individuals whose roles were not commercial we have found that that strongly supports our finding that, subjectively at least, the Claimant had concerns that included compliance concerns. We ask ourselves rhetorically, why else would he have spoken to these people? The fact that the Claimant had had concerns is also consistent with his e-mail to the Crude team of 27 November 2017. That e-mail details the enquiries he made and the responses as he understood them. It is impossible to read that e-mail as being limited to commercial concerns only.

207. In the later Business Integrity investigation it emerged that the Claimant was not alone in believing that the sums demanded by Alsaa might be used for improper purposes. When asked about the role of Alsaa John Goodridge was recorded in the handwritten note of the meeting that *'whole thing a joke….invent a job for him. ….lot of concern around ensur[ing] not paying agents money to bribe (probably) officials to get us deal'*. In his interview Chris Schemers is recorded as saying *"Alsaa wanted upfront 5m. I said to my team, he wants to so he could pay someone off … I had a bad feeling about the guy, paper thin no assets. And he wants upfront, didn't smell right to me".*

208. We have asked ourselves why it is that some of the individuals who the Claimant spoke to have at certain stages insisted that the Claimant was raising commercial concerns and many appear only to have a scant memory of the discussions. We find that there are mixed reasons for that. The Claimant was never as blunt in those discussions as he has been later. Then there is the fact that the people who the Claimant talked to expected him to know that he could have vetoed the producer finance deal if he wanted to. They would also expect the Claimant to know how any proposed deal was examined and approved by the Deal Governance Board and the Commitments Committee. The Claimant never asked any of the individuals who he spoke to to intervene and stop the use of local agents.

209. One feature of these conversations which we view as important is that everybody recognised that working with an agent carried a risk. When the Claimant articulated his concerns he was referring to matters of common knowledge. He was not saying anything shocking or surprising. BP was aware of the risks and had adopted mitigating strategies to reduce the risk. We find that the Claimant's tolerance for risk in relation to agents might have been lower than those he spoke to but ultimately, by 27 November 2017 he accepted that any risk was reduced to an entirely acceptable level.

210. In their submissions the Respondents draw attention to two bits of oral evidence that have a bearing on the impact of the information disclosed by the Claimant. We accept the evidence below and have taken it into account when assessing whether, as the Claimant says, his disclosures led to a perception that he was obstructing a lucrative oil deal.

210.1. Matthew East said*: "I think what I would say is that a conversation about this topic was not particularly out of the ordinary in the sense that it was flagging a risk that all of us, you know, were aware of, that we would discuss on a regular basis and that BP had processes in place to consider and to address. So, you know, if I didn't --had Mr Zarembok come to me and said "I have seen evidence that a*

counterparty or an agent of ours has paid a bribe", that would be very different, I would have taken a note, I would have escalated it immediately. I think a discussion of the risks associated with using agents and this agent and other agents in Nigeria and other high-risk countries was quite common place."

210.2. Brad Berwick who headed the Business Integrity investigation said: *"…there is a difference between raising a compliance concern and pointing out a known compliance potential issue. When you are raising a compliance concern, and I will go back to Mr Zarembok with his skills and experience in IST would know this, you raise, specifically raise a compliance concern, otherwise you are stating what they already know about a high-risk agent."*

211. Given the fact that it was widely recognised that the initial demands of Alsaa did raise very real concerns about the potential of bribery we found it surprising that some of the Claimant's former colleagues have failed to acknowledge the possibility that the Claimant shared and raised those concerns even if he did so obliquely. We consider that some aspects of the Respondents' evidence have become tainted by subsequent events. Labelling the Claimant as only being interested in money and a refusal to acknowledge alternative possibilities is symptomatic of a partisan approach. We accept the submission made by the Claimant that the reluctance to accept the obvious fact that the Claimant had genuine concerns about bribery is a matter that we should take into account when assessing the reliability of any explanations given for the Claimant's treatment. We return to the weight that we might give to this below.

212. In his witness statement the Claimant says that in speaking up about the use of agents he was taking on powerful interest groups. He refers to the fact that the GLights team were also using agents in Nigeria. We do not accept that the Claimant was afraid to raise any concerns he had. He had previously raised his concerns about the GLights Team with Sam Skerry in a full fronted attack on the conduct of the GLights Team. He was able to speak up when he had concerns. The Claimant accepted that he was aware of and could have used the anonymous Speak Up Whistleblowing Policy if he had any residual concerns.

213. Throughout the time we have looked at, he is discussing his concerns with Dan Wise. He does not say that at any stage, Dan Wise, or anybody else, suggested he should keep his concerns to himself.

214. It follows that we have accepted that the Claimant had, and raised his concerns about the use of agents in Nigeria and their remuneration in part at least, because of compliance/bribery considerations. We have also found that after speaking to a number of people the Claimant considered that the risks had been sufficiently mitigated.

215. On 14 December 2017 the Claimant shared an e-mail he had seen from the GLights team with Dan Wise by text message. The Claimant's text messages relate to transactions in Nigeria. He suggests that the GLights team are trying to engineer a proposal where that bench took a greater share of profit with less risk than the crude team. In the light of later allegations we consider it significant that when he wanted to complain about other teams, the Claimant's relationship with Dan Wise was sufficiently strong that he chose to chat to him. The text exchange indicates an excellent working relationship.

The alleged detriments in 2017

216. Before dealing with the detail of the Claimant's case we shall address one point made by the Respondents which is of general application but of particular significance in these earlier events. The point made is that in the Claimant's first grievance and in his first claim as originally presented to the Tribunal, the Claimant's case was (1) he was treated badly because of raising concerns about the Taleveras issues and (2) that he made a far wider range of complaints about his treatment. It is argued that his abandonment of those allegation shows that the Claimant was prepared to make unsubstantiated allegations.

217. That submission requires some careful analysis. The Claimant says, quite rightly, that during case management hearings he was encouraged to take his best points and the parties were jointly instructed to take a proportionate approach. If those were the reasons for trimming down the claim then there would be no basis for finding that the abandonment of claims had an impact on credibility.

218. In order to make good their submissions Mr Nawbatt KC cross examined the Claimant about some of the abandoned claims. One example was that the Claimant had claimed that his TPSA responsibilities in March 2018 had been removed. The Claimant had maintained that this was an action taken because he made protected disclosures. He had made that allegation in his grievance, his appeal against the outcome of that grievance and in his ET1. In his grievance letter of 5 October 2018 the Claimant puts the serious allegation that Dan Wise had stripped him of these responsibilities because they concerned matters of control, assurance and compliance.

219. On 5 April 2018 an e-mail from Sam Skerry set out that there were widespread changes to the IST-TPSA policy . We were told and accept that a decision had been taken to make the policy more straightforward and to reduce the number of people holding TPSA responsibilities. The decision was made to reduce the number of people in the London Crude team with TPSA responsibilities from 3 to 1. Dan Wise was to be the only person with those responsibilities. This explanation was given to the Claimant on 7 March 2019 in the response to his first grievance. The Claimant appealed that outcome.

220. In cross examination the Claimant accepted that the removal of his TPSA responsibilities had nothing whatsoever to do with taking parental leave or making protected disclosures and accepted that he had made his allegations based on assumptions. The Claimant has withdrawn the allegation that the removal of these responsibilities was an unlawful act on 4 April 2021.

221. The Claimant had made a further allegation that he had been excluded from annual Crude Executive meetings because he asked to take parental leave and/or because he made protected disclosures. In cross examination the Claimant conceded that he had not been invited to the Crude Executive meeting in 2016 as the invitations were extended only to team leaders in the various regions. The same individuals attended in 2017 and the meeting took place in October prior to all but one of the disclosures made by the Claimant.

222. In the outcome to the Claimant's grievance he had been told that following Dan Wise's appointment, changes were made which meant that the Claimant could have had no expectation of being invited to the Annual Crude Executive Meeting. The Claimant did not accept this explanation and appealed against the outcome of his grievance. He dedicated 15 paragraphs of his witness statement to this issue. The Claimant withdrew his claim in this respect after his cross-examination. We find that the Claimant had made his allegations on a very thin evidential basis. He complains that the Respondent was slow to provide documents that showed who attended meetings. That may be so but what is surprising is that the Claimant jumped to a conclusion that he had been excluded from meetings without knowing who had been invited.

223. In the Respondents' closing submissions there are other examples given but it is unnecessary for us to go into any detail. We do find that the Claimant had been prepared to make and maintain some very serious allegations based either on mere assumption or on a very thin evidential basis. Whilst it was obviously sensible to abandon such claims we do accept the point made by the Respondent that the fact that they were made in the first place is indicative of a propensity of the Claimant to assume the worst when actions were entirely innocent. We have taken those matters into account in assessing the evidence.

224. The list of issues includes a claim that Dan Wise ceased to consult the Claimant on strategic decisions from November 2017. We need to make findings about whether there was any change in the relationship after the first putative disclosures were made.

225. One example the Claimant gives is a suggestion that Dan Wise had excluded him from information about the Producer Finance deal in particular by not forwarding him e-mails from the Origination Team. Whilst we accept that the Claimant was not copied in to all e-mails from the Origination Team we find that the Claimant was swiftly informed about any proposed transactions. When pressed in cross examination the Claimant was unable to identify any e-mails that Dan Wise had not sent to him postdating any disclosure that he says ought to have been forwarded. Dan wise would have known that the Claimant would have to learn about any transactions. Dan wise sat alongside the Claimant at the time and we accept his evidence that he would often prefer to discuss things orally rather than send e-mails. We find that any failure by him to forward or respond to e-mails to/from the Claimant was inadvertent.

226. A further facet of the Claimant's case in this respect is that he says that he was not consulted about the bonuses of the members of his team. It was common ground that he had been involved in the past including in 2016. Dan Wise had taken on his role in 2015 from Donald Porteous. Dan Wise told us and we accept that Donald Porteous had not put in place any process of cross regional benchmarking for bonuses. Dan Wise accepted that he had consulted the Claimant about bonuses for his team in 2016 after he was appointed. He says that by 2017 he had implemented a more robust process which included cross regional benchmarking, a process involving other senior managers. Dan Wise says that despite the fact that the Claimant was not asked to attend any formal meetings about his team's bonuses from 2017, these were discussed with him.

227. Having regard to the evidence as a whole we are satisfied that Dan Wise did change the system for deciding bonuses as he suggests. Under that system the Claimant would

not have been invited to the meeting where regional benchmarking took place. We are satisfied that the changes reflected sensible commercial decisions and the need for cross regional consistency. We do not consider that the fact that in 2016 Dan Wise had not yet implemented those changes is in any way surprising. He was new to the position and making changes is often a gradual process.

The Claimant's Appraisal and Bonus

228. BP has a system for appraising traders which is referred to as 'My Plan'. Each year the employee is required to complete a pro-forma commenting on their own performance against set objectives. There is a mid-year and a year-end review. The employee is then given feedback by their line manager and there is a meeting held to discuss the feedback. We had the My Plan documents for the Claimant from his appointment in 2013. Whilst the Claimant's entries on the proforma are reasonably full we noted that the comments by Dan Wise and his predecessor were very brief. At the conclusion of the appraisal process the employee is given an overall rating. This rating was one measure that was taken into account in allocating a bonus. The ratings obtained by the Claimant were 'exceeds expectations' in 2013 and delivers expectations in all other years.

229. The Claimant says that in his 2017 appraisal Dan Wise gave him a downbeat appraisal. The comments made by Dan Wise are brief and are set out below:

> *'Overall sweet y-o-y performance is lower, however, in light of the headwinds from narrowing structure and a compression of volatility the performance was decent on WAF. The sources of revenue on the WAF book are changing, in 2017 we saw +$40mn of value created from Angolan trading and a large majority of that revenue is derived from sales into China which relies heavily on the China marketing team. With this in mind, and the spec trading environment tough I would like to see JZ being aggressive in growing the WAF base via producer deals.*
>
> *The Med sweet book had a difficult year and it is worrying that the last few years we continue to see an attrition on pnl, it is beholden on JZ and team to find a way to offset erosion and find new avenues of growth, ie cpc term / Libyan term etc.*
>
> *In 2018 I would like to see JZ continuing to develop the talent he has in his team, both Tara and Oliver are book leaders of the future and need structured coaching / mentoring to nurture that talent.'*

230. Dan Wise told us that the Mediterranean Sweet book was down some 65% in profit from the previous year and the West African book down some 27 %. The Claimant said that he could not recall the exact figures but did accept that there had been a downturn in profits. It is not at all surprising that this situation is referenced in the first two paragraphs mentioned above.

231. The Claimant takes exception to the fact that Dan Wise mentions that $40M of profit was generated by the Marketing Team in China without giving him credit for the fact that he claims to have recruited and trained the strongest member of that team. Dan Wise accepted that the Claimant had been responsible for recruiting Mandy Ong but was less certain that he had trained her on her specific role in China. Whilst the Claimant might

have liked his achievement in recruiting Mandy Ong to have been specifically noted in his appraisal he does not suggest that there is anything untrue about what was said in relation to the Chinese marketing team.

232. Dan Wise explained that there were changes occurring in the West Africa crude market. He told us, and we accept that some 65% of the profits derived from sales of crude where BP was exploiting oil fields. He said that those oil fields were in decline. We accept that in those circumstances it was unsurprising that the appraisal would deal with generating revenue by new initiatives.

233. The Claimant suggests that the reference to being aggressive in growing producer deals was an implied criticism of the position that he took on the NNPC producer finance deal. As we have found above Dan Wise shared some of the Claimant's concerns about Alsaa and the fees demanded. Furthermore Dan Wise knew that by the 27 November 2017 the Claimant had no objections to the deal proceeding with the new agent.

234. Dan Wise told us that the reference to producer deals referred to such deals generally and not specifically to deals in Nigeria. He denied that his reference in the appraisal was connected to the NNPC deal.

235. We are satisfied that, with revenue in decline, Dan Wise's comment was directed at pursuing new initiatives. Producer finance deals were one such initiative and there was nothing sinister or surprising in his requirement that such deals be pursued aggressively. We accept that the reference had nothing to do with the NNPC producer finance deal or amounted to an implied criticism of the Claimant for raising concerns about that. At around the same time Dan Wise had informed the Claimant that BP were not interested in resurrecting the deal.

236. Dan wise describes the profits made in West Africa as 'decent' in the circumstances. Given that the profits had dropped we consider that Dan Wise is being very fair in accepting that the Claimant had done a decent job in difficult circumstances. He goes on to give the Claimant the same rating as he had done in 2016.

237. In the circumstances prevailing we are not satisfied that the appraisal rating or the comments within it are downbeat or unfair. The most that could be said is that Dan Wise might have included specific mention of some of the Claimant's achievements. We do not think that necessarily recruiting and training an employee that turned out to be a strong asset is the sort of thing that would ordinarily be mentioned in a short appraisal.

238. The Claimant raised no complaint at the time and this matter was first mentioned in his grievance in October 2018. We find that the Claimant has come to view this appraisal as downbeat only in the light of subsequent events. At the time he considered it entirely fair.

The Claimant's bonus in 2017

239. As we have set out above traders at BP are habitually awarded what for many would be extraordinary sums of money as a bonus. Generally bonuses form by far the largest component of their remuneration.

240. Dan Wise told us about how the figures paid in bonuses were arrived at and we accept his evidence. The first point that he made struck the Tribunal as obvious and that was that the amount allocated for bonuses would depend on the financial performance of the global crude team. He said that in the light of global performance a bonus pot would be allocated at that time by Alan Heywood who was then the CEO of IST. The next stage was for the executives at the level of Dan Wise to allocate bonuses to their teams. The executives would then meet to benchmark bonuses to ensure some consistency. Once agreement was reached the final decision would be taken by Alan Heywood and Brian Gilvary the Chief Financial Officer. The process would take about three months beginning to end.

241. When interviewed by Emma Locke as a part of the Claimant's first grievance Kate Napier, a member of the Reward Team described the process of allocating bonuses and said:

> *There is also an awful lot of calibration within HR and within the business. During November we do SVP nominations etc. and there is a Bonus - round 1 calibration in November and in January Bonus - round 2 so there is a lot of rigour around how the bonus pay-outs are decided. There is a regional calibration then global calibration, ·all business calibration and then the final sign off - that is round 1 and then it is fed to round 2 discussions.'*

242. Emme Lock asked whether this meant that the bonus awarded to the Claimant would be sanity checked. Kate Napier responded saying: *'Yes, it would be. sanity*-checked *but whether it was line by line, it is unlikely but yes it would have been checked in several meetings.'*

243. In 2017 the Global Crude Team as a whole had seen the profits made decline significantly. The principle driver for that decline was a downturn in profit in the US. As a consequence the bonus pot was less than in previous years. In order to manage expectations Dan Wise wrote to the team on 27 February 2018 warning them that as the global profits had reduced by 50% the bonus pot would be much smaller. He *said 'Have no fear, I have battled on everyone's behalf with Alan/RBUL's to maximise the pot, nonetheless there is no getting away from the previously mentioned lower performance y-o-y'*.

244. The Claimant was informed that his bonus for 2017 would be $1.8M. That is a reduction from £3.75M the previous year.

245. When cross examined the Claimant accepted that he would have expected his bonus to have been reduced to reflect the downturn in the performance of the books he led but also the global position. The Claimant was reluctant to accept that poor performance in the US should have a significant impact on his bonus. His point was that the Traders in those regions should have borne the brunt of the downturn in profits.

246. The rationale for fixing the Claimant's bonus at $1.8M was explained by Dan Wise as follows. Firstly he said that the overall bonus pot was reduced. Thereafter he said that the Claimant's individual bonus was affected by two things. The first was the performance of his bench and the second was the perceived need to pay substantial bonuses to the more junior team members of the team to encourage their loyalty.

247. The Claimant has complained that when pleading their case and in giving disclosure the Respondents have asserted that numerous employees at the Claimant's level have had their bonuses reduced and they have anonymised that information. We can understand that the Respondents are concerned about placing details of individual's remuneration in the public domain. What we were provided with was a spreadsheet which set out the bonuses paid in 2016 and 2017 and e-mails which disclosed the bonuses paid to Ann Devlin and Jon Mottashed.

248. Dan Wise told us in his statement, and maintained in his evidence, that his own bonus had been cut by 60%. We do not know what his bonus was but assume it remained substantial. The position taken by the Claimant was that in the absence of disclosure this evidence was 'not accepted'. We do not believe that Dan Wise would tell such a bare faced lie in a public forum about a matter well known at the highest levels in BP. We accept his evidence.

249. Dan Wise's evidence about widespread reductions in bonuses is also supported by what Beth Cook the Head of HR said when she was interviewed by Emma Locke as a part of the investigation into the Claimant's first grievance. She said:

> *'Crude bench revenue was down globally. It was down to 700 million last year, so everyone was to take the hit. If you look holistically the majority of the senior traders were down. In term of bonus - it is very discretionary. We take· global performance, individual performance and your contribution,. how you traded, values and behaviours, leadership etc. The entire book was down so multiple individuals had a lot of decrease in their bonus too.'*

250. Kate Napier made a similar comment when she was interviewed by Emma Lock. She said: *'*The *revenue was almost halved so what people have received in bonuses went down drastically. You expect everyone's bonus to be halved in 2017'.*

251. We are satisfied that in 2017 there were substantial reductions to the bonuses paid to the vast majority of senior traders. Some of the biggest cuts in bonus were made to senior traders in the US. One Trader, Travis Korella, responsible for trading in Canada had managed to increase the profit he made for BP but still received a reduction in bonus.

252. We find that the global downturn in profits significantly affected the level of bonuses paid to senior traders in 2017.

253. We then turn to the other factor put forward by Dan Wise and that was his suggestion that there was a perceived need to incentivise the junior traders. The Claimant accepted in cross examination that there were good business reasons for taking this approach. A review of the Claimant's My Plan documents shows that he had been charged with and had consistently performed the role of bringing on the junior traders who by 2017 were perceived as being *'the book leaders of the future'.* Dan Wise suggested that Matt Jago and Oliver Stanford received increases to their bonuses of around 30 percent. Dan wise maintained in his cross examination that this was a significant factor that he took into account when allocating bonuses.

254. It follows that we accept that there were ostensibly two factors independent of any personal circumstances of the Claimant that might fully explain why the Claimant was allocated the bonus that he was. However we accept the argument made by Mr Rajgopaul that the checks and balances did not go through the rationale for any bonus 'line by line', that despite the bench marking and cross-checking Dan Wise played a part in fixing the bonus paid to the Claimant. There was no algorithm of formula that was applied, it was a matter of judgment. Despite the level of checks and balances it remained possible that he could have reduced the Claimant's bonus more than might objectively be justified, although checks and balances that did exist made that less likely.

255. In the joint bundle of documents there was a spreadsheet which was the document that recorded the decisions of Dan Wise and other executives about bonuses and included a column for comments to be considered by Alan Heywood. Dan Wise had included the comments:

> *'this is going to go down badly but he is wearing the lows as always been part of the highs. This could be the straw that breaks the camels back. Pnl prob ends up down 30% y-o-y but waf book evolving the east becoming key centre, in particular china, to unlock value.'*

256. The Claimant suggested that Dan Wise's comment indicated that he saw the bonus as being a means to drive him from the business. Dan Wise did not accept that. We do not think that the comment carries that connotation at all. In the corresponding entry for 2016 Dan Wise had remarked that the Claimant would be disappointed with his bonus but set out some justification for the recommendation. Informing Andy Heywood that the 2017 bonus proposal might tip the Claimant into resigning could only be effective if Dan Wise thought that Andy Heywood also wanted the Claimant to go. The alternative explanation, which was the one advanced by Dan Wise, was that Dan Wise was warning Andy Heywood that the Claimant would be so disappointed with his bonus that he might leave. In other words it was an attempt to suggest that a higher bonus might be appropriate. We accept Dan Wise's explanation. It is the natural reading of the comment in the context that it is made. It is more probable than the suggestion that there was a widespread view (shared by Andy Heywood) that the Claimant should be encouraged to resign.

<u>The Claimant takes parental leave and his return</u>

257. On 26 January 2018 the Claimant commenced a period of Parental Leave. He had originally intended to assist his wife set up a business venture but that did not progress and the Claimant spent some time in Colorado where he owns some ski rental properties.

258. Whilst the Claimant was away the originating team dealt directly with Oliver Stanford. When the Claimant's first grievance was investigated John Goodridge was asked about the relationship between his team and the Claimant. He said that he had no issues dealing with the Claimant on important matters but both he and the more junior members of the team preferred to deal with Oliver Stanford. John Goodridge suggested that the junior members of the team regarded the Claimant as abrasive and illustrated that with an example of an employee who had received some robust criticism. He suggested that his team found it much easier when the Claimant was on parental leave.

259. The Claimant returned from the US and on 2 March 2018 he, and the other employees learned of the level of their bonuses.

260. On 4 March 2018 the Claimant sent a text message to Dan Wise asking to meet up to discuss 'future plans'. An arrangement was made to meet at a restaurant called Scarpetta in Canary Wharf. It is common ground that the Claimant attended that meeting with a single page document setting out three future objectives. There is some dispute about what was said at that meeting but there is also considerable common ground.

261. The timing of the meeting is important. It took place immediately after the announcement of the bonuses for 2017. Both the Claimant and Dan Wise had received a huge drop in their bonuses. The Claimant describes Dan Wise as being downbeat. We find that that is very likely to be true. Dan Wise was expected to turn around the decline in profits in the US and was aware that the outlook for 2018 was gloomy. The Claimant says that Dan Wise said words to the effect *of 'the golden years are behind us'*. We would accept that there would have been a conversation along those lines. The Claimant also recalls Dan Wise saying words to the effect that he would take good leaver status if it was available. Whether he used those words of not we are satisfied that Dan Wise was expressing his own frustrations with his role and his bonus. The Claimant says that Dan Wise asked him how long he intended to continue trading. We have identified above that there was a common perception that traders would retire at a relatively young age to pursue other interests. Dan Wise and the Claimant had a good working relationship. We find that it is probable that a question along those lines was asked. The Claimant says that he said that he did not know. He probably did.

262. One matter that Dan Wise can recall is the Claimant recounting a conversation about doing some plumbing work at his ski rental property. Dan Wise remembers the Claimant saying words to the effect that he had never felt so alive. The Claimant agrees that he told that story but denies that it was intended as a suggestion that he was tiring of his role. That may be the case but it would not have been unreasonable for Dan Wise to regard that as symptomatic of somebody who was fed up.

263. We find it likely that both Dan Wise and the Claimant were expressing dissatisfaction with their bonuses and the future prospects.

264. It is common ground that they discussed the 3 point plan produced by the Claimant. The first matter raised was the Claimant's wish to develop the junior members of his team. Whilst that is not inconsistent with him wanting to stay in post it could have been reasonably viewed as the Claimant preparing his own successors bearing in mind that the team members had been identified as future book leaders.

265. The second point the Claimant discussed was his relationship with the Origination Team which the Claimant, very frankly, describes in his witness statement as him having a rant about the part of his job that he enjoyed least. Again this could easily have been mistaken for the Claimant saying that he was unhappy.

266. The third of the Claimant's points concerned a suggestion that he wanted to develop his interest in the ways that AI could be used to assist trading. Both he and Dan Wise agree that Dan Wise regarded this as a poor idea. In a later interview with Emma Locke who conducted an investigation into the Claimant's first grievance the Claimant is

recorded as saying that he thought that he might transition into an analytics role. In his evidence he disputed the accuracy of the note. We find that the Claimant did say words to the effect that he was contemplating an alternative role.

267. The dispute that flows from this meeting is not so much what was discussed but whether Dan Wise genuinely believed that the Claimant was indicating that he might leave. The Claimant says that he said nothing that would have given that impression and suggests in effect that Dan Wise was referring to the gloomy situation as a ruse to persuade him to leave.

268. Dan Wise suggested in his witness statement that he was shocked that the Claimant had not returned from Parental Leave invigorated and that he had failed to provide a comprehensive business plan for the future. We regard that as surprising. As ably pointed out by Mr Rajgopaul it would have been extraordinary if Dan Wise had the same expectations of a woman returning from maternity leave.

269. Dan Wise had believed for some time, even before the Claimant requested parental leave that the Claimant was fed up and might leave. That is clear from the message exchange with Sarah Pearson. He knew that the Claimant would be upset about his bonus. He knew that the prospects of bonuses returning to normal were unlikely and expected the Claimant to know that too. We accept that he regarded the Claimant's 3-point plan as not providing a roadmap to any improvement. He said in his witness statement, and we accept, that it was very unusual in his experience for a trader to express any interest in a role outside of trading.

270. We find that, whether the Claimant had intended it or not, Dan Wise left that meeting genuinely believing that the Claimant was dissatisfied with his role and that reinforced his existing belief that the Claimant might want to leave. We accept that the Claimant did not say in terms that he wanted to leave. We find that had Dan Wise not already held the view that the Claimant was beginning to think about retirement he would not have come to the conclusions that he did.

271. We accept Dan Wise's evidence that the discussion he had with the Claimant had such an impression on him that he promptly met with Jeremy Tolhurst, then the Crude Commercial Manager and explained how disappointed he was that the Claimant had not returned from his parental leave 'reinvigorated'. He then arranged a meeting with Val Nefyodova who was a UK based HR Business Partner. We find that the purpose of the meeting was to discuss Dan Wise's concerns, based on his perception, that the Claimant had lost enthusiasm for his job.

272. Val Nefyodova told us, and we accept, that Dan Wise explained that he thought that the Claimant had 'lost his spark' and asked what actions he might take. She advised him that if those concerns persisted once the Claimant returned from parental leave any performance issues might be managed through BPs performance management policy. The Claimant regards this as an indication that it was envisaged that he might be removed from the business via a performance management route. We find that there is a disconnect between the position of Val Nefyodova and Dan Wise. Val Nefyodova was giving Dan Wise standard advice as to how he might manage the Claimant's performance. However, whilst Dan Wise was concerned that there had been a downturn in profit in the books managed by the Claimant he had not at that stage ever

contemplated instigating a performance management process. We find that Dan Wise's concerns about the Claimant were driven by his belief that the Claimant might be deciding that it was time to move on which, as we have explained above, would not be uncommon. At no time were any performance concerns put to the Claimant or intimated as a possibility.

273. Dan Wise and Val Nefyodova discussed the question of what the ramifications might be of the Claimant seeking 'good leaver' status. They requested a breakdown of the Claimant's potential entitlement if good leaver status was granted. Whilst good leaver status would not uncommonly be granted to departing traders as we have said above an offer of good leaver status might also be used as an incentive to a trader to 'go quietly' where performance was an issue.

274. The Claimant returned from parental leave on 18 April 2018. The Claimant says that on his return he was asked to sit further away from Dan Wise and that this was because of protected disclosures and/or that he had taken parental leave. There is no dispute that prior to his parental leave the Claimant had sat one seat away from Dan Wise. The Claimant accepted in cross examination that the distance he sat was the same as between the employment judge and a member. It is also agreed that on his return he was allocated a different desk two seats apart from Dan Wise. The Claimant accepted in his cross examination that that meant that the distance between him and Dan Wise was the same as between the two tribunal members that is 2-3 meters.

275. We find that both before and after the Claimant's parental leave the he was in close proximity to Dan Wise and could communicate with him with ease. The Claimant says that the actual seating position is important. In essence he says that this was a matter of status. That sitting close to Dan Wise was a matter of status. We do not accept that the position of a person's seat relative to Dan Wise had anything like the significance that the Claimant has given it. We see that Ann Devlin, who it is agreed was a senior and trusted trader sat further away from Dan Wise than the Claimant both before and after he took parental leave.

276. On 18 April 2018 the Claimant met with Dan Wise to discuss the roles going forward. He sent Dan Wise an e-mail in which he set out his proposals as to the roles of his team which at that time consisted of Oliver Stanford, Tara Behtash and Andrew Finlinson. He proposed that Oliver Stanford should spend 100% of his time dealing with the West Africa Book, Tara Behtash would divide her time 80/20 between the West Africa Book and the Mediterranean Sweet book and Andrew Finlinson would spend all of his time on the Mediterranean Sweet book. The Claimant suggested that he would spend 45% of his time on the Mediterranean Sweet book, 20% on the West Africa book and the remainder of his time on business development.

277. The person responsible for organising seat allegation was Jeremy Tolhurst. Seat allocation was more complex than a physical seat and a desk as each seat had associated IT which was specifically allocated. Jeremy Tolhurst described seat allocation as *'the bane of his life'*. An e-mail in the bundle indicated that any change of seat came with some financial costs.

278. From e-mails between Jeremy Tolhurst and IT we can see that a decision to allocate a desk was communicated to IT on 12 April 2018. It is not clear to us who made the

decision or when. The rational given by Dan Wise, supported by Jeremy Tolhurst was that the seat allocated to the Claimant would allow him to be in close proximity to Andrew Finlinson dealing with the Mediterranean Sweet Book and also Tara Behtash who was doing some Mediterranean Sweet work but who would also benefit from mentoring by the Claimant. The Claimant accepted in cross examination that these would be good business reasons for placing him in that allocated seat. He also accepted that he raised no objection at the time. When interviewed during the investigation into his first grievance the Claimant accepted that a reason for making no objection was that he did not want to disturb Tara Behtash.

279. We are not certain who made the decision to place the Claimant in his seat but on the evidence we have we find that it is probable that Jeremy Tolhurst took that decision. We are not satisfied that the Claimant was placed at any disadvantage by the allocation of his seat on his return. Whatever his perception after the event at the time he did not mention the matter and we find that he could see that there were good reasons for leaving him in the seat that he had been allocated. We accept that he would have preferred to have sat closer to Dan Wise and that this could have been accommodated whilst also satisfying the rationale given by the Respondents.

280. The Claimant has suggested that in this period Dan Wise did not respond to some e-mails he sent. That was not disputed by Dan Wise. Dan Wise said that he would often prefer to speak about business matters orally rather than respond to e-mails. It is apparent from other documents in the agreed bundle that there continued to be meetings between the Claimant and Dan Wise and that they continued to exchange text messages in congenial terms.

281. At some point in early 2018 Dan Wise was asked by Simon Ashley, the Vice President HR Integrated Supply & Trading (IST) and HR Director for BP UK to prepare a report which we would categorise as a succession planning report. The purpose of the report was to highlight which employees might leave and who might replace them. Dan Wise produced a PowerPoint presentation in around April 2018 to present his findings. In that presentation Dan Wise identified 7 people who might leave his team. Those included the Claimant. His PowerPoint slide includes the comment *'Early stage conversations about retirement in 2019. Could be end Dec 2018'*. Comments against the other names that were identified included accepting that one name was based on conjecture. Others were said to have expressly indicated a wish to retire. One name, the individual responsible for the US book that had sustained heavy losses, has a comment that suggests that he would potentially be leaving whether voluntarily or not.

282. The Claimant says that there were numerous occasions when Dan Wise asked him whether he was going to continue trading. In his witness statement he emphasised the frequency of the questioning to support his contention that Dan Wise was trying to get him to leave. We have already accepted that this was raised as an issue at the meeting in Scarpetta. The Claimant has not specifically identified any other occasion when this was expressly raised. The Claimant tells us, and we accept, that after his meeting with Dan Wise on 6 March 2018 in Scarpetta he flew to Colorado and spent the remainder of his parental leave there. We find that there can have been no conversations about the Claimant continuing trading in the period before the Claimant returned to work on 17 April 2018.

283. The Claimant gives no detail in his witness statements about any repeated conversations he says took place prior to 18 May 2018. Dan Wise did not accept that there were any such conversations and did not accept that he might have forgotten about them. The Claimant did not say that there had been any conversations prior to 18 May 2018 in his first grievance.

284. It is agreed by all that there was a discussion on 18 May 2018 where Dan Wise expressly discussed the Claimant applying for good leaver status (to which we shall return). After that meeting the Claimant sent a text message to his wife that said: *'Dan just told me somewhat out of the blue that if I want to leave BP within the next two years he really needs to know ASAP. Saying his bosses want a full people plan for the future'.* The reference to *'somewhat out of the blue'* is inconsistent with a suggestion that there had been numerous conversations about the Claimant retiring.

285. The Claimant said in his witness statement that at the meeting on 18 May 2018 *'as I explain further below, Dan threatened me with the forfeiture of my retained compensation if I did not immediately apply for GL'*. We consider that the Claimant is distorting what was actually said by Dan Wise. There was no threat of 'forfeiture' and the Claimant could not have reasonably believed that there was. The only risk of the Claimant not receiving his deferred bonus would be if he left without any agreement to good leaver status. We find that the manner in which this evidence has been given has been severely affected by the subsequent events and this litigation.

286. Taking into account these matters, and the entirety of the evidence, we do not accept the Claimant's account of Dan Wise repeatedly asking him when he was going to stop trading. What we would accept is that there was a discussion in March where the issue was discussed and there may have been a small number of conversations in passing about the Claimant's ideas for his future. As we have found elsewhere such conversations were normal and reflected the common occurrence of relatively young requirements amongst traders.

287. The Claimant had brought a claim that related to a conversation which is common ground took place on 14 May 2018. The Claimant had said that when he raised compliance concerns with a deal in Angola proposed by Oliver Stanford Dan Wise lost his temper. This was said to be because of protected disclosures and/or that the Claimant had taken parental leave. The Claimant has withdrawn that claim but does say that this conversation is indicative of Dan Wise being dismissive of compliance concerns (and in submissions, it is said to be supportive of the Claimant's case that during this period Dan Wise was pushing him out for raising such concerns). Therefore despite the claim being withdrawn we need to make some findings about what occurred.

288. The Claimant first raised this matter in an addendum to his first grievance. In his grievance and in his witness statement he says that on 14 May 2018 Dan Wise called him over to his desk to discuss a proposal made by Oliver Stanford, who was also present, to bring forward a transaction in order to reduce the tax that needed to be paid to the Angolan Government. The Claimant says that he said that a similar proposal had been made in the past and had been vetoed by the tax department. He says that Dan Wise then lost his temper and authorised the transaction without it being passed to the tax department for its consideration.

289. When interviewed by Emma Locke during the investigation into his first grievance the Claimant was asked about how the alleged loss of temper manifested itself. He said that Dan Wise raised his voice '*slightly but that he is not the sort of person to be shouting'*. When interviewed by Niamh Hegarty the Claimant suggested that Dan Wise had rolled his eyes and pounded the table. He did not include that later allegation in his witness statement and when challenged in cross examination suggested that he should have been more careful in his choice of language. When interviewed as part of the business integrity investigation the Claimant accepted that Dan Wise had not behaved in a way that contravened BP's values or code of conduct. He accepted in cross examination that that remained the case.

290. Dan Wise was adamant that he had not lost his temper with the Claimant. He accepts that the Claimant had compliance concerns about this transaction. He says in his witness statement that he asked Oliver Stanford to speak to senior individuals in Angola to ensure that they were happy with the proposal. Oliver Stanford was interviewed as part of the Business Integrity investigation. He had no recollection of any 'bust up' or push back from the Claimant at all. He did say that 'the bench' had suggested that BP did not engage in tax optimisation which is consistent with the stance taken by the Claimant. He also said that the tax department had been consulted on the matter.

291. Oliver Stanford was asked about this matter during his interview as part of the business integrity investigation. He said that the Claimant had not raised any particular objection to his proposal. He produced e-mails that showed that the proposed transaction was discussed with others. He said that such transactions were commonplace and that he had done a number of similar deals since.

292. We consider that the Claimant has given a variety of accounts about Dan Wise losing his temper. We do not accept that there was any loss of temper at all. We find that Dan Wise asked for the Claimant's opinion on the proposal and that the Claimant suggested that tax optimisation schemes had not been approved in the past. The outcome was, as Dan Wise told us, that a senior individual in Angola was consulted on the proposal and express authority was obtained before it proceeded. It follows that we reject the Claimant's account that Dan Wise said that he was giving the proposal the go ahead in the face of objections by the Claimant.

293. We note that the Claimant did not include this allegation in his original grievance but added it in a subsequent letter. We consider that this is consistent with the Claimant fishing around to find material consistent with his perception that he had been forced out of his job. We find that his perception has skewed his account of what was in reality an ordinary discussion about the risks and benefits of the transaction.

<u>The meeting on 18 May 2018</u>

294. Dan Wise told us and we accept that in early May 2018 he travelled to the US and met with Beth Cook the Head of HR . He discussed the succession plan that he had produced. He was asked to speak to all of the people who he had identified as potential leavers to find out what their intentions were. A more controversial point is the question of whether Dan Wise was told that any good leaver applications should be made as a batch because they would need to be approved by Brian Gilvary and there were concerns about his attitude to the Crude team in the light of recent losses. We accept

that Dan Wise was told that he should tell the employees he had identified as potential leavers, that if any application was made for good-leaver status it should be made promptly. That is what he told the Claimant and it would make good business sense for a number of changes in the Crude Team to be considered at the same time.

295. The accounts given by Dan Wise and the Claimant of their meeting are broadly the same. The Claimant says that Dan Wise opened the meeting by saying that he was speaking *'as a mate not as a manager'*. We accept that he did. Dan Wise says that he opened the conversation with a discussion about bonuses including the reduction in 2017 and the fact that bonuses in 2018 were unlikely to improve. He then explained that he had been asked to do a succession plan and told the Claimant that if he had any plans to leave in the next two years then he might apply for good leaver status. Dan Wise accepts that he told the Claimant that any such application should be made in a batch in order to gain approval from Brian Gilvary. It is agreed that the Claimant gave no immediate response nor was he asked to do so.

296. We heard and read evidence from Simon Ashley and others that supported a submission made on behalf of the Claimant that there was particular restriction on applications for good leaver status and that generally they could be made at any time. We accept that evidence. However, in doing so that does not mean that we accept that Dan Wise was conveying anything that was not his honest impression. He told us, and we accept, that Brian Gilvary was upset about the overall performance of the Crude team. Given the large drop in profits that is unsurprising. We accept that Dan Wise considered Brian Gilvary to be prickly. Having had regard to the evidence as a whole we accept that Dan Wise thought that all applications for good leaver status should be made at the same time.

297. The Claimant has characterised the suggestion that a good leaver application might not be granted if made outside the timetable suggested by Dan Wise as a threat to forfeit his unvested shares. We find that the Claimant has mischaracterised or misunderstood this. If the Claimant did not request good leaver status and stayed his unvested shares would vest in the usual way. What Dan Wise gave the Claimant was an option and not a threat. The Claimant suggests in his witness statement that Dan Wise said words to the effect that if the Claimant did not apply for good leaver status then BP might change the terms upon which unvested shares were held. We do not accept that Dan Wise said any such thing. There were no proposals to change the bonus scheme retrospectively and such a step would have been extraordinary and affect all employees with retained shares.

298. The Claimant told us that prior to taking parental leave he had consulted his present solicitors who are employment specialists. Had he considered that there was a threat to remove his entitlement to unvested shares we find that he could and would have sought advice. We find that he understood that if he remained in employment his unvested shares would vest in due course under the scheme that was in place but if he resigned his shares would only vest if he was given good leaver status which was discretionary.

299. Dan Wise says, and we accept, that he spoke to other employees that he had identified as potential leavers. Two other employees Ann Devlin and Tim Sullivan who had already indicated that they wished to leave made applications for good leaver status.

Some of the employees that Dan Wise had identified as being potential leavers did not make any application.

300. In his witness statement the Claimant says that he did not give Dan any immediate response because he wanted to think things over and discuss the matter with his wife. We accept that those were his reasons.

301. After the meeting of 18 May 2018 Dan Wise told the Claimant, in confidence, that he was relocating to the US to deal with the situation in which BP had incurred substantial losses as a consequence of oil deals relating to the Permian basin. We find that the fact that Dan Wise continued to confide in the Claimant to be consistent with their previous good working relationship. The Claimant says, in his witness statement and we accept that during this conversation Dan Wise raised the possibility of combining the sweet and sour crude physical books and floated the idea of the Claimant heading that bench. The Claimant also says that in the same conversation Dan Wise asked him whether he was going to apply for good leaver status. Again we accept that this was likely. These were two senior employees both discussing the future. The Claimant's account of what Dan Wise told him is entirely consistent with Dan Wise having put an option to the Claimant which he might accept or might refuse. Dan Wise was open to the possibility that the Claimant might wish to stay.

302. On around 4 June 2018 the Claimant met with Dan Wise and told him that he did wish to apply for good leaver status. He says that he referenced the fact that his bonus in 2017 was half that received in 2016 and the fact that he felt that he was no longer valued in a general sense. We accept that he did say words to that effect. That mirrors what Dan Wise believed was the case that the Claimant had been unhappy for some time and was deeply upset at the reduction in his bonus. The Claimant in his witness statement suggests that he also complained that Dan Wise had not been responsive to his suggestions and that he had repeatedly asked him when he was going to stop trading. We do not accept that those latter points were raised in exactly those terms. In cross examination the Claimant conceded that he had no clear recollection of saying that Dan Wise had not been responsive to his suggestions. Dan Wise had no memory of that and as it would have been a personal criticism it is a matter which we would have expected him to recall if it had been said.

303. The Claimant categorises his decision to apply for good leaver status as a decision to 'throw in the towel' and a response to being forced out. The Claimant accepted in cross examination that he had retained his present solicitors at this point. In June 2018 the Claimant formally notified HR of his intention to ask for good leaver status. He did not make any complaints at that stage. The Claimant later sought a meeting with Val Nefyodova who agreed to meet him but the Claimant was unable to attend. He did not seek to fix a further meeting.

304. We find that the Claimant had been unhappy for some time. He deeply resented what he perceived as unfair treatment. That was evidenced by the fact that he was still raising in 2016 an issue he had with BP when he relocated from the USA. He accepts that he deeply resented the fact that the Crude bench had to absorb losses from the Taleveras transaction. He was tearful when discussing that with Dan Wise. He had what he described as an appalling relationship with the origination team. This was something that he, in his own words, ranted about when discussing his future plans with Dan Wise in

Scarpetta. He was very upset about his 2017 bonus being reduced. He, as well as everybody else, knew that the trading position was looking no better for 2018. We find that all of these matters played a part in the Claimant's decision to apply for good leaver status.

305. A measure of the Claimant's understanding that the prospects for bonuses in 2018 were poor is found in an e-mail he sent to Dan Wise on 26 June 2018 in that e-mail the Claimant refers to telling Andrew Finlinson that the bonus pool is likely to be reduced. That e-mail also illustrates two further matters. The first is the fact that the e-mail is congenial and does not suggest any resentment towards Dan Wise. The second is that the Claimant had quickly revealed his intention to leave to his team.

306. The Claimant criticises Dan Wise for not speaking to him to ensure that he really wanted to leave. We do not consider that criticism well founded. Dan Wise had no reason to believe that the Claimant did not want to take good leaver status. On the contrary he knew the Claimant to be unhappy, which he was, and believed rightly or wrongly that the Claimant would not wish to carry on trading. It is unsurprising that the Claimant was in two minds about whether to stay or go. He had not made any plan for the future. He told us, and we accept, that he spoke to Marco Candelaro about finding a role, within BP but outside the Crude team. He says that Marco Candelaro said words to the effect that he should not count on having Dan Wise's support. We did not hear from Marco Candelaro and on the evidence before us accept the Claimant's account. What we do not know is what prompted Marco Candelaro to form that opinion. It is quite possible that Marco Candelaro had learned that Dan Wise had formed a view that the Claimant had 'lost his spark'. The Claimant went on to say that Marco Candelaro suggested that if the Claimant was seeking another role he would be better off speaking to Andy Haywood the Chief Executive Officer of the IST. However the Claimant was then told that Andy Haywood, via his PA, had said that as he did not get involved with individual hiring decisions the Claimant should speak to individual hiring managers instead. The Claimant seeks this as an indication that there was already a widespread view that he should leave BP. We find below that hiring decisions are delegated to team managers. We do not consider that Andy Haywood's stance bears as much weight as the Claimant seeks to place on it but we have taken it into account in coming to our conclusions.

307. On 25 June 2018 the Claimant sent an e-mail to HR in which he asked to be considered for good leaver status. In cross-examination the Claimant accepted that he told his immediate team about this on the same day.

308. On 4 July 2018 Simon Ashley sent Alan Heywood an e-mail enclosing good leaver requests for the Claimant, Ann Devlin and Tim Sullivan. He stated in his covering e-mail that the Claimant had indicated a wish to retire at the end of 2018. The Claimant agrees that that was the date that he had proposed. He had told his team and Jeremy Tolhurst that that was when he would be leaving.

309. A condition of being granted good leaver status was the satisfactory completion of a Management of Change proforma. Dan Wise supplied these proformas to Anne Devlin and Tim Sulllivan. The Claimant was the last to be sent this document as Dan Wise initially believed that if he was leaving at the end of the year the document would be completed nearer the time.

310. By 29 July 2018 the Claimant had completed the Management of Change Pro-forma. He recorded on that document that he anticipated leaving at the end of 2018. He recorded that when he left there would be no direct replacement for him. Oliver Stanford would be the most senior trader on the West Africa bench and Tara Behtash would be the lead trader on the Mediterranean Sweet book. The Claimant accepts that he told his team of these changes. In the light of subsequent events it is worth recording that the effect of these changes was that Ollie Stanford and Tara Behtash were promoted. For them this would mean that they could expect a significant increase in their bonus even in the straightened circumstances of the oil market in 2018. In cross examination the Claimant accepted that it was not envisaged within this structure that the role he had done would still be necessary.

311. Having applied for good leaver status the Claimant, Anne Devlin and Tim Sullivan did not receive any confirmation that their requests had been granted. We have seen e-mails from Anne Devlin and Tim Sullivan that make clear their frustration about the lack of information. Tim Sulllivan put his frustrations very clearly in an e-mail sent on 9 August 2018 where he said (after waiting a few weeks); *'Hi Guys ... Can I get an update on where we are? Lots of life decisions to be made regarding my retirement once we firm things up here ...'*. Whilst we accept that the decisions about whether to grant good leaver status involved large sums of money and might take some time to deal with we do not consider that that provides a good reason for not keeping the relevant employees informed about the status of their applications. When cross examined the Claimant agreed that but for the delay in confirming the terms of his good leaver application he might never have brought a grievance.

312. On 15 August 2018 Dan Wise announced the changes envisaged in the Management of Change document prepared by the Claimant to the crude team. On 27 September 2018 Dan Wise sent an e-mail in which he confirmed the position. That e-mail is in congenial terms and suggests a farewell party at which *'red swim shorts, white dress shirt and tennis shoes compulsory'*. The Claimant raised no objection to this e-mail at the time.

313. At the same time Dan Wise informed the team that he was going to be based in the USA and that Jon Mottashed would be taking over his responsibilities in London. Up to that point Jon Mottashed had been a trader on the North Sea Bench. He and the Claimant were not close friends but they had a great deal of respect for one another.

314. On 4 September 2018 the Claimant had a meeting with Jon Mottashed. In that meeting the Claimant explained that it was his intention to leave at the end of the year. They discussed the division of the Claimant's role. The Claimant accepted in cross examination that he had told Jon Mottashed that he had no objection to this. Jon Mottashed thanked him for his flexibility. There was a discussion about Tara Behtash who was making changes in line with the role she understood she was going to be taking on. The Claimant suggested that Jon Mottashed spoke to Tarah Behtash. There was no indication at all that the Claimant was contemplating withdrawing his good leaver application or was unhappy that he had applied.

315. On 7 September 2018 the Claimant sent an e-mail to Jon Mottashed in which he said that Tara Behtash had expressed reservations about her new role having perceived it as a demotion. He said that he had explained that she was to be the lead on

Mediterranean sweet and 'Urals' and would have two junior traders reporting to her. A suggestion is made that Jon Mottashed speak to her to ensure she felt valued.

316. From around May 2018 the Claimant had started leaving the office very much earlier than had historically been the case. This continued after the Claimant applied for good leaver status. We find that the reason for this was that the Claimant was no longer focussing on active trading but saw his role as making sure that Oliver Stanford and Tara Behtash were up to speed by the time he left.

317. On 24 September 2018 the Claimant says that he was at the gym on a treadmill when for the first time it dawned on him that he had been subjected to detriments for making protected disclosures. He sent text messages to his wife in the following terms:

> *How are you this morning. I'm struggling with a three mile run. Paused after two,. About to start mile three but all achey and out of breath. Oh Well*
>
> *I need to talk to you this morning. I'm tired of feeling like a victim – I want to start throwing some punches.*
>
> *I was pushed aside for two things 1) taking three months parental leave and 2) blowing the whistle on a massive Nigerian Oil deal that required a disgusting bribe.*
>
> *I haven't mentioned the second to Alexandra but I think it's time to throw that in because I think it's part of the story.*

318. It was agreed that the reference to Alexandra in that text message was a reference to the Claimant's solicitor. The Claimant went on to say that he had printed out documents and was going to bring them home to work on a letter. That letter became the Claimant's first grievance letter.

319. There are two notable features of this chain of text messages. The first is that it appears that until 24 September 2018 it does not appear to have occurred to the Claimant that there had been any detrimental treatment because he had made protected disclosures. It is however clear that the Claimant has consulted his solicitor and suggested that some poor treatment is linked to having taken parental leave. The second feature of these texts which we consider important is that the Claimant intends to *'throw this in'*. This is a matter to which we return when asking whether the Claimant believed that any disclosures in his grievance were made in the public interest.

320. On 26 September 2018 Dan Wise signed off the Claimant's Management of Change Pro-forma. The notes on that form make it clear that that it was a necessary precondition of being granted good leaver status that the management of change process had been completed satisfactorily. The pro-forma gave the value of the Claimant's unvested shares as $2,233,234 and gave a leaving date of 31 December 2018.

321. On 27 September 2018 Dan Wise sent an e-mail to the wider crude team attaching a new organisational chart. He informed the team that the Claimant and Ann Devlin were leaving with good leaver status. We have already quoted from that e-mail above. The organisational chart showed Oliver Stanford as leading the West Africa bench and being

assisted by the Claimant. When read in the context of the e-mail that accompanied it, it is obvious that that was intended as a temporary situation pending the Claimant's departure. The Claimant was well aware of that. Despite this he included in his grievance, and in his first ET1 an allegation that he had been demoted because of his disclosures/parental leave. He withdrew that allegation and a complaint about Dan Wise announcing that he was leaving on 4 April 2021.

322. On 2 October 2018 the London Crude team had an away day. In advance of that the Claimant had prepared and sent to Jon Mottashed a table showing the strengths and weaknesses of his team. The Claimant attended part of the away day during which the future of the team was discussed. He did not suggest for a moment that he had any second thoughts about leaving. After the event the Claimant, who had fallen ill, sent an e-mail to Jeremy Tolhurst saying how well he thought the day had gone.

323. On 5 October 2018 the Claimant's solicitor sent an e-mail to Brian Gilvary, copied to a person in the legal department, attaching a 30 page grievance. In summary the grievance suggested that the Claimant had made a protected disclosure about the Taleveras incident as well as disclosures about the use of agents in Nigeria. The letter sets out that the Claimant has taken parental leave. He then goes on to complain that he had been subjected to detriments because of those things. The detriments listed are:

323.1. John Goodridge and Dan Wise side-lining or freezing him out; and

323.2. Dan Wise halving his bonus in 2017; and

323.3. Not inviting him to the crude executive meeting; and

323.4. Stripping him of his TPSA responsibilities in April 2018; and

323.5. Moving his position on the trading bench; and

323.6. Disengaging with him; and

323.7. Repeatedly asking when he might cease trading; and

323.8. Pressurising him to leave with good leaver status; and

323.9. Announcing his departure before any mutually agreed terms were agreed.

324. The letter references BP's speak up policy and the Grievance Policy. The grievance policy, in common with many, suggests that before invoking a formal grievance an employee attempts to resolve matters informally. The Claimant did not attempt to do this in any meaningful way. The policy then suggests that if a grievance cannot be dealt with informally it is made to the line manager but if the grievance concerns the manager her/himself it is made to their Manager's manager and copied to HR. If the Claimant had seen the grievance policy he had ignored it. If he had not then we find that it was a highly unusual step in an organisation as large as BP to address a grievance to the Chief Financial Officer. If there had been any uncertainty about who the grievance might more properly be addressed to then a simple inquiry to HR would have provided the answer. We have had regard to all of the evidence and come to the conclusion that addressing the grievance to one of the most senior people in the organisation, and the person the

Claimant knew would be responsible for approving the terms of any good leaver agreement was a tactical decision taken to ensure that the grievance caused the most impact at the highest levels.

325. On 10 October 2018 the Claimant sent a second letter in which he raised a further grievance which arose out of the conversation he had with Dan Wise and Oliver Stanford about the Angolan Oil deal on 14 May 2018.

326. At some point in October 2018 Sarah Pearson came to work on a 'keeping in touch' day. She had a conversation with the Claimant. The Claimant did not give any indication that he might or was thinking about withdrawing his application for good leaver status. He did say that he had raised a grievance but did not say what it was about.

327. A decision was taken within BP, and we are unable to identify the decision maker, to conduct a dual investigation into the matters raised in the Claimant's grievance. An investigation would be carried out by the Business Integrity Department into whether there had been a breach or any legal, regulatory or internal compliance standards. There would be a second investigation aimed at investigating whether there had been any improper treatment of the Claimant (i.e. his personal grievances).The responsibility for determining the Claimant's personal grievance was delegated to Richard Wheatley. We consider that there was some risk that in fragmenting the Claimant's complaints in this way the two investigations might not be in a position to reach a holistic view of the complaint.

328. In his witness statement the Claimant says that *'it was not until 18 October that I received an e*-mail *inviting me to a grievance meeting'*. We consider the Claimant's criticism of BP in this respect to be wholly unjustified. The Claimant had brought a wide ranging grievance running to 30 pages and spanning events over many years. Somebody needed to read that, decide how it should be dealt with and delegate the matter to an appropriate manager who would then have to find time to deal with it.

329. On 22 October 2018 the Claimant attended a meeting with Richard Wheatley. Richard Wheatley was assisted by Tina Johansen, an HR Manager, and Emma Roux an HR advisor who took notes. The Claimant was accompanied by Jennifer Pierce a colleague who had agreed to assist him. At the outset of the meeting the Claimant was told that BP intended to conduct two investigations rather than one. The purpose of the meeting was not to ascertain the detail of the Claimant's complaint but to identify the matters that he was complaining about in order that they could be investigated. We find that there was a real effort made to ensure that the Claimant had an opportunity to set out his complaints. He was given a further period to confirm the full scope of the matters he wanted Richard Wheatley to consider. He was sent copies of the minutes taken at the meeting and made some amendments before returning them.

330. The Claimant was asked what outcome he sought from his grievance. He suggested that steps were taken to reinforce BP's values, he suggested that disciplinary proceedings were commenced against any wrongdoers and he suggested that his 2017 bonus be revisited in the light of his contention that it had been reduced because he had made protected disclosures.

331. During the meeting on 22 October 2018 the Claimant asked about his employment status. He was told that he should direct any enquiries to Simon Ashley. In his witness statement the Claimant suggests that it ought to have been obvious from the fact that in his grievance he had complained that he had been pressured to leave the Respondent that he no longer wished to leave with good leaver status. We do not think that that was obvious and find that nobody in BP thought that that was the case.

332. A specialist investigator in the HR department, Emma Locke had been asked to undertake the investigation into the matters raised by the Claimant's grievance. When Emma Locke conducted interviews she was assisted by a note taker. We have seen copies of all of the notes that were made of her interviews. In each interview Emma Locke commenced by introducing herself and the notetaker. She invited the person interviewed to take their own notes having made it clear that she would not routinely share the notes that she made. She went on to warn all of the people that she interviewed that the process was confidential and asked them to read a document explaining the requirement to keep matters confidential. When Emma Lock interviewed the Claimant she explained again that she was investigating how the Claimant had been treated and that there was a second Business Integrity investigation of what she described as the other issues raised by the Claimant. Whilst the two investigations were to be conducted separately Emma Locke took direction from the Business Integrity Department. Richard Wheatley informed the Claimant of this on 23 November 2019. When Emma Lock interviewed all other witnesses she reminded them that BP would not tolerate any retaliation.

333. Emma Locke interviewed:

333.1. The Claimant on 21 November 2018; and

333.2. Sarah Pearson on 27 November 2018; and

333.3. Beth Cook on 28 November 2018; and

333.4. Stephanie Flack, a member of the HR Team on 29 November 2018; and

333.5. Kate Napier, a member of the Reward Team on 29 November 2018; and

333.6. Val Nefyodova on 5 December 2018; and

333.7. John Goodridge on 6 November 2018; and

333.8. Mychael Obaseki on 13 December 2018; and

333.9. Dan Wise on 18 December 2018.

334. On 26 October 2018 the Claimant met with Jon Mottashed in a 1-2-1 meeting. Jon Mottashed gives the following account of that meeting which we accept as it is consistent with Jon Mottashed's contemporaneous note of the meeting.

'The Claimant informed me that his Good Leaver application was still pending formal approval, and he was awaiting confirmation of his leaver package from HR. I offered to help the Claimant with this, but the Claimant confirmed that he was dealing with it.

The Claimant also informed me that he intended to leave the business by the end of 2018, but he might need to take garden leave beyond the end of 2018 if the Good Leaver process took longer than anticipated.'

335. On 31 October 2018 the Claimant's solicitor sent a letter which initiated without prejudice negotiations aimed at resolving the dispute. We do not know of the substance of those negotiations and have not speculated about the parties respective positions. What we are entitled to have regard to is the existence of those negotiations and the effect that the existence of the negotiations had on the steps taken by the parties.

336. On 6 November 2018 the Claimant wrote to Simon Ashley including copies of his grievances and saying that he wished to withdraw his application for good leaver status. The immediate response came from Simon Ashley who sent an e-mail to the Claimant saying that he was pleased that the Claimant would be continuing with BP and that he remained an employee. He said that the grievance investigation would continue. He offered to meet the Claimant if he wished.

337. We have been asked by the Respondents to find that the decision by the Claimant to bring his grievance and his decision to withdraw his good leaver status was motivated exclusively by a desire to advance his position in the without prejudice negotiations. It was suggested that his complaints were 'manufactured' for this purpose. We shall return to the Claimant's state of mind below when assessing whether his grievances amount to protected disclosures. At this stage it is sufficient to say that the existence of the without prejudice negotiations at the same time as the Claimant was suggesting that he would return to his role provided a reasonable basis for those dealing with the Claimant to speculate as to whether he was serious about wanting to return or whether he was bluffing in order to improve his position in negotiations.

338. Within a few days of the time that Simon Ashley received the Claimant's e-mail he telephoned Dan Wise. He informed him that the Claimant had indicated that he did not wish to pursue good leaver status. He told Dan Wise that he was the subject of the Claimant's grievance. He also mentioned the fact that the Claimant's solicitor had instigated without prejudice discussions. At this stage no action at all was taken by Dan Wise. Simon Ashley told us in his witness statement that the reason that no steps were taken at this stage to put the brakes on or reverse the changes that had taken place in anticipation of the Claimant leaving was the existence of the without prejudice negotiations. We return to that in our discussions and conclusions below. At this stage it is sufficient to say that Dan Wise was not instructed or advised to do anything at all and he did not.

339. Historically the Claimant had kept very long hours. After 2016 he had started coming in later in the mornings often going to the gym before work. We know from data obtained following an investigation commissioned by Jeremy Tolhurst (to which we return below) that from July to September 2018 the Claimant arrived at work at around 8:30am but left around 16:30 with just over an hour spent off site. In October and November 2018 the Claimant arrived at much the same time but finished work around 15:00 but with around 2 hours off site (all these figures being rounded averages).He worked marginally longer in early December 2018. What we draw from that is that the activity of the Claimant would not have led anybody he worked with to conclude that the Claimant was committed to returning to his existing role.

340. During November 2018 the without prejudice discussions between the Claimant's solicitors and BP continued. BP responded to the Claimant's solicitors on 14 November 2018 eliciting a further response on 15 November 2018. BP responded to that letter on 28 November 2018. Again we shall not speculate on the content of those letters. What is clear is that no agreement was reached between the parties.

341. Simon Ashley says in his witness statement that by the end of November he believed that it was unlikely that the without prejudice negotiations would result in an agreement. On 27 November 2017 that view appears to have been shared with Beth Cook who on 29 November 2017 wrote to Dan Wise in the following terms:

> *'I wanted to formally make you aware that Jonathan has decided to stay on with BP and continue in his current role. Please continue with year-end conversations such as MyPlans for closing out year-end and setting up new objectives, etc., normal course, as you would have, prior to him indicating his intent to leave. In addition, all other responsibilities that he held prior to beginning his MOC, when he had intended to leave, should be reinstated.'*

342. Dan Wise composed an e-mail to the Claimant which on 30 November 2018, after he had checked the content with the HR team, he sent to the Claimant. He said:

> *'I have just been notified by HR of the good news that you have made the decision to stay on with BP and not request leaver status. Unfortunately I am flying back today, so let's set-up time early next week to discuss unwinding the MOC process you had undertaken and how we can reinstate the job responsibilities you held prior to the MOC.*
>
> *Will consult with HR how we should handle the transition and then set-up the meeting early next week.'*

343. Dan Wise sent a text message to the Claimant to follow up on his e-mail. On 3 December 2018 the Claimant responded by agreeing to meet to consider any *'proposals'*. The Claimant then contacted Emma Locke and asked whether both Dan Wise and Jon Mottashed had been aware of his grievances. His e-mail indicated that he believed that was necessary if his future in the team was going to be discussed. A member of the HR Team, Tine Johansen responded telling the Claimant that he should not discuss his grievance with the two managers as they had yet to be interviewed by Emma Locke.

344. Dan Wise told us in his witness statement and in his oral evidence that he was shocked to learn that the Claimant wished to retract his application for good leaver status and also that he had brought a grievance against him. None of the witnesses that we heard from said anything to contradict Dan Wise's view that retracting a good leaver request was an extremely unusual thing to do. Nevertheless he did not make any objection to doing what HR had suggested that he do. Given the ramifications for the team that he led we do not consider that this rather supine stance showed a great deal of leadership. We should also have regard to the fact that taking this stance is inconsistent with any desire to drive the Claimant from the business. When interviewed by Emma Lock, Dan Wise was asked about this and said: "I was surprised but if we can

re-energise and JZ is hungry for it then we can reinstate it". We accept that this remark reflected his initial response.

345. Dan Wise told us in his evidence that around 3 December 2018 he was told by HR that he should no longer take part in directly managing the Claimant in the light of the fact that the Claimant had brought a grievance against him. There was no documentary evidence to support that assertion or indeed any evidence how that was communicated. We accept that if it was communicated orally there would be no documents. Despite the lack of supporting evidence we accept that this is what Dan Wise was told. It is consistent with what actually happened as Dan Wise did withdraw from managing the Claimant. It is also consistent with the evidence of Jon Mottashed and Sam Skerry each of whom says that they were told to stand back from managing the Claimant once he raised a complaint about them. As an Employment Tribunal we were not surprised to learn that such a decision was taken, in our experience such decisions are not unusual. What we were surprised at was that what on its face is a perfectly sensible decision was not promptly communicated to the Claimant. We consider that it was thoughtless and unnecessary not to let the Claimant know of these decisions and the rationale behind them. We take this into account in assessing the evidence.

346. We find that the Claimant knew reversing the Management of Change process and reverting to the position prior to the Claimant asking for good leaver status would have had significant ramifications for Oliver Stanford and Tara Behtash. They had each been given significant additional responsibilities and a de-facto promotion. They were both at an early stage of their careers and this would have been a significant move upwards. Not least, given that a bonus pot was divided between traders, they might have anticipated a very significant increase in earnings. Placing the Claimant back into the West Africa/Med Sweet bench in any significant capacity was likely to have a significant effect on their bonus expectations. The instruction given by the HR department to Dan Wise which he carried out without raising any objection was one that was obviously going to cause significant disruption. We find that there was little regard for the burden that would impose on those charged with implementing that decision.

347. On 3 December 2018 at around 6pm Dan Wise told Jon Mottashed by telephone about his correspondence with the Claimant. It may be that Jon Mottashed had already had a conversation to the same effect with Val Nefyodova, It is not important. Jon Mottashed's initial response was to agree to meet with the Claimant in a one to one discussion. In an e-mail sent to Val Nefyodova he suggested that the discussion would be focused on *'understanding from him his expectations with regard to his job role going forward'*. This was already a significant push back on the initial stance taken by HR that the Management of Change process would be reversed. He indicated he would confide in Sarah Pearson.

348. Val Nefyodova responded to Jon Mottashed by e-mail sent on 3 December 2018 at 19:45. She suggested changes to Jon Mottashed's proposed agenda for the meeting with the Claimant. She asked that they discuss *'next steps re MOC 'reversal'*.

349. At 21:45 UK time Jon Mottashed sent Dan Wise a text message in which he set out his position. He said:

'Hi Dan.

Had email exchange with Val in which she has instructed me on what to do.

On reflection am very uncomfortable and am not prepared to speak to JZ until I understand the full context from HR, have a basis on which I can explain this to my team and until Sam/Janet/Stefanie Flack have heard and acknowledged my views on the potential implications for the team and myself. What I'm being asked to do is contrary to my beliefs and values and in my view is very negative for my team. I will request time with Sam and Val/Stefanie tomorrow.'

350. What we find Jon Mottashed means by saying that he was being asked to go against his beliefs and values is that he thought that it was wholly unfair on his team that when the Claimant had given a clear indication that he was leaving and, acting upon that indication, two team members had received significant promotions, that process should be reversed because of a change of heart by the Claimant. Jon Mottashed tells us in his witness statement, and we accept, that for him this would have been a resigning matter. We find that that was a principled stance to take and a position that he genuinely held at the time.

351. On 4 December 2018 at 07:45 Jon Mottashed sent Val Nefyodova an e-mail in which he set out the same concerns as he had expressed to Dan Wise in his text message. He said:

'Thank you for your note. I have reflected on the situation overnight and have a number of major concerns. I am not prepared to have the discussion with JZ until the following points have been closed out:

-I want to discuss the full implications of undoing the people changes that have already been made to facilitate JZs initial request with senior management (I suggest Sam and Stephanie initially given this is a London issue but will subsequently want to speak to Dan and Janet Kong to ensure that all elements of this decision are being considered. In my view these implications are highly significant and I am failing my team if they are not fully taken into account

- Coming from the above I need an agreed and credible basis on which I can explain any required organisational changes to my team.'

352. Val Nefyodova responded to Jon Mottashed incorporating her responses in his e-mail. She told him that she could not disclose any more information about the context. That is consistent with the stance taken by HR that the grievance raised by the Claimant should be kept confidential. She went on to repeat her view that Jon Mottashed should say to the Claimant that BP would work with him to *'MOC back'*.

353. Jon Mottashed then spoke again to Dan Wise, he tells us and we accept, that he professionally but robustly pushed back at the suggestion that the management of change process might be reversed. In his witness statement he says that in his view Dan Wise had been given an instruction from HR and *'had just done it'*. We agree. He says that Dan Wise sought to persuade him to follow the line suggested by HR but that he had made his objections known. Again we note that Dan Wise's somewhat supine position does not demonstrate any desire to drive the Claimant from the business. Dan

Wise says at this point he had some real sympathy with Jon Mottashed's stance. He may have done, but he did not do anything to assist him.

354. Jon Mottashed had discussions with Dan Wise, Sam Skerry, Stefanie Flak and Val Nefyodova over the days that followed. He learned that without prejudice discussions were ongoing and he took no steps to meet with the Claimant before the Claimant took holiday over the Christmas period commencing on 14 December 2019.

Knowledge of the Claimant retracting his good leaver status and his grievance

355. In this section we set our findings as to the extent of knowledge of Dan Wise and Jon Mottashed about the Claimant's wish to continue in his role and the matters set out in his first grievance.

356. Dan Wise accepts that he was told by Simon Ashley that the Claimant had rescinded his good leaver application in a telephone call that took place shortly after 6 November 2018. It is common ground that he took no action at all at that time. In written submissions on behalf of the Claimant it is pointed out at some length that Dan Wise has only belatedly acknowledged that he learned of the grievance at this stage. That is correct. During the grievance, business integrity investigation and even in his witness statement Dan Wise appeared to suggest that he found out about the withdrawal of the good leaver application and/or the grievance later than he has now conceded. He made a correction to his witness statement before adopting it. Whilst the concession disposes with the question of when Dan Wise learned about matters it does not deal with what exactly he knew about the grievance.

357. Mr Rajgopaul and Ms Plews submitted that the failure to be straight about when Dan Wise learnt of these matters should support an inference that he is not being frank when he says that he did not know of the detail of the grievance.

358. We would accept that use of language such as 'I only knew formally' does show a lack of candour. Once something is known it is known. We accept that this is capable of supporting an inference that Dan Wise knew more than he has said about the grievance. However, this is not the only source of evidence on this matter. In order to have any idea that the Claimant's 30 page grievance letter made protected disclosures that information would have to have been passed to Dan Wise. The Grievance was sent to Brian Gilvary and passed to the HR Department, including Simon Ashley, and in turn to those involved with investigating the grievance. The inference we have been asked to draw is that one Simon Ashley told Dan Wise details of the grievance.

359. It was put to Simon Ashley that he was the person responsible for telling Dan Wise the nature of the grievance. Simon Ashley accepted that he had told Dan Wise about the existence of the grievance on 6 or 7 November 2018 but was adamant that he did not tell him about the substance of the grievance. He said that that was not the way BP investigated grievances. We have seen that before all of the grievance investigation interviews the participants were reminded of the need for confidentiality. Simon Ashley's account in this respect is supported by his e-mail sent on 29 November 2018 in which he asked that the Claimant's line manager, then Jon Mottashed, be informed of the fact that he had rescinded his application for good leaver status. In that e-mail he states in terms that it is unnecessary that Jon Mottashed was told about the grievance.

360. We have read the notes of the interview that Dan Wise had with Emma Locke on 18 December 2018 with a view to seeing if Dan Wise was aware of the nature of the grievance. There is nothing in the interview that suggests he was.

361. We were invited to find that Dan Wise was a dishonest witness. We shall not list the points made in the Claimant's submissions here because they are too numerous and it is disproportionate to do so. We would accept that Dan Wise had a poor recollection of some of the events. We would accept that he was amongst the witnesses who in our view unfairly categorised the Claimant's NNPC disclosures as being all about profit and nothing to do with compliance. We have accepted that Dan Wise has not been as frank as he could have been about when he knew that the Claimant had indicated that he wished to withdraw his good leaver application. However, we make no blanket findings that he was an unreliable witness.

362. There are other possible reasons why Dan Wise might wish to play down when he knew of the Claimant's decision to rescind his good leaver application. He knew of the without prejudice discussions. Whether by himself or with the encouragement of others it is clear that he did not do anything to stop the management of change process because of what turned out to be an unduly optimistic expectation that the HR department would sort this all out with without prejudice negotiations. He may well have felt that his own inaction as a leader did not reflect well upon him.

363. We were invited to infer from what was said to be a failure to disclose the invitations to the meetings with Emma Locke that the invitations must have included details of the grievance. We decline to draw that inference. Such an inference is not supported by the fact that Emma Locke is recorded as explaining the nature of the grievance during the meetings. It would involve a widespread conspiracy to supress evidence. We consider it highly unlikely that a 30-page grievance would be summarised in an invitation to an interview.

364. In respect of this particular matter we accept Dan Wise's evidence that he did not learn of the nature of the grievance until he was interviewed by Emma Locke on 18 December 2018.

365. We turn then to Jon Mottashed. Jon Mottashed says that he did not know that the Claimant had retracted his good leaver application until 3 December 2018 and that he found out from Val Nefyodova that the Claimant had made a complaint at the same time. He says that he knew nothing of the detail of the Claimant's grievance until the Claimant asked him to read it in January 2019. The Claimant says that Jon Mottashed knew much earlier of his decision to retract his good leaver application and that he knew earlier of the detail of his grievance.

366. The first point made in support of the contention that Jon Mottashed was told earlier about the withdrawal/grievance is said to be an inconsistency between his evidence that of Val Nefyodova. He said that he first learnt of the withdrawal from Val Nefyodova and when asked in cross examination she said *'it wasn't me'*. She had no recollection of telling Jon Mottashed about the complaint. We have carefully reviewed the transcript of Val Nefyodova's evidence. There are numerous instances where she is unable to recall events. She answers many questions by saying she has no recollection. She was the person who Jon Mottashed was dealing with in respect of the instruction to unwind the

good leaver request. From 3 December 2018 Jon Mottashed takes action promptly to push back against the unravelling of the management of change process. This points to him learning about this only at that stage. We accept that there is an inconsistency between these witnesses and have taken that into account in our findings.

367. The next point relied upon by the Claimant to demonstrate that Jon Mottashed knew of his withdrawal of his good leaver request is that on 18 December 2018 when Dan Wise was interviewed by Emma Locke in connection with the Claimant's first grievance he said: *'wow, I spoke to him about 2 weeks ago and he didn't mention [withdrawing good leaver status]'*. The Claimant says that he last had a 1-2-1 meeting with Jon Mottashed on 26 October 2018 and that it follows that Jon Mottashed must have known about the withdrawal of his good leaver status by mid-November. We do not find this point compelling. The Claimant accepts that he had a conversation with Jon Mottashed in late November about Sylvana Adams. Jon Mottashed said in evidence that this was the occasion that Dan Wise must have been referring to. That would fully explain the comment.

368. It is then said that it was inherently implausible that Dan Wise did not tell Jon Mottashed that the Claimant had changed his mind. We would accept that if Dan Wise had believed on 8 November 2018 that the Claimant was definitely going to be remaining in his position or if he had been instructed at that stage by HR to take some action it would have been surprising if he did not take steps to discuss this with Jon Mottashed. We are not satisfied that Dan Wise believed that the Claimant was likely to remain in post. That makes it far less likely that he would discuss the matter with Jon Mottashed.

369. The Claimant suggests that the senior team members, Dan Wise, Jon Mottashed, Sarah Pearson and Jeremy Tolhurst mutually trusted one another and that it is probable that they discussed both his retraction and his grievance. We would accept that these individuals worked closely together. There was no evidence that they were particularly close friends.

370. When interviewed by Emma Locke Sarah Pearson is recorded as saying *"I came back believing JZ wants to leave and that is not the case"*. It is said that that demonstrates that she knew about the Claimant withdrawing his good leaver status. We note that at the outset of the interview Emma Locke sets out the Claimant's grievances including the fact that he said that he had been pressurised into leaving and that his employment status was uncertain. In that context her comment provides far less support for the Claimant's contention that she must have known about his withdrawal earlier than suggested.

371. When interviewed in connection with the business Integrity investigation Sarah Pearson suggested that there had been an announcement to the team that the Claimant was staying in November. She was asked about that in examination in chief and said that that had been wrong and that the announcement was made in January. The Claimant asks us to find that this change demonstrates an attempt to tailor the evidence. Whilst we accept that there is a change in the account we bear in mind that it was common ground that the only announcement to the 'team' was in January 2019.

372. It is the Claimant's case that Jon Mottashed must have learned of the content of the grievance. The potential sources of that information suggested by the Claimant were

Dan Wise, Sarah Pearson and Jeremy Tolhurst. Sarah Pearson was interviewed by Emma Lock on 27 November 2018. We have already found that Dan Wise did not learn about the nature of the grievance until 18 December 2018. Sarah Pearson denied that she had divulged any detail about the Grievance to Jon Mottashed.

373. In written submissions on behalf of the Claimant the point is made that Dan Wise did speak to Jeremy Tolhurst and to Jon Mottashed about the grievance after he was interviewed. That is correct but those individuals both say that they were responding to requests for information. We accept that that was the case. We have referred to the fact that each person Emma Locke interviewed was reminded of the need for confidentiality. In his interview Dan Wise specifically refers to gathering information and that this might cause some difficulties.

374. We have the evidence of Jon Mottashed himself. He was unshakable in his account that he learned of the retraction of the good leaver application in early December and at the same time that there was a 'complaint'. We remind ourselves that sticking to an account does not make it more likely to be true. We have seen Jon Mottashed's hand-written notes of meetings with the Claimant in early January and e-mails where the Claimant and Jon Mottashed discuss the Claimant's request that Jon Mottashed read his grievance. In an e-mail of 7 January 2018 Jon Mottashed tells the Claimant that he does not even know who had been spoken to in the grievance investigation. This would have been a brazen lie if as the Claimant suggests the senior team members were discussing the grievance between themselves.

375. On behalf of the Claimant it was suggested that the fact that his managers, Jon Mottashed and Jeremy Tolhurst made no attempt to organise a leaving party, in contrast to Ann Devlin for whom leaving drinks were held on 26 November 2018, suggested that it was known that the Claimant was not leaving. The Claimant accepts that when he met with Jon Mottashed on 26 October 2018 he did not know when he was leaving. No formal announcement of a leaving date was ever made. Jon Mottashed's note of the meeting records that the Claimant might remain as an employee into 2019. Given the uncertainty about exactly when the Claimant was leaving we do not consider that the fact that no leaving party was organised supports a conclusion that the fact that the Claimant had retracted his good leaver application was widely known.

376. We may not have mentioned every point but we have had regard to the entirety of the evidence and the parties submissions, we are satisfied that Jon Mottashed learned of the retraction of the good leaver request in December 2018 as he has said. In addition we are satisfied that Jon Mottashed knew that the Claimant had brought a complaint/grievance as early as 4 December 2018 but that he did not learn of the scope of the grievance until the Claimant asked him to read the grievance in January 2018.

Increasing surveillance on the Claimant

377. Traders at BP were aware that their communications would be the subject of routine monitoring by members of the compliance team. The purposes of this included looking for any improper trading activity but also any threat to BP's interests posed by a trader. These might include taking information useful to a commercial rival.

378. In November 2018 the Claimant was informed by a member of the compliance team that it had been noted that he had been sending material from the BP system to his own e-mail address. He was informed that whilst his e-mails were being read their confidentiality was being respected. The Claimant says, and we accept, that the material that he was sending himself related to his grievances.

379. On 29 November 2018 Jeremy Tolhurst sent an e-mail to a member of the compliance team copying in Sarah Pearson and stating that 'we' were concerned that the Claimant might be removing information. He asked for an increased level of monitoring. In response he was told that all e-mails to an external e-mail address with attachments were already monitored. An offer was made to monitor the times when the Claimant came and left the office. Jeremy Tolhurst asked for that additional monitoring, backdated if possible and also that the volume of e-mail traffic is also monitored. Jeremy Tolhurst was aware of the conversation that the Claimant had with the team member from the compliance team.

380. Jeremy Tolhurst says in his witness statement that increased monitoring of the communications of people who are expected to leave BP is normal. We would accept that the fact that a person was expected to leave might well be a risk factor particularly the risk that they might take confidential information with them and remain in the oil industry.

381. The Claimant asks us to infer from the fact that Jeremy Tolhurst, and Sarah Pearson were involved in the monitoring of his communications that they would also be aware of the contents of his grievance. We consider that the fact that Jeremy Tolhurst was aware of the monitoring of correspondence does not, of itself, mean that he had read or knew about the contents of the grievance.

382. A point made forcefully in the closing submissions on behalf of the Claimant was that Jeremy Tolhurst was a member of the '*circle of trust'* including Dan Wise, Jon Mottashed and Sarah Pearson. We would accept that those senior managers would discuss matters concerning the team between themselves. That does not mean that we accept that they discussed everything.

383. A further point made by the Claimant is that after Dan Wise was interviewed as part of the grievance he obtained the MOC documents from Jeremy Tolhurst. It was suggested that that was a breach of confidentiality. Whilst it is possible that Dan Wise told Jeremy Tolhurst the purposed of seeking that document it does not follow from the mere request for that document that he did so.

384. Having had regard to all of the evidence we accept, that Jeremy Tolhurst only learned of the fact of the grievance after the Claimant returned to work on 7 January 2019.

385. On 14 January 2019 Jeremy Tolhurst sent a further e-mail to the compliance team asking for additional monitoring. Three areas of information were sought. Jeremy Tolhurst asks for information about e-mailing and printing. His e-mail states that the purpose of this was to ensure that the Claimant was not removing any information. The next area of information was to seek entry and exit times back as far as January 2018. The stated purpose was to understand the time that the Claimant was spending in the office. The last information sought was a comparison of the work undertaken by the

Claimant in comparison to the other traders (Tara and Oliver). Jeremy Tolhurst states that he believed that the Claimant was not proactively pushing for business.

386. It is the Claimant's case that the real purpose of this monitoring was to build a case against him that would justify his dismissal due to poor performance. We shall return to that below but at this stage there was no evidence that performance issues were ever raised with the Claimant. This is so despite a widespread view that the Claimant failed to treat the MARPOL project with the focus it was believed it deserved.

Events of 10 and 13 December 2018

387. On 10 December 2018 the Claimant met with Richard Wheatley. The purpose of the meeting was for Richard Wheatley to provide an update into the progress of the investigation. The Claimant raised a concern that he did not know what to do on his return from annual leave on 7 January 2019 because an announcement had been made that he was leaving at the end of 2018. Richard Wheatley informed Simon Ashley of this.

388. On 13 December 2018 the Claimant's solicitor wrote a further 'without prejudice' letter to BP. A meeting took place between the Claimant and Simon Ashley on the same day. We are unaware of what was discussed and do not speculate but it is clear that there was no resolution at that stage. The Claimant was due to go on holiday the following day.

389. In the evening of 13 December 2018 the Claimant sent Richard Wheatley an e-mail in which he complained that he had been subjected to three further detriments because he had made protected disclosures and taken parental leave. The three detriments complained of were:

389.1. That he had been excluded from the annual crude executive meeting that had taken place on 27 November 2018; and

389.2. That following Dan Wise's e-mail of 27 September 2018 the Claimant had been demoted which was demonstrated, he said, by an organisational chart attached to that e-mail which showed him reporting to Oliver Stanford; and

389.3. That Sylvana Adams (to whom we shall return) had been asked to support Oliver Stanford on the West Africa bench without consulting the Claimant and in a move to ensure that the bench was fully staffed on an assumption that the Claimant would be departing.

390. The Respondents invite us to find that these further complaints were raised purely to increase pressure on BP in the without prejudice negotiations. In assessing whether that was the case we have regard to the following matters:

390.1. The Claimant's complaint that he ought to have been invited to the annual Crude Executive meeting was, as he ultimately has accepted, based on an assumption that Senior Traders, such as himself, would ordinarily be invited. That was purely speculative. The Claimant describes in his witness statement feeling humiliated because he was sitting at his desk rather than attending the meeting. He did not raise this with Dan Wise or with Jon Mottashed at the time. He waited over

2 weeks before complaining.

390.2. By 27 September 2018 the Claimant had asked for good leaver status and knew that it was anticipated that he would be leaving on 31 December 2018. He had been asked to, and had set in place the management of change process. He had informed his team he was leaving and had adopted and implemented a proposal whereby Oliver Stanford would be the most senior trader for the West Africa business. He was undertaking the role of a mentor to Oliver Stanford and Tara Behtash and had stepped back from his original role. In particular he had significantly reduced his working hours in anticipation of leaving. He knew that all of the steps that had been taken were, with his knowledge, and were made on the assumption that he would take good leaver status and leave on 31 December 2018. The Claimant had included this allegation in his particulars of claim in his first claim. He withdrew this element of his claim only in April 2021. We consider that the Claimant could not have reasonably believed that he had been 'demoted'. Even if we are wrong about that it would be extraordinary if the Claimant had genuinely believed that this was because he had made protected disclosures. The Claimant knew about this situation at the time he brought his first grievance. He delayed over 2 months in raising this as an issue.

390.3. We would accept that the Claimant might have been surprised at the decision to ask Sylvana Adams to work on the West Africa book instead of the North Sea book. By the time she was asked to move, the Claimant had retracted his application for good leaver status. He did not have the full picture at the time of this complaint and we accept that he might have thought that the decision was inconsistent with his expressed desire to return to his role. This is not a matter which supports the Respondents' position.

391. Having regard to these matters specifically and to the evidence as a whole we find that the primary purpose of raising these allegation was to advance the Claimant's position in the negotiations. The Claimant's e-mail was passed to Emma Locke who agreed to add these complaints to the grievance that she was investigating.

<u>Sylvana Adams</u>

392. Jon Mottashed's promotion from the North Sea bench created a vacancy for a trader. It was assumed that Jon Mottashed would have some capacity to assist the North Sea Bench and a decision was taken to appoint a junior trader rather than replace Jon Mottashed with a trader of his seniority. Prior to a period of maternity leave Sylvana Adams had been working in the ESA asset crude and feedstock supply trading team. She had gained considerable experience dealing with refineries and was thought to be a good match for the role. On 24 August 2018 Dan Wise sought approval from Sam Skerry to appoint her as a Crude Oil Trader on the North Sea bench. In his e-mail to Sam Skerry he explained that *'With Alejandro and I movjng to the US, J Motts moving into BL role and Anne/JZ'retirlng we are short of traders in the London team.'*. Sam Skerry expressed her support for this move. The Claimant was aware that Sylvana Adams would be joining and accepts that this was a sensible move not related to any of his claims.

393. At a point between 16 and 23 November 2018 Jon Mottashed decided that Sylvana Adams should be deployed assisting Oliver Stanford on the West Africa bench. We have settled on those dates because we have seen an organisational chart circulated on 16 November which shows her joining the North Sea team, as had been planned for some time. A chart circulated on 23 November 2018 shows her as a member of the West Africa team. It is common ground that this change was announced by Jon Mottashed at a team meeting in London and again it is agreed that he took the Claimant aside to inform him about 30 minutes before the meeting began. There is a dispute about whether the Claimant suggested that it was a good idea but we do not have to resolve it. The Claimant accepts that he did not raise any actual objection at the time.

394. Jon Mottashed does not explain the rationale behind this move in his witness statement. However when interviewed by Emma Locke during the investigation into the Claimant's first grievance he stated that his reasons for this switch were that he was concerned that, with the Claimant leaving, the West Africa bench would not be sufficiently staffed. He said if Oliver Stanford were to fall ill he would not have been able to take over whereas he could easily fill any shortage of staff on the North Sea bench. In his oral evidence Jon Mottashed accepted that his reasons for the change were based on his assumption that the Claimant would be leaving.

395. The case put by the Claimant was that the decision to move Sylvana Adams into the West Africa team was one primarily taken by Dan Wise but assisted by Jon Mottashed as a device in order to prevent the Claimant being reinstated into his role. There were extensive submissions on this point by both parties and a great deal of cross examination on the point. Both Dan Wise and Jon Mottashed were adamant that the idea to move Sylvana Adams to the West Africa bench came from Jon Mottashed. Both were adamant that Jon Mottashed had not been told that the Claimant had rescinded his application for good leaver status. We have accepted that.

396. At this stage it is necessary for us to identify the role that Sylvana Adams was being asked to fill. Sylvana Adams held a G5 grade. That would make it appear that she was not much less senior to the Claimant. We do not consider that the grade she held gives the clearest picture of her anticipated role in the West Africa team. Sylvana Adams had no experience as a crude trader. The role it was envisaged that she took up required her to report to Oliver Stanford as the lead trader. Oliver Stanford's role was not directly comparable to the role previously held by the Claimant. It was a more junior role. We find that the role envisaged for Svlvana Adams was a junior role with considerably less responsibility and status, and far less earning potential, to that undertaken by the Claimant. In no sense was her role a replacement for that done by the Claimant.

397. We have found above that Jon Mottashed did not know that the Claimant had rescinded his good leaver application until 3 December 2018. He knew that the Claimant was engaged in a 'complaint' process but he did not know of the substance of the complaint. Dan Wise knew that the Claimant had rescinded his application for good leaver status in early November 2018. He knew that the Claimant had brought a grievance naming him at the same time. We have accepted that he did not know of the substance of that grievance until 18 November 2018.

398. Sylvana Adams was due to start in her role on 3 December 2018. Jon Mottashed accepted that once he learned that the Claimant had rescinded his request for good

leaver status he did not take any steps to reverse that process. He accepted in cross examination that it would have been possible to have reversed his decision. Dan Wise accepted that he had not intervened or insisted that the appointment was reversed.

399. In his evidence Jon Mottashed explained that his reasons for taking no steps to reverse the decision to introduce Sylvana Adams into the West Africa team to ease the Claimant's return included the fact that he believed that it would be disruptive to Sylvana Adams and to Oliver Stanford and Tara Behtash and himself. He places dome emphasis on the fact that Sylvana Adams was returning from maternity leave. He also stated that he learned of the existence of without prejudice discussions at the same time as he learned that the Claimant had withdrawn his good leaver application. He gave evidence that in his experience such negotiations commonly resulted in a person leaving the organisation. He said that he did not want to make changes if there was a possibility of the Claimant leaving.

400. Dan Wise's initial response to being told that the management of change process needed to be reversed was to go along with it. He sent the Claimant his e-mail to that effect on 30 November 2018 after Jon Mottashed had announced that Sylvana Adams was joining the West Africa team. It was only when Jon Mottashed drew attention to the impact of that decision that, after trying to persuade Jon Mottashed to go along with HR, he swung behind Jon Mottashed. That is not indicative of him being the behind the decision to block the Claimant's return by moving Sylvana Adams.

401. Drawing those threads together we find;

401.1. That it was Jon Mottashed who came up with the idea of switching Sylvana Adams' role; but that

401.2. Dan Wise was informed about this; and

401.3. That appointing another person to the West Africa team made it harder to re-instate the Claimant; but

401.4. That even without Sylvana Adams the Claimant could not have been re-instated without considerable disruption in particular to Oliver Stanford; and

401.5. That it would have been possible to have asked Sylvana Adams to revert to a North role if Jon Sea Mottashed had taken the decision to do so even after Jon Mottashed learned of the Claimant rescinding his good leaver request.

<u>The North Sea Role</u>

402. The decision to move Sylvana Adams to the West Africa bench left the North Sea team short of staff. At some point prior to 15 December 2018 John Mottashed started taking steps to address that. From an e-mail he sent to Chis Schemers on 15 December 2018 it is clear that he had already taken steps to find a permanent employee who would work with the North Sea Team. A 'preferred candidate' had already been identified and was expected to be available from April 2019. In his e-mail Jon Mottashed was asking essentially to borrow a member of the Origination team, Morten Joergensen, for a period of three months to cover the gap. Jon Mottashed expressed his view that Morten

Joergensen was, *'uniquely qualified to help cover the above workload in the near term. As you know he has extensive experience in front line marketing and procurement of North Sea grades and has a full current portfolio of contacts in the area. After his recent induction into your team he will require minimal training to allow him to provide full assistance'*

403. It is a matter of dispute whether the role that had been identified by Jon Mottashed was one which would have been suitable for the Claimant. We would accept a point made by the Claimant that there was some flexibility in placing a trader into any team but do not agree that that is boundless. Some roles are clearly more junior than others and we have seen efforts made to ensure that the balance of teams between senior and junior employees is maintained. The role that Sylvana Adams was going to undertake was a level H box 3 role. That was a lower grade that Sylvana Adams had historically undertaken but we accept Jon Mottashed's evidence that whilst she had considerable expertise in the North Sea she had no frontline trading experience.

404. We find that the role that was to be covered by Sylvana Adams and was temporarily covered by Morten Joergensen was a role that was significantly more junior than the role that the Claimant had previously occupied. Had that role been accepted by him he would not have been awarded bonuses anything like what he had previously enjoyed. We draw support for that conclusion from the fact that the role that Jon Mottashed occupied before his promotion was more senior than the vacant role and Jon Mottashed received a significantly lower bonus than the Claimant did in 2017. Below we refer to the Claimant indicating the type of role he was willing to consider. In cross examination the Claimant accepted that the role was a more junior role than he was looking for. When asked by the Tribunal how much a person in that role might anticipate earning the Claimant's estimate was £100,000 with a bonus potential of £300,000 to £900,000.

405. Jon Mottashed said that in filling the role he was looking for somebody who could 'hit the ground running' and that that required experience of North Sea. The Claimant says that he did have some experience and that as a very experienced trader he could have come to grips with the role. During the Claimant's cross examination Mr Nawbatt asked the Claimant about the requirements for experience set out in the job description used to advertise the position. The Claimant accepted that he did not have some of the experience required but maintained his stance that the role should have been discussed with him.

406. Morten Joergensen was asked to undertake the role on a temporary basis. The permanent candidate that had been identified as the 'preferred candidate' was David Myers'. He did have considerable North Sea trading experience.

407. On 4 January 2019 Jeremy Tolhurst sent an e-mail to Dan Wise about advertising the North Sea role. He indicated that he had been told that it needed to be posted internally and externally for a period of 2 weeks. Subject to the candidate pool he said it might be necessary to get permission to proceed only with the application of David Myers. On 7 January 2019 (the day that the Claimant arrived back at work) Jon Mottashed sent David Myers a copy of the job description that was prepared by the HR team. The role was advertised both internally and externally. In cross examination the Claimant accepted that he was aware that the role had been advertised (something he expressly mentioned in his fourth grievance) but he did not apply for it.

408. In his fourth grievance the Claimant incorrectly states that the role was intended to be a replacement for Jon Mottashed. We do not understand how he could have been under that impression.

The Claimant's return to work in January 2019

409. On 3 January 2019 Simon Ashley sent the Claimant an e-mail in which he offered the Claimant the opportunity to remain on paid leave until the resolution of his grievance. The Claimant responded to that e-mail on 7 January 2019 saying that he thought it in his best interests to return to work.

410. The Claimant had told Richard Wheatley and Emma Locke and Simon Ashley that he was returning to work on 7 January 2019. However Jon Mottashed believed that, if he was returning at all, the Claimant was due back on 28 December 2018. We find that that belief was genuine and reasonable because that was the date found on the outlook system that recorded leave. That finding is supported by the fact that Jeremy Tolhurst provided the same dates for leave when he sought additional monitoring of the Claimant. Jon Mottashed says, and we accept, that he had assumed that when the Claimant did not return to work that there had been some resolution and he would not be returning.

411. Jeremy Tolhurst had said in his witness statement that he had not expected the Claimant to be returning in January. He was challenged on that and it was put to him that he had not said goodbye and no party had been organised. The Claimant also placed weight on the fact that when he returned to work none of his colleagues said anything to him about why he was there.

412. We accept the evidence of Jon Mottashed and Jeremy Tolhurst that they had not expected the Claimant to return after Christmas. That is consistent with the fact that on 7 January 2019 Jeremy Tolhurst had to move his desk to accommodate the Claimant. We find that the reason why the Claimant was not expected to come back was that it was assumed, incorrectly, by Jon Mottashed that the Claimant would probably still be leaving with good leaver status after his negotiations with Simon Ashley. No contingency plans had been made if that fell through. We find that Jon Mottashed never told Jeremy Tolhurst that the Claimant might come back to work after Christmas because he had not seen that as likely. We find that the reason why no party was suggested was that there was no certainty about when the Claimant was leaving.

413. We find that Dan Wise and Jon Mottashed expected the HR department to sort out the matter by agreeing terms under which the Claimant would leave avoiding the difficult task of reaccommodating the Claimant after the management of change process. When interviewed as part of the Business Integrity investigation Sarah Pearson is recorded as responding to a question about how the relationships have changed by saying *'Life is hard with him now and I can't believe HR has allowed this to happen. HR support is weak!'.* We make no comment on whether that criticism was fair but accept that there was a view that HR should have sorted out the potential mess caused by the Claimant withdrawing his application for good leaver status.

414. The Claimant was also uncertain about whether he was expected back at work. For that reason he sent Jon Mottashed a text message to give him the heads up that he was coming into work. Jon Mottashed had not expected this and had made no preparations

about how to deal with the Claimant given his reservations about reversing the management of change process. Jon Mottashed immediately sought advice from Val Nefyodova.

415. During the morning of 7 January 2019 Jon Mottashed communicated with Val Nefyodova using a messaging system. He sought advice about what to say to the Claimant and was told that *'the messaging remains the same'*. Messages after the meeting between the Claimant and Jon Mottashed show Jon Mottashed preparing an announcement for the team which was approved by Val Nefyodova. That read:

- *JZ has made the decision that he would like to continue to work in the team*
- *As you all know, I had made changes to the group set-up on the basis that JZ would be leaving*
- *As a result, I'll be working with JZ over the next few weeks and how we best re-integrate him back into the team*

416. In the Claimant's witness statement he describes the meeting with Jon Mottashed under a heading *'Jon confirms he will work with me to reinstate me'*. Jon Mottashed accepts that he discussed the Claimant's return to 'the team'. He does not accept that he suggested that he would simply reinstate the Claimant to his existing role. We prefer the evidence of Jon Mottashed. If Jon Mottashed had told the Claimant that he was to be reinstated into his old role that would be inconsistent with the announcement that he made to the team. That announcement expressly referred to the changes that had been made and spending time working out *'how we best re-integrate him'*. We do not accept that the Claimant was told that he would return to his existing role. Both parties agree that the meeting was brief and professional.

417. During the meeting the Claimant asked Jon Mottashed whether he had read his grievance. It is agreed that Jon Mottashed said that he had not. In his message exchange with Val Nefyodova Jon Mottashed raises this and asks whether it is appropriate for him to read the grievance. We have relied upon this in reaching our conclusions that Jon Mottashed had no knowledge of the contents of the grievance at that stage.

418. Later in the day Jon Mottashed sent an e-mail to the Claimant saying that if the Claimant wanted him to read the grievance he could send it to him. A proposal was made to have a 'chat' the following day. It is agreed that there was a further meeting. Jon Mottashed took notes of that meeting. We accept that those notes are broadly accurate. Jon Mottashed repeated his invitation to the Claimant to share the grievance with him but suggested that there were pros and cons of him knowing. He reminded the Claimant of the confidentiality around grievances and that people needed to behave appropriately. Jon Mottashed says that there was a brief discussion about the role that the Claimant might do. His note records the Claimant asking BP to offer him a role and saying that he '*needs to see how BP value him'*. The Claimant does not accept that that was said. We find that there was a discussion about finding a role, that is consistent with the announcement made the day before, we consider it probable that the Claimant suggested that BP showed he was valued. That is consistence with his stance before and after that meeting.

419. After the meeting the Claimant decided that he would send Jon Mottashed his grievance and did so on the morning of 9 January 2022. In the covering e-mail the Claimant stated that he had never had a formal conversation with anybody about agreeing terms for good leaver status. He said that he had had a single without prejudice meeting with Dan Wise. In fact there had been additional without prejudice discussions in correspondence and a without prejudice meeting with Simon Ashley by that stage. It is clear from that letter that the Claimant knew that he was not simply going to be reinstated into his old role. An hour and a half later Jon Mottashed responded to the Claimant informing him that he had read but not fully digested the letters that comprised his first and second grievances. He proposed a meeting later that day.

420. There was a West Africa team strategy meeting on 12:00 on 9 January 2019. The Claimant knew that meeting was taking place. He had not been invited but on the other hand he accepted that he did not ask to attend and did not mention any wish to attend in his e-mail to Jon Mottashed. He did not mention this meeting when he met with Jon Mottashed later in the day. The Claimant alleged in his first claim that the reason that he had not been invited to this meeting was because of his disclosures/parental leave. He withdrew that complaint on 4 April 2021.

421. The Claimant met with Jon Mottashed in the afternoon of 9 January 2019. Jon Mottashed took brief notes of that meeting which again we accept are broadly accurate. He and the Claimant briefly discussed the Claimant's grievances. The Claimant was at pains to stress that he was not making any criticism of Jon Mottashed within his grievances. He said that the situation was not ideal and that he was sorry that Jon Mottashed had needed to become involved. Jon Mottashed told the Claimant that he would come back to him with a proposal for a role going forward the following day. Both Jon Mottashed and the Claimant agree that the tone of this meeting was cordial.

422. Shortly after the Claimant left the meeting with Jon Mottashed he sent an e-mail to Richard Wheatley in which he complained that the reason why he was excluded from the West Africa team meeting was because he had made protected disclosures and brought a grievance. He further complained about being excluded from the crude executive meeting that had taken place in November 2018. He raised further points about the removal of his TPSA responsibilities and other matters. Richard Wheatley responded the following day informing the Claimant that whilst his original grievance investigation report had been completed consideration would be given to investigating these further matters.

423. We consider it remarkable that if the Claimant was concerned about not attending the West Africa Team meeting he did not raise this with Jon Mottashed and ask him whether he could attend or if not for the reasons he had not been invited. He had an open and cordial relationship with Jon Mottashed and there was no good reason for the Claimant not to raise concerns if they were genuinely held. In his original claim the Claimant had alleged that excluding him from the West Africa Team Meeting on 9 January 2019 was an unlawful detriment because he had a protected disclosures. He subsequently withdrew that claim. In cross examination the Claimant accepted that that he had *'jumped to a wholly unfounded assumption based on incomplete facts'*.

424. The Claimant met Jon Mottashed again on 10 January 2019. In advance of that meeting Jon Mottashed exchanged messages with Val Nefyodova. His messages start

with him asking whether she has got any news. Having read those text messages it is clear to us that parts of the discussion referred to the possibility of a resolution of the Claimant's situation. At this time there were ongoing discussions on a without prejudice basis. We find that Jon Mottashed was contemplating the possibility that the Claimant would not wish to remain at BP.

425. There is little in dispute about what was discussed between the Claimant and Jon Mottashed on 10 January 2019. Jon Mottashed made notes during the meeting and the same afternoon sent an account of what was discussed to Val Nefyodova by e-mail. We find that that e-mail gives an accurate summary of the meeting. The e-mail says:

> *'• I am still working on a solution to re-integrate JZ into the team*
>
> *• In the near term I would like JZ to work to look at the MARPOL implications - look at trading strategies across the London book and look at potential integrated/holistic strategies- investment etc. Told him that it is good to have somebody of his experience and capability to lead this important piece of work. JZ made enquiries about who to speak to in starting the piece of work to which I provided answers.*
>
> *• JZ asked if there is an option to be returned to his old job. I told him that we had re-organised and assigned/trained people and therefore this role was not available. I told him that I would prefer to look for roles that suit him and will not mean undoing changes made. I told him I need his help to do this and would like him to provide his preferences for the make-up of a potential role. JZ is considering whether he will give me this. We will reconvene when JZ has a response to this.'*

426. 'MARPOL' is a reference to the International Convention for the Prevention of Pollution from Ships. From 2020 new higher standards were to be imposed under the convention which would require ships to emit/burn less sulphur. A number of the Respondents' witnesses gave evidence of the importance of the changes introduced by the new standards. We accept that Jon Mottashed had a genuine and reasonable belief that the work that he was asking the Claimant to do was strategic and important. However we have had regard to a comment made by Dan Wise about the Claimant being offered this work essentially accepting that this type of work was not the sort of thing that the Claimant would enjoy doing. In the light of that we would accept that the Claimant viewed the work as being analytical and not directly connected with his skills as a trader. We do find that the Claimant's description of the project as 'busy work' was not justified and that the Claimant ought to have realised that.

427. In the evening of 10 January 2019 the Claimant sent an e-mail to Jon Mottashed. He starts by saying that he was *'extremely surprised and disappointed'* to learn that he was not going to be restored to his previous role. He made an allegation that Jon Mottashed had not been straightforward. He suggested that he had only learned that he was not going to be undertaking his old role through questioning Jon Mottashed. He described the Marpol work that he had been asked to do as follows:

> '*you have further humiliated me by asking me to do a piece of work which can not in any way be said to be commensurate with my seniority, status, skills and experience (a piece of work that we both know to be unnecessary busy work). Thistask is neither trading nor market facing. I will agree to do this piece of work if*

you
insist, but to be clear, I will be doing so under protest and because I am a diligent and conscientious employee who continues to harbour the hope that BP will do the right thing by me, and to be clear I do not expect to be asked to do this sort of work again.'

He went on to say:

What I want is to be restored to my previous roles and responsibilities. If BP persuades me that there is a very compelling reason why this cannot be done then I would like a trading book leader role with a realistic earnings potential equivalent to my previous role.

428. On 11 January 2019 The Claimant's solicitor wrote to the Respondent's legal department setting out a further grievance. The first complaint is of the delay in receiving an outcome to the original grievance thereafter the complains concern the failure to reinstate the Claimant to his original position. The letter included a complaint about the Claimant being asked by Jon Mottashed to work on the MARPOL project. That letter has been referred to by all parties as the Claimant's second grievance.

429. The tone of the e-mail to Jon Mottashed was in stark contrast to the Claimant's behaviour during the meetings spanning 7 to 10 January 2019. The Claimant suggests in his e-mail, second grievance and witness statement that there was a volte face by Jon Mottashed at the meeting of 10 January 2019 when he was told that he would not be restored to his original position. This was not the case and the Claimant knew that it was not the case. He knew all about the changes that had been made as a result of him seeking good leaver status. He had implemented many of those changes. He would know that undoing those changes would cause significant upheaval. He would have recognised that it would be very difficult to have simply reverted to the position that had existed 6 months before.

430. The Claimant would be well aware that Jon Mottashed would not be able to conjure '*a trading book leader role with a realistic earnings potential equivalent to my previous role'* from thin air. There were very few such roles. Re-integrating the Claimant into the crude team was always going to be a delicate task.

431. Jon Mottashed responded to the Claimant's e-mail of 10 January 2019 the following afternoon. Essentially he set out the fact that the structure of the team had been changed significantly in the light of the Claimant's stated intention to leave. He stated that moving the Claimant back into the team would take time and require input from the Claimant. He made it clear that whilst he regarded the Marpol project as a priority area it was an interim role for the Claimant whilst other roles, including roles outside the crude team were explored.

432. Jon Mottashed met with the Claimant on 14 January 2019. In that meeting he reiterated that it would take time to find the Claimant a role. The Claimant asked how long this would take but the matter was left with Jon Mottashed saying that he would get back to the Claimant.

433. On 16 January 2019 the Claimant contacted ACAS for the purposes of early conciliation in respect of a claim where Jon Mottashed would be an individual respondent. At much the same time Jon Mottashed was notified of the Claimant's grievance and he was instructed that he should step back from line managing the Claimant. A decision was taken that the Claimant would be line managed by Jeremy Tolhurst. Again this decision, and the reasons for it were not communicated to the Claimant. This was thoughtless and unnecessary.

434. On 22 January 2019 Jon Mottashed received a telephone call from ACAS notifying him that he was a prospective respondent to proceedings. Jon Mottashed was shocked by this and tells us, and we accept, that this caused him significant distress ultimately causing him to take a career break and then to leave his employment with BP.

435. When Mr Nawbatt cross examined the Claimant on the wisdom of the decision to commence early conciliation naming Jon Mottashed the following exchange ensued:

Q: I suggest to you that the initiation of the ACAS early conciliation process against your line manager, who was tasked with your reintegration, was another cynical and tactical move. Do you accept that?

A: I accept that it was very aggressive. But I thought I was doing the right thing and standing up for myself.

Q. You did it as the next step in what you considered was a negotiation, correct?

A. No. No. I did escalate matters. But, again, I was trying to stand up for myself and I thought at the time I was doing the right thing.

Q. Do you still think it was the right thing?

(Pause).

A. No, I don't. (and again after a pause)

I know that is hard to believe. But the honest answer is no, I don't.

He then addressed Jon Mottashed at the back of the room saying

I am sorry. I am really sorry.

436. After this exchange the Claimant was asked why he had not withdrawn the claims against Jon Mottashed. He then indicated that he wanted to do so. We gave the Claimant an opportunity to seek legal advice which he initially declined but then accepted. There was no objection made to the Claimant being advised on the decision he had intimated. The Claimant then returned to the witness box and we were told that the Claimant wished to withdraw his claims against Jon Mottashed personally but not against BP in relation to the same factual matters.

<u>The Claimant's work on the MARPOL project</u>

437. Between 14 January and 13 February 2019 the Claimant worked on the Marpol Project. The Claimant had been expected to attend a meeting on 13 February 2019 and to make a presentation. He was invited to a grievance meeting which clashed with that meeting. He sent Sarah Pearson some slides which he had produced to support his presentation.

438. Sarah Pearson and Jeremy Tolhurst both say that the quality of the Claimant's work was far below what they would have expected. Sarah Pearson makes a damming comparison with what she might have expected from an intern. The Claimant says that this is unfair. He makes a fair point that these slides were not meant as the sum total or finished product of his work but were just to support a talk at a meeting.

439. It is sufficient in our view to limit our findings to saying that we accept that Sarah Pearson and Jeremy Tolhurst genuinely considered that the slides were a weak effort in preparation for the meeting that the Claimant was to attend. His efforts when coupled with his description of the task as 'busy work' that he ought not have been asked to do did lead others to form a genuine view that he was uninterested in the task that he had been set. We accept that when the task was later completed by others it was done to a far higher standard. The Claimant has suggested that he dis not have the instructions or resources to do that level of work. We disagree Jon Mottashed was entitled to expect an employee of the Claimant's seniority to use his initiative.

The Claimant's interactions with senior managers January and February 2019.

440. After the Claimant commenced early conciliation against Jon Mottashed an instruction was given by HR that Jon Mottashed should not directly line manage the Claimant. From that point onwards there were no further meetings between them.

441. On 31 January 2019 the Claimant wrote to Sam Skerry and copied in Alan Heywood the CEO of the IST. He complained that Jon Mottashed had refused to reinstate him and stated that was in retaliation for him having blown the whistle on a proposed bribe, taking parental leave and filing a grievance.

442. On 1 February 2019 the Claimant made a further request for parental leave to take place in the school summer holidays. That was swiftly agreed to. He was sent a letter to that effect signed by Jon Mottashed.

443. On 6 February 2019 the Claimant sent a document setting out a single recommendation that to strengthen compliance BP should bring back the role of Trading Manager. The Claimant sent that letter to several senior employees including Brian Gilvary. He received a response from Alan Haywood who informed him that he had asked another employee to look at the suggestion made and that he would discuss this with Brian Gilvary.

444. Sam Skerry responded to the Claimant's e-mail by offering to meet with him. A meeting took place on 12 February 2019. The Claimant says in his witness statement that Sam Skerry discussed his good leaver application before saying that she had not been personally involved in attempts to reintegrate him into the crude team and that she had no detailed knowledge of his grievance. He goes on to say that he did not find that credible and left the meeting convinced that Sam Skerry was not going to help him. We

find that the Claimant's suspicion of Sam Skerry during that meeting was entirely baseless. There was no reason why Sam Skerry needed to have read the Claimant's grievance at that stage. As we find below, shortly after, this Sam Skerry went to considerable lengths to find the Claimant a role. She also encouraged the Claimant to make the most of the Marpol opportunity.

445. Sam Skerry says, and we accept, that during the meeting the Claimant indicated that he wanted a role as a trader and that he wished to maintain the same level of remuneration. That is consistent with the stance the Claimant had taken in his correspondence in early January.

446. On 12 February 2019 the Claimant had a further meeting with Simon Ashley that took place entirely on a without prejudice basis.

447. On 19 February 2019 (whilst the Claimant was incommunicado being on 'block leave) an announcement was made that David Myers had been recruited to fill the North Sea vacancy on a permanent basis.

The Outcome of the Claimant's first and Second Grievances

448. After the Claimant presented his second grievance Emma Locke interviewed Jon Mottashed on 25 January 2019. Whilst the Claimant's return to work is referenced in that interview Emma Locke did not go into any detail about the Claimant's re-integration.

449. By 24 January 2019 Emma Locke had prepared a draft report setting out her investigation and suggesting where she considered that the Claimant's complaints were supported by evidence and where she considered they were not. The draft report was submitted for the purposes of seeking legal advice and a final report produced shortly after that.

450. We have read the investigation report. It covers only the Claimant's first grievances and the matters he subsequently raised prior to his second grievance. In their submissions on behalf of the Claimant Mr Rajgopaul and Ms Plews suggest that the failure of the Respondents to call Emma Locke to give evidence about her investigation is something that would support an inference that Emma Locke had set out to construct a defence for the Respondents.

451. We find that the report and the investigation were in many respects very thorough. When conducting interviews Emma Locke asked each person to comment upon what the Claimant said and asked appropriate follow up questions.

452. Emma Locke decided that there was evidence to support the Claimant's complaint that his departure was announced before consulting him. She did not accept that there was evidence to support the suggestion that this was in retaliation for making protected disclosures or taking parental leave. She includes the following criticism in her report with which we strongly concur:

> *'As a general observation, the Investigator believes there was a lack of timely and appropriate communication to Zarembok in relation to his leaver status and who was dealing with the process and how this would play out.'*

453. The Claimant complains that he was not permitted to see the interviews notes of the people that Emma Locke spoke to. It was suggested that that demonstrated a lack of transparency. Some organisations will share such notes others in our experience do not. We have compared the notes with the summary of the evidence that was included in the investigation report. We consider that Emma Locke's report gives a reasonably accurate summary of the interviews.

454. Richard Wheatley read Emma Locke's report. Having done so he decided to interview Dan Wise, Simon Ashley and Jon Mottashed. He informed the Claimant that he wanted to follow up on some items in the report by an e-mail sent on 25 January 2019. Prior to speaking to Dan Wise Richard Wheatley prepared a number of questions which he planned to ask Dan Wise. His list of questions also disclosed that he initially considered that the issue of the 2017 bonus did not require any further follow up as he appeared entirely confident in the review processes. Where Richard Wheatley did prepare questions we find that they were appropriate open questions relevant to the issues raised by the Claimant.

455. Despite his confidence in the bonus process Richard Wheatley did discuss the system for allocating bonuses with Simon Ashley. The notes of that interview show that Simon Ashley told Richard Wheatley that overall BP paid out half what they had in the previous year. He did not suggest that there had been any specific discussion about the Claimant's bonus. Richard Wheatley also discussed the good leaver process and the efforts to find the Claimant a role in the crude team. Simon Ashley is recorded as saying that if any of the grievances are upheld then there might be implications of the Claimant continuing to report to Dan Wise as that may not be tenable. We note Simon Ashley's observation that *'In hindsight, I wonder if we had got the good leaver signed off earlier if we would be in this position'.*

456. Richard Wheatly met with Jon Mottashed on 5 February 2019. He discussed the changes that had been made to the team, the placing of Sylvana Adams into the West Africa team, and the attendees at the 2018 Crude Executive meeting. Jon Mottashed provided a copy of the e-mail that he had received from the Claimant after their meeting of 10 January which he described as legalistic.

457. Richard Wheatley met with the Claimant on 13 February 2019 to announce his decisions on the Claimant's first and second grievances. In advance he prepared a script which set out his reasoning. He did start the meeting with an acknowledgement that there had been a lack of clarity and shortcomings in how the Claimant's expected exit had been communicated. After that Richard Wheatley told the Claimant that he did not uphold any of his grievances.

458. In their submissions Mr Rajgopaul and Ms Plews argue that Richard Wheatley was an unreliable witness and say that that supports an inference that he rejected the Claimant's grievances because of protected disclosures and/or that the Claimant had taken parental leave. We have had regard to the entirety of the submissions but regard the following points as being the most important:

458.1. Richard Wheatley did not appear to understand the potential difficulty of hiving off the issue of whether the Claimant raised concerns that might amount to protected

disclosures from the question of whether anybody retaliated against him for doing that.

458.2. In his evidence about the award of a bonus Richard Wheatley placed considerable weight on the systems of cross-checking bonuses and did not appear to appreciate that the process included an element of individual judgment (vested in Dan Wise) that might or might not have been affected by the Claimant's protected disclosures.

458.3. Richard Wheatley looked at the bonuses awarded to other traders but did not have information that *would* have informed him as to whether they were in comparable circumstances to the Claimant.

458.4. Richard Wheatly consistently used phrases like 'triangulating evidence' where he suggested he had looked at all of the evidence whereas we find that he relied heavily on the report of Emma Locke. He accepted in cross examination that he had not read all of the notes of interviews that she made.

459. One matter where the Claimant particularly criticised Richard Wheatley was the rejection of the suggestion that the Claimant was suffering from 'medical, stress and anxiety'. What was said was that Dan Wise had acknowledged that the Claimant had been unhappy and emotional after the Taleveras incident. The Claimant had not put forward any medical evidence. We do not find it surprising that Richard Wheatley treated the complaint as being a suggestion that the Claimant had suffered stress and anxiety to an extent that it was a medical issue. There was no evidence of that. Richard Wheatley's actual conclusion was that if the Claimant was suffering from Stress and anxiety he had not reported it to anybody. The Claimant never said he had.

460. When we review Richard Wheatley's conclusion there are a number of matters where, following investigation, he came to the right conclusions with sound reasoning. To give some examples. Richard Wheatley's conclusions on the Claimant not being singled out when TPSA responsibilities were removed was plainly right. His conclusions in respect of the Claimant being demoted on 27 September 2018 was plainly right. He established that the Claimant was not demoted in any formal sense and any changes were made in anticipation of the Claimant leaving. There was abundant evidence to support Richard Wheatley's conclusions that Jon Mottashed had acted reasonably in allocating the Marpol project to the Claimant pending any more permanent role being identified.

461. When we step back and look at the manner in which the Claimant's grievance was investigated and the conclusions reached we would say that overall there appears to have been a reasonable effort to gather relevant evidence and to evaluate it fairly. We accept that this was not always done with faultless intellectual rigour. That said the conclusions reached differ from our own only in one respect (to which we shall return).

462. In his first claim the Claimant had alleged that the delay in providing any response to his grievance was an unlawful detriment. We are satisfied that the investigation overseen by Richard Wheatly was conducted reasonably promptly in all of the circumstances. The Claimant did expand his grievances on a number of occasions. His grievances raised serious matters. There were a number of people who were required to be interviewed.

The Claimant withdrew his complaints that this was a separate unlawful act together with a further allegation that the refusal to provide him with copies of the records of interview was unlawful on 4 April 2021.

463. The Claimant was given a right of appeal which he exercised under cover of an e-mail sent on 20 March 2019. He asked for an extension of time to bring an appeal but that was refused. In the event he presented his appeal within the time limit. We shall return to the appeal below.

The Claimant's meeting with Simon Ashley on 7 March 2019

464. The Claimant met with Simon Ashley on 7 March 2019. Notes of this meeting were taken by Janine Knights who was then an HR Lead for the IST. This was her first involvement in the events giving rise to these claims. Her notes have been redacted to exclude matters discussed on a without prejudice basis. The meeting included Simon Ashley discussing his understanding of the outcome of the grievance process. A decision had been made to award the Claimant a bonus of $500,000 in respect of the year 2018. Simon Ashley used this meeting to convey this news to the Claimant. There was a without prejudice discussion following which the Claimant was asked to remain at home. Janine Knight's notes of the meeting show that the Claimant questioned that but that Simon Ashley said that he was the one *'taking the risk'* and later saying '*if we fall out we will see where we get to'* followed up by saying *'they work better when individuals are not in the workplace'*. The Claimant was told that he should not clear his desk but that his trading Delegations of Authority would be removed and that he would be taken off BP's systems.

465. On 7 March 2019 Val Nefyodova sent Janine Knights a document including calculations of sums that might be paid to the Claimant if his contract was terminated. They included a contractual redundancy payment valued at £284,365.15.

466. We need to take care not to speculate on the nature of the without prejudice discussion. What is clear is that the Claimant was sent home in anticipation of without prejudice discussions resolving the dispute between the parties. The 'risk' referred to by Simon Ashley was the risk that those negotiations broke down. The Claimant was told in terms that the reasons he was being sent home was to allow those negotiations to continue.

467. Janine Knights sent the Claimant e-mails on a without prejudice basis on 8, 13 and 26 March 2019. On 28 March 2019 the Claimant spoke to Janine Knight on a without prejudice basis. Thereafter the direct discussions ceased.

The Claimant's third grievance

468. On 18 March 2019 the Claimant submitted a third grievance. That grievance contained two complaints. The first was a complaint about being 'suspended'. The second was a complaint about the level of the bonus for 2018. The Claimant said in his grievance letter that both decisions were taken because he had made protected disclosures and/or that he had taken parental leave. The Claimant withdrew the allegation that the payment of a bonus of 500,000$ dollars was an unlawful act on 4 April 2021.

469. Mr Nawbatt pressed the Claimant in cross examination about the fact that in his grievance and subsequent correspondence the Claimant has failed to acknowledge the context in which he was given the instructions to remain at home. It is sufficient for us to say that we find that the Claimant had been given an explanation why he was being sent home by Simon Ashley (whether or not he accepted that it was true). He has not acknowledged that explanation in his correspondence.

470. On around 25 March 2019 Simon Ashley responded to the Claimant's grievance letter. His letter started with a reminder that BP's grievance policy provided that a formal grievance should only be brought when any informal attempts to resolve the grievance had failed. He went on to say that the Claimant had not been suspended as suggested in the grievance but had been told that he should not remain in the office with access to commercially sensitive information whilst they had agreed to pursue without prejudice conversations. He then set out an explanation for the bonus being set at 500,000$ including explaining that the profits on the two benches that the Claimant was responsible had declined by 52% in 2018. He offered to give the Claimant further information (he used the phrase 'context') if requested. His letter closed with a suggestion that this might be more appropriate than a formal grievance.

471. The Claimant responded to Simon Ashley's letter of 25 March 2019 on 4 April 2019. He insisted on pursuing his grievance formally. His letter is strongly worded. For example he continued his stance that being asked to work on the MARPOL project was 'busy work'. He suggested that the refusal to acknowledge that he had been suspended was '*semantic nonsense'*. He refused to accept the rationale given for the level of bonus awarded.

472. The Claimant says that Simon Ashley's suggestion that the grievance be dealt with informally was an unlawful act taken because of his disclosures and/or because he had requested and taken parental leave.

<u>The Claimant's first Claim</u>

473. On 18 March 2019 the Claimant issued his first claim. That claim named Jon Mottashed as the First respondent, and Dan wise and BP as the second and third Respondent's respectively. The ET1 expressly limited the complaints made to matters occurring prior to 5 March 2019.

<u>The Claimant's appeal against the dismissal of his first and second grievances.</u>

474. Prior to submitting an appeal against the outcome of his first two grievances the Claimant sought a copy of Emma Locke's investigation report and copies if the interview records made during her investigation. The Claimant was told that BP regarded those as confidential and that he would not receive a copy of them.

475. On 20 March 2019 the Claimant submitted his appeal in a 34-page document. He appealed against almost every single finding. We consider this surprising because, whilst sometimes the reasons were brief, the Claimant was given a full explanation for some of his original complaints. For example, the Claimant was told that the removal of his TPSA responsibilities was not targeted at him but was part of a wider decision that affected a number of traders. Had the Claimant not had such a jaundiced view of the BP

he might very well have accepted this straightforward explanation. The Claimant's grounds of appeal include allegations of bias made against Richard Wheatley and repeat allegations of dishonesty levelled against Dan Wise and Jon Mottashed.

476. The task of hearing the Claimant's appeal was allocated to David Knipe who was, at the time, the Head of international Gas and a member of BP's Executive team. Throughout the proceed he was assisted by Laura Milanovic, an HR Resources lead.

477. When he first read the Claimant's grievance appeal David Knipe annotated it in manuscript. He included a key to the shorthand he had adopted. A marking of D was said to indicate a Data request, a marking of G for a new grievance, a marking of C said to be a point requiring a challenge and a marking of R which was said to be a point that would require to be refuted.

478. When cross examined it was suggested to David Knipe that his use of the term 'Refute' indicated that he had set out to refute the Claimant's grievance appeal before ever meeting the Claimant. David Knipe said that this was not the case. The passages he marked with the letter R were he said about matters which if they had taken place would be serious and surprising. He explained that he would be looking to see whether the evidence refuted the allegation. That is consistent with some annotations where the R is followed by a question mark. In cross-examination David Knipe said that he recognised that it would have been better if he had put a question mark alongside all of the Rs.

479. We note that in many instances where David Knipe has used an 'R' it is against some of the more robust assertions by the Claimant. Statements such as 'the only inference…'. We accept to a point the submissions made on behalf of the Claimant that this shows a lack of rigour. We find that David Knight's starting point was to assume that matters he would regard as extraordinary would probably not have occurred unless he saw clear evidence to the contrary.

480. The allegation made by the Claimant in cross examination and in submissions is that David Knipe from the outset looked for reasons to dismiss the Claimant's grievances. It is said that that was an act of retaliation for having made protected disclosures. In evaluating that suggestion we have regard for the fact that David Knipe was a very senior employee remote from the crude bench.

481. The Claimant was invited to a meeting to discuss his grievance by a letter dated 5 April 2019 sent by Laura Milanovic. That letter sets out a summary of Laura Milanovic's understanding of the grounds of appeal. She invited the Claimant to a meeting to be chaired by David Knipe to take place on 24 April 2019. In her letter she indicated that the Claimant might choose to call witnesses. She told the Claimant of his right to be accompanied at that hearing.

482. The Claimant responded to Laura Milanovic by an e-mail sent on 16 April 2019. He confirmed his attendance at the hearing and the name of a colleague who would accompany him. He suggested that as BP had declined to provide him with the interview notes of the people who had been interviewed as part of his grievance he wanted those people and others to attend so that he could ask them questions. In all the Claimant

proposed that 14 people were made available for questioning. He reserved the right to seek to question other witnesses.

483. On 18 April 2019 Laura Milanovic wrote to the Claimant enclosing a copy of BP's Grievance Procedure. Her letter stated that the grounds of appeal that were permitted were limited. She quoted the following passage of the procedure:

"Your appeal letter should clearly state:-

• the grounds on which you wish to appeal the grievance outcome

• any new evidence or facts that have come to light since the grievance meeting or which you feel have been overlooked with an explanation as to why

• what you think the resolution is.

Simply disagreeing with the outcome of the grievance is not a sufficient ground for appeal."

484. Laura Milanovic's letter identified a number of the Claimant's grounds of appeal as being matters where he simply disagreed with the outcome of the grievance. She indicated which grounds she said fell into that category and which she said did not. She told the Claimant that he would only be permitted to call witnesses that went to any proper ground of appeal. David Knipe says and we accept that he discussed which grounds of appeal he would consider with Laura Milanovic. On 24 April 2019 the Claimant wrote a letter complaining that his grounds of appeal had been impermissibly narrowed. This issue was discussed between the Claimant and David Knipe during the appeal hearing that took place on 24 April 2019. David Knipe agreed to look at the Claimant's complaints that the grievance process had been superficial and inadequate and if necessary carry out further investigations.

485. The Claimant did not seek to challenge the witness statement of Laura Milanovic. He had included an allegation in his second particulars of claim that Laura Milanovic/David Knipe's actions in reducing the scope for calling witnesses and attempting to narrow the grounds of appeal were on the grounds that he had made protected disclosures and/or taken parental leave. He withdrew that claim on 4 April 2021. In her witness statement Laura Milanovic explains why she took the stance she did. We do not think there was anything surprising about limiting a domestic appeal to a review of the original decision. The Claimant was not suggesting that he be able to call witnesses in support of his appeal but that he wanted to cross examine witnesses with whom he had disagreements. Such an appeal would have taken days and we do not think it unfair that this approach was not permitted.

486. Both before and after meeting with the Claimant, David Knipe interviewed Richard Wheatley. He also interviewed Dan Wise, Jon Mottashed and Tina Johansen.

487. On 24 May 2019 David Knipe wrote to the Claimant informing him that he had not upheld any of his grounds of appeal. We shall not attempt to summarise the whole of that letter.

488. We are not directly concerned about whether David Knipe came to the right conclusions. The issue for us is whether he was materially influenced by any protected disclosures made by the Claimant or the fact that the Claimant had taken parental leave. However, we accept that any failure in the investigation and reasoning process might be relevant to those questions.

489. When he gave evidence David Knipe explained that some of his conclusions were supported by his own knowledge of BP's business. Two examples were his knowledge of how bonuses were cross checked and his knowledge of the importance of the Marpol project. In their submissions Mr Rajgopaul and Ms Plews say that this is evidence of David Knipe being a part of *'team BP'* unwilling to believe that there could be any wrongdoing. Whilst this suggestion might not necessarily support the Claimant's case we do not believe it is entirely fair. We consider that there is nothing inherently wrong in David Knipe relying on his knowledge of the systems in place to discount the possibility that the Claimant's bonus was influenced by improper considerations. We do not think that he had to leave his knowledge of the Marpol project to one side when considering whether it was reasonable to expect the Claimant to do this work.

490. David Knipe was criticised for upholding Richard Wheatley's conclusion that the Claimant had not suffered 'Medical, stress and anxiety suffered during the time of the alleged incidents'. The Claimant had added in his letter of appeal a statement that because of the mishandling of the Taleveras incident he had become anxious and extremely unhappy, Being stressed and unhappy is not usually a 'medical' matter. The notes of the meeting that the Claimant had with David Knipe do not record the Claimant saying anything about 'Medical, stress and anxiety'. When cross examined about this David Knipe was not prepared to accept that he had made any error. We do not find that this suggests bias or any significant failure in the investigation. There appears to have been a misunderstanding about the complaint. This was understandable when the Claimant adopted the use of the term 'Medical'. Had the Claimant just said that the situation had made him stressed and unhappy then we doubt whether anybody would have disagreed. Even then he was not so stressed and unhappy as to raise it with anybody formally until some years later.

491. We return to the question of whether David Knipe was influenced in his decisions and actions by improper considerations in our discussions and conclusions below.

<u>The Claimant's fourth Grievance</u>

492. On 4 April 2019 the Claimant sent a letter by e-mail to James Norman of BP's legal department. That letter was the Claimant's fourth grievance. The Claimant complains that he had learned from Morten Joergensen that what we have described above as the North Sea role was being advertised. He says that an announcement was made on 19 February 2019 that David Myers had been appointed to the role. His grievance sets out an assertion that Jon Mottashed was lying when he gave an assurance that he was trying to find a role for the Claimant. He complains that the role was never discussed with him. He says that the actions in not putting him back into the crude team were further detriments because he had made protected disclosures and had taken parental leave.

493. Haydee Vielma the Head of Commodity Risk, International Gas was asked to hear the Claimant's third and fourth grievances. She invited the Claimant to a meeting which was to take place on 16 May 2019. Her letter of invitation inaccurately summarised the Claimant's third grievance as she omits the Claimant's complaint about his 'suspension' by Simon Ashley.

494. In advance of meeting with the Claimant Haydee Vielma started to make notes. She produced a timeline of events leading up to the complaints that she was expected to resolve. The work in completing that timeline demonstrates some care in Haydee Vielma's approach. She made further reasonably detailed notes during the subsequent interviews she attended despite having the assistance of a note taker.

495. The reason for Haydee Vielma not including reference to the 'suspension' was explored at the outset of the meeting on 16 May 2019. Haydee Vielma explained that BP was considering whether the complaint would be considered within the grievance process. She agreed that the Claimant could raise and discuss his suspension and agreed to keep him informed of the position. We find that the reason for not immediately agreeing to hear this aspect of the grievance was a concern about how the without prejudice aspects of the discussion of 7 March 2019 could be separated from the discussion about the reasons for the suspension. In the event Haydee Vielma dealt with the entirety of the grievance having informed the Claimant that she would do so.

496. In the course of the grievance hearing the Claimant was asked about his knowledge of the North Sea role. He said that he had no idea of the grade or ranking of the role but said that it followed that as it was a replacement for Jon Mottashed it could not be an unimportant job. Later on when asked why he ought to have been offered the North Sea Position the Claimant is recorded as saying:

'JZ said that he is the most experienced physical trader on the crude team and that he has global experience. JZ's specific point was not that he should have necessarily been given that role. It was more that there were, in his opinion, many easy avenues to re-instate him back into the bench and the failure to use that headcount to re-instate him shows BP's unwillingness to re-integrate him. The only rationale JZ can see as to why he was not given the role is that it was assumed that the role was too junior for him or that they may have wanted someone more junior in the team. JZ stated that regardless of this, BP had an obligation to try and re-integrate him into the team. He saw it as BP's obligation to at least try.'

497. Haydee Vielma asked the Claimant a series of questions about his bonus. She asked him when he had last personally conducted a trade. The Claimant was unable to recall when that might have been but thought he had done a trade in December 2018. The notes of the meeting show that the Claimant gave a great deal of what he regarded as relevant background.

498. Haydee Vielma then asked the Claimant a number of questions about his meeting with Simon Ashley on 7 March 2019. The Claimant recalled being told that '*they were going to start a negotiation'* he also recalled Simon Ashley saying something about him having access to sensitive material.

499. We have read the notes of the grievance meeting carefully. We find that Haydee Vielma asked a number of searching questions of the Claimant relevant to his grievances. She explored areas likely to shed light on whether there had been improper conduct. There is no sign during that meeting of her approaching the matter in a dismissive or biased way. Much of the background introduced by the Claimant overlapped with the issues he had raised in his first and second grievances.

500. Haydee Vielma proceeded to investigate the Claimant's grievance. She interviewed Jon Mottashed. The notes of that interview show that she sought explanations about how the Claimant came to be without a role and she asked for specific explanations as to why the Claimant had not been considered for the North Sea role. Jon Mottashed responded saying:

> *'There was a specific need for a junior level trader with experience in the North Sea and US markets that needed to be covered quite quickly. The role was a level H box 3 and JZ was a level F box 8 trader. Given the statement JZ made in his email to JM1 about being offered a role of equivalent status, he did not consider offering JZ the North Sea role and recruited someone externally with experience in the North Sea and US market which is what they wanted. JZ does not have that experience.'*

501. Haydee Vielma interviewed Dan Wise on 23 May 2019. Notes were taken of that meeting. In the first part of the meeting Haydee Vielma explored the circumstances that had led to the Claimant being without a role in the crude team. Dan Wise explained that Sylvana Adams role and the North Sea role were junior roles. Oliver Stanford was to move to a more senior role. He said that he had not taken any personal steps to unwind the Management of Change process as he had been told by HR that he should not be involved as the Claimant had brought a grievance naming him.

502. Dan Wise was asked about the rationale for awarding the Claimant a bonus of 500,000$. He said that the Claimant had had responsibility for the Mediterranean Sweet book and the West Africa book. That on return from parental leave he had been requested to focus on the Mediterranean sweet book. That book had its worst ever year and ended up as loss making. The other person working on that book got no bonus at all. Haydee Vielma asked whether the bonus was affected by any 'values or behaviours'. Dan Wise said that there had not been but commented that the Claimant's intensity was not the same after he requested good leaver status. He is recorded as saying that that was probably normal.

503. After he met with Haydee Vielma, Dan Wise sent her an e-mail he had sent Simon Ashley on 2 March 2019 in which he explained the rationale for the bonus awarded. He set out the revenue generated from the Mediterranean Sweet and West Africa books. Those figures show a sharp decline from 2017 to 2018. The combined revenue was around half of the year before. The Claimant set out a comparison with Ann Devlin. On a slightly better overall performance on the books where she had responsibility Ann Devlin was awarded a smaller bonus than the Claimant.

504. Haydee Vielma asked Dan Wise for further information seeking information about the bonus given to Oliver Stanford. Dan wise responded suggesting that HR would be able to provide details of Oliver Stanford's bonuses since he joined.

505. Haydee Vielma made enquiries by e-mail of Simon Ashley directed at the issue of whether the Claimant had been 'suspended'. Simon Asley said that the Claimant had not been suspended but had been asked to remain out of the office for compliance and regulatory reasons whilst the parties worked towards reaching an agreement. Haydee Vielma then read the disciplinary policy to get an understanding of when an employee might be suspended.

506. Haydee Vielma decided to speak to Oliver Stanford. Oliver Stanford said that he had been initially concerned that in October 2018 the Claimant was once again working alongside him on the West Africa book (having been concentrating on the Mediterranean Sweet book). He felt that he had been given responsibility for this and did not want to relinquish this. He went on to say that the Claimant had allocated him the greater share of the accounts. He says that the Claimant had explained that by saying that he was going to leave and would be spending time with HR discussing his retirement package. He says that after about a month the claimant was 'not bothering'. He was coming in to work later than he had. He says that from January the Claimant was coming in at 10am, would read a book or go to the gym and leave around 3pm. Oliver Stanford robustly stated that he deserved his position as the lead on the West Africa book. He stated that he had worked hard. He was concerned at the suggestion of the Claimant returning to the West Africa bench he said*: 'you can't have someone who doesn't care about the job in our environment it's intense and you give away money. I was seen as an equal on the book. The role of the lead voice is to push the risk of the book'*. He gave an example where he felt that in October 2018 the Claimant had made an error causing a significant loss.

507. Having tried and failed to arrange an early meeting with the Claimant to deliver her decisions at a face to face meeting Haydee Vielma decided to give the Claimant the outcome of his grievance in writing. She sent a letter setting out her conclusions by post on 8 July 2019. In advance of delivering the outcome Haydee Vielma agreed to extend the usual 10 working days for an appeal to accommodate the Claimant's second period of parental leave.

508. In her letter Haydee Vielma informed the Claimant that she did not uphold any of his grievances. The Claimant says that that was because he had made protected disclosures and/or taken parental leave. We return to that below.

509. The Claimant presented his second claim to the Tribunal on 4 July 2019 prior to receiving the outcome to his grievances. In his second claim the Claimant alleged that the delay in providing him with an outcome to his third and fourth Grievances was an unlawful act because of his disclosures/parental leave. We fail to understand how the Claimant could have reasonably believed that there was undue delay in dealing with these grievances. The Claimant was told on 3 July 2019 that Haidee Vielma had completed her work and was attempting to arrange a meeting. After some difficulty arranging a date convenient to the parties (including the person the Claimant had asked to accompany him) the Claimant wrote on 4 July 2019 in these terms:

> *Given that our schedules conflict and that, having thought about it a bit, I would really prefer to be accompanied, perhaps it would be better for us to meet once we have both had our summer breaks. Would that be ok?*

510. There is a stark inconsistency between the Claimant's stance in his e-mail and the fact that on the same day he brought a claim complaining of unreasonable delay and alleging that the reason for the delay was unlawful. The Claimant withdrew that claim on 4 April 2021.

Sam Skerry and Janine Knights' involvement with finding a role for the Claimant

511. Simon Ashley asked Sam Skerry and Janine Knights to assist the Claimant in finding a role within BP. Janine Knights corresponded with the Claimant in early May 2019 and organised a meeting to take place on 20 May 2019.

512. Before dealing with the issue of the efforts to secure a role for the Claimant we shall set out our findings in respect of the amount of knowledge that Sam Skerry had of the Claimant's first grievance. Mr Rajgopaul and Ms Plews invited us in their written submissions to find that Sam Skerry was aware of the content of the grievance and that her attempts to distance herself from that supported the Claimant's case that she had retaliated against him because of protected disclosures.

513. When the Claimant met with Richard Wheatley on 22 October 2018 he asked whether Dan Wise and Sam Skerry were aware of his grievances. He was told that they were not but that they would be soon. The Claimant's reliance on that presupposed that a person told that there was a grievance would also be told of the subject matter. In her witness statement Sam Skerry said that she had become aware of the existence of the grievance in December 2018 but that she had no idea what it related to or its content.

514. It is common ground that at the meeting between the Claimant and Sam Skerry on 12 February 2019 the Claimant offered to show Sam Skerry his grievance but she said that she was aware of the grievance but was not familiar with the details of it. The Claimant does not believe that to be true.

515. In his e-mail asking for the meeting with Sam Skerry the Claimant includes the sentence *'I believe that I am being deliberately excluded in retaliation for having blown the whistle on a proposed bribe, for having taken parental leave, and for having filed a grievance'.*

516. On 28 May 2019 the Claimant sent Val Nefyodova an e-mail which was copied in to Sam Skerry. In that e-mail the Claimant sets out a number of complaints about his treatment. He made the following reference to the disclosures he made: *'Among other detriments (including halving my bonus and freezing me out) Dan Wise pressured me to leave BP after I twice blew the whistle on internal wrongdoing and exercised my statutory right to take parental leave'*

517. The Claimant says against that background Sam Skerry's suggestion that she only learned of the detail of his grievances in January is untrue. He draws support for that from the fact that Sam Skerry was made aware of the decision of the Claimant to withdraw his good leaver status and that she had discussions with Dan Wise and Jon Mottashed about this. He says that in the witness box Sam Skerry had to backtrack on what she initially said she knew having failed to acknowledge initially that the e-mail sent by the Claimant on 28 May 2019 included matters raised in his grievances.

518. We have had regard to all of the arguments put forward by the Claimant. We accept that Sam Skerry knew of the existence of the grievance and knew who the grievances were levelled against. She does not say otherwise. The e-mails we have referred to above do give an outline of what the grievance might have been about but do not give the detail included in the Claimant's 27 page grievance (excluding the appendices). We do not find that Sam Skerry's statement that she did not become aware of the detail of the Claimant's grievance until January 2020 is false or even misleading.

519. The Claimant withdrew his claims against Sam Skerry brought under Section 47B(1)(A) of the Employment Rights Act 1996. He did not withdraw his complaints against BP in respect of the allegations he made against her.

520. In his second claim the Claimant has complained that he was subjected to a detriment because the Respondents 'Not creating a role for or taking any (or any adequate) steps to find a role for C during the period from 13 February 2019 to 4 July 2019 (alternatively any part of that period)'. In the closing submissions of the Respondents it is suggested that those criticisms were completely undermined by the agreed chronology and by concessions made by the Claimant during his evidence.

521. In terms of the chronology during this period:

521.1. The Claimant did approach Sam Skerry on 12 February 2019 and in that meeting did ask for assistance finding a role as a trader. He asked her to pass that information on to Simon Ashley along with an indication that he was open to a without prejudice conversation.

521.2. The Claimant was on annual leave between 14 February and 6 March 2019.

521.3. Without prejudice discussions occurred on 7 March 2019 and continued through to 28 March 2019.

521.4. The Claimant was on annual leave from 5 April to 19 April 2019.

521.5. On 7 May 2019 Janine Knights wrote to the claimant in part informing him that she would schedule a hearing for his third and fourth grievances but also inviting him to attend a meeting with her and Sam Skerry to discuss finding him a role. The Claimant could not attend on that date and also asked that his wish to be accompanied by a colleague be accommodated. The meeting was re-scheduled for 20 May 2019.

522. On 20 May 2019 the Claimant was told in terms by Sam Skerry that a role would not be 'created' for him and that he was not going to be reinstated into his old role. He was told that he would need to apply for any role that was vacant. During the meeting the Claimant was provided with a list of all vacancies shown on the BP's Talent Acquisition System ('TAS'). He was told that he would be supported in any application that he made.

523. On 21 May 2019 Val Nefyodova sent an e-mail to the Claimant in order to check that he had access to the TAS system. The Claimant responded on 28 May stating his view that it was 'absurd' to shift the onus onto him to find a role with BP. The Claimant then

sent a further e-mail to Sam Skerry and others on 29 May 2019 stating that he would look at internal roles but expected BP to actively consider those roles and support him.

524. Janine Knight responded to the Claimant on 18 June 2019. She informed him that many of the issues he was raising were being dealt with in the grievance process. She suggested a follow up discussion about the job search. Janine Knights wrote to the Claimant on 25 June 2019 informing him that there were changes being made to the Crude bench and offering to discuss those with the Claimant but saying that they were not expected to generate a vacancy. The Claimant did not respond to those e-mails.

525. Janine Knights wrote to the Claimant again sending him an e-mail and a list of possible suitable vacancies on 11 July 2019. Again there was no response to that e-mail.

526. The Claimant took his parental leave between 15 July and 24 August 2019.

527. When he was cross examined the Claimant accepted that he had ceased to engage with Janine knights and Sam Skerry during this period. He accepted that in this period that Janine Knights was attempting in good faith to provide him with details of all existing vacancies. He explained his lack of engagement by very frankly accepting that *'I was still very emotional and being a bit stubborn and a bit proud at this point, and really I needed to swallow my pride.'*

528. The Claimant accepted that on his return from parental leave he took no steps to respond to the e-mails that he had been sent.

529. We find that the Sam Skerry and Janine Knights both took steps in good faith to attempt to assist the Claimant to find another role. In this early period the Claimant did not engage in any meaningful way. His stance remained essentially that it was for BP to find him a role.

Changes in the Crude team

530. In late March 2019 Jon Mottashed was discussing with Val Nefyodova the possibility of advertising an on bench originator role. An individual, Harry Chandler, was in that role but had completed a trader course and was going to vacate the role. Jon Mottashed discussed this with Dan Wise in a Yahoo chat on 19 March 2019. Jon Mottashed said that 'Val' was good with the role being advertised as 'we stay balanced headcount to year end'. He then said: '*This role is effectively Harry's headcount and that way not affected by JZ situation'*. Both Jon Mottashed and Dan Wise told us that the role that was being discussed was a Grade H level 1 role significantly more junior than the role that the Claimant had undertaken. We accept that evidence.

531. It was put to both Dan Wise and Jon Mottashed that the *'JZ situation'* referred to was the fact that the Claimant had brought his first three grievances by then. Neither of them accepted that was the case. Jon Mottashed suggested that his comment may have referred to the fact that he knew he was expected to be looking for a role for the Claimant. For ourselves we consider that the reference related to headcount. The Claimant was still shown on the headcount of the crude team at this time. Headcount was a matter that was kept under review at all times by BP. In any event we do not accept that the

discussion between Dan Wise and Jon Mottashed shows that they were making changes in the Crude team to thwart the Claimant's return. The role that had fallen vacant was a role far below that undertaken by the Claimant. It was not a role anybody would have ever believed was a suitable role for him.

532. The Claimant suggests that there was a further expansion of the Crude team because Harry Chandler became a trader. He suggests that this change further thwarted his return. As indicated above Harry Chandler was a junior employee who had just completed his traders course. He was expected to take up a junior position in the USA but had remained in London whilst he got married in order that his wife could accompany him on his work visa. In the meantime he did some work on the West Africa bench. The Claimant had inferred from Harry Chandler's linked in profile that he was a full trader doing a role that he might have done. We do not agree. We accept the evidence of Jon Mottashed and Dan Wise that the position Harry Chandler occupied on the West Africa bench was very junior and temporary in nature. It had no bearing on the question of whether there was a role for the Claimant.

533. The changes to the crude team that Janine Knights referred to in her e-mail of 25 June 2019 arose because Oliver Stanford had been recruited to cover a role in Chicago and would be leaving the London team. Jon Mottashed explained in his witness statement that he asked Matt Hague who was a more junior trader than the Claimant and who had previously been a 'Sour' trader to work alongside Sylvana Adams on the West Africa book. He says that to cover the vacancy left by moving Matt Hague he relied upon a 'trader graduate' Frankie Lane. He finally says that he had the capacity to cover any shortfall in experience.

534. In cross examination Jon Mottashed accepted that the fact that a vacancy arose in Chicago presented a possibility of a trading role that the Claimant might have been suitable for.

535. In 2019 Jon Mottashed took up a suggestion from Janine Knights that he use a counselling service offered by BP. He says, and we accept, that his counsellor believed that the behaviour of the Claimant was the driver of his symptoms. By Mid 2019 Jon Mottashed had decided to apply for Good Leaver status. Dan Wise and Sam Skerry sought to dissuade Jon Mottashed from leaving and proposed an alternative whereby he would take a 1 year sabbatical in 2020 with an option to take good leaver status if he felt unable to return to work. Jon Mottashed agreed to that proposal.

536. On 31 July 2019 Jon Mottashed and Dan Wise exchanged text messages on the internal chat system. Those text messages include the following exchange:

Jon: had a slightly out of the box idea on job cover for me

Dan: Interesting

Jon: May be a complete non starter

Dan: if it is jz

Dan: dont do that to me

Jon: One for our next chat

Jon: :)

Jon: No rush … let's chat later

Jon: Though see some merits to this idea that make it worth at least thinking about

537. Dan wise was cross examined about the fact that the Claimant was not told about or offered the right to apply for the post in Chicago which Oliver Stanford was given. He said that the role had been offered to Oliver Stanford because he was a 'book leader of the future'. When pressed he accepted that the Claimant was qualified for the job. The bonus Oliver Stanford had received was a seven figure sum. He accepted that the Claimant had the right to work in the USA. When pressed on why he had not discussed the role with the Claimant he said that he felt that there had been breakdown in trust between himself and the Claimant and it would have been difficult for him to work with the Claimant reporting to him.

538. In his witness statement Jon Mottashed had said that the arrangements made when Oliver Stanford was due to go to America were a progression of the Management of Change process. There was nothing in his statement to suggest that he felt uncomfortable with the idea of the Claimant working in the crude team. During cross examination Jon Mottashed accepted that, following on from the Claimant's fourth grievance, there came a point where he was reluctant to work with the Claimant. He said that he thought that he was placed in an impossible position. If he had offered the Claimant the junior North Sea role the Claimant would have complained, When he didn't the Claimant complained. Jon Mottashed said that it is likely that he spoke to the people then dealing with the Claimant to communicate that. That would have been Sam Skerry and/or Janine Knights.

539. We think that Mr Rajgopaul and Ms Plews are correct when they suggest in their written submissions that these concessions had to be extracted rather than being volunteered. They were at the least a significant change in position. The failure to volunteer that the damage to the working relationships had an impact on the possibility of the Claimant being reintegrated into the Crude team is a matter which damages the credibility of these two witnesses and is a matter that we have taken into account in our other findings. We also consider it probable that the sentiments of Dan Wise and Jon Mottashed were known to Sam Skerry.

540. We shall return to the vacancy created by Jon Mottashed's sabbatical and other changes below.

<u>Appeal against the third and fourth grievance outcome.</u>

541. The Claimant appealed against Haydee Vielma's decision not to uphold his third and fourth grievances. He set out his grounds of appeal in a letter dated 30 August 2019. His letter runs to 28 pages. He appeals against all the decisions taken by Haydee Vielma. His letter opens with a complaint that Haydee Vielma had refused to provide details of all the interviews she had conducted and the underlying documentation. The Claimant alleged that this was a further unlawful act of detriment on the grounds he had made

protected disclosures. The Claimant then went on to address the substantive findings of Haydee Vielma. The Claimant says that this letter amounts to a further protected disclosure save that he no longer challenges Haydee Vielma's conclusions in respect of the 2018 bonus.

542. In his letter the Claimant refers to the fact that he had just been contacted by Sam Skerry (see below). As we set out below she had warned him that there was a risk that his employment might be terminated. The Claimant said in his appeal letter:

> *'I am driven to the conclusion that BP has made such lacklustre efforts to reintegrate me or to find me an alternative role – amounting really to no meaningful effort at all – because it does not wish me ever to return to the office or to continue in its employment*.'

543. The Claimant conceded in his oral evidence that he had made no efforts to engage with Sam Skerry and Janine Knights up to this point. In the light of that his statement the suggestion that the efforts to find him an alternative role were more robust than was justified. The Claimant maintained his stance that the Marpol project was *'inconsequential busy work'*,

544. David Speed was the person asked to decide on the Claimant's grievance appeal. He was at the time an IT Director but is now the Senior Principal Portfolio Manager for Refined Products and Trading.

545. The Claimant had been granted an extension of time to bring his appeal which caused some delay. Further delay was caused because David Speed was highly committed and it took him some time to read all of the documents considered by Haydee Vielma and those sent to him by the Claimant. The grievance appeal hearing did not take place until 30 October 2019. This was in our view a significant delay which could have been avoided had BP found a manager with fewer commitments. That said we are satisfied that the reasons for the delay given by David Speed are his only reasons.

546. In advance of the hearing David Speed wrote to the Claimant setting out his proposed approach to the appeal. He indicated that he would not deal with matters that had been the subject of the claimant's first and Second grievance and the appeal. He stated that he would not deal with matters where there was mere disagreement as to the outcome. In response to the Claimant's complaint that he had not seen the evidence gathered by Haydee Vielma, David Speed told the Claimant that, as he was already engaged in Employment Tribunal proceedings he would seek advice as to whether BP would depart from its usual policy of keeping interviews with witnesses confidential as an 'early voluntary disclosure'. He indicated that he would provide information requested by the Claimant relating to his arrival and departure times. He further outlined additional information he would seek to obtain relating to the suspension and bonus issues. He asked the Claimant to indicate what resolution he was seeking.

547. We shall say that both the Claimant's grievance letter and David Speed's response were legalistic in tone. We have little doubt that lawyers had drafted or approved both letters. We are neither critical or surprised by this. At this stage the parties were litigating in the Tribunal. Both parties would have been aware that in due course their

correspondence might be read by a tribunal. David Speed did not follow up with his suggestion that the documents generated by Haydee Vielma's investigation would be disclosed.

548. Whilst David Speed's letter was almost certainly vetted in the way we have suggested we are satisfied that he approved the contents. He told us, and we accept, that he took two days to sit down and read all of the documents and familiarise himself with the issues. We consider that his approach to disclosing information and the fact that he identifies additional information that he might need demonstrates an even handed approach to the grievance.

549. The Claimant responded on 28 October 2019. He indicated that the resolution he sought was to be reintegrated back into the crude team, for BP to stop *'unlawful and unethical'* activities in Nigeria and he wanted compensation for loss of income and bonuses. The Claimant took issue with both the scope of the appeal and the disclosure that had been offered.

550. At the outset of the hearing on 30 October 2019 the Claimant read a statement said to provide 'background' to the appeal hearing. The Claimant described the two month delay in convening the hearing as *'ridiculous'*. It is sufficient for us to say that in the course of the hearing David Speed asked the Claimant about each of the matters raised in his grievance. Amongst the matters raised by the Claimant was the fact that he had learned that his activities were monitored in late 2018/early 2019. He identified the reason as him being viewed as a 'flight risk'. When the Claimant was sent notes of the hearing he responded with numerous proposed amendments. He then sent David Speed a number of documents including correspondence between him, Janine Knights and Sam Skerry relating to the efforts to secure an alternative role.

551. David Speed then sent e-mails to:

551.1. Jeremy Tolhurst asking questions related to the Claimant being monitored and his work on the Marpol project; and

551.2. Haydee Vielma providing a summary and asking for details of her investigations and seeking further explanations for her conclusions; and

551.3. Sam Skerry asking for her comments upon the Claimant's suggestion that the search for alternative roles was not being properly conducted because of protected disclosures and about her assertion that the Claimant's good leaver application had been accepted; and

551.4. Jane Knights asking about the 'suspension' meeting and the efforts to secure an alternative role; and

551.5. Dan Wise asking about the Claimant's return from parental leave and his knowledge of the Claimant withdrawing his good leaver status; and

551.6. Jon Mottashed asking about the same issues.

552. We find that David Speed's questions of all of these individuals was at least reasonably thorough and asked about matters relevant to the discussions he had had with the Claimant.

553. When Dan Wise responded to the question about when he learned of the date the Claimant had withdrawn his good leaver application Dan Wise said that it was on 29 November 2018. In fact as we have found above he had been told of this earlier.

554. On 18 December 2019 David Speed sent the Claimant an e-mail detailing the outcome to his investigations. David Speed did not uphold any of the grievances. Before he had completed his grievance outcome David Speed had read the outcome of the Business Integrity Investigation . That report had concluded that there had been no wrongdoing in relation to the matters raised by the Claimant. David Speed accepted that conclusion.

555. Mr Rajgopaul and Ms Plews point out in their submissions a number of matters both in approach and in the reasoning of David Speed which they say support the case that David Speed was materially influenced by protected disclosures. We shall not deal with all of their points but have read their submissions carefully.

556. David Speed was challenged on his approach to the appeal dealing with all questions in writing. The point that was made was that his role was not only to establish what might have happened but also to explore whether what had occurred had been influenced by protected disclosures. We accept that David Speed's emphasis was very much on trying to find out what had occurred rather than asking whether protected disclosures might have played a part in what happened. We would say that he did ask questions about why things happened.

557. We bear in mind that David Speed was conducting an appeal. His role was to look at the original decision and review it. We do not see that there is anything inherently wrong with asking written questions. We accept that there could have been a greater focus on the effect of the protected disclosures.

558. David Speed accepted that in his outcome letter he failed to deal with two points that had been raised by the Claimant. The first was the issue of why the instruction that he remain out of the office had been maintained even after the direct without prejudice discussions had ended. The second was that he did not provide any outcome to the Claimant's complaint that he was being monitored. He accepted that he had not dealt with these points when he was cross examined (and asked about this by the tribunal). In relation to that second point David Speed had asked Jeremy Tolhurst about this. The response he got would have provided an answer to the allegation. David Speed said that these two matters had been overlooked. We weigh up that explanation when looking at the reasons for the treatment.

559. We would accept that David Speed was perhaps over generous in his treatment of Haidee Vielma's approach. In particular David Speed adopted the rather literal approach to the question about whether the Claimant had been suspended. He agreed in his oral evidence that there was a de-facto suspension. We accept that there was no suspension pursuant to the disciplinary policy but we would agree with the Claimant that the refusal to acknowledge the effect of being sent home without work was very defensive.

560. When we step back and look at what David Speed did we are not left with the impression that he set out to find against the Claimant or approached the appeal unfairly. We accept that David Speed took a great deal of time investigating the Claimant's grounds of appeal. He appears to have asked reasonably searching and relevant questions of the people involved. His approach did fall short of the standards of a judicial enquiry but many of the conclusions he reached were firmly based on what he had been told and were reasonably open to him. His outcome letter is lengthy and generally well-reasoned. He did however make a number of errors the most significant of which we have described above. We return to whether the disclosures played a part in any failings below.

The Business Integrity Investigation

561. We have referred at various points to what was said by people interviewed during the Business Integrity Investigation. We heard from Brad Berwick the Supervising Senior Investigation Manager who was in charge of that investigation. The Claimant was not given a copy of the investigation outcome until it was disclosed in the present proceedings. Whilst we have been assisted in reaching some of our conclusions from material we have gathered in that report there is no claim that the process or outcome of that report was unlawful.

562. We have commented below that it may have been better for the investigation into whether the Claimant had raised genuine concerns about Taleveras and the NNPC transactions to have been dealt with alongside the investigation into his grievances. We would also say that in our view taking over 12 months to conclude the report was slow going even given the nature of the allegations that were investigated. We would accept that there was a far reaching investigation and that a large number of people were interviewed.

563. The conclusions reached in that report were that there had been no improper behaviour in respect of the Taleveras incident, the NNPC deals or towards the Claimant from his managers.

Sam Skerry and Janine Knights further involvement in identifying a role for the Claimant.

564. On 30 August 2019 Sam Skerry e-mailed the Claimant asking him whether he would wish to attend a further meeting to discuss alternative roles. By this stage she had decided that if no alternative role could be identified then the Claimant might be dismissed. Indeed that had been recognised by Simon Ashley at the time of his meeting with the Claimant on 7 March 2019. It is clear from the surrounding correspondence that Sam Skerry's e-mail was written with the assistance of the HR and legal teams. The reason that Sam Skerry gave for the possible termination of the Claimant's contract was as follows:

> *'… your employment is at risk of being brought to an end with notice on the ground of some other substantial reason. This is because you applied for Good Leaver status, but then changed your mind about pursuing this route after a significant period of time had passed and after the request had been accepted. Given that your role by the time no longer existed, there having been a management of*

change process fully supported by you, you were given temporary work on the MARPOL project, which I understand you objected to.

You have been on paid leave since 7th March and the process of identifying suitable employment has been on-going.'

565. On 5 September 2019 the parties to the first claim attended a judicial mediation. That mediation did not resolve the dispute.

566. The Claimant responded to Sam Skerry's invitation to meet by an initial e-mail sent on 5 September 2019. In that email he asked for job descriptions and details of three roles, a Power Trader role, a Bio Feedstock role and a Strategy Manager. He asked for details of the proposed remuneration and details of any training or support he might be given. In his e-mail he also sought IT assistance as he had no access to BP's intranet and therefore no access to the TAS system. The Claimant had been specifically directed in May as to how to use that system. September was the first time that he indicated that he had not been able to access the TAS. This is consistent with his concession that he was not engaging in the process before September 2019.

567. E-mail communications between Val Nefyodova, Janine Knights show that they together with Sam Skerry are looking for potential roles to discuss with the Claimant at the forthcoming meeting. Sam Skerry had identified an additional role that she thought the Claimant might be interested in. Janine Knights arranged for IT to contact the Claimant about his access to TAS. She requested a copy of his CV so she could assist him with this. On 11 September 2019 the Claimant sent Janine a copy of his CV under a covering letter. In his letter he raised a concern about how he should describe his role from March 2019.

568. The meeting that took place between the Claimant, San Skerry and Janine Knights was cordial and constructive. This was in stark contrast to the meeting in May which had been difficult. The Claimant expressed an interest in the three roles he had referred to in his earlier e-mail. The Claimant raised the question of how he would describe his current role and Sam Skerry told him that he should say that he was a crude trader. The Claimant asked whether he was being instructed to lie. Sam Skerry told him that that was not the case that was his most recent role. We see no difficulty with this and consider that the Claimant was seeing, or building, obstacles where there were none. The Power Trader role was discussed. During the meeting Janine Knights indicated that previous power experience might be necessary. The Claimant indicated that that was not clear from the job description. Janine knights said that she would raise that with the hiring manager. The meeting ended with an agreement that there would be steps taken to identify the relevant hiring managers for the roles that the Claimant had indicated that he was interested in and that he would be given support to access the TAS system.

569. On 16 September 2019 the Claimant sent an e-mail that started by acknowledging that the meeting had been conducted in a courteous and constructive spirit. The Claimant then raised the fact that he had not been told of the changes to the crude team that were in progress pending Oliver Stanford's departure to the USA. He asked that these be discussed with him. In the rest of his letter the Claimant continues to raise concerns about how he should present the period since March in his CV and at any interview.

570. On 17 September 2019 the Claimant sent a further e-mail. That e-mail is polite but it is a far stronger tone than the e-mail sent the day before. The Claimant was responding to the suggestion that his employment might be ended for 'some other substantial reason' or at all. He says that if it were it would be a further detriment for his disclosures or the fact that he took parental leave. He fairly points out that Sam Skerry was wrong to say that his good leaver application had been accepted. It had never been expressly accepted although the Claimant and his managers had proceeded on the basis that it would be. One criticism that he does make is that he says that he was concerned about a lack of engagement by BP in finding him a role. There is no acknowledgement by the Claimant of his own lack of engagement. In his cross examination the Claimant accepted that his approach "was very aggressive and unnecessary given what they had been doing".

571. Also on 17 September 2019 Janine Knights contacted Mark Flowerdew who was at the time the Head of European Power trading who in turn reported to Jason Tate. The communications on that day were by text message. We were invited by the Respondents to have regard to the fact that during a text message exchange commonly both parties might be typing at the same time. What appears from the exchange is that Janine Knights asked generically whether an oil trader might be suitable for the power trade role. Mark Flowerdew responded saying that might be 'tricky' because right then he was looking for a power trader with southern Mediterranean experience. He indicated a willingness to have a chat despite this. Janine Knight asked whether it was OK to put the Claimant (who she did not identify) in contact and Mark Flowerdew agreed. Janine Knight asked 'just to clarify are you ideally looking for power experience/expertise?'. Mark Flowerdew responded saying yes '*for one role'*. Towards the end of the exchange texts are clearly crossing in the manner suggested by the Respondents. The last few exchanges were as follows:

Knights, Janine 09:49: ·

so the one we advertised .... does that need Power exp?

Flowerdew, Marie 09:49:

otherwise strictly i dont have a job to offer

Flowerdew, Marie 09:49:

so no need to see someone

Flowerdew, Mark 09:50:

Power experience is always preferable

Flowerdew, Marie 09:50:

but by no means essential

572. On 20 September the Claimant sent a further e-mail to Janine Knights. In this e-mail he told her that despite assistance he was still having IT issues. He asked whether Janine Knights had managed to speak to any of the hiring managers and in particular

whether she had asked Mark Flowerdew whether power trading experience was necessary for the Power Trader role.

573. The Claimant had been issued with a pass that permitted access to BP's offices in Canada Square. That pass had not been deactivated deliberately but had after 30 days without being used been deactivated automatically. In his e-mail of 20 September 2019 the Claimant asked if his pass had been reactivated.

574. At a point prior to 24 September 2019 Janine Knights spoke with Sam Norman, then the Global Commodity Lead for Gas, Oil and Fuel Oil and the hiring manager for the Bio Feedstock Trader role who had told her that Feedstock experience was essential. When Sam Norman gave evidence he was asked whether he accepted that it was possible for a trader to change fields. He agreed to the general proposition but explained that the person he was seeking to recruit would have to have specialist knowledge of animal fats and contacts in the meat processing industry to be effective. Nobody in BP had that skillset or contacts. We accept his evidence and find that the Claimant would not have been a viable candidate for this role.

575. On 24 September 2019 Janine Knights sent a long e-mail to the Claimant responding to his e-mails of 11, 16 and 20 September 2019. Janine Knights spent some time in her e-mail setting out BP's case in response to assertions that the Claimant had made about his treatment. She took issue with the suggestion made by the Claimant that he had not been consulted about changes on the crude bench pointing out that she had offered to speak to the Claimant in June. She dealt with the Claimant's concerns about how he would present his activities since March 2019. She said that the advice that she and Sam Skerry had given was that the Claimant's CV should not go into any detail. She said that whether the Claimant followed that advice was a matter for him. She suggested that the Claimant should avoid contentious areas such as whether he had been demoted of penalised for making protected disclosures. She suggested that, if the Claimant wished, he could just explain that he had applied for Good Leaver status, changed his mind and in the meantime had been displaced by the Management of Change process.

576. We consider it surprising that the Claimant sent a number of e-mails where he appears to be suggesting that it was necessary for him to draw attention to the dispute he was having with BP to the attention of hiring managers. It would have been obvious to him that that would not enhance his prospects. The approach taken by Sam Skerry and Janine Knights which was to be honest but neutral is clearly sensible and in the Claimant's interests.

577. We find that from as early as January 2018 the correspondence from both sides was generally carefully written with a recognition that it was likely to be read by third parties in the course of proceedings. The correspondence has all the hallmarks of being written by lawyers. Whilst we understand that parties in litigation will frequently adopt the adversarial stance of repeating their position in correspondence, such correspondence was in our view likely to corrode rather than rebuild the working relationship.

578. In her e-mail of 20 September Janine Knights told the Claimant that she had spoken to Mark Flowerdew about the experience necessary for the Power Trader role and had been told that *'south med power experience is essential'*. She said that she had also spoken to San Norman and that he had said that previous feedstock experience was

essential. She told him that another role that had been discussed, the CEF Trading role was now under offer. She asked the Claimant whether he wished to progress two other roles that had been discussed. She sent the Claimant details of a further role a Supply Strategy Manager position. In response to the Claimant's enquiries about speaking to colleagues and accessing the building she said:

> *'Finally, and on a general note, I am happy to liaise with the relevant colleagues in any team you are proposing to join to enable you to learn more about the role at the appropriate time. You are of course free to access the relevant locations as you see fit for the purpose of your job search. Currently your pass has been automatically deactivated given the time you have been out of the office. As and when you have meetings with hiring managers organised, please let me know and we can have your pass reactivated.'*

579. The Claimant responded to Janine Knights e-mail on 26 September 2019. In that e-mail he acknowledged that Janine Knights had offered to discuss changes on the Crude Bench with him in her e-mail of 25 June 2019. He went on to say that he was not interested in the Strategy Manager role as the pay would be 5 – 10 % of what he had previously enjoyed. He ruled out applying for a Supply Strategy Manager role for the same reasons. He asked to be given more time to find a trading role. He asked that 'before he gave up' on the Power Trading and Bio Feedstock role he be given an opportunity to speak with Mark Flowerdew and Sam Norman.

580. The Claimant chased for a response to his e-mail on 4 October 2019. Janine Knights accepted that she had not responded as promptly as she might have done. The Claimant copied Janine Knights into a further e-mail sent to Sam Skerry on 14 September 2019. He reiterated his request to speak to Mark Flowerdew and to Sam Norman. This did prompt Janine Knights to take some action. She sent an e-mail to Jas Flora, the Talent Acquisition Specialist responsible for recruiting into both of these roles in the following terms:

> *'Hi Jas - need to provide an update Tom as to the status of the-above - when _I last discussed with mark f and Sam Norman both confirmed south Med power and bio exp (respectively) was essential. JZ would still like the opportunity to discuss the roles .... before i conform, pls let me know status ASAP Thanks !'*

581. Jas Flora responded the following day She told Janine Knights that for the Power Trader role specific southern power trading experience was required and that they had been *'very selective on candidates'*. She confirmed that experience was required for the Bio Feedstock role and that they wanted a person with the requisite skill set as they did not want to train or develop an individual.

582. On 17 October 2019 Janine Knights told the Claimant that specific southern power experience was required for the Power Trader role. In her e-mail she did not expressly deal with the Claimant's request to talk to the hiring managers. On 22 October 2019 the Claimant responded by e-mail saying that:

> *'It is absurd and entirely unfair that BP will not allow me to have a conversation with the hiring managers for the Power trader and Biofeedstock trader roles. I consider this to be a deliberate attempt to prevent me from finding a trading role. This is a*

further detriment to which I am being subjected because I blew the whistle and exercised my statutory right to take parental leave.'

583. In his e-mail the Claimant said that he had not ruled out a non trading role and asked for all suitable vacancies to be sent to him. Janine Knights responded with a holding e-mail on 30 October 2019 and with a substantive response on 5 November 2019 in which she agreed to make arrangements for the Claimant to meet with the hiring managers. She had taken a period of annual leave in the interim.

584. The Claimant telephoned Mark Flowerdew on 8 November 2019. In this telephone call Mark Flowerdew told the Claimant that he would consider a person without Power experience. He said in his witness statement that he had already interviewed a number of candidates. He said that Jason Tate had a strong preference for a Spanish Trader. Mark Flowerdew disagreed. In his oral evidence Mark Flowerdew said that there had been evolving discussions about what was required of the role and therefore of the person who might be appointed. The Claimant took an attendance note of that call. It was not disputed that that note was accurate. We find that the purpose of the note was that the Claimant wished to evidence his belief that Janine Knights had lied to him.

585. The Claimant sent Mark Flowerdew a copy of his CV on 11 November 2019 and they met to discuss the Power Trader position on 29 November 2019. The meeting was informal over a coffee. Mark Flowerdew told the Claimant that the role that was required was the subject of ongoing discussions and was evolving. He told the Claimant that he could see that it was possible that the Claimant would be suitable for the role. The Claimant says that he asked Mark Flowerdew if he had spoken to Janine Knights. He says Mark Flowerdew said he had told her that it was possible but not easy to recruit somebody without power experience. The Claimant later made a note of that meeting. Again we find he did so because he believed Janine Knights had lied to him and he wanted to gather and preserve evidence to that effect.

586. On 6 December 2019 the Claimant sent Mark Flowerdew an e-mail stating that he was interested in the position. He did not formally apply through the TAS system which he could have done had he wished to. Mark Flowerdew did not reply to the Claimant. In his witness statement Mark Flowerdew said that his immediate reaction was to think 'this stinks'. He thought that the e-mail had just been written to say an e-mail had been sent. He went on to say that he *'thought this was now a legal matter rather than somebody genuinely looking for a job'*. The Claimant sent 2 follow up e-mails but Mark Flowerdew did not respond but instead forwarded them to Jas Flora. It was suggested to Mark Flowerdew in cross examination that he had been told that the Claimant was causing trouble for BP by raising grievances and bringing claims as a whistleblower – he denied any knowledge of those matters. Mark Flowerdew said that in his experience a long e-mail like the Claimant's was highly unusual. He said that all the Claimant needed to say was that he was interested in the role and make an application.

587. We find that Mark Flowerdew's reaction to the Claimant's e-mail was for the exact reasons he set out in his witness statement. He thought that the e-mail was written for tactical purposes in a legal battle and he did not want to be dragged in to any dispute. Mark Flowerdew was happy to meet with the Claimant on 29 November 2019 at least held out the possibility that the Claimant might be considered for the role. If he had been warned off he had a perfectly good excuse to give the Claimant as he could reasonably

have placed greater emphasis on the need for power experience. He was unaware that the Claimant was carefully documenting their exchanges but his response to the Claimant's e-mail is consistent with our own conclusions that the Claimant had his disputes firmly in mind when creating those records. In cross examination Mark Flowerdew was asked why he had the reaction he did and struggled with his explanation. We have had regard to that but it does not change our conclusions. There is no direct evidence that Mark Flowerdew was 'warned off' and we do not draw the inference that he was.

588. It is the Claimant's case that Janine Knights deliberately lied to him about the necessity of power trader experience. He says that Janine Knights lied because of his disclosures. Janine Knights said in her witness statement that, after the text exchange and a subsequent in person meeting with Mark Flowerdew, her belief was that the role that was being advertised did require South Mediterranean power experience. The Claimant accepted in cross examination that the text exchange was ambiguous about which of two roles required power experience. The Claimant's view is not determinative. The question for us is what Janine Knights genuinely believed. To come to a conclusion on that point we have needed to have regard to all the evidence.

589. Janine Knights was adamant that she had not deliberately misled the Claimant. She told us that she had worked with Mark Flowerdew and Jason Tate and from her knowledge of power trading had strongly believed that power experience was necessary for a Power trader role. She was later told by Jas Flora that power trading experience was necessary. We were told that Janine Knights and Jas Flora worked close to each other.

590. We accept that Janine Knights was wrong when she said that Mark Flowerdew considered power experience essential. He was not firmly of that view although it was clear that he considered it a significant advantage. He also recognised that Jason Tate had differing views to him. We need to consider whether this was straight forward dishonesty by Janine Knights or whether she misrepresented Mark Flowerdew's views in error.

591. We would accept that Janine Knights was well aware of the litigation that was underway at this time and that she was seeking advice about many of her communications with the Claimant. That was true of both parties. It is difficult to see why Janine Knights would seek to deliberately mislead the Claimant. She had nothing to gain personally from the Claimant not finding a position. She was not personally affected by any disclosure or grievance. We accept the possibility that she was acting under instructions or seeking to take a 'party line'.

592. We find that Janine Knights was wrong but was not dishonest when she represented Mark Flowerdew's views to the Claimant. The most likely source of the mistake in our view was Janine Knights preconceived view, formed from her previous experience, that power trading experience was essential. That view could easily have led her to misconstrue the text messages particularly given the confusion between two roles one of which would have required power experience. Her view was likely to have been reinforced by her colleague Jas Flora who we find honestly held the same view.

593. The Claimant had of his own accord applied for a job as an Oil Derivatives trader through the TAS system on 16 October 2019. On 6 November 2019 the Claimant asked for feedback on his application and on 7 November 2019 Janine Knights told the Claimant that she had spoken to the recruiter and in her e-mail told the Claimant that the role *"requires strong derivatives/*options *(as opposed to physical trading) experience" and suggested that no such experience was apparent on the Claimant's CV.* In his e-mail of 8 November 2019 the Claimant told Janine Knights that he did have derivatives experience and that he wished to speak to the hiring manager. Janine Knights contacted the hiring Manager, Alberto Challita and told him that the Claimant may be in touch. We see nothing sinister in that. The Claimant spoke with Alberto Challita on 26 November 2019. During that telephone Alberto Challita explained the level of experience that he was looking for which involved *'a deep understanding of the technical side of options, both theory and practice'* . Having discussed the Claimant's experience he stated that the Claimant did not have the profile he was looking for. The Claimant took a note of this telephone call. The contents of his note match almost exactly the feedback that Alberto Challita later gave Jas Flora.

594. In his witness statement as originally served the Claimant had included two paragraphs where he suggested that he was better qualified than the candidate ultimately appointed to this role. He expressly alleged that Janine Knights or others had attempted to influence Alberto Challita. When the Claimant had had additional disclosure he served an amended statement withdrawing those suggestions.

595. We are satisfied that the reason why Albert Challita did not interview the Claimant was that he believed that the Claimant had no relevant experience for the role.

Further changes on the crude bench

596. Concurrently with the events set out above there were some further changes on the crude bench. At the end of the summer of 2019 Jon Mottashed had decided that in the light of his symptoms of stress he would apply for good leaver status. He was persuaded by Sam Skerry to take a 1 year sabbatical in 2020 to reconsider. He was promised that he could take good leaver status at the end of that year if he still wanted to leave. By mid October 2019 Jon Mottashed fell ill and was signed off work by his GP. He had a period of about 4 weeks of work.

597. In December 2019 Sarah Pearson started a second period of maternity leave.

598. On 1 November 2019 the Claimant sent an e-mail to Janine Knights. In that e-mail the Claimant offered to cover Jon Mottashed or to stand in for Sarah Pearson or do any other *'Senior Trader role'*.

599. We find that a decision had already been taken about how Jon Mottashed's sabbatical would be covered. We have referred above to the text exchange between Jon Mottashed and Dan Wise. Jon Mottashed said in his witness statement that he had suggested a senior trader with leadership skills take over his role. He says, and we accept, that it was Dan Wise who took the decision who should cover his role. Dan Wise decided that the leadership/managerial responsibilities would be undertaken by Graeme Alexander an IST-ESA Supply Manager. The day to day trading activities were undertaken by Matt Jago. Sam Skerry was consulted on the use of Graeme Alexander

and expressed some concerns that he would be doing two jobs and would be stretched. However she ultimately endorsed the proposal.

600. Sarah Pearson was asked to draw up a list of colleagues who might cover her maternity leave. She did not suggest the Claimant. Her role as a Commercial Compliance Manager was very different to the role of a trader. It involved cooperating across the business. She was also paid substantially less than any trader. We find that there was no active consideration of the Claimant as maternity cover for Sarah Pearson.

601. On 6 November 2019 Dan Wise exchanged text messages with Janet Kong. In those text messages Dan Wise says that he had announced these changes to the team. Janet Kong's response is to say *'Sam is worried about what JZ might say about the jobs. Did you check with legal?'*. We find that there was some concern about how these changes would be perceived by the Claimant.

602. We find that by 7 November 2019 the decisions as to who would cover for Jon Mottashed had already been taken. On that day Janine Knights responded to the Claimant in response to this and other matters. She informed him that the decisions we have set out above had already been taken.

The Claimant's Fifth Grievance

603. On 17 December 2019 the Claimant sent a letter to James Norman in the Respondent's legal department. This letter was his fifth grievance. He included as an attachment the opening statement that he had made at the outset of the appeal against the outcome of his third and fourth grievances.

604. The Claimant's grievance letter ran to 18 pages with a large number of attachments. In it the Claimant raised matters which he later included in his third ET1. We shall not attempt to summarise that letter save for indicating that it raised the matters identified in the list of issues from paragraph 3(ee) to 3(ff) and 3(jj). The Claimant set out a complaint that Janine Knights lied when she told him that power trading experience was essential for the Power Trader role. At the end of his letter the Claimant suggests that it would be inappropriate for Janine Knights or Sam Skerry to have any further responsibility for finding him a role.

605. In the same way as when the Claimant had brought grievances against Dan Wise and Jon Mottashed, Sam Skerry and Janine Knights were asked to take no further part in assisting the Claimant secure an alternative role.

The actions of Niamh Hegarty, the Fifth Grievance and the dismissal

606. On 6 December 2019 Simon Ashley sent Niamh Hegarty an e-mail asking for her assistance on an HR matter that required a senior person to deal with it. He suggested that it would take about 1.5 hours to prepare for. Niamh Hegarty was at the time a Vice President for HR for the Chief Financial Officer and the Global Business Services. She was a senior employee with wide responsibilities with some 25 years of HR experience.

607. The matter that Simon Ashley wanted Niamh Hegarty to decide was whether the Claimant's employment should be terminated. We are satisfied that he did not instruct

Niamh Hegarty to dismiss the Claimant or even suggest that she should. Simon Ashley did say that if Niamh Hegarty came to the view that the Claimant should be dismissed she should act before a tranche of the Claimant's unvested shares would vest in him. We find that Simon Ashley wanted to avoid making any payment to the Claimant if it could lawfully be avoided. We have no doubt that this was a tactical stance in the ongoing litigation. We note that the mediation had failed just some months before. In the event Niamh rapidly concluded that she would not be able to deal with the matter in the timeframe proposed. Whatever our view on the suggestion made by Simon Ashley it was not acted upon.

608. When the Claimant brought his fifth grievance Niamh Hegarty was asked to deal with it. On 20 December 2019 she invited the Claimant to a meeting on 6 January 2020. She informed the Claimant that she would be dealing with his fifth grievance but also whether in the light of the failure to find a role, the Claimant's employment should be terminated. Her letter indicated that the Claimant should be prepared to discuss the reasons for his displacement from his original role and his work on the Marpol project. He was advised of his statutory right to be accompanied.

609. On 2 January 2019 Niamh Hegarty sent an e-mail to the Claimant asking him if he had arranged to be accompanied at the meeting. The Claimant responded and the meeting was rearranged for 9 January 2019 in order that the Claimant could be accompanied. The Claimant asked for a further postponement but Niamh Hegarty was unable to accommodate that.

610. On 8 January 2020 Hayley Millard, who was a Gasoline Assets Trader posted a role for a Senior Supply Coordinator. This role was then posted on the TAS system. The grade given to the role was 'G' which was one grade higher than the other team members. The Claimant received an automatic notification of this role and was interested in applying.

611. Niamh Hegarty tells us, and we accept, that in advance of meeting the Claimant she read all of his grievances, the outcomes and appeal outcomes. Niamh Hegarty told us, and we accept, that her initial response to the Claimant's situation was surprise tinged with sympathy. She had never encountered a situation where somebody had remained displaced from any role for as long as the Claimant had. She accepts in her witness statement that she did not know the entirety of the background. We accept her evidence that that is what she wanted to explore in the meeting with the Claimant.

612. The Claimant attended the meeting on 9 January 2020 accompanied by a colleague. Niamh Hegarty was assisted by Tammy Dehn who was a Senior HR Business partner reporting to Simon Ashley. Notes were taken at that meeting which were subsequently agreed.

613. After some opening remarks the Claimant talked about applying for the Senior Supply Coordinator role. He then gave a history of the issues that he had raised in his grievances. The notes of the hearing show that he did most of the talking during the early stages. The Claimant is recorded as accepting that the Marpol project was strategically important. He then went on to say that what he had been asked to do was 'bogus BS'. The issue of finding a role was discussed. The Claimant maintained his allegations that Janine Knights and Sam Skerry had lied to him. Janine Knights in respect of the Power

Trader role and Sam Skerry who had included in one of her e-mails an assertion that the Claimant's good leaver application had been accepted. The notes show that Niamh Hegarty asked why the Claimant made such strong allegations.

614. The meeting ended with Niamh Hegarty asking the Claimant what he wanted as a resolution. The Claimant responded saying that he wanted to find a role but also that he wanted compensation for not being able to trade. We find that the meeting was conducted by Niamh Hegarty in a cordial and measured way. Niamh Hegarty did tell the Claimant that she expected a senior trader out of a role to be proactive in seeking a new post and suggested that he exploited any networks that he could. There was nothing in what was said at that meeting that the Claimant could reasonably have taken as an indication that Niamh Hegarty was not going to properly consider his grievance and whether his employment could be maintained. She positively encouraged him to apply for the role he had identified.

615. On 10 January 2020 the Claimant sent an e-mail to Niamh Hegarty thanking her for meeting with him. He set out a number of steps he was going to take including contacting Sam Norman. We find that the only purpose of this was that he wanted to check whether Janine Knights had accurately reported that prior experience in Biofeedstock was essential. The Claimant indicated that he wished to apply for the Power Trader position (which at that time had been withdrawn). He queried why he could not see a live vacancy for the Senior Supply Coordinator on the TAS system. He asked that his access pass to the Canada Square offices was re-activated. He asked that the issue of who authorised the surveillance on him was investigated as a part of his grievance. He asked that two persons with no knowledge of his protected disclosures were assigned to assist him find a role. Niamh Hegarty says that she read this as implicitly questioning her ability to fairly assist the Claimant. She says she was '*taken aback'* by this. We think her interpretation is a fair one.

616. On 14 January 2020 Niamh Hegarty responded to the Claimant's e-mail. She told him that she was not going to reinvestigate matters that had already been the subject of previous grievance procedures unless they were relevant to the Claimant's fifth grievance. She told the Claimant that she had already interviewed Dan Wise and planned to interview others including Jeremy Tolhurst. She agreed to investigate the instruction to increase surveillance on the Claimant as a part of the grievance. She said that she had asked Tammy Dehn to look into why the Claimant could not see the Senior Supply Coordinator role on the TAS system.

617. Niamh Hegarty's responded to the Claimant's request for his pass to the Canada Square offices to be reactivated by saying that she understood that the Claimant had previously been told that he could have his pass reactivated when he needed to access the building from time to time. She told the Claimant that he could ask Tammy Dahn to do this. She said that whether the pass would be permanently reactivated would depend on her decision whether to extend the job search or whether the Claimant's employment would be extended.

618. In her witness statement Niamh Hegarty says that she did not have a lot of knowledge about the IST team and relied on Tammy Dehn to inform her of any special considerations. She says that her decision about the Claimant's access to the building

was informed by being told that access to the trading floor was restricted for security reasons. We shall revisit that below.

619. Niamh Hegarty told the Claimant that she had asked Sam Skerry and Janine Knights to step aside from assisting the Claimant with any job search and that she had asked Tammy Dehn to assist in their place.

620. On 10 January 2020 the Claimant sent an e-mail to Graeme Alexander. He asked to meet to discuss roles either in front line trading or in supply co-ordination. Graeme Alexander did not respond to the Claimant but forwarded the Claimant's e-mail to Sam Skerry with a message '*to discuss please'*.

621. Graeme Alexander gave evidence that when he started his role standing in for Jon Mottashed he had been told that he would not be line managing the Claimant and that he should escalate any questions about that to Sam Skerry. The Claimant sent a chasing e-mail on 16 January 2020. At this point Graeme Alexander says that he spoke to the legal department. He had been aware that there was a 'legal dispute' between the Claimant and BP. He responded to the Claimant suggesting that he use the TAS system to see whether there were any vacancies. He told us, and we accept, that he believed that any BP employee would be familiar with the TAS system and be able to use it to search for vacancies.

622. Graeme Alexander was challenged on whether he had been told to avoid dealing with the Claimant. He resolutely stuck to his account that he had not. We found Graeme Alexander to be a straight forward witness. We accept his account. We infer that he was instructed to respond to the Claimant in writing but not to meet with him as he had requested. We shall return to the reasons for that instruction below.

623. On 14 January 2020 the Claimant sent an e-mail to Sam Norman. He wrote in exactly the same terms as he did to Graeme Alexander saying that he wanted to chat about roles. Sam Norman forwarded that e-mail to Sam Skerry and Janine Knights. He said:

> *'Terrified to even respond. Will chat to you guys about best way to engage/manage [sic] this but didn't rate him as a trader and don't feel he is qualified to trade our mrkt in a senior role.*

624. In his witness statement Sam Norman explained his reaction by saying that he did not want to be pulled into a lawsuit. On 15 January 2020 Sam Norman responded in virtually the same terms as used by Graeme Alexander. We find that his response was drafted with the assistance of the legal department or HR. The Claimant responded asking him if the Biofeedstock role had been filled sometime later. Sam Norman responded saying that the role was just about to be filled by an external hire. He explained why prior feedstock experience and contacts were necessary. We find that his explanation for that was entirely frank. In his witness statement the Claimant accepts that the person appointed was eminently qualified for this role.

625. On 15 January 2020 the Claimant contacted Wilhelm Von Schweintz who was at that time a Fuel Oil Trader in the Distillates Trading team. The Claimant proposed sitting down for a chat about potential roles. Wilhelm Von Schweintz's initial response was to

agree. He said *'All is well, can't put the feet up just yet?'.* He explained that that was a reference to retirement and told us that it reflected his experience that Traders often retire at a fairly young age. After the Claimant proposed meeting later the same week Wilhelm Von Schweintz sent a further e-mail where he said *'I hear you are in a bit of a quarrel with BP in terms of coming back or not, so what is this about specifically'*. The Claimant rightly says that this showed a marked change of tone from the earlier e-mail. He replied asking *'where that came from'*. Wilhelm Von Schweintz explained this in his witness statement. He says that he was sitting next to Harry Channing who had been an analyst on the Crude bench. He said that Harry Channing had said that the Claimant had not gone out of his role smoothly. He says that it was in the light of this information that he gathered that there was a quarrel.

626. The case that was put to Wilhelm Von Schweintz was that the Claimant was perceived as a trouble maker and that he was warned off. Wilhelm Von Schweintz did not accept that. He acknowledged that there were rumours about the fact that the Claimant had not had a 'Clean exit'. He did not accept that he was warned off. We accept Wilhelm Von Schweintz's evidence in this respect. It was inevitable in our view that the fact that the Claimant had indicated he was leaving with good leaver status and then was approaching people looking for a role would result in speculation. The Claimant had brought claims against individuals. It is very likely that somebody let slip that the Claimant was locked in litigation with BP. It is very likely that Harry Channing was the source of this gossip.

627. On 16 January 2020 the Claimant responded to Niamh Hegarty's e-mail of 14 January 2020. We need not summarise the whole of that e-mail. What is significant is that the Claimant indicated that he wanted an investigation into why he was unable to access the Senior Supply Coordinator role shortly after he had indicated his interest. The clear implication being that he suspected that he had been blocked from applying. He objected to the decision not to permanently reactivate his pass saying that it would hamper his ability to find a role. He objected to the fact that only Tammy Dehn would be assisting him to find a role and asked that a person as senior as Sam Skerry be asked to assist. His e-mail in places was robust and critical. He included the following passage (with emphasis added):

> *'I am very concerned that you have put the decisions whether to reactivate my pass and whether to depute a person other than Sam to assist me with my job search on hold pending a decision you say you are going to take as to whether there should be an on-going search for alternative employment. The fact that you are putting in place interim, short term arrangements only strongly suggests that you have already made the decision to terminate my employment and that <u>you are simply going through the motions of investigating my grievance</u>. Indeed, if BP had any intention not to penalise me for my protected disclosures and parental leave there would be no excuse for such short term arrangements at all even if you had already decided to terminate my employment given (as above) my notice period.*

628. The Claimant forwarded Wilhelm Von Schweintz's e-mail response to Niamh Hegarty later on 16 January 2020. He set out his objections to the term 'quarrel' saying that there was no quarrel about the fact that he was looking for a role. That was true but there was a quarrel going on as there were two claims at that stage in the employment tribunal. The Claimant asked for this to be investigated as a part of his fifth grievance.

629. On 17 January 2020 Tammy Dehn contacted Wilhelm Von Schweintz saying that she, and Niamh Hegarty had been asked to investigate the use of the phrase 'quarrel' as a part of the fifth grievance. Wilhelm Von Schweintz responded. He said:

> *'Thanks for your email.*
>
> *His email request looked a little bit suspicious to me from the start. He in my view was a successful crude oil bookleader, who had now retired (or waiting in some sort of holding pattern until the shares vest), just as Anne Devlin.*
>
> *I hardly know him. So when he asks me to meet up for a coffee to "discuss roles", when I am in another team, I said well fine, why not. didn't know exactly what he meant. Then I heard that he is seeking to return to BP, that seems to be an issue, I know nothing more. Hence I said "quarrels". I now hear he seems to be going legal.*
>
> *Happy to discuss at 3:30, where do you want to meet?*
> *This is really annoying, looks like a total setup from his side, collecting any sort of comms to support his case. If this was so contentious, why was it not communicated that we need to be careful on what to say when he would try these things?'*

630. Having regard to the content of this e-mail we find that Wilhelm Von Schweintz understood that the Claimant had 'gone legal' but that the passage we have underlined shows that there had been no prior instruction on how or whether to communicate with the Claimant.

631. Wilhelm Von Schweintz then sent the Claimant an e-mail drafted by Tammy Dehn which was in much the same terms as the one sent by Graeme Alexander instructing the Claimant to identify any vacancy through the TAS system before contacting any hiring manager.

632. Tammy Dehn contacted Sam Norman on the 17 January 2020 in the same terms as she had Wilhelm Von Schweintz. Sam Norman was interviewed as part of the investigation into the Claimant's fifth grievance on 20 January 2020.

633. Drawing those threads together, the Claimant had been advised by Niamh Hegarty to network and to exploit his contacts. The Claimant had sent three e-mails where he asked to meet people he knew. In each case the individual had been concerned about meeting the Claimant and, following advice, sent an e-mail advising the Claimant to identify a vacancy in advance of any meeting. We shall return to the reasons for that below.

634. Tammy Dehn had obtained further details of the Senior Supply Coordinator role. She contacted the Claimant on 19 January 2020 in order to assist him with his IT issues. The issue of the Claimant being able to apply for the Senior Supply Coordinator's job was resolved when Tammy Dehn asked the Claimant to attend the Canada Square on 22 January 2020 office and use a networked computer.

635. Niamh Hegarty took the following steps to investigate the Claimant's grievance and his search for a role. She interviewed:

635.1. Dan Wise on 10 January 2020. That interview covered topics from the Taleveras incident right through to the withdrawal of the Claimant's good leaver application; and

635.2. Jeremy Tolhurst on 17 January 2020. His interview focused on the instruction to increase surveillance but also dealt with the Claimant's work on the Marpol project. In follow up e-mails he said that any person without a trading role in the IST would have to be 'hosted' to have access to the floor.

635.3. Sam Skerry on 20 January 2020. Her interview dealt with her involvement in finding a role for the Claimant; and

635.4. Sam Norman on 20 January 2020. He was asked about his interactions with the Claimant particularly around the Biofeedstock role. And;

635.5. Wilhelm Von Schweintz on 20 January who was asked in particular why he had referred to the Claimant being in a 'quarrel with BP. And

635.6. Janine Knights on 22 January 2020 who was asked about the efforts to find the Claimant a role and in particular why she had told the Claimant that power trading experience was essential for the Power Trader role.

635.7. Jas Flora on 22 January 2020 about her involvement in securing an alternative role. She was asked about whether the Power Trader role required power experience.

635.8. Mark Flowerdew on 23 January 2020 who was asked about the Claimant's interest in the Power Trader role. He maintained his position that he would not have ruled out the Claimant because of a lack of power trading experience.

635.9. Simon Ashley on 24 January 2020 who was asked about the events that followed from the Claimant withdrawing his application for good leaver status.

635.10. Jon Mottashed on 27 January 2020. He was asked what had led to the Claimant being displaced from his original role. He discussed Marpol, the North Sea role and the subsequent changes to the Crude Team.

636. On 3 February 2020 Tammy Denh sent an e-mail to the Claimant asking him to attend a further meeting on 6 February 2020. She sent him her notes of the meeting of 9 January 2020 stressing that they were not verbatim. She told him that the application process for the Senior Supply Co-ordinator role was still open.

637. The Claimant asked for the meeting to be rearranged to allow his chosen companion to attend. That change was accommodated and a date of 10 February 2020 fixed for the meeting. The Claimant requested an agenda and listed points that he wanted to discuss. On 5 February 2020 Niamh Hegarty provided the Claimant with an agenda. Niamh Hegarty told the Claimant that she was concerned about whether there was *'the necessary trust for you to remain in employment with BP'*. She outlined a number of matters which she wanted to discuss with the Claimant.

638. On 7 February 2020 the Claimant sent an e-mail to Niamh Hegarty and Tammy Dehn explaining that a close relative who had cancer had suffered a stroke. He said that he could not concentrate on preparing for the hearing and provided a fitness for work certificate that indicated he would be unable to work until 29 February 2020. He asked that this absence did not jeopardise his application for the Senior Supply Co-ordinator role.

639. Niamh Hegarty responded on 7 February 2020. She opened her e-mail by expressing her sympathy. She then indicated that it was standard practice to engage BP's OH service in such circumstances and pointed out that it was unclear that the Claimant was unfit to engage in any meetings rather than work. We find that this response indicates a degree of scepticism about an employee facing a meeting at which the termination of employment was being discussed. We do not consider that surprising or indicative of anything other than a long experience of HR matters. The response does not indicate that Niamh Hegarty did not believe the Claimant only that it was possible that he was hiding behind ill health to postpone a difficult meeting. In fact in this case we are satisfied that the Claimant's request was entirely genuine. Niamh Hegarty agreed to postpone the meeting in the interim.

640. The Claimant had urgently travelled to America to see his Uncle. Unfortunately the Claimant's Uncle died on 23 February 2020. The Claimant had spoken to an OH advisor before he left. He says, and we have no reason to doubt him, that he explained the circumstances to the OH advisor and said that he would deal with this on his return. It emerges from later e-mail correspondence that the OH advisor had not reported back to Tammy Dehn who had raised the referral. When she chased that on 20 February 2020 she was told only that the Claimant was on annual leave.

641. Tammy Dehn sent an e-mail to the Claimant asking for clarification as to whether the Claimant was on sick leave or annual leave. She referred to BP's sickness policy which dealt with sickness pending meetings. She pointed out that the policy provided that proceedings might be conducted in the employee's absence. The Claimant responded. He explained that his Uncle had died and that he was observing Shiva. He said that his return was very up in the air at that stage as his Uncle had died the day before. Tammy Dehn responded on 25 February 2020. She expressed her sympathies and then asked for some further information. It is clear from that e-mail and Niamh Hegarty's evidence that both of them felt that the Claimant should have told them he was travelling abroad. The Claimant responded to Tammy Dehn's e-mail in robust terms asking to be left in peace at this time.

642. The meeting that was to have taken place on 10 February 2020 was rearranged for 10 March 2020. In that meeting Niamh Hegarty discussed the information she had obtained as a result of the interviews set out above. She asked the Claimant a number of questions in relation to what he had been told. At the conclusion of the meeting Tammy Dehn gave the Claimant the information that she had obtained about the salary and bonus expectations of the Senior Supply Coordinator role. She said that it would be recruited at Box G and that the bonus potential was 25-100,000$. The Claimant made no response. Both Niamh Hegarty and Tammy Dehn later commented about the Claimant's reaction suggesting that he looked blank. We find that at that level of salary the Claimant would have had no further interest in taking that role.

643. Niamh Hegarty did not make any decision at the meeting on 10 March 2020. She accepts in her witness statement that she was forming the view that the Claimant's continued employment was untenable. She had been asking Tammy Dehn to make further enquiries by e-mail of some of the people she had spoken to and that process continued. Niamh Hegarty had intended to come to a conclusion by the end of March 2020. BP's officed were closed from 13 March 2020. This was unfortunate timing for Niamh Hegarty because at the same time she was responsible for contributing to a major restructure in the organisation. Her work on this matter was done mainly at weekends.

644. On 10 April 2020 Niamh Hegarty sent the Claimant a letter setting out her conclusions. She did not uphold any aspect of the Claimant's fifth grievance. She determined that the Claimant should be dismissed and a payment made in lieu of notice. She set out her reasons for both decisions over 25 pages. The reasons given for the decision to dismiss the Claimant are twofold. Firstly, Niamh Hegarty said that 'a more than reasonable time has passed without you securing another role'. Secondly, she said that there were 'irreconcilable trust issues'.

<u>The Senior Supply Coordinator role</u>

645. The hiring manager for the Senior Supply Co-ordinator role was Hayley Millard a Gasoline Asset Trader who at the material time reported to Graham Alexander. She knew the Claimant by name but had no working relationship with him. We find her to be perhaps the single most straightforward and forthright witnesses we heard from. Ultimately her evidence was that considering the Claimant for this particular role was completely inappropriate as the Claimant was far too senior to be undertaking this work. We have already indicated that we find that the Claimant would not have accepted this role given the disparity between the potential bonus and his expectations.

646. We do need to deal with the suggestion that there was some interference in the recruitment process to disadvantage the Claimant. Hayley Millard told us and we accept that she would normally be left with the responsibility for hiring decisions into the team that she led subject to final approval by Graeme Alexander. Generally she only managed grade H employees. On this occasion she was looking for a grade G employee who could take some of the responsibility for training junior members of staff. In her evidence she said that she might have entertained applications from a current grade H employee.

647. The role was posted on the TAS system from 8 January 2020. It was posted both internally and externally. Hayley Millard had not wanted it to be posted externally as she thought the role would be better filled by a person with knowledge of BP.

648. On 29 January 2020 Hayley Millard was sent applications from 3 candidates, a grade H employee, a grade G employee and the Claimant. She says, and we accept that her immediate strong response was that the Claimant was not suitable for the role. We find that that caused her to question what was going on. She says and we accept that she went and spoke to Graeme Alexander about this. He told her that he had been in discussions with HR about this and that she was not to worry.

649. We find that Hayley Millard decided almost at once that she would not interview the Claimant. She believed one of the other candidates to be very qualified for the role. She had no contact from the Claimant and did not understand why he might be applying. In

her witness statement she describes the appointment of her preferred candidate as a 'no brainer'. We accept that was her genuine view and agree with her analysis.

650. At the end of January the HR partner dealing with the vacancy, Tom Bachelor told Hayley Millard that they were going to keep applications open and advertise the role externally as the shortlist did not meet the standards for gender diversity. Hayley Millard tells us that whilst she would ordinarily have agreed with that approach in this case she thought she had the perfect candidate. She sought permission for the usual rules to be relaxed.

651. On 6 February 2020 Tammy Dehn contacted Hayley Millard by e-mail. She asked about the role. Hayley Millard told her that the role was anticipated as a low grade G role. Hayley Millard worked out that the reason for the questions was connected with the Claimant's application.

652. Hayley Millard then pressed Tom Bachelor for permission to interview her preferred candidate. On 20 February 2020 Tammy Dehn sent an e-mail where she said that interviews should progress but that no final offer should be made. We find that the reason for the request for feedback and the reluctance to confirm a final appointment was that it was recognised that any decision not to progress the Claimant's application might have to be justified later. Hayley Millard recognised that there was an issue and forwarded the request to Graeme Alexander.

653. On 13 March 2020 Tom Bachelor asked Hayley Millard for feedback as to why the Claimant had not been interviewed. Hayley Millard allowed Graeme Alexander to respond. He did so by saying that no formal decision had been taken at that stage. That was true but an informal view had been formed almost immediately.

654. It was only after the Claimant was dismissed that Tammy Dehn notified Graeme Alexander and Hayley Millard that they were free to appoint their preferred candidate.

655. We find that Hayley Millard recognised straight away that the Claimant was not a suitable candidate for the role. He was far more senior than she was herself and she would have been expected to manage him if appointed. We note that Graeme Alexander said in his witness statement that the bonus potential might be as high as 250,000$ which was higher than the figure given to the Claimant by Tammy Dehn. We find nothing sinister about this. Graeme Alexander was not the source of Tammy Dehn's information. There is room for reasonable disagreement about the expectations. In any event the remuneration was far below that which the Claimant had been seeking.

656. The Claimant says that he has subsequently accepted a role at around the levels of salary and bonus that this role might have paid him. We have taken that into account but it does not change our view that he would not have accepted this job.

657. We accept that the actions of Tammy Dehn in holding back Hayley Millard's wish to appoint her preferred candidate was to a great extent a window dressing exercise. If Hayley Millard's reasoning had been explained frankly to the Claimant then we suspect he might have acknowledged the good sense in her position.

<u>The Appeal</u>

658. Niamh Hegarty informed the Claimant of his right to appeal both of her decisions. His appeals against both were heard by Trina Nally the Senior Vice President, People and Culture, Customers and Products. She dismissed both appeals. The Claimant does not suggest that Trina Nally was influenced by protected disclosures or parental leave. However, what is said is that she did not approach the task of hearing the appeal against the dismissal with an open mind. This is a matter that the Claimant says contributed to the unfairness of his dismissal claim.

659. Trina Nally was asked to undertake the appeal in late May 2020. She says, and we accept, that she was told by Simon Ashley that this was one of the most complex cases he had ever seen.

660. The Claimant's grounds of appeal took the form of a commentary on the outcome letter. In his letter the Claimant said that he did not want the restrictions in place due to the covid pandemic to delay the determination of his appeal. He went on to say:

> *'I have taken care to set out the grounds of my appeal fully above and I confirm that I would be happy for my appeal to be determined on the basis of a documentary review, supplemented as necessary with written questions and answers (or, if required, a video or audio call with the Appeal Manager).'*

661. Trina Nally read that letter, used a highlighter and then at some point made her comments upon it in manuscript. We would accept that quite a few of those manuscript comments showed at least a preliminary view that the Claimant's grounds of appeal would not succeed. To give one example, The Claimant included a response to Niamh Hegarty's finding that he had used extreme language to describe his colleague's actions. He said that he did not accept that his language was so extreme as to justify a dismissal. Trina Nally put a note beside that saying *'disagree & personally suing individuals adversarial'*. There are other examples particularly where the word *'agree'* is used.

662. One of the grounds of appeal raised by the Claimant was that he was dismissed whilst he still had a live application for the Senior Supply Coordinator role. We shall return to that point below.

663. Trina Nally contacted the Claimant by e-mail on 8 June 2020. She told him that she anticipated taking 4 weeks to review all the documentation. This was due to the volume but also because of other business commitments due to the Pandemic. She thanked the Claimant for agreeing to the appeal being conducted as a paper exercise and said that she was likely to have questions of the Claimant and would send these by e-mail, She indicated that she would interview Niamh Hegarty and Tammy Dehn. The Claimant responded on the same day. He expressed his disappointment at the delay.

664. Trina Nally asked to see the documents considered by Niamh Hegarty. She then decided that she should interview some of the witnesses herself. She spoke to Jeremy Tolhurst, Niamh Hegarty, Tammy Dehn, and Janine Knights. Her HR assistant, Melissa Creevey spoke to Jas Flora and Simon Ashley and made a record of the conversation.

665. Trina Nally gives an explanation of the markings on the e-mail which comprised the grounds of appeal. She says that on a first review she used a highlighter to alert her to parts of the document she considered important. She says that she later added

comments like 'in' as a shorthand to prompt further investigation. The comments such as 'agree' she says were added at a later stage. At least one comment at the top of the document which refers to the Claimant's e-mail of 8 June 2020 cannot have been made on a first reading (as Trina Nally's e-mail of 6 June shows a good understanding of the appeal). Having regard to all the evidence we accept Trina Nally's account of the document being marked up as she proceeded with the appeal.

666. On 17 July 2020 Trina Nally sent the Claimant a letter in which she dismissed both of his appeals.

667. The Claimant had on 22 June 2020 already presented his fourth claim to the Employment Tribunal.

The law to be applied

668. As we indicated above, with the agreement of the parties, the Employment Judge circulated a draft self-direction on the law to be applied in cases concerning protected disclosures. In their written submissions neither party took issue with the proposed direction but each party included reference to some additional cases and the legal propositions derived from them. Neither party took issue with the additional propositions cited by their opponents. In our self-direction below we have adopted those additional propositions that were important to our decisions.

669. Our self-direction is lengthy and contains many quotes and propositions which are not controversial. We are very aware of the fact that our role is not to slavishly set out a self-direction to demonstrate a working knowledge of the law but to demonstrate that we have applied it. That is what we have attempted to do in this case.

670. The one point of contention between the parties concerns the application of the principle accepted, at the level of the EAT, in the case of ***Kraus v Penna plc*** which we refer to below. We return to the differences between the parties in our discussions and conclusions below.

Public interest disclosure claims

671. The protection for workers who draw attention to failings by their employers or others, often referred to as 'whistle-blowers', was introduced by the Public Interest Disclosure Act 1994 which introduced a new Part IVA to the Employment Rights Act 1996.

672. In ***Jesudason v Alder Hey Children's NHS Foundation Trust*** **[2020] ICR 1226** Elias LJ described the purposes of the protection as follows:

> *'Ever since the introduction of the Public Interest Disclosure Act 1998, the law has sought to provide protection for workers (colloquially known as whistleblowers") who raise concerns or make allegations about alleged malpractices in the workplace. Too often the response of the employer has been to penalise the whistleblower by acts of victimisation rather than to investigate the concerns identified. The 1998 Act inserted a new Part IVA into the Employment Rights Act*

1996 designed to prevent this. The long title to the Act describes its purpose as follows:

> *"An Act to protect individuals who make certain disclosures of information in the public interest: to allow such individuals to bring action in respect of victimisation; and for connected purposes."*

The law which gives effect to the simple principle enunciated in the long title is far from straightforward. The basic principle, set out in section 47B of the Employment Rights Act 1996, is that a worker has the right not to be subject to a detriment by any act of his employer on the grounds that he has made what is termed a "protected disclosure".'

673. Section 43A of the Employment Rights Act 1996 provides that a disclosure will be protected if it satisfies the definition of a 'qualifying disclosure' and is made in any of the circumstances set out in Sections 43C-H. The material parts of the statutory definition of what amounts to a qualifying disclosure are found in Section 43B of the Employment Rights Act 1996 which says:

> 43B Disclosures qualifying for protection.
>
> (*1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

674. The proper approach to assessing whether there is a qualifying disclosure for the purposes of Section 43B is that summarised by HHJ Aurbach in ***Williams v Michelle Brown AM*** **UKEAT/0044/19/OO**. He said:

> *"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more*

of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."

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

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

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

> *26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B (1).*
>
> *27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.*

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

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

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

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

"….. *in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr*

Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

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

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

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

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

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

679. In ***Dobbie v Felton*** **UKEAT/0130/20/OO** HHJ Tayler reviewed the decision in ***Chesterton*** he extracted the following propositions.:

(1) the necessary *belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence*

(2) while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation

(3) the exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest

(4) a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith

(5) there is not much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression

(6) the statutory criterion of what is "in the public interest" does not lend itself to absolute rules

(7) the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest

(8) the broad statutory intention of introducing the public interest requirement was that "workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers"

(9) Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis

i. the numbers in the group whose interests the disclosure served

ii. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed

iii. the nature of the wrongdoing disclosed

iv. the identity of the alleged wrongdoer

(10) where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest

680. HHJ Tayler then added further guidance on the meaning of 'public interest'

28 There are a few general observations I consider it worth adding:

(1) a matter that is of "public interest" is not necessarily the same as one that interests the public. As members of the public we are interested in many things, such as music or sport; information about which often raises no issue of public interest

(2) while "the public" will generally be interested in disclosures that are made in the "public interest", that does not necessarily follow. There may be subjects that most people would rather not know about, that are, nonetheless, matters of public interest

(3) a disclosure could be made in the public interest although the public will never know that the disclosure was made. Most disclosures are made initially to the employer, as the statute encourages. Hopefully, they will be acted on. So, for example, were a nurse to disclose a failure in the proper administration of drugs to a patient, and that disclosure is immediately acted on, with the consequence that he does not feel the need to take the matter any further, that would not prevent the disclosure from having been made in the public interest - the proper care of patients is a matter of obvious public interest

(4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition. If the nurse in the example above disclosed a one off error in administration of a drug to a specific patient, the fact that the mistake was unlikely to recur would not necessarily stop the disclosure being

made in the public interest because proper patient care will generally be a matter of public interest

(5) while it is correct that as Underhill LJ held there is "not much value in trying to provide any general gloss on the phrase "in the public interest" - noting that "Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression" - that does not mean that it is not to be determined by a principled analysis. This requires consideration of what it is about the particular information disclosed that does, or does not, make the disclosing of it, in the reasonable belief of the worker so doing, "in the public interest". The factors suggested by Mr Laddie in Chesterton may often be of assistance. While it certainly will not be an error of law not to refer to those factors specifically, where they have been referred to it will be easier to ascertain how the analysis was conducted. It will always be important that written reasons set out what factors were of importance in the analysis; which may include factors that were not suggested by Mr Laddie in Chesterton. As Underhill LJ held "The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case". It follows that if no account is taken of factors that are relevant; or relevant factors are ignored, there may be an error of law

(6) for the disclosure to be a qualifying disclosure it must in the reasonable belief of the employee making the disclosure tend to show one or more of the types of "wrongdoing" set out in section 43B (a)-(f) ERA. Parliament must have considered that disclosures about these types of "wrongdoing" will often be about matters of public interest. The importance of understanding the legislative history of the introduction of the requirement for the worker to hold a reasonable belief that the disclosure is "made in the public interest" is that it explains that the purpose was to exclude only those disclosures about "wrong doing" in circumstance such as where the making of the disclosure serves "the private or personal interest of the worker making the disclosure" as opposed to those that "serve a wider interest"

(7) while the specific legislative intent was to exclude disclosures made that serve the private or personal interest of the worker making the disclosure, that is not the only possible example of disclosures that do not serve a wider interest, and so are not "made in the public interest". There might be a disclosure about a matter that is only of private or personal interest to the person to whom the disclosure is made and does not raise anything of "public interest".

(8) while motivation is not the issue; so that a disclosure that is made with no wish to serve the public can still be a qualifying disclosure; the person making the disclosure must hold the reasonable belief that the disclosure is "made" in the public interest. If the aim of making the disclosure is to damage the public interest, it is hard to see how it could be protected. Were a worker to disclose information to his employer, that demonstrates that it is discharging waste that is damaging the environment, with the aim of assisting in a coverup, or to recommend ways in which more waste could be discharged without being found out; while the disclosure would otherwise be a qualifying disclosure, it is hard to see how the disclosure could be "made" in the public interest. The fact that a disclosure can be made in "bad faith" does not alter this analysis. A worker might make public the fact that the employer is discharging waste because he dislikes the MD, and so is acting in bad faith, but

nonetheless hold the reasonable belief that making the disclosure is in the public interest because the discharge of waste is likely to be halted. Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest.

29 Disclosures about certain subjects are likely to be "made in the public interest". This point was made by HHJ Eady QC, as she then was, in Okwu v Rise Community Action UKEAT/0082/19/OO, when considering a disclosure by a worker who raised "concerns that the Respondent was acting in breach of the Data Protection Act by failing to provide the Claimant with her own mobile and with secure storage, when she was dealing with sensitive and confidential personal information", at para. 47:

"The ET apparently considered that the Claimant was primarily raising those matters as relevant to her assessment of her own performance. However, as is made clear in Chesterton Global, that would not necessarily mean that she did not reasonably believe that her disclosure was in the public interest. Indeed, considering the nature of the interest in question it would be hard to see how it would not - in the Claimant's reasonable belief - be a disclosure made in the public interest, even if (as the ET seems to suggest, see the penultimate sentence of paragraph 31 and the reasoning at page 32) the Claimant also had in mind the impact upon her in terms of her work performance; after all, the public interest need not be her only motivation for making the disclosure (again, see Chesterton Global)." [emphasis added]

30 In Simpson Bean LJ, in rejecting an appeal against a decision that a banker primarily concerned with his own commission had not made protected disclosures, distinguished his situation from that of a person who made a disclosure that tended to show malpractice, held at para. 63:

"The present case is a long way from one of a doctor complaining of excessively long working hours. The ET repeatedly found that Mr Simpson's real complaint was about being deprived of the commission which he thought was rightfully his. If they had accepted that the disclosures, or some of them, constituted information which in the actual and reasonable belief of the claimant tended to show malpractice, then the public interest test would no doubt have been quite easily satisfied. But that is not what happened." [emphasis added]

31 However, the fact that a disclosure is about a subject that could be in the public interest does not necessarily lead to the conclusion that the worker believed that she or he was making the disclosure in the public interest: Parsons v Airplus International Ltd UKEAT/0111/17/JOJ. It is the belief that the worker held when making the disclosure that must be determined.

681. In ***Cox v Adecco*** **[2021] UKEAT/0339/19/AT (V)**, the EAT reiterated:

"71. The fact that the Claimant's disclosure was principally, or even totally, about his own treatment, would not necessarily prevent him reasonably believing it was in the public interest, if he considered he was bringing to light a matter of more general importance…"

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

> *'…. in order to fall within ERA section 43 B(1)(b), as explained in Blackbay the ET should have identified the source of the legal obligation to which the Claimant believed Mr Ashton or the Respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more that a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation.'*

683. There is no requirement for a worker to spell out what criminal offence or legal obligation they say is engaged within any disclosure but a failure to do so is evidentially relevant to the question or whether they actually held the necessary belief that their information tends to show the commission of any offence and/or breach of any legal obligation see ***Twist DX Ltd and ors v Armes and anor*** **EAT 0030/20**.

684. In ***Kraus v Penna plc*** **[2003] UKEAT 0360_03_2011** Cox J held that where Section 43B required a reasonable belief that some wrongdoing was 'likely' that word was to be understood as equating to probable. That case was subsequently overturned by the Court of Appeal in ***Babula v Waltham Forest College*** on other grounds. The conclusion in respect of the meaning of the word likely was not disturbed.

685. Any assessment of the belief held by the worker is entitled to take into account any specialist knowledge the worker may have - ***Korashi v Abertawe Bro Morgannwg University Local Health Board*** **[2012] IRLR 4**

686. As a general rule each communication by the worker must be assessed separately in deciding whether it amounts to a qualifying disclosure however, where some previous communication is referred to or otherwise embedded in a subsequent disclosure, then a tribunal should look at the totality of the communication see ***Norbrook Laboratories (GB) Ltd v Shaw*** **2014 ICR 540, EAT** and ***Simpson v Cantor Fitzgerald Europe*** **EAT 0016/18** (where the worker had failed to make it clear which communications needed to be read together) and ***Barton v Royal Borough of Greenwich*** **EAT 0041/14** (where it was held that separate and distinct disclosures could not be aggregated). When reached the Court of Appeal it was held that the issue of whether disclosures could be aggregated is a matter of common sense and a pure question of fact - see ***Simpson v Cantor Fitzgerald Europe*** **[2021] ICR 695].**

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

688. Section 47B provides:

> *47B Protected disclosures.*

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

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

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

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

on the ground that W has made a protected disclosure.

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

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

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a)from doing that thing, or

(b)from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a)the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b)it is reasonable for the worker or agent to rely on the statement. But this does not prevent the employer from being liable by reason of subsection (1B).]

(2) This section does not apply where—

(a) the worker is an employee, and

(b)the detriment in question amounts to dismissal (within the meaning of Part X).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K

689. In ***Timis and anor v Osipov (Protect intervening)*** **2019 ICR 655, CA**, the Court of appeal held that S.47B(2) does not preclude an employee from bringing a detriment claim against a co-worker under S.47B(1A) for subjecting him or her to the detriment of dismissal. This means that a detriment claim in such circumstances can also be brought against the employer, who will be liable for the detriment under S.47B(1B) unless the 'reasonable steps' defence can be established.

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

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

691. A detriment can be on the grounds that the employee has made a protected disclosure whether the motivation is conscious or subconscious see ***Knight v Harrow LBC*** **[2003] IRLR 140** at §17. It is not a necessary ingredient of the test that there was any malice towards the worker - ***Croydon Health Services NHS Trust v Beatt*** **2017 ICR 1240, CA.**

692. Depending on the facts there can be a distinction between the fact of the disclosure itself and a matter properly separable from the disclosures such as the manner in which the employee raises or pursues any complaints: ***Panayiotou v Chief Constable of Hampshire Police and anor*** **2014 ICR D23, EAT,** ***Mid Essex Hospital Services NHS Trust v Smith*** **EAT 0239/17,** ***Woodhouse v West North West Homes Leeds Ltd*** **[2013] I.R.L.R. 773 and** ***Martin v Devonshires Solicitors*** **2, EAT,2011 ICR 35.** The underlying principle in those cases was approved by the Court of appeal in ***Page v Lord Chancellor and another*** **[2021] IRLR 377** per Underhill LJ at paragraphs 53 -56.

> *'55. The essential point in that reasoning is encapsulated in the sentence which I have italicised in para. 22: dismissal (or any other detrimental act) in response to a complaint of discrimination does not constitute victimisation if the reason for it was not the complaint as such but some feature of it which can properly be treated as separable. Mr Diamond's use of the terms "severance" or "severability" is not an apt paraphrase because it brings in unhelpful echoes of completely different areas of the law.*
>
> *56. The principle recognised in Martin has since been applied in a number of decisions of the EAT, most notably Panayiotou v Kernaghan [2014] UKEAT 0436/13, [2014] IRLR 500 . Although it has not so far been approved in this court, an analogous principle was applied in Morris v Metrolink RATP DEV Ltd [2018] EWCA Civ 1358, [2019] ICR 90 , which was a case concerning dismissal for taking part in trade union activities: see paras. 19-21 of my judgment. For my part I believe that it is correct.* ***In a case where it applies, the making of the complaint is the context in which the reason for dismissal (or other detriment) arises, but it is not the reason itself****. (emphasis added)'*

693. The Respondents have relied on the following cases, not for any matter of principle, but as illustrations of the principle being applied

693.1. ***Kong v Gulf International Bank*** UKEAT/0054/21/JOJ

693.2. ***Watson v Hilary Meredith*** UKEAT/0092/20/BA

693.3. ***McIntosh v The Governing Body of St Mark's Primary Schoo***l UKEAT/0226/13/BA

694. An employer who subjects an employee to a detriment or dismissed her of him on the grounds that they have raised some complaint that the employer genuinely and honestly does not regard as being a protected disclosure runs the risk that if an employment tribunal later concludes that a disclosure was made it will be taken to have acted unlawfully – see

Croydon Health Services NHS Trust v Beatt *where Underhill LJ* said:

> *'I wish to add this. It comes through very clearly from the papers that the Trust regarded the Appellant as a trouble-maker, who had unfairly and unreasonably taken against colleagues and managers who were doing their best to do their own jobs properly. I do not read the Tribunal as having found that that belief was anything other than sincere, even though it found that it was unreasonable. But it is all too easy for an employer to allow its view of a whistleblower as a difficult colleague or an awkward personality (as whistleblowers sometimes are) to cloud its judgement about whether the disclosures in question do in fact have a reasonable basis or are made (under the old law) in good faith or (under the new law) in the public interest. Those questions will ultimately be judged by a tribunal, and if the employer proceeds to dismiss it takes the risk that the tribunal will take a different view about them. I appreciate that this state of affairs might be thought to place a heavy burden on employers; but Parliament has quite deliberately, and for understandable policy reasons, conferred a high level of protection on whistleblowers. If there is a moral from this very sad story, which has turned out so badly for the Trust as well as for the Appellant, it is that employers should proceed to the dismissal of a whistleblower only where they are as confident as they reasonably can be that the disclosures in question are not protected (or, in a case where Panayiotou is in play, that a distinction can clearly be made between the fact of the disclosures and the manner in which they are made).'*

695. The meaning of the word 'detriment' in Section 47B is the same as in a claim of direct discrimination under the Equality Act 2010 and is treatment that a reasonable worker might reasonably consider to be to their disadvantage. In ***Jesudason v Alder Hey Children's NHS Foundation Trust*** the Court of Appeal stated:

> *"27.In order to bring a claim undersection 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistleblowing cases. In Derbyshire v St Helens Metropolitan Borough Council (Equal Opportunities Commission intervening) [2007] ICR 841, para 67, Lord Neuberger of Abbotsbury described the position thus:*
>
> > *"67. In that connection, Brightman LJ said in Ministry of Defence v Jeremiah [1980] ICR 13, 31A that 'a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment'.*
> >
> > *68.That observation was cited with apparent approval by Lord Hoffmann in Chief Constable of the West Yorkshire Police v Khan [2001] ICR 1065, para 53. More recently it has been cited with approval in your Lordships' House in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. At para 35, my noble and learned friend, Lord Hope of Craighead, after referring to the observation and describing the test as being one of 'materiality', also said that an 'unjustified sense of grievance cannot amount to "detriment"'. In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: 'If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice'."*

> *28.Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective."*

696. S47B includes no test of seriousness in respect of establishing detriment, and nor is it necessary to demonstrate some physical or economic consequence ***Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland)*** **[2003] IRLR 285** at §35).

697. The Court of Appeal held in ***Deer v University of Oxford*** **[2015] I.C.R. 1213** that a worker may be subjected to a detriment on the basis that a grievance process has been defective or delayed, even if a properly conducted process would have led to the same result**.**

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

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

699. The effect of Sub section 48(2) of the Employment Rights Act 1996 is that once the worker proves that there was a protected disclosure and a detriment the Respondent bears the burden of showing that was not on the grounds that the worker had made a protected disclosure. The fact that the employer leads no evidence, or that the explanation it does give is rejected, does not lead automatically to the claim being made out. It is for the tribunal looking at all the evidence to reach a conclusion as to the reason for the treatment - See ***Ibekwe v Sussex Partnership NHS Foundation Trust EAT*** **0072/14** and ***Kuzel v Roche Products Ltd*** **2008 ICR 799, CA**. Where there is no evidence or the employer's explanation is rejected it will be legitimate for the tribunal to draw an inference from the failure to establish the grounds for any treatment.

700. Inferences can only be drawn from established facts and cannot be drawn speculatively or on the basis of a gut reaction or 'mere intuitive hunch' see ***Chapman v Simon*** **[1994] IRLR 124** see per Balcombe LJ at para. 33 or from 'thin air' see ***Chief Constable of the Royal Ulster Constabulary*** **[2003] ICR 337**.

701. Where the worker is an employee and complains of a dismissal by their employer (in contrast to the actions of a fellow worker in deciding to dismiss them) then the employee may present a claim that they have been unfairly dismissed under Section 111 of the Employment Rights Act 1996. If they can establish that they have been dismissed then the dismissal will be automatically unfair if the requirements of Section 103A are met. Section 103A reads as follows:

> *103A Protected disclosure.*
>
> *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.*

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

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

Claims under Section 47C and S48 of the Equality Act 1996 (the Parental leave claims)

703. The material parts of Section 47C of the Employment Rights Act 1996 say:

47C Leave for family and domestic reasons.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—

(a) …

(bb) shared parental leave,

(c) parental leave,

…

(3) A reason prescribed under this section in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement.

704. The relevant regulations are the Maternity and Parental Leave etc Regulations 1999. The material parts of Regulation 19 say:

Protection from detriment

19.—(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

(2) The reasons referred to in paragraph (1) are that the employee—

(a)…..(d)

(e) took or sought to take—

(i)…

(ii) parental leave, or

(iii)…….

705. A claim under section 47C of the Employment Rights Act 1996 may be enforced by bring a claim under Section 48. We have set out above the proper approach to the phrase ‘on the ground that’ for claims under Section 47B. A claim under Section 47C uses the expression ‘for the reason that’ our view is that the test does not differ from a claim under Section 47B.

Time Limits – claims brought through Section 48

706. The time limits for a claim brought under Section 48 of the Employment Rights Act 1996 are set out in sub sections 48(3)-(5) which read as follows:

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

707. The meaning of 'an act extending over a period' was used in the various discrimination acts prior to the Equality Act 2010. In ***Commissioner of Police of the Metropolis v Hendricks*** **[2002] EWCA Civ 1686** it was held that:

> '*the burden is on [the Claimant] to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of 'an act extending over a period''.*

708. In ***Tait v Redcar & Cleveland BC*** **UKEAT/0096/08** it was held that a disciplinary suspension was an act extending over a period.

709. In ***Arthur v London Eastern Railway Ltd*** **[2007] IRLR 58** the Court of Appeal held that in order for time to be extended on the basis that an act ostensibly out of time forms part of a series of similar acts the Claimant needs to establish that there is at least one unlawful similar act that was presented in time.

710. In relation to the availability of an extension of time we adopt the Claimant's summary of the law. Mr Rajgopaul and Ms Plews say:

'35. Further, where it was not reasonably practicable to bring a claim in time, under s. 48(3)(b) the claim will be in time if it was presented within such further period as the Tribunal considers reasonable. As Shaw LJ noted in Wall's Meat Co Ltd v Khan [1979] ICR 52 (p. 57): "The test is empirical and involves no legal concept. Practical common sense is the keynote." Lady Smith added in Asda Stores Ltd v Kauser EAT 0165/07 that the test is not just as to what is possible, but whether, "on the facts of the case as found, it was reasonable to expect that which was possible to have been done'

Unfair Dismissal

711. Section 94 of the Employment Rights Act 1996 gives a right for an employee not to be unfairly dismissed. As we have set out above where the reason or if more than one the principal reason for the dismissal is that the employee made protected disclosures then the dismissal will be automatically unfair (see Section 103A of the Employment Rights Act 1996 that we have referred to above). If the tribunal do not find the dismissal to be automatically unfair it will need to apply the approach set out in Section 98 of the Employment Rights Act 1996. The material parts of that section are as follows:

98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) …..

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case.*

712. The issue of whether a lack of trust can amount to *'some other substantial reason'* has been considered in ***Ezsias v North Glamorgan NHS Trust*** **[2011] IRLR 550**. A lack of trust should not be used as a pretext for some other reason for the dismissal.

713. In ***Leach v Ofcom*** **[2012] EWCA CW959** Mummery LJ said:

> *'The legislation is clear: in order to justify dismissal the breakdown in trust must be a "substantial reason." Tribunals and courts must not dilute that requirement. "Breakdown of trust" is not a mantra that can be mouthed whenever an employer is faced with difficulties in establishing a more conventional conduct reason for dismissal.'*

714. ***Perkin v St George's Healthcare NHS Trust*** **2006 ICR 617, CA** establishes that a dismissal for having a particular personality defect would not amount to a substantial reason but it may do so where that personality defect is manifested in the workplace.

715. The burden of proving a potentially fair reason for a dismissal falling within section 98(1) or (2) falls on the employer. If the employer is unable to discharge that burden then the dismissal is unfair. If the employer can establish a potentially fair reason for the dismissal then the tribunal need to apply the test for fairness set out in Section 98(4).

716. The correct test is whether the employer acted reasonably, not whether the tribunal would have come to the same decision itself. In many cases there will be a 'range of reasonable responses', so that, provided that the employer acted as a reasonable employer could have acted, the dismissal will be fair: ***Iceland Frozen Foods Ltd v Jones*** **[1982] IRLR 439**. That test recognises that two employers faced with the same circumstances may arrive at different decisions but both of those decisions might be reasonable.

717. The range of reasonable responses test applies as much to any investigation and the procedure followed as it does to the substantive decision to impose dismissal as a penalty ***Sainsbury's Supermarkets Ltd v Hitt*** **[2003] IRLR 23**.

718. When looking at whether a dismissal is fair or unfair it is necessary to look at the entirety of the process including any appeal ***Taylor v OCS Group Ltd*** **[2006] IRLR 613, CA**

Discussions and conclusions

719. In this section we shall set out our conclusions in respect of each contested issue. In some instances in order to reach a conclusion it is necessary for us to make further findings of fact drawn from our general findings of fact set out above. Our additional findings generally concern the state of mind of the witnesses we have heard from i.e.

what the Claimant actually believed when making any disclosure and the reason for any treatment we have found made out. We have also made additional findings about why the Claimant brought his grievances when he did. Again it should be clear where we have made further findings of fact.

The 2017 disclosures

720. Whilst the majority of the legal principles we have set out above were not controversial the parties had differing views about the impact of the decision in ***Kraus v Penna plc*** and the interpretation of Section 43B as imposing a threshold that the putative whistleblower has a reasonable belief that any future failure is 'probable'. On behalf of the Claimant Mr Rajgopaul and Ms Plews accepted in their written submissions that this Tribunal are bound by the decision of the EAT on this point. They quite properly reserved the right to argue that the case was wrongly decided if this case goes any further.

721. Whilst accepting that this tribunal must interpret the word likely as meaning probable Mr Rajgopaul and Ms Plews argued that the further qualifying words in Section 43B dilute the effect of this. In their submissions they rely upon the following passage from the *IDS Handbook on Whistleblowing At Work* which says at §3.21:

> *"An important point to note is that the worker's reasonable belief must be that the information disclosed tends to show that a relevant failure has occurred, is occurring, or is likely to occur, rather than that the relevant failure has occurred, is occurring, or is likely to occur. In other words, the worker is not required to show that the information disclosed led him or her to believe that the relevant failure was established, and that that belief was reasonable — rather, the worker must establish only reasonable belief that the information tended to show the relevant failure. As the EAT put it in Soh v Imperial College of Science, Technology and Medicine EAT 0350/14, there is a distinction between saying, 'I believe X is true' and 'I believe that this information tends to show X is true'. This may appear a nice distinction, but it is an important one. The EAT in Soh observed that there will be circumstances in which a worker passes on to an employer information provided by a third party that the worker is not in a position to assess. As long as the worker reasonably believes that the information tends to show a state of affairs identified in S.43B(1), the disclosure will be a qualifying disclosure for the purposes of that provision even if the information does not in the end stand up to scrutiny."*

722. We accept the proposition that what Section 43B demands is that the worker subjectively believes that the information she or he discloses tends to show some wrongdoing. It is not necessary that the worker is right.

723. We would further accept that if the relevant subjective belief is held then the requirement that the belief is reasonable (as opposed to right) gives a degree of latitude to the employee – see ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed*** at para 28 which whilst it is dealing with the requirement that a belief in the public interest is reasonable must be equally applicable to a belief that the information shows wrongdoing.

724. In their submissions Mr Nawbatt KC and Mr Way say not only that it could not have been reasonable to believe that any disclosure showed that wrongdoing was likely but they dispute that the Claimant ever held a belief that they did.

725. When it comes to a subjective belief what is necessary is that a person believes that the information they disclose tends to show a future event is likely. . If they actually recognise that the information they have disclosed tends to show that there is a possibility rather than a probability of wrongdoing then in our view the parts of ***Kraus v Penna plc*** binding on us drive us to the conclusion that the worker could not succeed in showing that any disclosure is protected. There is nothing in that conclusion inconsistent with the passage in the IDS handbook relied upon by the Claimant or ***Soh v Imperial College of Science, Technology and Medicine EAT 0350/14*** which is cited.

726. We would wish to record our view that it is surprising that an employee who draws attention to a future risk of wrongdoing by providing information which she/he recognises shows that wrongdoing is a possibility and not a probability is not protected from any retaliation. If it were open to us to take a purposeful interpretation we may well have come to a different conclusion. As the parties agreed that we were bound by ***Kraus v Penna plc*** it is not open to us to revisit the meaning of the word 'likely'.

727. We had considered whether the words 'tends to show' dilutes the requirement to actually believe that future wrongdoing is likely. We do not believe that it does. The most natural meaning of the phrase is that the information must go towards showing that the relevant state of affairs exists. It does not affect the state of affairs itself. Furthermore, it seems to us that to hold otherwise would be to impermissibly go behind the binding decision in ***Kraus v Penna plc***.

728. Accordingly we find that where the Claimant says that the information he provided tends to show that some future wrongdoing is likely he needs to establish that he actually believed that the information disclosed tended to show the wrongdoing was probable. If he held that belief it must have been reasonable for him to do so. In his evidence the Claimant has suggested that he believed that the wrongdoing was a certainty. The Respondents say that we should reject that evidence. We need to address that conflict of evidence to decide whether many of the disclosures were protected. That involves making findings of fact as to the Claimant's state of mind in respect of each disclosure.

729. We deal with each disclosure in turn. In respect of each disclosure we have taken the following structured approach recommended in ***Williams v Michelle Brown AM***:

729.1. We have referred to our findings of fact set out above to determine what the Claimant actually said and to decide whether it included 'information'; then

729.2. We make further findings of fact as to whether the Claimant actually believed that the information tended to show wrongdoing (or where appropriate) that wrongdoing was likely; and

729.3. We make findings about whether the Claimant actually held a belief that his disclosure was in the public interest; then

729.4. We have asked ourselves whether the Claimant's subjective belief that the information disclosed tended to show wrongdoing was reasonable; and finally

729.5. We have asked whether any subjective belief that the disclosures were in the public interest was reasonable.

The September Abodunrin Disclosure (paragraph 20 POC)

730. Our findings of fact about what was said by the Claimant when he spoke to Dan Abodunrin are set out above. We are satisfied that the gist of what the Claimant said on 22 September 2017 included words to the effect that payment of 50 cents per barrel was not commercially justified and might lead to legal and reputational risks, we have further found that he made reference to the deal that had been done in 2016.

731. We are satisfied that the Claimant disclosed information in the sense identified in ***Kilraine v London Borough of Wandsworth***. The key facts conveyed were that deals had been concluded and were proposed where a fee of $0.50 per barrel had been and might in the future be agreed as a commission. That was put into the context that that fee was higher than might ordinarily have been commercially justified. That was to an extent a matter of opinion but it implicitly included information that a fee not commercially justified gave rise to the possibility of wrongdoing. We are satisfied that that is sufficient to amount to 'information' for these purposes.

732. The Claimant's pleaded case is that he referred to the 2016 transaction as having involved Alsaa and Wale Otegbola. He had made the same suggestion in his first grievance. The position was only revised in the Claimant's witness statement. As we have found above the fact that the Claimant had no accurate recollection of the agent concerned in the 2016 transaction caused us to be cautious about the Claimant's ability to remember exactly what had been discussed. In addition to this we need to take this error into account when assessing what the Claimant actually believed at the time and whether those beliefs were reasonable. The imposition of a reference to Alsaa into this discussion is consistent with the Claimant revising his memory to fit with information he gathered later – a common occurrence that does not require any dishonesty.

733. The Claimant did not apply to formally amend his case but the Respondents' took no point on this, being content to deal with the case set out in the Claimant's witness statement – subject to their submissions on credibility.

734. The Claimant has set out in his responses to the Respondents' request for further and better particulars, the types of wrongdoing he says that he had in mind. In summary he says that he believed the information disclosed tended to show:

734.1. That BP had, was or was likely to commit(ed) criminal offences of bribery which he has subsequently identified as arising under the Bribery Act 2010 in the UK and the Foreign Corrupt Practices Act 1977 in the US. He says his beliefs fall within Section 43b(1)(a); and

734.2. That BP had, was or was likely to breach(ed) legal obligations imposed by Bribery Act 2010 in the UK and the Foreign Corrupt Practices Act 1977 in the US. He says his beliefs fall within Section 43b(1)(b); and

734.3. That information tending to show those breaches had been, was being or was likely to deliberately concealed He says his beliefs fall within Section 43b(1)(f).

735. As can be seen above the Claimant suggests that he had beliefs in past, present and future wrongdoing. Of course that is not impossible but the information that tended to suggest wrongdoing over different time periods is very likely to be different. We would accept that information that tends to suggest past wrongdoing might also support a belief that future wrongdoing was likely. We need to assess the Claimant's beliefs to make findings about what beliefs were actually held. We will ask whether the Claimant believed the information he disclosed tended to show there had been past present and likely future wrongdoing.

736. We are satisfied that the information that the Claimant disclosed to Dan Abodunrin related to the practice of paying agents in the past and the proposals to continue to use agents in the future. There was no reference to any current transaction. We find that the Claimant's beliefs concerned the past and future rather than the present.

737. In order to assess whether the Claimant held the beliefs he claims it is necessary to look at what he knew. In our view it is less likely that a person will believe something that conflicts with something they know and understand. We are alive to the possibility that a person might hold beliefs that conflict with what they knew – it is just a matter to be assessed when evaluating an assertion that a person had a particular state of mind. We accept the submission made by Mr Nawbatt KC and Mr Way that an assessment of the specialist knowledge of the Claimant is necessary not only to evaluate whether holding a belief is reasonable but also whether the belief is held at all.

738. The following matters were known to the Claimant and support his contention that he held the beliefs he professes to have held;

738.1. The Claimant knew that a commission of $0.50 per barrel was being paid and that this was significantly higher than commissions paid in other regions; and

738.2. He knew that agents in Nigeria were considered high risk and that Nigeria was widely regarded as a country where there were high levels of corruption; and

738.3. The Claimant was aware of the fact that an indicator of possible corruption was an imbalance between the size of the fee and the services provided; and

738.4. The Claimant knew that the services provided by Nigerian agents were no greater than the services of agents working in other jurisdictions.

738.5. The Claimant had seen the e-mail from Mychael Obaseki which could reasonably have been understood as suggesting a link between the fact that it was an election year and bribery.

739. Matters which were within the Claimant's actual knowledge which tend to undermine the suggestion he held his professed beliefs are:

739.1. The Claimant knew that BP widely stressed its commitment to fighting corruption and encouraging practices of speaking up in particular he knew:

739.1.1. That BP maintained a 24-hour global confidential hot line 'Open Talk' and

739.1.2. That BP had taken action against an agent who paid a trivial sum of around $15 to a doorman (an example given by the Claimant in his statement); and

739.2. The Claimant had no evidential basis for any believe that BPs processes for the appointment of local agents had been circumvented as he acknowledged in the Business Integrity meeting.

739.3. The Claimant knew that there was a Local Content requirement that needed to be satisfied and he would have known that this gave agents in Nigeria a strong hand to play in any negotiation; and

739.4. He would have recognised that a demand for a high level of remuneration might not have been to facilitate bribery but might be greediness.

739.5. He knew that before any deal (of this size) was approved it would have to be approved at either the level of the Deal Governance Board and/or the Commitments Committee. He knew that those meetings were attended by representatives of BP's anti Money Laundering function and from its legal team as well as senior commercial figures; and

739.6. He regarded those systems as robust as he himself acknowledged when completing the Management of Change Pro-forma in July 2018.

739.7. He knew that before any deal was approved it would have to be supported by the Crude Bench. We find that the Claimant had no reasonable basis for believing that he would be overruled by Dan Wise in respect of payments to agents as the Claimant's own opinions about the level of remuneration were shared.

740. In response to a request for further information about his disclosures the Clamant said this about this transaction (with our emphasis added):

> *'In theory, [the rate of remuneration] could be justified. Nigeria exports many different grades of crude oil, each with a specific market value. The values change over time and an agent can help to lobby NNPC to secure the right grades at the right time. However, in reality Mr Otegbola was not particularly successful in these efforts and, with the benefit of hindsight, Mr Zarembok felt that the agency fee was totally out of proportion to the value which Mr Otegbola could have - and had – added, and that there seemed to him to be a risk of it being construed as a bribe'*

741. The first matter which we have identified in the quote set out above is that the Claimant recognised at the time he gave that further information that an agent might provide value for the services paid for by BP. The Claimant was less willing to accept that in his witness statement and oral evidence but in the light of the evidence as a whole

we are satisfied that the Claimant did know of the potential benefits of using an agent beyond merely satisfying the Local Content Act. The next point is that the Claimant says that payment of a large fee gave rise to a 'risk'. We would accept that he held that belief. However, in his evidence the Claimant has amplified this to the level of a certainty. We do not accept that he held that belief at the time. Finally the risk identified by the Claimant is that this would be *'construed'* as a bribe.

742. In assessing whether the Claimant held his professed beliefs we have regard to the fact that when he revised his witness statement he diluted a suggestion that he had 'objected' to the use of agents to a suggestion that he raised serious concerns. He also changed a suggestion that using agents to fulfill the Local Content Act was unacceptable to a suggestion that he had said that it was probably unacceptable. These changes would suggest that his beliefs were more tentative than his pleaded case would suggest.

743. We have no doubt that the Claimant had concerns about the use of agents in Nigeria. And that the purpose of the meeting was for the Claimant to discuss those concerns with Dan Abodunrin. His beliefs will have been informed by that. We accept that the Claimant had a very low tolerance of risk and viewed bribery as abhorrent. Again these matters would inform his beliefs. They are also very much to his credit.

744. Having regard to those matters and the evidence as a whole we are not satisfied that the Claimant believed that the information he conveyed tended to show there had been a bribe paid by BP (whether directly or indirectly) or by the agent acting independently of BP. We accept that he did believe that that was a possibility but not a probability.

745. For the Claimant to have believed that the information he disclosed tended to show that the 2016 transaction had resulted in a bribe he would have had to believe that the systems in place to prevent that had failed and that he himself had authorised a transaction that had resulted in a bribe being paid. He did not hold or tell us about any information that would have led him to belief that the agent involved was corrupt. Indeed it was the same agent that he appeared content to use when he wrote his e-mail of 27 November 2017.

746. Our conclusion that the Claimant's belief did not go beyond a concern or recognition of a possibility of bribery are strongly supported by the outcome of the discussions which is to propose that agents continue to be used but at reduced rates of remuneration.

747. We consider that had the Claimant believed that payment of a bribe, past , present, or future was a probability, rather than a concern or possibility, he would not have simply endorsed the future use of agents, would have made some formal (by which we mean written) objection and/or would have used the confidential hotline. It is inconceivable to us that if the Claimant really believed that a bribe had been or was likely to have been paid he would not have done more about it.

748. We do not accept that the Claimant actually believed that the information he conveyed tended to show that anybody would deliberately conceal that a bribe had been paid. We would accept that if the Claimant believed that if a bribe had been paid the belief that that was likely to be deliberately concealed would go hand in hand. However in the light of our conclusion that the Claimant did not hold that belief he has not satisfied us that he believed that.

749. It follows that we are not satisfied that the Claimant has the necessary subjective belief that what he told Dan Abodunrin tended to show any past present or likely future wrongdoing.

750. In case we are wrong about that we shall address the question of whether the Claimant could reasonably have concluded that the information he disclosed tended to show the categories of wrongdoing he has referred to.

751. This analysis requires us to disregard the finding that we have made which is that the Claimant did not actually believe that the information disclosed tended to show any wrongdoing or that it was likely that there would be in the future. We shall assume that he did. However in making this assessment we should not disregard the Claimant's specialist knowledge because that is capable of informing the Tribunal whether his beliefs were reasonable.

752. All of the matters set out above in weighing whether the Claimant held a subjective belief that the information tended to show wrongdoing are material in assessing whether had the Claimant actually concluded that the information tended to show past wrongdoing or a likelihood of future wrongdoing. We remind ourselves that the Claimant did not need to be right.

753. We would accept that it would have been reasonable to have believed that information that tended to show that monies paid to a local agent had been paid to the NNPC, diverted to individuals or politicians that that would breach criminal and civil obligations in the UK and USA. We were not invited to examine the law for ourselves by either party but that was unnecessary. We would also accept that if the information tended to show bribery it would be reasonable to believe that information might be deliberately concealed.

754. The Claimant has put his case on the basis that BP was the person who was in breach of criminal or civil obligations. The Claimant said in his evidence that he believed that the anti-bribery legislation prohibited facilitating any corrupt practice as well as engaging in such a practice. Whether the Claimant is right or wrong is of no consequence. We find that the Claimant could reasonably have held that belief.

755. The more difficult question is whether it was reasonable to believe that the information tended to show that there had been or was likely to be bribery. The Claimant could not have reasonably believed that payment of a large fee to an agent by itself tended to show the likelihood of the wrongdoing he has identified. We have had regard to the factors set out above and made an assessment of whether it would have been reasonable for the Claimant to have believed that the information disclosed tended to show the wrongdoing alleged. We have reminded ourselves that the issue is reasonableness and not our own assessment. Whilst we would accept that the Claimant might (and did) reasonably have concluded that the information suggested a possibility of the wrongdoing alleged we do not accept that he could reasonably believe that the wrongdoing was any more than a possibility (by which we mean less than a probability).

756. In the light of those conclusions we shall deal more briefly with the issue of a belief that the disclosures were in the public interest and the question of whether that belief was reasonable.

757. We have found above that when the Claimant first spoke to Dan Abodunrin about the use of agents some part of his concern was that the high rates of remuneration paid to agents might facilitate bribery. It was not in the Claimant's personal interests to stop or slow any deals. The fact that the Claimant might also have been interested in the commercial ramifications of using agents is not inconsistent with him holding other concerns.

758. We accept that the Claimant did believe that drawing attention to the payment of bribes, or even, as here, the risk that bribes might be paid, is a matter which was in the public interest. Such wrongdoing would be of interest to BP itself, its shareholders, and any regulator or other body concerned with stamping out bribery.

759. We must also be satisfied that the Claimant reasonably believed that the disclosure he made was in the public interest. If the Claimant's disclosure was based on mere speculation or an entirely remote risk we would need to consider carefully whether he could have reasonably believed that making the disclosure was in the public interest. That is not the position here. On the information known to the Claimant there was, as acknowledged by many witnesses, a residual risk that paying a local agent the sums demanded in Nigeria might facilitate bribery. It cannot be said that the Claimant was worried about nothing. He had some basis for his concerns. When we couple that with the approach we must take to the question of reasonableness – see para 28 of ***Chesterton*** above, the Claimant is entitled to some latitude whether we regard his concerns as overcautious or not. We have concluded that the Claimant could reasonably have concluded that making the disclosure that he did was in the public interest.

760. It follows that we have found this disclosure was not a qualifying disclosure as the Claimant did not hold the necessary belief that there had been, was or was likely to be any of the wrongdoing he has relied upon. He did believe that there was a risk of wrongdoing and has satisfied us that he believed that it was in the public interest to raise this matter and that it was reasonable for him to believe that.

Our approach in the other 2017 disclosures

761. We have approached each of the remaining 2017 disclosures in the same way. The conclusions that we reach are the same and we wish to avoid being overly repetitive with our reasoning. We do accept that, as the matter progressed, there were matters that came to the Claimant's attention that require to be taken into account in addition to the matters we have identified above. To keep this already lengthy judgment within reasonable bounds we have set out the additional matters and briefly explain the effect of those matters on our analysis. It might appear to the reader that we do less analysis as the disclosures continue. That was not our approach.

The Wise & Pearson Disclosure (paragraph 27 POC)

762. We have set out our findings in respect of the information conveyed by the Claimant during the meeting with Dan Wise and Sarah Pearson above. Broadly speaking we have accepted the Claimant's account of that meeting. We would accept that referring to the $0.20 fee per barrel, the fact that there was limited commercial justification and the fact that the negotiations were not rejected out of hand by the Origination Team has the

specific factual content envisaged in ***Kilraine***. We would accept that the Claimant conveyed information. Referring to a disconnect between the remuneration and the services provided did have the quality of tending to show possible wrongdoing.

763. By the time of this meeting the Claimant had learned of the following additional matters:

763.1. He was aware of the producer finance deal and the fact that it was a significant financial transaction.

763.2. He had seen Xavier Venereau's e-mail on 6 November 2017 and learned that Wale Otegbola was seeking a finder's fee which was thought to be unjustified and a commission of $0.20 per barrel which was twice the rate approved by the deal Governance Board.

763.3. He had learned from the e-mail chain that he had seen that the NNPC would vet the terms of the Agent's appointment and be aware of any fee.

764. The Claimant also held all of the knowledge we have identified above.

765. As explained above when looking at the question of whether the Claimant actually believed the information he provided tended to show that there had been, was or was likely to be a criminal offence, breach of a legal obligation or deliberate concealment we have held that it is insufficient that the Claimant believed that this was possible rather than probable. We need to decide whether taking into account all of the matters known to the Claimant at this stage he actually believed that the information he disclosed tended to show that such wrongdoing had occurred or was probable. The focus of this meeting was very much on the potential producer finance deal and as such the belief would concern a potential future event. It is therefore the lower standard of probable which was the focus of our analysis.

766. We would accept that the Claimant actually viewed the reference to Wale Otegbola misrepresenting Alsaa's role in introducing the producer finance deal as akin to sharp practice. We would also accept that he viewed the demand for a finder's fee and $0.20 cents per barrel as not commercially justified and as such an indicator of potential bribery. We would accept that he was also concerned that the origination Origination Team appeared prepared to keep negotiating.

767. Even taking these additional matters into account we cannot, and do not accept that the Claimant believed that the information he disclosed tended to show that it was likely that a bribe would be paid. As set out above he was aware of the robust governance in the IST. He was aware of his own power to veto a deal. He knew that the Originating Team could not reach any binding agreement without his consent or the consent of Dan Wise. He was aware that he could at any time raise a concern anonymously. He had no basis whatsoever for believing that he would be overruled by Dan Wise. He is also sufficiently commercially astute to recognize that nobody was suggesting that Alsaa's demands should be met. Whilst the Claimant gave evidence that he regarded wrongdoing as a certainty we do not accept that that was his view at the time. Had it been we have no doubt that he would have stated so in terms. He had a perfectly good

working relationship with Dan Wise at the time and it is clear that Dan Wise agreed with the Claimant that Alsaa's demands were excessive and would not be met.

768. We turn to the question of if, contrary to our findings, the Claimant could have reasonably believed that the information he disclosed tended to show that it was likely that the wrongdoing he has identified would occur. Viewed objectively the e-mail from Xavier Veneraeu does not bear some of the weight that the Claimant places upon it. What it does is sets out Alsaa's negotiating position. It does not suggest for a moment that that position is going to be accepted in full. The closest it gets is to suggest that there may be room for negotiation. Given what the Claimant knew about the way in which transactions would be authorised he ought reasonably to have recognised that there were numerous opportunities to mitigate any risk of bribery.

769. Even given the degree of latitude provided by the fact that the Claimant need only to have reasonably believed that wrongdoing was likely we find that he could not have reasonably believed that it was as great as probable that the wrongdoing that he had identified would occur. To have held such a belief the Claimant would have had to disregard his own ability to veto and/or formally report any transaction he did not approve of.

770. We would accept that the Claimant believed that raising these matters was in the public interest and that that belief was reasonable for the same reasons as we have set out above.

771. The Claimant put his case on an additional basis in his response to the Respondent's request for further information. He says that he believed that the information he disclosed tended to show that there had been, was or was likely to be a breach of a legal obligation namely a breach of the implied term of mutual trust and confidence in the employment contracts of members of the Origination Team. In the Respondents' closing submissions they fairly suggest that this point had all but been abandoned. Nevertheless we shall deal with it.

772. We would accept that the Claimant believed that Xavier Venereau was improperly entertaining negotiations beyond what had been agreed by the deal governance board. We would further accept that in the Claimant's mind that amounted to a breach of the terms of the employment contract. We very much doubt whether the Claimant gave any thought to what term of the contract might be breached and find that he did not. Putting that to one side we accept that the Claimant believed that the information he conveyed showed that there was some misconduct that amounted to a breach of contract.

773. We turn to the question of whether that belief was reasonable. The Claimant knew that Xavier Veneraeu could not agree any deal above that authorised by the Deal Governance Board. We were told, and accept, that on occasions the Originating Team could not secure terms approved by the Deal Governance Board and would return to seek additional authorisation. The Claimant would have known that. As we have said above there was nothing in Xavier Veneraeu's e-mail read objectively that suggested that he was going to accept the terms proposed by Alsaa. Viewed objectively that e-mail is no more than a report on the present state of negotiations. The Claimant's objection appears to be that there was a willingness to continue negotiating. We find that the Claimant could not have reasonably believed that drawing attention to the contents of

that e-mail tended to show a breach of contract by Xavier Venereau let alone a breach of the implied term of trust and confidence which would always justify summary dismissal..

774. Putting to one side the question of whether the Claimant believed that disclosing this information was in the public interest we ask whether it was reasonable to have believed that it was. We find that the Claimant could not have reasonably believed that drawing attention to Xavier Venereau's willingness to continue to negotiate with Alsaa was in the public interest. The Claimant knew that the product of any negotiations would not be binding unless approved by the Deal Governance Board, the Crude Bench and perhaps the Compliance Committee. There was no reasonable basis for believing or supposing that Xavier Venereau was complicit in bribery. At the very worst he was exhibiting an over willingness to entertain negotiations. We do not accept that the Claimant could have reasonably believed that there was any public interest in drawing attention to that.

775. It follows that we do not find that the information disclosed to Dan Wise and Sarah Pearson amounted to a qualifying disclosure.

The Goodridge and Obaseki Disclosure (paragraph 28 POC)

776. We have set out our findings above about what was discussed at the meeting between the Claimant, Dan Wise, and Sarah Pearson (from the crude bench) and John Goodridge and Mychael Obaseki from the Origination Team. In summary the Claimant discussed the proposals made by Alsaa and raised in Xavier Venereau's e-mail. We have accepted that he suggested that the amount sought was commercially unjustified. Again we are satisfied that this was factual information which satisfies the test set out in ***Kilraine***.

777. The only new information that the Claimant had prior to this meeting was that he knew Dan Wise shared his concerns and had been prepared to organise and attend the meeting. The purpose of the meeting was very much for the Crude bench to inform the Originating Team that they would not endorse any proposal to pay a commission beyond £0.10. This was knowledge that we find was likely to, and in fact did, cause the Claimant to accept that the risks of any wrongdoing were reduced.

778. We do not accept that at the time the Claimant disclosed information during this meeting he believed that the information disclosed tended to show any past, present, or future wrongdoing had occurred or was likely. In making this assessment we have had regard to what the Claimant actually knew. In common with his earlier disclosures we find that whilst the Claimant regarded the possibility of bribery as a real possibility his knowledge of the mitigating steps was such that it is simply not credible that he believed that the risk rose to the level of being probable. We adopt the reasoning set out above.

779. We do not accept that if the Claimant had held that belief it would not have been reasonable for him to do so. We adopt the reasoning above but take into account the fact that Dan Wise and Sarah Pearson were supportive of the Claimant's position. Given that the Crude Team had a veto over any transaction the chances of a deal being done without the Claimant's approval were vanishingly small.

780. We reach the same conclusions about the belief in the public interest as we have in respect of the other disclosures.

781. The Claimant also says that there was a qualifying disclosure because he raised the willingness of the Originating team to negotiate beyond the limits imposed by the Deal Governance Board and says that this tended to show that there had been, was or was likely to be a breach of the contract of employment of the Originating Team and in particular Xavier Venereau). Whilst we have accepted that Xavier Venereau's e-mail was the subject of discussion we do not accept that this amounted to a qualifying disclosure for the reasons set out above in connection with the meeting with Dan Wise and Sarah Pearson. In short, he could not have reasonably believed that the information provided showed that a breach of contract had occurred, was occurring or was likely to occur.

782. Our conclusion is that there were no qualifying disclosures made at this meeting for the same reasons as in the previous disclosures.

The Milnes Disclosure (paragraph 34 POC)

783. In our findings of fact above we have accepted that the Claimant's account of his discussion with Andrew Milnes was broadly accurate. The only suggestion we have not accepted is the Claimant's evidence that he suggested that the Origination Team had agreed payment of $0.50 per barrel without authorisation.

784. The aspects of the Claimant's account that we have accepted make it clear that he was talking about the use of a local agent, the rate of remuneration and specifically about the risks involved in this. Of all of the conversations the Claimant engaged in this was one of the clearest instances where the Claimant is alluding to the risks of doing business in this way. We are satisfied that there was sufficient factual content to this discussion to satisfy the test set out in ***Kilraine***.

785. When the Claimant made this disclosure he had gained the additional knowledge;

785.1. That Mychael Obaseki did not trust Wale Otegbola (although he may well have misinterpreted what was said); and

785.2. He knew that the Origination Team had been given a clear instruction that they should not offer any payment in excess of $0.10 per barrel.

786. When we have had regard to what the Claimant had learned we find that in common with the previous disclosures whilst the Claimant was concerned about the use of agents and wanted to put in place mitigating strategies, we find that his concerns never actually amounted to a belief that there was more than a mere possibility of bribery. There is nothing in the new information sufficient to persuade us that his state of mind had changed.

787. We shall not repeat our reasoning about the reasonableness of any belief. The fact that the Claimant had been told that Mychael Obaseki did not trust Wale Otegbola separately or in combination with what the Claimant knew would not give a reasonable basis for believing that there was anything like as high as a probability that there would be the wrongdoing that the Claimant says he believed the information disclosed tended

to show. The fact that the Claimant knew that he, Dan Wise, and Sarah Pearson had given some hard-edged instructions about the negotiations reinforce that conclusion. We find that any belief that wrongdoing had actually occurred, was occurring or was likely to occur was unreasonable. The information conveyed by the Claimant could only have supported a reasonable belief that there was a possibility of wrongdoing and even that possibility would have required the Claimant to take no steps to intervene.

788. We would accept that the Claimant genuinely and reasonably believed that raising concerns about the possibility of bribery was in the public interest.

789. In his responses to requests for further information, it is suggested by the Claimant that this disclosure also qualified on the basis of a reasonable belief that the Origination Team were in breach of their contracts of employment. We have not accepted that the Claimant raised his complaint about the Origination Team agreeing $0.50 cents per barrel without authority. By the time that the Claimant spoke to Andrew Milnes he knew that he, and Dan Wise, had told the Origination Team not to negotiate beyond $0.10 per barrel. For the reasons given above any belief the Claimant actually held that the information he disclosed tended to show that the origination team were in breach of their contracts of employment, was not a reasonable belief. We repeat our findings in respect of the issue of a belief in the public interest. It would not have been reasonable to have believed that making this disclosure (the employment contract part) was in the public interest.

790. It follows that we do not find that there was any qualifying disclosure on this occasion.

The East Disclosure (paragraph 37 POC)

791. As we have set out in our findings of fact above we have broadly accepted the Claimant's account of his discussions with Matthew East. The only matter we have not accepted is that the Claimant suggested that the originating team had previously exceeded their authority. The key points are that the Claimant raised the level of remuneration sought by Alsaa and what was proposed and suggested that it was disproportionate to the work that was involved. We are satisfied that that amounts to information in the sense identified in ***Kilraine.***

792. In assessing the Claimant's actual belief about whether this information tended to show any wrongdoing was likely, we disregard what Matthew East told the Claimant because it appears to have been a response to any disclosure and therefore cannot have been operative on the Claimant's mind when he first raised the issue.

793. For the same reasons as in the previous disclosures we are not satisfied that the Claimant actually believed that the information he disclosed tended to show any wrongdoing had occurred or was occurring or was likely to occur. We find that the Claimant knew that the information he shared showed only that that was a possibility, a risk falling short of being probable.

794. If, contrary to our conclusion that the Claimant did not actually believe that his information tended to show any wrongdoing had occurred, was occurring or was likely then we reach the same conclusions as set out above when assessing whether that was

a reasonable thing to believe. We find that it was not. We have set out our reasons above.

795. We do not accept that the Claimant could have had any reasonable belief that the information he conveyed tended to show any breach of the employment contract of any member of the originating team. We do not accept that the Claimant held a reasonable belief that any breach of a term of any employment contract in this context was in the public interest. Our reasons are set out above.

796. For the same reasons as we set out above we are satisfied that the Claimant actually held a belief that raising his concerns about the level of remuneration proposed was in the public interest and that it was reasonable for him to have held that belief. Our reasons are the same as set out above.

797. It follows that we do not accept that the information the Claimant disclosed to Matthew East amounted to a protected disclosure.

The November Abodunrin Disclosure (paragraphs 39 and 40 POC)

798. In our findings of fact we have broadly accepted the Claimant's account of this meeting. It is clear that the Claimant was raising concerns about the use of an agent as he raised the issue of auditing the agent's books. We find that he conveyed information about the level of remuneration in comparison to the work that the agent would do. For the same reasons as we have set out above we find that that satisfies the test in ***Kilraine***.

799. By the time he spoke with Dan Abodunrin the Claimant has additional knowledge which we need to take into account when assessing his state of mind. Matthew East had told the Claimant that BP's agency agreements included provision for auditing the agent's books and that in practice this was done. That is a further safeguard whereby BP could ensure that any remuneration paid by BP was not used for any improper purpose. The Claimant had also spoken to Phillip Llewellyn on 14 November 2017 and had asked him to ensure that he was happy with the agent and the agency agreement.

800. We shall not repeat the entirety of out reasoning set out in respect of the other disclosures. It is sufficient to say that our conclusions in respect of each of the issues relating to the beliefs of the Claimant and the question of whether they were reasonable are the same. Our conclusions are bolstered by the fact that the Claimant knew of the auditing process.

801. For the reasons we have set out above whilst we accept that the Claimant was quite properly raising legitimate concerns he actually knew and believed that there was only a risk falling short of a probability that there was any potential wrongdoing. By this stage the risk was becoming less and less. Only a few days later on 27 November 2017 the Claimant was quite happy to proceed.

802. We reach the same conclusions as we have above in respect of the alternative suggestion that the wrongdoing concerned a breach of the terms of any of the originating team's contract of employment.

The Llewellyn Disclosure (paragraphs 41 and 42 POC)

803. We have found above that the meeting between the Claimant and Phillip Llewellyn took place on 14 November and that the Claimant raised his concern that the level of remuneration that was proposed was disproportionate to the work that the agent might do. We find that that would satisfy the test in ***Kilraine.***

804. At the time the Claimant had spoken to Phillip Llewellyn he had not spoken to Matthew East or had his second conversation with Dan Abodunrin. We need to assess his state of mind without the information he gleaned in those conversations. We find that even without that information he did not actually believe that any wrongdoing had occurred, was occurring or was likely to occur. He knew that there was a mere possibility of wrongdoing. He knew that he could prevent that wrongdoing if he wished.

805. We rely on our reasoning set out above. We have concluded that the Claimant did not make any protected disclosures when he spoke with Phillip Llewellyn. He raised concerns about a risk which he actually knew was less than a probability. We have reached the same conclusions about any wrongdoing bases on a breach of any employment contract.

Overall view of the 2017 disclosures

806. We have accepted that the Claimant had genuine concerns that the rate of remuneration sought by Alsaa in negotiations raised a risk that the money would be paid to a third party as a bribe. The Claimant did not always distinguish in his mind the payment of a bribe and payment of a large sum of money for little work (but retained by Alsaa). These concerns were shared by others and widely recognised. The Claimant knew of the local content act and knew that an agent could bring some value. The Claimant knew of the process for approving any deal negotiated by the Origination team. He knew that he could give instructions to the Origination team. He knew and learned more about the process of vetting and appointing agents. We do not accept that he believed that he could not veto any deal. The rate of remuneration proposed gave rise to the risk of a bribe but the Claimant was aware that there were numerous opportunities to avoid that risk. There was no pressure on him to take any risk he was not comfortable with. Ultimately he was entirely comfortable with the deal proposed with the new agent.

807. The Claimant's caution is admirable and is fully in line with the public stance of BP of having a zero tolerance of corruption.

The grievances

808. Before looking at the individual grievances we shall deal with some points of general application. The Respondents say that when we look at the evidence as a whole we should accept that the purpose behind each of the Claimant's grievances and appeals (and a great deal of his other conduct) was a cynical attempt to manufacture a claim in order to secure a settlement or further his position in negotiations. The Respondents placed particular emphasis on the chronology of events and what they said was a correlation between the Claimant's grievances and negotiations between the parties.

809. It is clear from ***Chesterton*** that *'motivation is not the issue'*. What we take from that is that if we were to accept that the Claimant brought his grievances in order to further his own aims of obtaining a satisfactory settlement from the Respondents that would not mean that his grievances were incapable of being protected disclosures. Motivation might be relevant to the question of whether the grievances were in 'good faith' but that is relevant only to the issue of remedy.

810. The position taken by the Respondents is not only that the Claimant was motivated by his own self-interest to make any disclosures but that his obvious self-interest provides a sufficient evidential basis to rebut any suggestion that he had given a moment's thought to whether his disclosures were in the public interest. It is said in the Claimant's submissions that it was not directly put to the Claimant that he did not hold a believe that his disclosures were in the public interest. We do not agree. Mr Nawbatt KV repeatedly challenged the Claimant's state of mind. The Claimant had an ample opportunity to deal with the challenges made.

811. It is clear from ***Chesterton*** that the belief that the disclosures were in the public interest must be present at the time the disclosures were made. Paragraph 27 of the judgment says (with emphasis added)

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

812. Another relevant point that emerges from ***Chesterton*** is that provided the belief that the disclosures are made in the public interest is held, it does not matter that reasons emerge later that are put forward to justify that belief. Underhill LJ said at paragraph 29 (with emphasis added):

> '*Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is* ***evidential not substantive****.'*

813. In ***Dobbie v Felton*** HHJ Tayler emphasised that the exercise for the Tribunal is to make findings of fact. He said at paragraph 31 (with emphasis added)

> *'However, the fact that a disclosure is about a subject that could be in the public interest* ***does not necessarily*** *lead to the conclusion that the worker believed that she or he was making the disclosure in the public interest: Parsons v Airplus International Ltd UKEAT/0111/17/JOJ.* ***It is the belief that the worker held when making the disclosure that must be determined****.'*

814. Where there is an obvious public interest in the information disclosed, in our view that would strongly support an inference that the worker believed that at the time. Where the public interest is less obvious there will be less support for that inference. Additionally where there is evidence of the worker advancing a private interest that might support, but most certainly would not be determinative of, an inference that there was less thought to the public interest.

815. Our overall conclusion from a review of those authorities is that the question as to whether the Claimant actually held a belief that the disclosures in his grievances were made in the public interest is a question of fact that we need to determine.

816. We are entitled to have regard to the explanation given by the Claimant both at the time and later. We shall summarise the evidence that was advanced.

817. In the Claimant's grievance of 5 October 2018 he refers to the 2017 disclosures and suggests an obvious public interest as he alleges that BP were going to commit a criminal offence. He does not say why, if he were subjected to a detriment because of this that would be in the public interest. He does not mention any belief in the public interest in his letter of 10 October 2018.

818. In the Claimant's second grievance of 11 January 2019 he does not refer to his complaints as being related to any protected disclosures. He does not mention if or why he believed that there was any public interest in raising the complaints he has.

819. In the Claimant's third and fourth grievances, the appeal against the outcome of those grievances and the fifth grievance the letters include an assertion that the treatment infringes Section 47B and Section 47C but there is no reference to why bringing the grievance is in the public interest.

820. The Claimant's first ET1 included an assertion that his first grievance was a protected disclosure and that he reasonably believed it was in the public interest. No explanation is given as to why that was. The second grievance is not identified at that stage as a protected disclosure and nothing is said about the public interest.

821. The Claimant provided further information about his first ET1. He was asked to say why he believed that making his grievances was in the public interest. He responded saying:

> *'is a matter of public interest including to other employees of BP, to those responsible at BP for upholding the values espoused in the Code including in particular the Speak Up Policy contained within it, from the respective custodian(s) of the Code and the Speak Up Policy to the CEO and ultimately to the Board of and shareholders in BP, to Protect and the Equality and Human Rights Commission and, indeed, to members of the public concerned to ensure that the statutory protections are upheld by a high profile publicly listed company.'*

822. In his witness statement the Claimant said the following in respect of his first grievance:

> *'I also believed that it was in the public interest to disclose to him the details of the way in which I had been treated, which I believed showed that BP, a FTSE100 company and a giant of British industry, had failed to comply with its legal obligations not to subject me as a whistleblower to detriments because I had made protected disclosures and/or because I had taken or sought to take statutory PL. I think the British public expect better of a company of BP's stature, and that there is a real public interest in ensuring that whistleblowers and those who take PL are not subjected to detriments by such big employers.'*

823. The Claimants position was the same for his later grievances.

824. We have found above that the Claimant could have and did reasonably believe that raising his 2017 concerns was in the public interest.

825. We have said above that the more obvious the public interest in making a disclosure the more likely it will be that the worker had given some thought to that. The nature of the disclosures is to complain about an infringement of employment rights. We agree with Mr Rajgopaul and Ms Plews that these are important rights. However, the alleged infringement only impacts the Claimant. He does not suggest that there is any widespread practice. We do not consider the size of BP of its status as a large public company to provide particularly strong support for the suggestion that there is a public interest in disclosing breaches of these protections. Equally we do not consider that the fact that protecting whistleblowers is of interest to Protect – the charity supporting the rights of whistleblowers or the Equality and Human Rights Commission – who are charged with promoting equality– is sufficient to establish that it was reasonable to believe that making disclosures was in the public interest.

826. In his first grievance the Claimant says that he has been subjected to detriments because he raised the 2017 concerns. We have set out in our findings of fact, the public stance that BP takes on matters of corruption and in respect of retaliation against whistleblowers. If there was information that showed that BP were not living up to the standards it professes to do and retaliating against its employees who drew attention to matters of corruption then BP could rightly be accused of gross hypocrisy. This would affect its standing and may well impact its shareholders. This persuades us that despite the apparent private nature of the rights said to be infringed and despite the fact that the Claimant was the only person directly affected it would have been reasonable for the Claimant to have believed that disclosing a breach of Section 47B of the Employment Rights Act 1996 was in the public interest.

827. We have considered carefully whether the same reasoning would apply when the Claimant was later complaining not that he was treated badly because of his 2017 concerns but because he had raised grievances some of which 'piggy backed' on those earlier concerns. Whilst we would accept that the more remote the disclosures from the 2017 concerns the less obvious the public interest, having regard to the latitude afforded by the 'reasonable' test, we do find that the Claimant could have believed that his later complaints that there had been breaches of Section 47B of the Employment Rights Act 1996 were in the public interest.

828. The same considerations do not apply to disclosures that the Claimant has been subjected to detriments for the reason that he took parental leave. BP takes no greater a public stance on these matters than most other employers. The right to take parental leave and not to be penalised for it is not a matter of any obvious public interest. The Claimant does not point to any widespread practice. He is the only person affected by this. Whilst we acknowledge that his belief that any disclosure was in the public interest would only have to be reasonable, we do not find that he is able to meet that standard.

829. Drawing those matters together we have accepted that the Claimant might have reasonably believed that his disclosures about breaches of Section 47B were in the public interest. That leaves the question of whether the Claimant actually held that belief

but the finding that he might reasonably have done so is supportive of his contention that he did.

830. We have no doubt that by October 2018 the Claimant had a genuine sense of grievance. We find that the Claimant had become increasingly dissatisfied with BP from the Talevaras incident. We accept the suggestion made by Dan Wise that the Claimant took matters to heart and dwelt on them for a long time. He hated dealing with the origination team. The Claimant was very disappointed at the size of his 2017 bonus. We have found that the Claimant willingly elected to apply for good leaver status but that does not mean that he was pleased to do so. The Claimant had not been kept informed about the status of his good leaver application even though he expected it to proceed without difficulty. We find that he expected a discussion about the terms under which he would leave including any financial terms. We find that he engaged solicitors for the purpose of assisting him with that process.

831. The Claimant's text message to his wife of 24 September 2018 shows the occasion where he says he believed for the first time that he had been subjected to detriments because of a transaction that required a *'disgusting bribe'*. He says that he is tired of being a victim and has decided to *'throw some punches'*. The punch he threw was his first grievance. When the Claimant refers to the requirement that BP pays a disgusting bribe we do not think the Claimant was being honest to himself. The Claimant had not come close to using such language in his disclosures. He would have known that he had the ability and indeed the duty to stand in the way of a bribe being paid. We find that he had been stewing on the perceived injustices and had come to believe that BP should compensate him.

832. There were aspects of the Claimant's approach in his grievance of 5 October 2018 which we believe are relevant to his state of mind. The first is that he sent his grievance to Brian Gilvary. We consider that that was intended to have the maximum impact. In other words it was a tactical decision. The next point is that in that letter the Claimant made a very large number of allegations. A large number of matters flowed from the Taleveras incident and aftermath. He referred to a large number of alleged detriments many of which he has not sought to pursue before us. Again we find that this was the Claimant throwing in the kitchen sink and that that was a tactical decision. Some of those allegations were very speculative. Just to give one example, the Claimant's asserting that he had been demoted because he was shown on an organizational chart below Oliver Stanford. In fact he knew full well that the changes that were made were in anticipation of his departure which he had not kept a secret and which he was seeking to introduce.

833. We are invited to have regard to the chronology. The Claimant brought his first grievance on 5 October 2018 and added to that on 10 October 2018. It was his solicitor who initiated without prejudice discussions on 31 October 2018.

834. We have had regard to all the evidence but there were a number of matters which we consider support the proposition that the Claimant was taking a stance that was not consistent with seeking a resolution of matters other than by achieving a settlement. One such matter is the Claimant complaining about not being invited to attend a West Africa Team meeting on 9 January 2019 a matter which he did not raise with Jon Mottashed, a person with whom he had no quarrel but instead raised a written complaint. We find

that the Claimant would have known just how hard it would be to reinstate him. He could not have been unaware of the difficulties of this yet despite a nod to those difficulties he robustly criticised Jon Mottashed for his actions. The Claimant's categorisation of the Marpol project as 'unnecessary busy work' and his insistence on reverting to his old role or a senior trader role with the same financial prospects paid little regard to the obvious difficulties there would be in implementing this. This stance is consistent with the Claimant attempting to force a settlement.

835. Another matter which supports the suggestion that the Claimant was acting tactically is the North Sea role. The Claimant was aware that this role was being advertised. He did not speak to Jon Mottashed about this. He did not apply for the role. He had a copy of the job description. It was clearly not a job description for a senior trading role. He did not mention this matter until his fourth grievance on 4 April 2019. He had sat upon that information for weeks whilst the without prejudice negotiations continued. This was just days after the last without prejudice conversation with Janine Knights.

836. We accept that the direct without prejudice conversations ceased at the end of March 2019. That does not in our view mean that the suggestion that the Claimant was acting tactically to achieve a settlement ended at the same time. The parties were in litigation. Many parties to litigation will act tactically to achieve a settlement. Here the parties mediated although that did not resolve their differences.

837. We should not attempt to make a blanket finding of fact. We must treat each grievance/disclosure separately. We need to make individual findings of fact in respect of each one. That said we should look at the entirety of the evidence in order to reach any conclusions on the question of whether the Claimant actually believed that his disclosures were made in the public interest.

<u>The 5 and 10 October 2018 grievance (paragraph 65 POC)</u>

838. The Claimant puts his case that these documents were protected disclosures in three different ways. Firstly he says that the letter of 5 October 2018 repeats the 2017 disclosures. He then says that the letter tends to show a breach of Section 47B of the Employment Rights Act 1996 and that is a further protected disclosure. Finally, he says that the letter tends to show there has been a breach of Section 47C of the Employment Rights Act 1996. We shall deal with each of these in turn.

839. We would accept, as we have above, that the Claimant has disclosed information about the use of Alsaa/agents generally. We need to deal with whether he held the necessary belief that the information tended to show wrongdoing. We would accept that in theory the Claimant's actual state of mind might have varied between 2017 and 2018 such that he actually believed that some wrongdoing in Nigeria had been likely. The wording of his text message of 24 September 2018 provides some support for the suggestion that the Claimant had come to believe that the payment of a bribe was not merely possible but had been likely. By the time that the Claimant was giving further information about his claim he was using the more realistic expression 'risk' . We do not find that his state of mind had altered between 2017 and 2018. He still had concerns that the use of agents gave rise to a risk of wrongdoing. We find that he never believed that

this rose to the level of being probable. The level of safeguards importantly including the role of the Claimant himself meant that he could never have believed that wrongdoing was probable. If we are wrong about that then we find that any belief the Claimant did have was not reasonable. Our reasons are the same as for the 2017 disclosures. We shall deal with public interest below.

840. The manner in which the Claimant put his case was that his grievance(s) played a part in his subsequent treatment. In respect of the 5 October 2018 grievance the Claimant withdrew many of the claims that arose from the complaints in the grievance. He withdrew the allegation that he raised protected disclosures about the Taleveras incident and suffered detriments as a consequence. We should not assume that because he withdrew those complaints he was conceding that those parts of the grievance were not protected disclosures. He made no such express concession. However he did not lead any evidence about the beliefs he actually held about these matters other than in passing. It is for the Claimant to establish the relevant belief. For the claims and complaints that he withdrew we find that the Claimant has failed to establish either that he reasonably believed that any wrongdoing had occurred or that he reasonably believed that raising those matters was in the public interest.

841. We do not intend to address the issue about whether the Claimant actually, and reasonably believed that the parts of his grievance that were not withdrawn tended to show wrongdoing. It is unnecessary in the light of our conclusions below. There are a number of separate allegations and it would be disproportionate to evaluate them all. We should say that there are some, such as the 2017 bonus, where we would have taken some persuasion that the Claimant actually believed that his bonus was reduced because of any disclosures. He was well aware of the downturn in profits. We need not decide the point.

842. In order for the Claimant to have reasonably believed that he had been subjected to a detriment for making protected disclosures he would have had to have a reasonable belief that those disclosures were protected. We have held that the earlier disclosures were not protected disclosures. That is beside the point. We have done so on narrow grounds and after a careful analysis of the requirements of a protected disclosure focusing on the meaning of the word ‘likely’. Whilst the Claimant had legal advice we would fully accept that he could have reasonably believed that his earlier disclosures were protected and that that meant that it was possible for any detriment on those grounds to be unlawful. This exactly the sort of situation where the latitude given by the word ‘reasonably’ should be given a liberal interpretation. The same point applies to the subsequent disclosures.

843. We have already found that the Claimant could have reasonably believed that his disclosures were in the public interest. That is a powerful factor in his favour for why we should accept that he had this in mind when he instructed his solicitors to send this grievance. It is not determinative and we have to look at all the evidence.

844. We have set out some of the matters we have considered important above. In his own words the matters which the Claimant now says he believed were in the public interest were things that he decided to ‘throw in’. This is by no means the only matter we have considered but we find that it is indicative of the Claimant’s thinking. He had been stewing for months about the injustices that he felt had been perpetrated for some time.

He believed that he had been badly treated. We find that in many respects those feelings were a reflection on the Claimant's own views about unfairness. We acknowledge the genuine nature of those feelings without making any finding about whether they were justified. Without wanting to be unkind we find that the Claimant had become somewhat obsessed with his own feelings. As others said and as we observed, he is a very intense character.

845. The conclusion that we have come to is that the purpose of the 5 and 10 October 2018 grievances was to obtain redress for the Claimant's sense of grievance. As we have explained above that does not mean that he could not at the same time have considered that the matters he was raising were in the public interest. Having regard to the entirety of the evidence, the Claimant has not satisfied us that he gave a moment's thought to the public interest when he made these disclosures. We are sure that the Claimant has subsequently thought about the public interest and that he believes that he is being frank in his witness statement. We need to consider his state of mind at the time of the disclosures. We find that he gave no thought to the public interest at the time.

846. We reach the same conclusion in respect of any disclosures that there had been an infringement of Section 47C. We have held above that even if the Claimant did have the relevant state of mind he could not have reasonably believed that these disclosures were in the public interest.

847. It follows that we do not accept that the Claimant made protected disclosures in these grievances.

<u>The 18 March 2019 Grievance (paragraph 8 POC2)</u>

848. This concerns the Claimant's third grievance. The grievance concerns only two allegations. The first is the 'suspension' by Simon Ashley. The second is the 2018 bonus. That latter allegation, which had been part of the Claimant's second claim, was withdrawn. As such we were only presented with evidence in passing about whether the Claimant at the time of the grievance held the necessary beliefs that the information tended to show any wrongdoing and whether he believed that raising that matter was in the public interest. We are not satisfied that the Claimant has provided sufficient evidence in respect of either of those matters as they were not the focus of his case before us. The Claimant had been given an explanation of why he had been awarded a bonus of 500,000$, the profits in the area that the Claimant had worked were significantly down. The Claimant would have expected this from his conversations with Dan Wise in early 2018. If the Claimant actually believed that the reduction in his bonus was on the ground he had made protected disclosures then we do not accept that that belief was reasonable.

849. The 18 March 2019 letter does not acknowledge at all the reasons that the Claimant was given by Simon Ashley for sending him home. The Claimant was not acknowledging the existence of the without prejudice negotiations. His grievance reads as if he had been given no reason at all for being sent home. We have had regard to the timing of the grievance. The Claimant was sent home on 7 March 2019. On 13 March 2019 the Claimant is sent correspondence marked without prejudice and subject to contract. Only

then does the Claimant raise a grievance. The Claimant commenced his first claim on the same day.

850. We need to determine whether the Claimant actually believed that the information he included in his grievance letter tended to show that Simon Ashley had sent him home because he had made protected disclosures. We find that he did not. He actually knew why he was being sent home because it had been explained to him. He had the most tenuous basis for believing that Simon Ashley was motivated by his disclosures or parental leave a thing as Simon Ashley's involvement had been at all times to seek to resolve the situation. We do not accept that the Claimant actually believed that the information he disclosed in his grievance tended to show wrongdoing by Simon Ashley. This issue is coupled with the question of whether the Claimant believed that the disclosure was made in the public interest.

851. We would accept that it is possible for the Claimant to have believed that the situation he was in was connected to his 2017 disclosures and from that had come to a reasonable conclusion that his complaint about being sent home was in the public interest. The issue is whether he held that belief.

852. Again we have had regard to the whole of the evidence and not just the events surrounding this grievance. We find that there was an element of opportunism in the wording of the grievance informed by a belief that there was no need to disclose the reasons given for the Claimant being sent home. The timing of the grievance supports our view that it was inextricably linked with the negotiations. Again we acknowledge that we are not concerned about motivation. We are not satisfied that the Claimant gave a moment's thought to the public interest when he brought this grievance.

853. The Claimant also says that these two detriments were on the grounds that he had taken parental leave. We put to one side the question of whether the Claimant held a reasonable belief in this. For the reasons we have given above we are satisfied that the Claimant did not actually believe that raising this matter was in the public interest. If he did we are not satisfied it was reasonable for him to have done so.

854. It follows that we do not find that this grievance amounted to a protected disclosure.

<u>The 4 April 2019 Grievance (paragraph 12 POC2)</u>

855. The first and main complaint in this, the Claimant's fourth grievance relates to the North Sea role. The Claimant complains that nobody spoke to him about this role. The Claimant knew that the role had been posted and had obtained a copy of the job description. He did not speak to Jon Mottashed about the possibility of him doing this role. He has accepted later that the role was a junior role. That was obvious from the job description which he had. He had known that the role had been filled on 19 February 2019. Between that date and 4 April 2019 the Claimant had brought his first claim in which he raised no claim about this matter.

856. The grievance was submitted within days after a without prejudice discussion between the Claimant and Janine Knights. There has been no satisfactory explanation

why the complaint, if genuine, could not have been made earlier. In particular there is no good reason why it could not have been raised by the Claimant with Jon Mottashed if he had any genuine interest in the role. In assessing whether there was any genuine interest in this role we have had regard to the concession made by the Claimant that for a long period through the summer of 2019 he was not engaging in efforts to find another role.

857. We would accept that the Claimant's e-mail includes information which satisfies the test in ***Kilraine***.

858. The Claimant later accepted that he would have been too senior for the role as advertised. The complaint evolved into saying that the role could have been expanded. The Claimant had only the most tenuous basis for suggesting that Jon Mottashed's failure to do that was because of any earlier protected disclosures. We shall leave the question of whether the Claimant had a reasonable belief that any of the matters in this fourth grievance tended to show any wrongdoing.

859. We have regard to all of the evidence but place particular weight on the timing of this grievance. It raised matters that the Claimant had been aware of for some time at the point where without prejudice discussions had not succeeded in reaching a resolution. It has all of the hallmarks of tactical correspondence. Again we remind ourselves that we are not concerned with motivation. We are satisfied that when the Claimant raised these matters he did not give any thought at all as to the whether it was in the public interest to do so. We would not have found that it was reasonable for the Claimant to have believed that raising this grievance was in the public interest insofar as it relies on him taking parental leave.

860. It follows that we do not find that there were any protected disclosures within this grievance.

The 30 August 2019 appeal against the Third and Fourth Grievances (paragraph 13 POC3).

861. The Claimant's appeal against his Haydee Vielma's decision to reject his third and fourth grievances attacks her reasoning and reasserts that the treatment he raised in his grievances was because of his disclosures and/or because he had taken parental leave. He also complains about not being provided with all of the information that Haydee Vielma gathered in her investigation and complains of a lack of transparency.

862. We would accept that the Claimant has included information in his appeal letter that meets the test in ***Kilrane*** there is also a great deal of argument and various statements of the Claimant's position but that does not detract from the fact that at least some information pointing towards wrongdoing is included.

863. There are a large number of points made in the appeal letter and it is not proportionate to examine each one to ask whether the Claimant reasonably believed that the information showed wrongdoing. There is one matter that we shall deal with. The Claimant alleges a lack of transparency in not providing him with notes of interviews. We have some sympathy with his position. However, we do not accept that the Claimant

could have reasonably believed that this tended to show that BP or Haydee Vielma was subjecting him to a detriment on the grounds he had made protected disclosures and/or taken parental leave. The Claimant knew from his first two grievances that BP's policy was that the records of interview would not be disclosed. He refers to the policy in his letter. He had no basis for believing that the policy was not universally applied. It follows that e had no basis for believing that an application of this policy was on the grounds of any disclosures/parental leave.

864. For the reasons we have set out above we would accept that in respect of at least some of the matters included in the Claimant's appeal letter he could have believed that drawing attention to what he suggests were breaches of Section 47B would have been in the public interest. We do not accept that he could have reasonably believed that drawing attention to what he suggests were breaches of Section 47C was in the public interest. That leaves us with the question of whether the Claimant actually gave any thought to the public interest.

865. The appeal letter was sent within days of the unsuccessful judicial mediation. The parties were locked in litigation at this stage. As we have acknowledged it is irrelevant that the Claimant might have been motivated by advancing his position in the litigation. What matters is whether we accept that he thought that conveying the information in his appeal letter was in the public interest.

866. We have come to the same conclusion as elsewhere. Whilst we accept that the Claimant might have believed that his disclosure was in the public interest we do not find that he gave it a moment's thought. We find that he was exclusively concerned with his own position. He instructed his solicitors to draft and send the appeal letter only for his own purposes.

The 17 December 2019 Grievance (paragraph 44 POC3)?

867. The Claimant's fifth grievance dealt mainly with the actions of Sam Skerry and Janine Knights. There was extensive information about their acts and omissions. There is an assertion that those acts and omissions are because of the Claimant's disclosures. Whilst there is also a lot of conjecture and argument we are satisfied that there is sufficient information in the letter to satisfy the test in ***Kilrane***.

868. We would accept that in at least some respects the Claimant could have reasonably believed that he had been treated badly. We are not concerned at this stage with how he expressed himself. We are prepared to accept that the Claimant believed that his treatment was connected with his disclosures. We shall proceed on the basis that in respect of at least some of the complaints he raised the Claimant reasonably believed that he had conveyed information that tended to show breaches of Section 47B.

869. Whilst the more remote the alleged breaches are from the 2017 disclosures the less reasonable it would be to regard the grievances as being in the public interest we are satisfied that the latitude given by the 'reasonable' test is sufficient that we can say that the Claimant could have believed that his disclosures were in the public interest.

870. Once again we are left with the question of whether the Claimant actually did have the public interest in mind when he made his disclosures. He says that he did.

871. Having regard to all the evidence we do not find that the Claimant gave a moment's thought to the public interest. It follows that he cannot have made a protected disclosure in this grievance.

Conclusions on the grievances/appeal as protected disclosures

872. We have found that on none of the occasions that the Claimant says that he made protected disclosures he thought about the public interest in doing so. We recognise that the Claimant might have reasonably done so. We also recognise that our conclusions in this respect are in contrast to our conclusions about the Claimant having genuine and reasonable concerns about the transactions in 2017 and him acting for perfectly proper altruistic reasons. We have said that the Claimant has a propensity for dwelling on perceived slights. We have no doubt that he felt a personal sense of disappointment.

873. We accept that making a disclosure to advance a position in litigation does not preclude believing that a disclosure in the public interest. However where the private position grows to exclude any consideration then the necessary belief might be entirely excluded. We have not accepted the Claimant's evidence that he had the public interest in mind. We have no doubt he thought he was being truthful. Our findings must not be equated with a finding of dishonesty.

874. The question of whether a person had a particular state of mind is a finding of fact. The standard of proof is that of probability. The Claimant has not satisfied us that it was probable that he did have the public interest in mind.

Is there a detriment/the reasons for any treatment

875. In case we have made any error in our conclusions in respect of the protected disclosures we shall deal with the questions of whether the Claimant has made out any detriment on the facts and if he has, whether any such detriment was on the grounds that he had made a protected disclosure or had taken or proposed to take parental leave.

876. Below we set out our conclusions in respect of each of the alleged detriments. We should make it clear that in some cases we supplement our findings of fact set out above. In particular we make findings of fact as to the reason for any treatment we find was made out on the evidence. Firstly we deal with some points of general application.

The impact of the NNPC disclosures

877. We had a great deal of evidence about the matters raised by the Claimant in 2017 concerning the NNPC finance deal. We have not accepted that these amounted to protected disclosures on fairly narrow grounds. We have accepted that the Claimant was raising his genuine concerns that there was a risk of bribery. We note that a number of witnesses both before us and in the business integrity investigation labelled those concerns as 'purely commercial'. They were wrong to do so. The Claimant says that we should regard their unwillingness to recognise his concerns as being about bribery as

indicative of their resentment of him drawing attention to these matters. The initial force of that point is in our view diluted by the following considerations:

877.1. The Claimant accepts that at no time did he actually spell out that his concerns were about bribery or expressly ask anybody to act on the information he gave.

877.2. Our overall impression is that many of the concerns raised by the Claimant were well recognised and everyday points of discussion. They were very much business as usual matters.

877.3. The Claimant did not reduce his concerns to writing or go through any formal channel for raising bribery and corruption concerns.

877.4. The categorisation of the Claimant's concerns as commercial by some witnesses came a long time after the disclosures and in the context of grievances brought by the Claimant.

877.5. The Claimant had ultimately been willing to proceed with the NNPC finance deal having received assurances about the measures in place to combat the risk of bribery. He had never said that the deal should not proceed.

878. During the NNPC negotiations Dan Wise and Sarah Pearson were entirely supportive of the position adopted by the Claimant (however they later categorised it). It was Dan Wise who organized a meeting with the Origination Team at which everybody agreed that a maximum of 0.10$ per barrel would be paid.

879. We have found that the Claimant's distaste for Alsaa and Wale Otegbola were widely shared although for a variety of reasons. Importantly we have not accepted that it was the Claimant's concerns alone that brought the negotiations with Alsaa to a close. When negotiations with Alsaa were discontinued the Origination Team rapidly found an alternative partner. The Claimant agreed to the deal proceeding in that form. In our view it is highly unlikely that in those circumstances the Claimant would have been perceived as a person obstructing a lucrative deal or for bringing a Nigerian Senate investigation on the heads of BP.

880. Our overall impression having heard all the evidence was that the fact that the Claimant raised his concerns about the use of agents in Nigeria had no discernable effect on the relationships that he had with his colleagues.

<u>The manner in which the Claimant's case was put</u>

881. Throughout the hearing there were exchanges between Mr Nawbatt KC and Mr Rajgopaul about the manner in which Mr Rajgopaul put his case to the various witnesses. Mr Rajgopaul elected in most cases to put a rolled-up case on the basis that some detriment 'was because of the Claimant's disclosures/grievances and/or the fact that he took parental leave'.

882. We would accept that Mr Rajgopaul was entitled to put his case in this way but it did mean that there was no exploration with the witnesses which parts of the disclosures or grievances might have given them cause to retaliate against the Claimant. The Claimant's grievances are said to contain a number of protected disclosures. The

Claimant had withdrawn various allegations made in his grievances. The effect of this was that there was little evidence before us to determine whether the abandoned claims amounted to protected disclosures. In this case the difficulty gets more pronounced when at each stage further protected disclosures are introduced interspersed with matters where allegations were withdrawn. The points made by Mr Nawbatt KC have echoes of the dicta of HHJ Taylor in ***Vaughn v Modality Partnership*** **UKEAT 0147/20** where he said: *'Litigants in public interest disclosure cases often feel with detriments and disclosures that the more the merrier, whereas focus on the principal disclosures that may have resulted in detriment or dismissal is more likely to bear fruit'*. The Claimant's approach of putting a case that 'you were materially influenced by the grievances' does pass the task of questioning which part , if any, of the grievances was a material influence for any act or omission. That said we accept that it is sufficient if any part of a protected disclosure had a material influence on the actions of any Respondent and that the focus is on the explanations given for any treatment.

883. A further point raised by Mr Nawbatt was a suggestion that the Claimant had not suggested that his presentation of his claims were protected disclosures in themselves. We accept that that was not the way that the Claimant put his claims. We note that in various provisions which are enforced through the mechanism of Section 48 of the Employment Rights Act 1996 there are provisions which make it unlawful to subject a worker to a detriment on the ground that they had brought proceedings. Sections 45A (1)(e) and 47E(1) (c) being two examples. Those provisions are analogous to the protection afforded by Section 27 of the Equality Act 2010. Section 47B has no similar provisions.

884. Section 104 of the Employment Rights Act 1996 provides protection for employees dismissed because they had asserted a statutory right of brought proceedings alleging an infringement of a right. The statutory rights include any right under the 1996 Act which a remedy could be obtained in an Employment Tribunal. Thus an assertion that Section 47B or Section 47C would be a relevant statutory right. That would afford protection against dismissal for bringing proceedings. The Claimant has not sought to rely on that section.

885. We consider that there will be cases where a reaction of an employer to a worker bringing proceedings relying on protected disclosures of the taking of parental leave against it will be impossible to separate from the protected disclosures or taking of parental leave itself. However we do not consider that a reaction to being sued for one of those reasons will always equate with the reasons themselves. If that were the case there might be no need for Section 27 of the Equality Act 2010 and the similar provisions we have identified. We have concluded that whether a response to litigation can be 'on the ground of' the protected acts set out in sections 47B and 47C is a question of fact. We adopt that approach below.

3(c) From November 2017 to the end of February 2019 Mr Wise ceasing to consult C on strategic decisions (including in respect of bonuses for more junior traders), ignoring C's suggestions on team structure and strategy

886. In his submissions and evidence the Claimant has sought to rely upon a number of examples of matters that he says demonstrate a change in attitude by Dan Wise. Those

examples almost all relate to the earlier part of the period identified above. We shall deal with those examples before setting out our conclusions about the entire period.

887. In his first grievance the Claimant had relied upon the fact that he had not been invited to the Crude Executive meeting in 2017 as an example of Dan Wise sidelining him and seeking to freeze him out. He has since accepted that that is unsustainable. He had no reasonable expectation of being invited to that meeting.

888. A complaint maintained by the Claimant is that Dan Wise did not consult him about the bonus levels of junior members of his team. Dan Wise accepts that he did not do so in 2017 but does say that he would have informed the Claimant about what had been decided. In our findings of fact set out above we have accepted that Dan Wise introduced a new system for deciding on the levels of bonuses. We find that this change meant that the level of bonus would not have been discussed with the Claimant in the same way as he had done previously.

889. The Claimant has identified some e-mails which raised strategic matters which were not directly responded to. However the agreed bundle included text messages from around the same period which show the Claimant and Dan Wise gossiping about business matters. We accept the evidence given by Dan Wise that he worked just metres away from the Claimant and that he preferred to talk rather than send e-mails.

890. We have had regard to the allegation the Claimant made that Dan Wise lost his temper when discussing a proposal to save tax made by Oliver Stanford in relation to an oil deal in Angola. The Claimant put that as Dan Wise losing his temper. As the matter was investigated the Claimant has at times watered down that allegation and at times he accepts that he exaggerated. In the business integrity investigation he accepted that there was no infringement of BP's values. He has abandoned that allegation as a separate detriment. For the purposes of the allegation we are considering, we find that the stance of the Claimant in relation to the 'loss of temper' is consistent with him being oversensitive.

891. Having regard to the entirety of the evidence we are not satisfied that in the period prior to the Claimant applying for good leaver status there was any change to the way that Dan Wise dealt with the Claimant.

892. We would accept that once the Claimant had applied for Good Leaver status there would have been some change in the business relationship. The Claimant's role from that time was to prepare Oliver Stanford and Tara Behtash to take on greater responsibility. It is likely in our view that this would have diluted the interaction with Dan Wise.

893. There was a further change that would have affected the relationship that is when Dan Wise left to take up his role in Chicago and Jon Mottashed became the Claimant's line manager.

894. There was a complete cessation in the relationship from 4 December 2018. From that point onwards, we are satisfied that the reason for that is that Dan Wise was instructed by HR that he should not have any management dealings with the Claimant whilst the Claimant's grievance(s) were outstanding.

895. It follows that we have rejected the key elements of the Claimant's factual case in relation to the earlier period. The conduct complained of did not occur and we cannot therefore examine the reasons. We can do so for the later periods.

896. We are satisfied that any change in the amount of discussions Dan Wise had with the Claimant after the Claimant applied for good leaver status was because the Claimant was grooming Oliver Stanford and Tara Behtash to take on more responsibility (increasing their involvement in strategic matters). We find that that is a reason that is entirely distinct from the Claimant having made disclosures or having taken parental leave.

897. We reach the same conclusion about any difference made in the working relationship following the appointment of Jon Mottashed. The reason for any change was Dan Wise's move to Chicago. We find that that is a reason that is entirely distinct from the Claimant having made disclosures or having taken parental leave.

898. We have accepted that there was a significant change between 4 December 2018 and the end of February 2019. During that period Dan Wise had no managerial dealings with the Claimant. We have already commented in our findings of fact set out above that there was a complete failure to explain to the Claimant what advice Dan Wise had been given and why. We would readily accept that the Claimant could view this as a detriment particularly as the last e-mail that the Claimant received from Dan Wise promised him that he would be fully reinstated.

899. The fact that the Claimant had brought a grievance against Dan Wise which was being investigated is the background to the decision by the HR Department to instruct Dan Wise to have no further managerial dealings with the Claimant. As such, if the test was one of 'but for' causation then it is certainly the case that but for the Claimant's grievance Dan Wise would not have been given the instruction he was.

900. We have regard to the fact that Jon Mottashed, Sam Skerry and Janine Knights were also instructed to have no dealings with the Claimant after they were the subject of grievances. In our experience in many organisations it is considered sensible to separate individuals bringing and named in grievances in order to reduce difficulties in the working relationships and avoid any further complaints or counter allegations. Having had regard to all of the evidence we are satisfied that that was the reason for the instruction in this case. We find that that is a reason that is entirely distinct from the Claimant having made disclosures or having taken parental leave.

901. For completeness we should deal with the question of the failure to communicate the decision to the Claimant. The Claimant makes these allegations against Dan Wise and so we need only consider his reasons for not communicating his stepping aside to the Claimant. We find that he did not view this as his role and left the matter to the HR department that had given him the instruction to step aside from managing the Claimant. It is not impressive that he did not question how this was being communicated to the Claimant but we do not infer or find that this had anything whatsoever to do with the Claimant making disclosures or taking parental leave.

3(d) Mr Wise making the comments in C's 2017 year-end review referred to in paragraphs 49 and 50 POC

902. We have dealt with this extensively on our findings of fact. We have concluded that the appraisal could not reasonably have been regarded as 'downbeat'. The Claimant makes a comparison with the 2016 appraisal. We would accept that Dan Wise says more positive things about the Claimant's performance in this appraisal, however, the Claimant's benches had been far more profitable in that year. The difference is unsurprising. We consider that Dan Wise's assessment of the West Africa book's performance as 'decent' in difficult trading conditions was at least fair and arguably generous in circumstances where there was a significant decline in profits.

903. We do not consider it surprising that Dan Wise did not specifically mention the fact that the Claimant had had a role in the recruitment and training of a member of the Chinese team.

904. We do not agree with the Claimant that the reference to producer finance deals is an implicit criticism of the Claimant for his disclosures relating to the NNPC producer finance deal. We accept that producer finance deals were viewed as a new source of revenue independent of BP's own oil fields. Xavier Venereau had been hired specifically for his expertise in these matters. There was no basis for Dan Wise to assume that the Claimant did not wish to be involved in Producer Finance deals – he knew that the Claimant had given the go ahead for the NNPC deal.

905. We have concluded that there is nothing unfair or downbeat about the Claimant's appraisal in the context of results in 2017 that were worse that the year before. As such we reject the Claimant's factual contention.

906. We have gone on to ask whether the Claimant's disclosures or parental leave played any part in Dan Wise's decisions to write what he did. We are satisfied that Dan Wise believed that he was giving the Claimant a fair and broadly positive appraisal. We are satisfied that the Claimant's disclosures and parental leave had no influence whatsoever on Dan Wise when he wrote that appraisal.

(3e) Halving C's bonus for the 2017 financial year

907. We shall assume that being paid a bonus that was less than had been paid in previous years is capable of being a detriment. Our focus is on the reason for that treatment.

908. In our findings of fact we have accepted that the starting point for the calculation of any bonus was the performance of Global Crude. In 2016 the profits made by Global Crude were £1021M (a decrease from previous years) in 2017 they were £507M. Given that the profits had reduced by this level it is unsurprising that the bonus pot would be reduced proportionately. That is what Dan Wise warned of when he sent his out his e-mail to the team on 27 February 2018. In our view had the Claimant not received a significantly lower bonus there would have had to be some exceptional reason for this.

909. The Claimant sought to suggest that as the significant downturn in profits related to the performance of Global Crude that any reductions in bonuses should have been restricted to that team. We are not concerned with whether the system adopted was fair but only with whether the Claimant was singled out. Having said that it seems to us an entirely sensible starting point in deciding what bonuses to pay to look at the overall

performance. It is that overall performance which generates the revenue that is used to pay bonuses.

910. We accept the evidence on behalf of the Respondents that the majority of senior crude traders had their bonuses cut by in the order of 50%. That is consistent with the Global profit being the biggest deciding factor.

911. We have accepted that a further criteria for assessing individual bonus is the performance of the bench/team that the trader works on or manages. In 2017 the Mediterranean and West Africa books had a combined profit of £58M a 27.5% drop from the year before. That is a significant factor that would point to a reduction in bonus. In fact the Claimant does not seem to have had his bonus reduced by any significant amount as a consequence of the downturn on the benches that he led.

912. We heard, and accept, that the trader responsible for the situation in the USA did not get any bonus. Travis Korella, who had performed better than expected still had his bonus reduced. Jon Mottashed's North Sea team had a good year in 2017 increasing profit by 55%. He had been earning bonuses which were about a third of the Claimant's historic level. He was given an increase of 42%. Having regard to the entirety of the evidence we find that the performance of the individual bench was a factor in deciding the Claimant's bonus but that it was not as significant factor as the Global Crude profit.

913. The final factor we have accepted applied could best be described as a retention factor which was applied where there was a risk of talent departing to competitors. Paying larger bonuses to such individuals would reduce the scope for paying others. We accept that individuals such as Oliver Stanford, who was seen as *a 'book leader of the future'* would not have had his bonus reduced for fear he would go elsewhere. This is a criteria that favoured the up and coming at the expense of senior traders.

914. We have accepted that the bonuses were scrutinised at a high level and cross checked for consistency. This was not a 'line by line' examination but more of a sense check. It was intended to and we find did improve regional consistency. Whilst we found the process reasonably robust there remained an element of judgment which in the Claimant's case vested a discretion in Dan Wise.

915. We have found above that in recording that 'this might be the straw that breaks the Camel's back' Dan wise was warning his superiors of the risk that the Claimant might leave. We have rejected the suggestion that Dan Wise was telling his superiors that this was what they needed to do to make the Claimant leave. To make it clear Dan Wise was trying to secure a more generous bonus for the Claimant by making this comment.

916. Having regard to all of the evidence we have concluded that the bonus paid to the Claimant was consistent with the objective criteria. If anything the Claimant was treated somewhat more generously than might have been expected given the performance globally and of his own benches. We are satisfied that Dan Wise was not influenced in any way at all by the Claimant's disclosures or that he had taken parental leave

3(g) Moving C's seat to the end of the bench from April 2019

917. Prior to taking parental leave the Claimant had sat next to Matt Jago, A Trader on the North Sea bench who in turn sat next to Dan Wise. At the point the Claimant returned Dan Wise and Matt Jago had swapped seats . Oliver Stanford sat next to Dan Wise, Tara Behtash next to him and then the Claimant. This meant that the Claimant was one seat further away from Dan Wise than when he left. The Claimant accepted that that placed him perhaps 1 metre further away from Dan Wise. We need to ask ourselves whether that amounted to a detriment applying the test in ***Jesudason v Alder Hey Children's NHS Foundation Trust***. The Claimant says that proximity to Dan Wise was an indicator of status on the crude bench. We do not think that this is borne out on the evidence. Matt Jago sat between the Claimant and Dan Wise before he went on parental leave. The Claimant has never suggested that that was because Matt Jago was viewed as being of greater status than him at that time. Ann Devlin. a very senior and experienced trader sat further away from Dan Wise than the Claimant did before or after his parental leave.

918. We would accept that both Dan Wise and later Jon Mottashed deliberately placed themselves at the centre of the bench. That way they would be surrounded by the team. By a very narrow margin we would accept that a reasonable employee might place some value on being at the centre of the bench. As such placing the Claimant one seat away, by a very narrow margin, amount to a detriment. We find the extent to which the Claimant was really concerned about this is evidenced by the fact that he never raised this as an issue until he included it in his first grievance. At worst he felt mildly disappointed to have moved. We reject any suggestion that he felt unable to speak up. He had previously felt able to do so.

919. In our findings of fact set out above we have concluded that Jeremy Tolhurst was probably the person responsible for allocating the Claimant his seat when he returned from Parental Leave. It is therefore his reasons for the decision which are the primary focus of our attention although we recognize the scope for him being influenced by others. We would expect that there were discussions with Dan Wise about this.

920. It is clear from the charts appended to the Claimant's witness statement that prior to him going on parental leave the bench was organized in a way that allowed traders working on a particular geographical area to sit together. That is particularly clear looking at the members of the North Sea team. The Claimant had sat in close proximity to the traders who reported to him.

921. The Claimant accepted that whilst he was on parental leave Tara Behtash had moved to sit next to Oliver Stanford. At that time they were both working on the West Africa book. Sitting them closer together was consistent with the practice of seating people together who worked on the same area. The Claimant agreed that he was going to be spending time working on the Mediterranean book. It is correct that on his return he was not sitting beside Andrew Finlinson who was the junior trader working on the same book but he was not far away. The Claimant accepted in cross examination that Tara Behtash was the more junior of the Traders on the West Africa team and in the seat he was allocated he would be able to supervise her. He also accepted that when interviewed by Emma Locke he had said that he had not raised any issues about the seat he was allocated because Tara Behtash was making good progress and he did not want to move her.

922. It is suggested on behalf of the Claimant that Dan Wise has not always been consistent in his explanations of why the Claimant was seated where he was. He is recorded as telling David Knipe that he suggested to the Claimant that he sat closer to Andrew Finlinson. We accept that that is unlikely.

923. Our conclusions are that a factor in deciding where the Claimant would sit was the wish to keep Oliver Stanford and Tara Behtash where they were because they were both working on the West Africa book. Dan Wise said the Claimant was 'just slotted in' in a convenient seat which would be in close proximity to Tara Behtash and no great distance from Andrew Finlinson. This was a perfectly sensible arrangement as the Claimant recognized when talking to Emma Locke and one which he conceded in cross examination. He later qualified that concession in re-examination but we find that his answers in cross examination were more accurate. He did see the sense in the seating arrangement and it is for that reason he never raised it as an issue at the time.

924. We are satisfied that the reason that the Claimant was given the seat that he was allocated was that it preserved the seating arrangement whereby Oliver Stanford and Tara Behtash sat together whilst allowing the Claimant effective supervision of his team. We are satisfied that the decision had nothing whatsoever to do with the fact that the claimant made disclosures or that he took parental leave. The fact that he took parental leave caused the change in seating plan but it was not the reason for it.

3(h) Mr Wise repeatedly asking C when he was going to cease trading and pushing him to apply for Good Leaver status from April to June 2018

925. In our findings of fact we had not accepted that Dan Wise 'repeatedly' asked the Claimant when he was going to cease trading. We should be clear that what we are saying is that whilst the topic was certainly discussed in March and might have been raised on one or two other occasions it was not raised more often than what could reasonably have been expected in an environment where ceasing trading was a normal topic of conversation.

926. We accept that Dan Wise had formed an impression that the Claimant might leave. That is clear from the exchange between Dan Wise and Sarah Pearson on 12 April 2019 where he speculates that the Claimant might resign. That exchange took place prior to any protected disclosure (on the Claimant's present case) and before he requested parental leave. Dan Wise knew the Claimant was deeply unhappy about the division of loss following the Taleveras incident. The Claimant had been very emotional when he met with him in 2016. The Claimant had changed his working hours significantly quite understandably adjusting his work/life balance.

927. When Dan Wise met with the Claimant in March they discussed the bonus allocation for 2017 but also the projected bonuses for 2018. We accept that Dan Wise said words to the effect that the good times were over. We would accept that that was very much his own view and one which he expected the Claimant to share.

928. It is not disputed by Dan Wise that in his succession plan he identified the Claimant as being a person who might wish to leave. He did so before having any confirmation from the Claimant that that was indeed the case. We find that he was making assumptions based on his own views of how unhappy the Claimant was.

929. We have found that the meeting on 18 May 2018 was the first time that Dan Wise directly asked the Claimant about his intentions. That explains the *'somewhat out of the blue'* text that the claimant sent his wife. We accept that the message that Dan Wise gave the Claimant was that if he wished to apply for good leaver status he should do so reasonably promptly. We consider it important that the invitation made by Dan Wise was for the Claimant to indicate whether he wished to leave in the next 2 years. That is a matter which we have taken into account when looking at whether Dan Wise wanted to push the Claimant out of BP. Two years is a long time to wait to get rid of an employee if Dan Wise wanted to do so because they had made protected disclosures.

930. We have found that what the Claimant was presented with was in no sense a threat but was a choice. The Claimant was a well-educated senior trader who had raised concerns about other matters (we have the Taleveras division of loss in mind) who had access to and had previously instructed specialist solicitors. He would have known that he had a choice whether to apply for good leaver status or not. We would accept that the Claimant was unhappy. He was still deeply upset about the Taleveras incident. He was unhappy about his bonus and he was unhappy at having to work with the Origination Team. We find that he chose to apply for good leaver status for these reasons.

931. We find that Dan Wise's assumption that the Claimant might want to leave was in fact sound. The Claimant did choose to leave when offered the choice. We do not accept that the offer of that choice was the Claimant being forced out as he has suggested. Dan Wise raised the matter because he was asked to look at succession planning and he believed, rightly, that the Claimant had become so fed up that he might be contemplating leaving.

932. We have asked ourselves whether Dan Wise's approach with a suggestion that the Claimant might like to leave is capable of amounting to a detriment when in fact the Claimant was open to considering leaving. We have come to the conclusion that it could be. Whilst the Claimant was increasingly unhappy with aspects of his job and the bonuses he had been given in 2017 and could expect in 2018 he had not for himself decided that he should give up trading.

933. We find that being a trader is analogous to being an elite sportsman. Careers could be stella but were often short. It was not a job that many people did for a very long time. We find that the general view was that after a while even the most stella trader would lose the necessary focus and drive to work at the level expected. It is one thing for a person to take the decision that they have had their days of glory for themselves. It is another for a manager to raise the topic even if ultimately the trader agreed. Nobody would find it easy to recognise that their trading years were probably over.

934. We find that whilst Dan Wise's assumptions were broadly correct it was still hurtful for the Claimant to have his future career raised in this way. It is a matter about which he could reasonably complain and qualifies as a detriment.

935. We turn to the question of whether the Claimant's NNPC disclosures played any material part in Dan Wise asking the Claimant if he wanted to apply for good leaver status. We ask first whether we are satisfied that Dan Wise has proved his reasons for this treatment. With one caveat set out below we are. We accept that Dan Wise approached the Claimant because he assumed that the Claimant was very unhappy and

would continue to be unhappy given the prospect of a further low bonus in 2018. He had held the view that the Claimant was unhappy for a considerable time including before the disclosures.

936. We find that Dan Wise was not concerned in any way by the disclosures that the Claimant made in 2017. There were a number of areas where Dan Wise backed up the Claimant at the time. We do not find that his later mischaracterisation of the Claimant's concerns as purely commercial provides any great support for a suggestion that in early 2018, prior to any grievances or allegations, Dan Wise resented the Claimant raising these matters. We find that nobody considered the Claimant responsible for the fact that there was a Nigerian Senate enquiry instigated by Alsaa not being appointed as a local agent. There was no direct evidence and insufficient evidence to support an inference that they did.

937. We do not accept that Dan Wise came to believe that the Claimant was improperly putting obstacles in the way of deals proposed by the Origination Team whether because of complaints by that team (of which there is no direct evidence) or at all. The Claimant did not have a good relationship with the Origination Team and he was probably not their preferred point of contact either. However, there was little evidence that the Origination Team considered that the Claimant had blocked the deal with Alsaa. The Origination Team had come to their own conclusions about Alsaa and had found another local partner who had agreed to terms that the Claimant agreed were acceptable.

938. Dan Wise and BP have satisfied us that the reason that the Claimant was approached and asked whether he wished to apply for good leaver status was Dan Wise's impression that the Claimant was unhappy and might wish to leave. That had nothing whatsoever to do with the Claimant's disclosures in 2017.

939. Having accepted that Dan Wise approached the Claimant because he believed him to be unhappy we must ask whether that perception was informed in any material way by the fact that the Claimant had requested parental leave. If we were asking whether it was a large part of the reasons the answer would be no but that is not the question.

940. We consider it significant that Dan Wise expected the Claimant to return from parental leave 'invigorated' and with a fully formed business plan for the future. As we have found above that would have been an extraordinary approach to a woman returning from maternity leave. We have asked ourselves, why the difference. We find that the answer is that on some level Dan Wise saw the Claimant's period of parental leave as symptomatic of a trader who was burnt out. When the Claimant did not return invigorated that reinforced Dan Wise's view that the Claimant might wish to leave.

941. Whilst the fact that the Claimant took parental leave was only one of a number of factors that led Dan Wise to, correctly, assume that the Claimant might like to leave we find that it was a factor and sufficiently material to satisfy the test in ***Fecitt v NHS Manchester*** which applies as much to claims brought under Section 47C as it does to claims under Section 47B of the Employment Rights Act 1996.

942. It follows that subject to any issue of time limits the claim under Section 47C of the Employment Rights Act 1996 claim would succeed.

3(l) Mr Wise not taking any steps to: (i) retract his announcement to the trading team that C was leaving after 30 November 2018; (ii) meet with C following Mr Wise's email of 30 November 2018; (iii) restore C's roles or responsibilities after 30 November 2018; and/or (iv) provide C with appropriate duties or responsibilities after 30 November 2018

943. The Claimant sent his e-mail withdrawing his application for good leaver status on 6 November 2018. Dan Wise sent him an e-mail, agreed between him and the HR department that indicated that there would be a discussion about unwinding the management of change process and a discussion of how the Claimant's previous responsibilities would be reinstated. The Claimant indicated that he was prepared to discuss any 'proposals'. No meeting was ever arranged and Dan Wise did not arrange a meeting or communicate further with the Claimant. It was not until January that the Trading Team was told that the Claimant was not leaving.

944. As we have found above the Claimant was not told that Dan Wise was not going to communicate any further with him or given any reasons why that might be the case. We have expressed our views that this was poor management. Had the Claimant been told of the instruction and the reasons for it he would not have been left wondering when the promised meeting was to take place (if at all) or been suspicious about the motivation for the instruction.

945. In order to assess whether the events complained of amounted to detriments we need to make a finding as to whether the Claimant really intended to return to his old role. We have had regard to the chronology of the without prejudice negotiations.

946. Between the time that the Claimant withdrew his good leaver application and 14 December 2018 when he went on holiday there were active negotiations on a without prejudice basis. There was correspondence on:

946.1. 14 November 2018 from BP to the Claimant's solicitor; and

946.2. On 15 November 2018 from the Claimant's solicitor to BP; and

946.3. On 28 November 2018 from BP to the Claimant's solicitor and

946.4. On 4 December 2018 from the Claimant's solicitor to BP; and

946.5. A response on 7 December 2018 from BP

947. We have found above that the Claimant brought his grievances having regard only to his private interests and gave no thought to the public interest. Having regard to the entirety of the evidence we find that his motivation in bringing that grievance and in withdrawing his good leaver request was to advance his position in the without prejudice negotiations. He had a good understanding about how difficult it would be to reverse the changes that he had implemented. However, he had not resigned and no terms had been agreed for his departure. We would accept that if no terms were agreed returning to work in some capacity was an option that the Claimant wished to leave open even if it were just for negotiation purposes.

948. In those circumstances we have asked whether the four complaints under this heading could have been reasonably regarded as a disadvantage. We have concluded that they could. The Claimant was entitled to assert his right to remain an employee. He had been promised a meeting and that had not materialised. There had been no discussions about what he might do if the without prejudice negotiations bore no fruit.

949. It is therefore necessary for us to look at the reasons for the treatment complained of. We have found above that Dan Wise was instructed by HR that because the Claimant had brought a grievance against him he should have no further management dealings with the Claimant.

950. In their submissions Mr Rajgopaul and Ms Plews suggest that an admission that the instruction was given because of the Claimant's grievance is, without any evidence for why that instruction was given, effectively an acceptance that the Claimant was dismissed because of any disclosures included in that grievance. We accept that the reasons why that instruction was given were not well evidenced. When Simon Ashley gave evidence he said that he had been behind the instruction to Dan Wise not to interact with the Claimant having taken advice from the legal department. He accepted that grievance was one part of his reasons but said that the without prejudice negotiations provided further context. Consistently with that Simon Ashley suggested that the Claimant might want to take unpaid leave during the grievance process.

951. It is further suggested on behalf of the Claimant relying upon ***Amnesty International v Ahmed [2009] ICR 1450*** that if the instruction was given for the benign purpose of avoiding difficult working relationships during the grievance process then that would not be an answer to the claim.

952. We do not consider that an acceptance that the fact that the Claimant had brought his grievance(s) played a part in the instruction being given to cease dealing with the Claimant is to be equated as an acceptance that the instruction was given and followed on the ground that the Claimant had made protected disclosures.

953. We consider it necessary for us to decide what aspect of the grievance was the reason for the treatment. It is not fatal to the Respondents case that they have not spelt their reasons out in evidence as clearly as they might have done although that is a matter which we need to take into account.

954. We have had regard to all of the evidence but in particular:

954.1. We have noted that the same instruction was later given to Sam Skerry and Janine Knight when grievances were leveled against them; and

954.2. That Simon Ashley had suggested that the Claimant take unpaid leave during the grievance process; and

954.3. That in parallel with the grievance process the Claimant and Simon Ashley were engaged in without prejudice negotiations.

955. We find that the reason for the instruction was to avoid the possibility of further workplace disputes which were more likely if the Claimant continued to be directly

managed by Dan Wise. In other words to preserve or not further damage working relationships. Given that the Claimant was alleging that Dan Wise had driven him out of the business it seems to us entirely unsurprising that HR would advise that Dan Wise should not be the person discussing how the Claimant could continue to work in the business.

956. We do not accept that the argument based on ***Amnesty International v Ahmed*** is of any application in this case. This is not a situation where the reason for the treatment was making protected disclosures were, however laudable the reasons, it would still be unlawful. The reason for the treatment we have identified is entirely separate from the protected disclosures said to have been included in the grievances.

957. That finding is sufficient to dispose of the first two complaints under this heading.

958. The next two sub-points can also be dealt with together. It is correct that Dan Wise did not do anything to find a role for the Claimant at this point in time. From January 2019 a similar complaint is made against Jon Mottashed and we assume that the Claimant is complaining about the period from 3 December 2018 to early January 2019.

959. One answer to these points is that Dan Wise was instructed not to have any dealings with the Claimant. We have dealt with the reasons for this above and will not repeat them here. However it would be unsatisfactory to deal with the case on this basis as it fails to deal fully with the reason why nobody else started to assist the Claimant with returning to his role.

960. Having regard to all of the evidence we have come to the following conclusions:

960.1. When the Claimant first withdrew his good leaver application Simon Ashley believed that no immediate action was necessary because the Claimant was actively participating in without prejudice negotiations; then

960.2. By the end of November 2018 Simon Ashley instructed Dan Wise to restore the Claimant's responsibilities. At this point Jon Mottashed refused to simply reinstate the Claimant taking the view, later shared by Dan Wise, that it would be unprincipled to reverse the changes that had been made.

960.3. The issue of what to do about the Claimant's expressed wish to stay on was not resolved in the early days of December. A without prejudice discussion took place on 13 December and after that the Claimant was on leave.

961. We find that the reason why nobody took any steps to restore a role to the Claimant was because it was initially considered that the without prejudice discussions should take priority and latterly that Jon Mottashed had made it clear that he would not simply restore the Claimant to his original role. The fact that the without prejudice discussions were still taking place meant that it was uncertain whether the Claimant would return at all. These are all reasons entirely separate to the protected disclosures.

962. We rely on our findings above that Jon Mottashed had no knowledge that the Claimant had made protected disclosures. His reasons for refusing to reverse the

management of change process were exclusively that he considered it unprincipled and unfair on the two traders who had been promoted.

963. We are satisfied that any disclosures made by the Claimant played no part at all in the omissions the Claimant has complained of.

964. We are further satisfied that the fact that the Claimant had taken parental leave was not a material reason for these omissions.

3(n) Mr Mottashed: (i) informing C on 10 January 2019 that he would not reinstate C to his previous role; (ii) asking C to carry out a data gathering exercise from 10 January 2019; (iii) not reinstating C to his previous role; and/or (iii) not providing C with appropriate duties or responsibilities after C withdrew his request for Good Leaver status:

965. In our findings of fact we have found that Jon Mottashed's response to being asked to unwind the management of change process was, in effect, a refusal to do so. He took that position before being aware of any of the detail of the Claimant's grievance although he knew of its existence.

966. We are entirely satisfied that Jon Mottashed took the stance that he did for the reasons that he has stated in his contemporaneous correspondence. He considered it unfair to reverse changes that had been made insofar as they would have an adverse impact on the careers of others. Jon Mottashed maintained this position despite pressure being brought upon him initially by Dan Wise and at the same time by Val Nefyodova.

967. We are entirely satisfied that the reason that Jon Mottashed did not simply reinstate the Claimant into his old role was nothing to do with the fact that the Claimant had made disclosures.

968. We have set out above our conclusion that whilst the Claimant was at this time engaging in negotiations he did wish to have the option of returning to work. In the light of that we would accept that being told that he would not be restored to his previous role would be a matter which he could reasonably regards as a detriment. That is consistent with the stance that he took in the meeting with Jon Mottashed on 8 January 2019 when he said he *'needs to see how BP value him'*. We need to make findings about the reasons for the treatment.

969. By 10 January 2019 Jon Mottashed was aware of the Claimant's grievances. We need to consider whether the content of those grievances played any part in the decisions that Jon Mottashed took after that.

970. The stance Jon Mottashed took on 10 January 2019 was entirely consistent with the stance that he took when he first learned that the Claimant had withdrawn his good leaver application. His position was that it would be wrong to simply undo the management of change process. We find that Jon Mottashed was right, and more importantly genuinely believed, that the Claimant could not simply be slotted back into his existing position putting the Claimant back into his original position would result in a de-facto demotion for the two traders who had been promoted and it would impact their potential for bonuses.

971. The Claimant has suggested that there was a fluid approach to roles and responsibilities. He has suggested that a role might have been created for him or that he could have grown into a role. The evidence we have seen demonstrates that head count was a matter that was kept under regular review both in terms of numbers and grades. We would accept that a grade was not necessarily determinative of a level of responsibility. That said the Claimant was a very senior trader. Amongst other witnesses Janine Knights told us, and we accept that there were very few individuals at BP earning at the Claimant's level. She told us that the Claimant's seniority made it difficult to simply slot him in and to allow a role to develop around him. We would accept that it would have been very difficult just to create a role for the Claimant.

972. We are satisfied that the reason that Jon Mottashed told the Claimant that he would not be placed into his original role was that Jon Mottashed was unwilling to undo the management of change process, in his view, at the expense of the two junior traders. Oliver Stanford's interview during the business integrity meeting gives an indication of how badly this might have been received. We find that this had nothing whatsoever to do with the Claimant's grievance or his earlier disclosures.

973. The Claimant describes the MARPOL project as a data gathering exercise. He has also said that it was just 'busy work'. A large number of the Respondents witnesses told us that the MARPOL project was of real significance and was an important piece of work. We accept that Jon Mottashed and the other witnesses who spoke about MARPOL genuinely believed that the MARPOL project was a significant opportunity. We would accept that the Marpol project was not the sort of work the Claimant enjoyed (as Dan Wise knew). However, Jon Mottashed made it clear that he did not expect this to be a permanent role for the Claimant. He was allocated the work whilst looking for something more long term.

974. Having reviewed all of the evidence we are satisfied that the Claimant could not reasonably have regarded being asked to do the Marpol project as 'unnecessary busy work'. His e-mail to Jon Mottashed sent in the evening of 10 January 2019 was unnecessarily robust. The Claimant must have known that reversing the changes that he had overseen himself was a significant matter. Having regard to those matters and the entirety of the evidence, we find that the Claimant's suggestion that this work was demeaning was primarily a stance taken for the purposes of negotiations.

975. We accept the evidence of Jon Mottashed that he allocated the Claimant the Marpol project because he thought it was an important task commensurate with the Claimant's skills and responsibilities. Allocating this task to the Claimant would give some time to see whether any other roles emerged on the crude bench. We accept that this was a genuine attempt to bring the Claimant back into the team. We find that the decision to ask the Claimant to do this role was nothing whatsoever to do with the disclosures that the Claimant had made. This finding is sufficient to dispose of each element of this claim.

3(o) Not restoring C's roles and responsibilities or providing C with appropriate duties or responsibilities between 6 November 2018 and the end of February 2019.

976. There is some overlap between this allegation and the ones above. We shall deal with the additional points raised in the Claimant's submissions. The first of these is a

suggestion that the move of Sylvana Adams to the West Africa team served to block the Claimant's return. We shall deal with that point first.

977. The Claimant suggests that the appointment of Sylvana Adams to the West Africa bench impeded his return. We find that the role that Sylvana Adams was asked to do was to provide support for Oliver Stanford. She could be recruited without reversing Oliver Stanford's de facto promotion. Her appointment was consistent with the Management of Change process. We do not agree that the appointment of Sylvana Adams per-se acted as a block to the Claimant's return. What was an effective block at that stage was the stance taken by Jon Mottashed that he was not willing to place the Claimant back on the bench in a manner which would impact Oliver Stanford and Tara Behtash. As we have said above that decision had nothing whatsoever to do with the Claimant's disclosures of the grievances that he brought. Despite this we agree that the appointment of Sylvana Adams to the West Africa Bench made it very slightly harder to undo the changes that had been made. We shall assume that that is sufficient to establish a detriment.

978. We find that the reason that Sylvana Adams was diverted from the North Sea bench to the West Africa bench was because Jon Mottashed recognised that with the departure of the Claimant, the West Africa bench needed more support. Whilst that was also true of the North Sea bench Jon Mottashed was better placed to assist that bench due to his specialist knowledge. We have found above that the decision to ask Sylvana Adams to move to the West Africa bench was taken by Jon Mottashed before he had any knowledge that the Claimant was not going to be leaving and before he knew that the Claimant had made any grievance or complaint about Dan Wise.

979. As we have identified above that does leave a question as to why Jon Mottashed did not reverse this change once he learned that the Claimant might stay with BP. At that stage he knew that the Claimant had made a 'complaint'. Jon Mottashed did not know of the contents of that complaint and did not know that the Claimant was complaining of matters that might be protected disclosures. We doubt that a person could be said to act on the ground that a worker has made protected disclosures if they do not know what information has been disclosed and were not manipulated by somebody with the relevant knowledge. However, we shall not decide the point as in the light of our finding below it is entirely academic.

980. We find that Jon Mottashed did not act in December to reverse the decision to ask Sylvana Adams to work on the West Africa bench for the mixed reasons he identified in his evidence. He was at that stage unsure about whether the Claimant was really going to return. He recognised that reversing this appointment would not resolve the difficulty of identifying a role for the Claimant that did not adversely impact on Oliver Stanford and Tsara Behtash and finally he thought that it would be unfair to speak to Sylvana Adams about a further change as she was just returning from maternity leave. We find that those are the entirety of the reasons and that they were not influenced in any material sense by the Claimant's disclosures.

981. For the avoidance of doubt we find that Dan Wise was not the decision maker. His reasons for not interfering or suggesting that the Claimant might be disadvantaged by these changes were that until after he was told in late November 2019 that he needed to acknowledge that the Claimant had withdrawn his good leaver status, he had been

proceeding on the basis that the matter would be sorted by HR and he did not expect the Claimant to return. Shortly after that he left the problem of how the Claimant might be re-integrated to Jon Mottashed. We find that neither his acts nor omissions were influenced in any material sense by the Claimant's disclosures.

982. The further point raised by the Claimant in written submissions relates to the secondment of Morten Joergensen to the North Sea Bench. We find that this was a decision taken by Jon Mottashed but supported by others.

983. As we set out below the Claimant's view of the role that was available has been based on the misapprehension that the role was intended as a replacement for Jon Mottashed and therefore a senior trader role. In fact Morten Joergensen had little trading experience and would need support. When the role was subsequently advertised the job description was for a junior trader. A decision had been taken to recruit at the bottom.

984. In his e-mail of 10 January 2019 the Claimant made it clear that he was looking for a role with the same levels of seniority and remuneration as he has previously enjoyed. The role undertaken by Morten Joergensen was nowhere near that level of seniority. In the light of that it is not straightforward to identify how the Claimant can establish that he has suffered a detriment. We find that a reasonable employee would not object to not being considered for a position significantly below their seniority and bonus expectations. We find below that had the Claimant been offered this position he would have refused it. We do not accept that the Claimant has established any matter which he could reasonably complain of.

985. In case we are wrong about that we shall deal with the reasons for the treatment. In his evidence Jon Mottashed had alluded to three matters which had led him not to consider asking the Claimant to fill the role offered to Morten Joergensen. These were the fact that the bench did not have any scope for training and Morten Joergensen could 'hit the ground running'. The second was the fact that this was a role far less senior than the Claimant later demanded. Finally he said that the existence of the without prejudice negotiations that the Claimant was engaged in meant that he did not know if the Claimant was really going to stay on. In submissions on behalf of the Claimant it is suggested that the first reason did not stand up to scrutiny. It was said that the Claimant has some North Sea experience and that he would not have needed the support that was offered to Morten Joergensen. We would accept that the Claimant's seniority and experience would have been positives. However, we would also accept that Morten Joergensen's more recent experience and level of seniority made him a very obvious temporary fit.

986. When asked by the Tribunal to disregard the subsequent events and to focus on the time that the decision was taken not to consider the Claimant for this temporary role, Jon Mottashed told us that the overwhelming reason at the time was his uncertainty about whether the Claimant would actually want to return. We accept his evidence. There was a plausible basis for Jon Mottashed's belief that the without prejudice discussions would relieve him of the difficult task of finding a role for the Claimant. We find that it was that reason, and no other, that caused Jon Mottashed not to consider the Claimant for the temporary role filled by Morten Joergensen.

3(q) Not inviting C to apply for, or discussing with C, the North Sea Trader position, and/or not considering C for/appointing C to the North Sea Trader position.

987. We have dealt with the temporary position filled by Morten Joergensen above. In their submissions the parties have focused on the second opportunity to appoint the Claimant to this position which arose when the role was advertised in early January 2019.

988. We revisit the issue of whether the Claimant could reasonably have regarded not being invited to apply for this post as a detriment. We conclude that he could not. Our reasons are as follows:

988.1. As we have set out above the role was to be a junior role reporting to Jon Murphy. The salary and bonus expectations of that role were far lower than the Claimant had historically enjoyed. The role was of significantly lower seniority and status.

988.2. We do not accept that the Claimant could have been placed into this vacancy and a role 'created' to reflect his seniority. There would have been an absurd situation with the most senior trader doing the most junior role. We have found previously that it was not practicable to simply create a role of the Claimant's seniority without a specific stream of revenue to support that role without diluting the bonuses of others. If there was no vacancy for a senior role there would be no such revenue stream from which the profits to justify bonuses would be generated.

988.3. The Claimant had stated in terms in his e-mail of 10 January 2019 that he wanted a senior role with the same levels of remuneration that he had previously enjoyed. This was not such a role.

988.4. The role was advertised. The Claimant knew of that. He did not apply for the role nor did he raise it as a possibility at any time before it was filled. Had the Claimant been genuinely interested in this role he would have either applied or raised the possibility of applying promptly.

989. We therefore conclude that the Claimant has not established a detriment. Nevertheless we go on to deal with the reasons for the treatment.

990. By 9 January 2019 Jon Mottashed had read the Claimant's grievance. He would have known that the complaints raised did not relate to him but related to events some time before. That is a matter which we take into account when looking at whether the disclosures in those grievances played any material part in the omission not to raise the North Sea role with the Claimant.

991. Jon Mottashed gives two reasons in his witness statement as to why he did not raise this vacancy with the Claimant. The first related to experience. The candidate identified at an early stage as a preferred candidate did have more recent and relevant experience than the Claimant for the junior role that was advertised. When cross examined the Claimant accepted that he did not possess several of the essential criteria set out in the job description. We would accept that the Claimant, with all of his skill and experience, could have swiftly learned on the job and fulfilled this role. We accept that the fact that the Claimant was not an obvious fit for the role was one factor in Jon Mottashed's mind at the time.

992. The second reason that Jon Mottashed gives is we find the most significant reason Jon Mottashed had for not raising this vacancy with the Claimant. He said in his witness statement and repeated in his oral evidence that he did not raise this vacancy because he knew that it was a far more junior role than the Claimant had demanded in his e-mail of 10 January 2019. He was afraid that if he raised it the Claimant would respond in the same way as he had done in response to being asked to do the Marpol project. It would lead to further complaints. We find that he did genuinely believe, entirely reasonably, that the Claimant would regard being asked to consider this role insulting and that he would raise further complaints.

993. We find that these two reasons were the entirety of the reasons in Join Mottashed's mind during the relevant period. The reasons for the treatment complained of were not materially influenced by the disclosures made by the Claimant.

994. As we have found above when interviewed by Haydee Vielma and asked why he thought he might not have been offered the North Sea role his response included saying: 'The only rationale JZ can see as to why he was not given the role is that it was assumed that the role was too junior for him or that they may have wanted someone more junior in the team'. We accept that he said that. The Claimant recognised that the role per-se was not an appropriate role for him. His stance during the grievance was to accept that but to argue that with some re-organisation a role could have been created.

995. It was the Claimant's allegation about the North Sea role which Jon Mottashed accepted made him doubt that he could ever work with the Claimant again. We do not go as far as to suggest that the Claimant fabricated this complaint. However, he did recognise that there may be entirely innocent reasons for not appointing him to this role but persisted with an allegation of dishonesty despite this recognition. What we do say is that viewed objectively the decision not to encourage the Claimant to apply for this role given his stance about the roles he might accept was entirely understandable. In those circumstances it is unsurprising that the allegation of bad faith that the Claimant levelled against Jon Mottashed had a significant impact on their working relationship.

3 (r) Not upholding C's First and Second Grievances and/or the contents of the written outcome to C's First and Second Grievances

996. The complaint that is made here concerns Richard Wheatley. The Claimant's pleaded case in his first claim concerned delay in providing the outcome of the grievance. That allegation has been withdrawn. In his second ET1 the Claimant complains about the outcome and reasoning of the grievances. It is that complaint that we are asked to determine.

997. We start by stating our conclusions about a number of matters of principle and our general approach to this particular claim. These general points are equally applicable to the claims that relate to the other grievances and the appeals.

998. We have had regard to ***Deer v University of Oxford*****.** That case is authority for the proposition that a reasonable employee might regard defects in the process followed in a grievance as being a detriment despite the fact that the outcome might have been the same. Delay is perhaps an example of the sort of think which might reasonably be regarded as a detriment. However, we do not think that that is the only procedural matter

that could be regarded as a detriment. We see no reason why a failure to investigate or some defect in reasoning could not reasonably be regarded as a disadvantage. The fact that the manager hearing the grievance has come to the same conclusion as a tribunal is not in our view determinative of the issue of whether there is a detriment.

999. Where there is a complaint that the process or outcome of a grievance procedure (or appeal) is on some unlawful grounds, it is common, as here, for the complaint to be met with a response that the process reflected the manager doing his or her best and that the outcome reflects their genuinely held view. It is not unusual for that explanation to be challenged, as here, by showing that the process and reasoning was poor.

1000. When assessing the weight that can be given to any failure of process and reasoning we will need to have regard to the fact that those managers charged with hearing grievances are not judges conducting a quasi-judicial process. They will all have other roles which might place demands on their time.

1001. The essential question will be whether any identified failings provide a sufficient basis for displacing the ostensible suggestion that the process and outcome are a result of the manager's human best and drawing an inference that the Claimant's disclosures played a part in the reasoning process.

1002. In this case we have not been asked to determine whether all elements of the grievance were made out because a number of claims have been withdrawn. They have not formally been dismissed at this stage so there has been no determination on the merits.

1003. Where we have determined the claims we have agreed with the conclusions of Mr Wheatley in all but one matter. That matter relates to whether the fact that the Claimant took parental leave played a part in Dan Wise forming the view that the Claimant might want to apply for good leaver status. We would accept that in respect of this particular aspect of the grievance the Claimant could reasonably have considered that he was disadvantaged. We would accept that where the person taking a decision on a grievance that we have not upheld does so with a lack of care or rigor (of any description) that too might be reasonably regarded as a disadvantage.

1004. We have made findings above about the process and reasoning followed by Richard Wheatley. When he gave his evidence there were times when he was defensive and where he clung to a position that was untenable.

1005. We have agreed that the decision to separate the matters dealt with by the business integrity investigation from the matters personal to the Claimant meant that the decisions about whether there was any retaliation against the Claimant were taken without knowledge of the events that were the background to the protected disclosures. We note that when Emma Locke interviewed Dan Wise the extent of her questioning about the 2017 disclosures was limited to asking Dan Wise if he recalled the matter being raised (which he did) . He is not asked whether he thought the Claimant was wrong, was making a fuss or was seen as obstructive. When Richard Wheatley interviewed Dan Wise he scarcely touched on the events of 2017. The investigations of Emma Locke and Richard Wheatly consisted of an examination of whether the Claimant's complaints were made out and if so why. The focus was very much on looking at the explanations given. The

difficulty with not asking about the events giving rise to the disclosures was that it was impossible to evaluate the impact those events might have had and whether the ostensible reason for any treatment was the only reason.

1006. We are satisfied that there were aspects of the way in which his grievances were investigated that the Claimant could reasonably regard as being to his disadvantage.

1007. In their written submissions Mr Rajgopaul and Ms Plews invite us to have regard to what they say are failures in reasoning and process which they say should lead to an inference that Mr Wheatley and others have been influenced by protected disclosures. We shall not deal with every point, although we have had regard to each point made, but shall deal with the principal matters. We have set out some areas where we have agreed with these criticisms in our findings of fact above.

1008. The Claimant invites us to find that the separation of the business integrity investigation was a decision taken on the ground that the Claimant had made protected disclosures. It is suggested that the person who made that decision has not been identified and that no explanation has been given.

1009. A similar approach is taken to the fact that we did not hear from Emma Locke. It is suggested that we should find that her failures to probe the circumstances of the 2017 disclosures means that the Respondents should be taken as having failed to discharge the burden imposed by Section 48(2).

1010. In our view there were sensible reasons for commencing a business integrity investigation separately to the grievance investigation. BP would have an interest in establishing whether there had actually been illegality or risk taking in Nigeria and if so would need to do something about it. That was not a necessary part in deciding whether the Claimant had been treated badly in the way he claimed for raising these matters. The separation of these issues did not mean that the grievance could not and should not explore whether the Claimant's actions in Nigeria were unwelcome to his colleagues.

1011. We have found that, within the confines of what she was asked to do, Emma lock did explore the issues of whether the Claimant had been treated the way he claimed and if so what the reasons were for that. As far as it went her investigation was very thorough. Her reasoning is not as thorough as it could have been. One example of that is that she had evidence given by Beth Cook that suggested a link between the Claimant taking parental leave and concerns about performance. She did not really grapple with the possibility of Dan Wise being influenced by Parental leave

1012. We did not find that Richard Wheatly was as thorough as he might have been. He adopted Emma Lock's conclusions without reading many of the interview notes. We find that sloppy at best. We have set out some examples of other failings above. The question for us is whether the failings that have been identified lead us to conclude that the process followed and the outcome reached was materially influenced by the disclosures made by the Claimant. We have had regard to all the evidence. We are satisfied that the reasons for separating the business integrity investigation, for Emma Locke's approach to her investigation and for Richard Wheatley's approach both procedurally and in his conclusions, were not materially influenced by the fact that the Claimant made disclosures in 2017 and/or in his grievances. This was not a model

process but the Respondents have satisfied us that the process was conducted in good faith with an intention of reaching a correct conclusion.

3(u) On 7 March 2019 instructing C to leave the office and not return, and thereafter withdrawing his trading authority and trading systems access

1013. There was no dispute that Simon Ashley told the Claimant that he had to leave the office and not return on 7 March 2019. There is also no dispute that the Claimant expressed his reservations about that at the time. The decision to send the Claimant home took place in the context of without prejudice negotiations but it is common ground that those had not resulted at that stage in a concluded agreement. It is against that background that we ask whether the Claimant could reasonably have regarded the decision to send him home as a detriment.

1014. The Claimant had referred to the MARPOL project as 'unnecessary busy work' and was unhappy about being asked to do this work. That does not mean that he consented to BP removing from his duties and sending him home. He did not. We find that the Claimant could reasonably have considered that being sent home was a disadvantage.

1015. It is necessary for us to turn to the reason for the treatment. We find that the decision to send the Claimant home was taken by Simon Ashley. He had seen the Claimant's first grievance and was broadly aware of its contents. Reading that grievance would have informed Simon Ashley that that the Claimant claimed to have made protected disclosures in 2017.

1016. We need to ask whether the Respondent has discharged the burden of proving the reasons it puts forward for the treatment complained of. We are satisfied that Simon Ashley believed when he sent the Claimant home that there was only a 'risk' of the parties failing to reach agreement. That state of mind was consistent with the common practice of negotiations leading to traders leaving BP.

1017. Simon Ashley has suggested during the grievance investigations and in his witness statement that a factor in his decision making was the fact that the Claimant had access to sensitive commercial information. We can understand why that might be a relevant consideration where there were ongoing negotiations with a senior employee who may be leaving but we do not find that these were the most significant matters in Simon Ashley's mind at the time.

1018. Simon Ashley told us, and we accept, that it is 'usual' for employees to be asked to remain at home whilst without prejudice negotiations take place. As was pointed out by Mr Rajgopaul and Ms Plews in their submissions that practice had not been applied to the Claimant. The negotiations had been ongoing since late October 2018. We accept that point but consider that a practice can be 'usual' without being invariably or strictly applied.

1019. It is suggested on behalf of the Claimant that *'there is positive evidence in support of the connection between his grievance'* and the decision to send the Claimant home. This is an example of the Claimant putting his case in very broad terms. The examples then given are that:

1019.1. Dan Wise and Jon Mottashed had been instructed not to have any managerial dealings with the Claimant after he brought grievances against them.

1019.2. Simon Ashley had made the Claimant an offer of paid leave pending the resolution of his grievance.

1019.3. The decision to send the Claimant home coincided with the Claimant being told that his grievances were not upheld.

1019.4. The pre-prepared script that Simon Ashley had prepared for the meeting included a reference to the Claimant being dismissed *'for some other substantial reason'* if agreement was not reached in the 'next week or [so]'.

1019.5. That Simon Ashley accepted in cross examination that he was aware that Jon Mottashed was finding it difficult working with the Claimant.

1020. We have had regard to each of those points. We must firstly decide whether or not we accept Simon Ashley's explanation.

1021. We find that the explanation that the Claimant was given at the meeting of 7 March 2017 was a full and truthful account of the reasons. Simon Ashley believed that the likely outcome of the without prejudice negotiations would be an agreement under which the Claimant would leave. He believed that those negotiations would best be conducted with the Claimant out of the office because that has been his experience in the past.

1022. We would accept Simon Ashley was aware that by this stage Dan Wise and Jon Mottashed knew that the Claimant had contacted ACAS and might sue them personally. The Claimant was working alongside Jon Mottashed on a daily basis. He had made robust attacks on both of these managers. Simon Ashley knew how difficult the working relationships had become. We have had regard to our self-direction on when a reason for taking any action can properly be regarded as separable from making a protected disclosure. We find that insofar as Simon Ashley thought that in those circumstances the negotiations would be better if the Claimant was out of the office that is entirely separable from the reason being the disclosures themselves (even if they were the cause of the difficult working relationships). The reason for the treatment was not the protected disclosures but the wish to facilitate a resolution of a dispute. This reasoning applies to the first, second and fifth of the Claimant's points listed above.

1023. We do not consider that the fact that the Claimant was sent home at the same meeting at which he was told the outcome of his grievances has any great bearing on the question of Simon Ashley's reasons for sending the Claimant home.

1024. Simon Ashley had clearly contemplated warning the Claimant that unless an agreement was reached his employment might be terminated for some other substantial reason. Simon Ashley would have known that the Claimant was not going to be placed back into the same role he had done prior to applying for good leaver status. He knew that the Claimant had complained about doing the Marpol project. In the context of ongoing negotiations it is not surprising that Simon Ashley had thought about telling the Claimant that the ongoing situation might result in his dismissal. It was true and had a bearing on any possible agreement. That was the stance taken from this period onwards

by others. We do not consider that the fact that Simon Ashley had thought about raising this undermines his evidence that he sent the Claimant home to facilitate the without prejudice discussions.

1025. For the reasons above we are satisfied that the decision taken by Simon Ashley to send the Claimant home was not materially influenced by the claimant's disclosures or even more broadly by his grievance.

1026. We deal separately with the allegations that the continued suspension was unlawful below.

3(v) Not permitting C to return to work (in the office or at all), or restoring his trading authority or access to trading systems at any time since 7 March 2019

3(ee) (vii) refusing to reactivate his pass and/or keeping his pass deactivated and/or not enabling Mr Zarembok to have unrestricted access to the office building from 12 September 2019 until 3 February 2020 [Ms Knights].

3(ff) keeping him *de facto* suspended (i.e. instructed not to attend the office without a pre-arranged meeting and/or not permitted to work in the office unless arranged and approved in advance and/or with his trading authorities and trading access removed) from June 2019 (i.e. from the period covered by the Second Claim) until 3 February 2020.

3(mm) refusing to reactivate his pass and/or keeping his pass deactivated and/or not enabling Mr Zarembok to have unrestricted access to the office building from 4 February 2020 to 10 April 2020 [Ms Hegarty]

1027. We shall deal with these three matters together because they raise common considerations. There is really no dispute about the underlying facts. After the Claimant was sent home from work his pass expired and his authority to trade was suspended. From about September 2019 the Claimant was asking for his pass to be reactivated. He was told that he could visit the building whenever he had a meeting but his pass was not reactivated in order that he could come and go as he pleased.

1028. Janine Knights never gave the Claimant an explanation as to why she did not consider she should get his pass reactivated. Niamh Hegarty was also asked about reactivating the Claimant's pass. She expressly refused to do so in the context of the meetings that she was having, the purpose of which included deciding whether the Claimant would be dismissed.

1029. We shall first consider whether the Claimant has suffered a detriment. We have already found that Simon Ashley's actions in sending the Claimant home on 7 March 2019 could amount to a detriment. The first of these allegations is a continuation of that state of affairs. We accept that the Claimant did not want to be out of the workplace. However, we do not understand what the Claimant thought he might be doing in the way of work if he did come into work. He had essentially rejected the Marpol role. He did not

have a trading role. If he had been permitted to return to work he had no role at all to occupy him. We would accept that if he was in the workplace he might have been 'closer to the ground' in terms of seeking an alternative role. On that basis we would accept that his continues exclusion amounted to a detriment. We reach the same conclusion about the Claimant's pass.

1030. We need to look at the reasons for the treatment. We find that the Claimant's access to the building was actively managed. There was no objection to the Claimant attending pre-arranged interviews and meetings. What Janine Knights and later Niamh Hegarty objected to was the Claimant being able to come and go as he pleased.

1031. One reason that was put forward, particularly by Niamh Hegarty, for this is that the trading floor is a secure area that required non pass bearing visitors to be signed in. We accept that the Trading floor was an area where people were not as free to roam as in other parts of the building. However, we find that was not the entirety of the reasons for not allowing the Claimant back into the workplace.

1032. Whilst the initial reasons for sending the Claimant home was to allow the without prejudice negotiations to run their course those direct conversations ceased at the end of March 2019. The Claimant was not allowed to return. We find that a major consideration about allowing the Claimant back to work and/or renewing his pass was the fact that he had no role to do. A further consideration would have been that he had brought litigation against Jon Mottashed. We have dealt with the issue of the breakdown of trust elsewhere. What Janine Knights knew was that Jon Mottashed was unwell and considered that the issues with the Claimant were the main cause of that. We find that a further consideration would have been that there was a fear that if the Claimant was back at work he would find new things to complain about. That was not an unreasonable fear. Janine Knights and Sam Skerry had told the Claimant that he should keep things tight. We find that they wanted to be the single point of contact to manage the Claimant. We find that they did so whether consciously or not with all of the above matters in mind. We also find that they believed that would facilitate the Claimant in looking for a role. The motives were very mixed. We reach that conclusion having had regard to the efforts they made to prevent the Claimant disseminating information about how he had spent the last few months out of a role.

1033. We find that a further consideration was that at this stage the parties were in litigation. There was a significant dispute between the parties. Giving the Claimant access to the building would carry with it the risk of unsettling other employees.

1034. We find that Niamh Hegarty had similar considerations in mind. She had less knowledge of the trading floor and believed that it was secure. This was one of her reasons. We find that she took an active decision not to let the Claimant roam around the building.

1035. We find that the steps that were taken to restrict the Claimant's access to the building were not taken to prevent the Claimant networking or finding a role although we accept that this made it harder for the Claimant. The reasons for managing the Claimant in this way were those which we have set out above. These include some of the reasons put forward by the Respondents but also wider matters which we have concluded they would have had in mind. Whilst we would accept that these reasons were generally aimed at

managing the dispute between parties we do not find that any of these reasons were on the grounds that the Claimant made protected disclosures. In our view they are entirely separate reasons.

3(aa) Not creating a role for or taking any (or any adequate) steps to find a role for C during the period from 13 February 2019 to 4 July 2019 (alternatively any part of that period)

AND

3(bb) Mr Mottashed deciding that he would not reintegrate C into his team

AND

Issue 3ee(iii): not creating a role for Mr Zarembok within or giving him the opportunity to perform any of the roles available within the Crude team, including without limitation (i) Oliver Stanford's role when he moved to Chicago; (ii) Ms Adams' role (either the role she performed before or the one she performed after she took on the WAF Book Lead role); (iii) Mr Mottashed's role while he was off sick and/or on sabbatical; (iv) Ms Pearson's role while she was on maternity leave; and (v) Matt Hague's role (either the role he performed before being moved to the WAF Book, or the one he performed after that move)

1036. The first allegation relates to the period between the Claimant's first and second claims. In the Claimant's second ET1 he did not limit his complaint to the actions of Jon Mottashed. The second complaint is also found in the second ET1 he identifies Jon Mottashed as the alleged perpetrator. The third complaint is made in the Claimant's third ET1 the allegation is made against BP. There is a degree of overlap with other complaints. The Claimant's submissions deal with several allegations together with this one. As the allegations all concern the possibility of the Claimant working on the Crude bench it is sensible to deal with them all together.

1037. We have already dealt with the decision by Jon Mottashed to ask the Claimant to undertake the Marpol project on a temporary basis whilst he considered a more permanent role. We have found that that was a genuine attempt to find the Claimant a suitable role and that the fact that the Claimant had made disclosures was not a material factor in that decision See allegation 3(n) above.

1038. We have also dealt with the decision to move Sylvana Adams into the West Africa team. See allegation 3(o) above.

1039. From shortly after the time that the Claimant instigated ACAS conciliation naming Jon Mottashed, John Mottashed was instructed not to have any further management dealings with the Claimant. We would accept that that decision did not absolve Jon Mottashed of his promise to the Claimant that he would look at ways he could be accommodated on the crude bench. Whilst it is not pleaded as a specific detriment we note that the Claimant accepted in cross examination that at the time he had no trust in Jon Mottashed. In his fourth Grievance the Claimant referred to Jon Mottashed as having

lied to him. In those circumstances the decision to cease direct contact is one the Claimant could not reasonably have complained about. In any event we are satisfied that the reasons for this decision were the same as in the case of Dan Wise and were to preserve the integrity of the grievance process and avoid damage to working relationships. Those reasons are properly separate from the grievances themselves for the reason we have given above.

1040. Two of the allegations above raise the suggestion that the Respondents ought to have 'created' a role for the Claimant. Sam Skerry had explained to the Claimant in May 2019 that no role was going to be 'created'. The Claimant's suggestion that a role should have been must be seen against his expectations that he be provided with a trading role remunerated at the level he had been used to. Given that the Claimant has suggested that his 2017 bonus was unjustifiably low the Respondent could be expected to understand him to be asking for a role with a bonus expectation in excess of $1.8M. As we have said above, and as the Claimant has recognized, headcount on the crude bench was monitored for both numbers and balance.

1041. We do not find that the Claimant could reasonably have expected the Respondents to invent a trading role with his salary expectations. As we have said above bonuses for traders are tied to revenue streams. The bonus pool is fixed by reference to overall profits before being shared. Imposing the Claimant into any team without a vacancy would have diluted the potential for bonuses amongst team members. We accept evidence given by Janine Knight to the effect that it might be possible to find an extra position for a junior member of staff. At the Claimant's level it would be impracticable. Jon Mottashed had proposed an interim role when he asked the Claimant to undertake the Marpol project. To an extent that was a role that was created but it was not a trading role at that stage.

1042. We conclude that the Claimant could not reasonably have expected a role to be *'*created*'* a refusal to establish a role where there was no vacancy cannot in our view amount to a detriment. To be clear we are not suggesting that where there was a vacancy, even if not of the same seniority as previously enjoyed by the Claimant, it would always follow that he could not feel reasonably disadvantaged if there was no consideration of expanding that role to accompany his seniority and bonus expectations. Whether he could, or could not, would depend on the vacancy.

1043. If we have made any error in our conclusion that there was no detriment in respect of a role not being 'created' then we need to consider the reason for not creating a role. We are satisfied that Jon Mottashed, together with Sam Skerry, Janine Knights and Dan Wise gave little thought to simply creating a role where no vacancy existed. Doing so would have required a restructure in any team that the Claimant joined. We find that the reason why this approach was not considered was the entirely reasonable view that it was not practicable to simply create a role where none had been identified or was vacant.

1044. We shall take each vacancy in turn. The first vacancy identified by the Claimant was the 'On-Bench Originating' role. This was advertised after 20 March 2019. We have set out our findings about this above. This was a junior Originating role that had fallen vacant. We find that this role of itself was not one that the Claimant would ever have contemplated doing. The fact that there was a vacancy did not give rise to the faintest

possibility that the Claimant could be placed in this role and to expand that to a trading role with his existing bonus expectations.

1045. In looking at the reason for the Claimant not being considered for this role we do not consider that we are assisted in any way by Jon Mottashed saying that advertising this role *'would not affect the JZ situation'.* Whether he was talking about headcount, as we believe he was, or whether he was talking about the fact that he knew that he was expected to find a role for the Claimant it is quite clear that a vacancy at that level gave no possibility of the Claimant being allocated a role. We find that the reason that the Claimant was not considered for this role was that it was clearly entirely unsuitable either as a role in itself or a basis for an expanded role. That reason is not in any material way influenced by any disclosure by the Claimant.

1046. The next role identified in the Claimant's submissions is a role said to have been done by Harry Chandler after he vacated the On-Bench Originator role. We have found above that Harry Chandler did work within the West Africa team for a period whilst he waited for a US visa for his wife to be obtained. This was a temporary and junior post.

1047. We find that this temporary assignment did not offer the faintest possibility of the Claimant being assigned that role. Had he taken the post occupied by Harry Chandler he would have been reporting through Oliver Stanford. We find that nobody ever contemplated that as a possibility. The more realistic question is whether the fact that there was some work being done within the West Africa team by Harry Chandler whether that made enough space to accommodate the Claimant in a role that would have suited his seniority.

1048. We put to the side whether such a remote possibility could amount to a detriment and shall assume that it can. We turn to the reason for the treatment. The reason that Harry Chandler was asked to work with the West Africa Team was that he was a newly qualified trader who needed to mark time whilst awaiting a post in the USA. The reason that the Claimant was not considered, and we find that there was no active consideration to this, was that the Claimant could not have been placed in that role with a view to expanding it to match his seniority and bonus expectations without in effect reversing the management of change process. Having him step back into the team would mean that Oliver Stanford would no longer be the most senior trader on the book. The reasons why Jon Mottashed would not have given this a moment's thought are exactly the same as his reasons for refusing to agree to place the Claimant back into his existing role. They were not in any material sense on the grounds of the Claimant's disclosures.

1049. In around April 2019 Oliver Stanford was asked to take up a role in Chicago. He finally left to take up that role in mid-September 2019 and Matt Hague took over his role. In his evidence Dan Wise said: *'We wanted to move Oliver because we thought he was a book lead of the future and to give him a different experience in another market'*. Dan Wise was asked whether the role that Oliver Stanford took up in Chicago was potentially a good role for the Claimant. He said that there was already 'leadership' in Chicago. We understand him to be saying that the role was not quite as senior as the Claimant's old role. He also said that the *'bonus outlook wouldn't have been potentially what he wanted*'. He acknowledged that the potential bonus would be a 7-figure sum. When pressed he accepted that the Claimant could have been considered for that role. Dan

Wise accepted that he had not discussed this role with the Claimant. When asked why he said:

> *'I didn't discuss that with Mr Zarembok at the time. And I think going through the grievance process, I did feel like JZ and I, in terms of what we had said about one another, had had a breakdown in trust so I did think it would be difficult for him to work with me, for me, in Chicago.'*

1050. Matt Hague was asked to replace Oliver Stanford. Dan Wise was asked whether he agreed that the Claimant was more suited to the role than Matt Hague. He responded saying:

> *'Erm, so, sir, again I would say that Mr Zarembok's experience was potentially more suited to the role or was more suited to the role than Mr Hague but we were at that point -- I just felt like we -- the trust between both of us had completely broken down via the process*.'

1051. A junior trader was appointed to fill the vacancy caused by Matt Hague's move. Matt Hague had worked as a sour crude trader. Dan Wise accepted that the Claimant would have been able to adapt to that role.

1052. When Jon Mottashed was asked whether the Claimant would have been suitable for the role in Chicago he said:

> *It would have potentially been a role that he could have done, yes. I think the issue is though that by this time, sir, we discussed the grievance that Mr Zarembok issued about the North Sea trader role which was an H3 role and at this point this was starting to get to be something that I was struggling with from the perspective of again Mr Zarembok's behaviour. Because although I hadn't agreed or approved of the way that or agreed with the way that Mr Zarembok had pursued his first grievance against me, I totally understood the fact that he was sort of entitled and should be bringing grievances like that. Now this, this grievance around the North Sea role, I felt was somewhat different. In fact, I had, you know, sort of I hadn't considered Mr Zarembok for the role, in large part because it was just too junior a role. I was actually worried or I would have been considering at that point that Mr Zarembok was too junior and he would be very upset about me offering him that role. So I didn't offer the role from that perspective. And then he understood that it was a junior role, he knew what had been advertised, and he brought a grievance against me. Which by this time I was starting to believe that this was becoming a bit malicious. It was very different to the first grievance that he had brought and at that point I think my trust in Mr Zarembok started to be undermined.*

1053. Jon Mottashed accepted that the same considerations had been in his mind in respect of the vacancy left by Oliver Stanford. He did however say, and we accept that this vacancy was not of the seniority that the Claimant had previously enjoyed.

1054. These changes were the ones that Janine Knights was referring to in her e-mail of 25 June 2019. Janine Knights told the Claimant that the changes were not expected to result in any vacancies. In a sense this was true. We find that the decision to make the moves detailed above was taken before this date and that there was essentially a fait

accompli. We do not accept that Janine Knights intended to mislead the Claimant. Had the Claimant responded we have no doubt that she would have told him what at that stage had been decided but not put in place. She would have had to have done so because the changes were to be announced. We find it is probable that Dan Wise and/or Jon Mottashed identified the business reasons they gave in their statements as the reasons for the changes as well as giving an indication that they were uncomfortable working with the Claimant.

1055. During the grievance processes and in their witness statements Dan Wise and Jon Mottashed had given reasons for the three appointments we have considered above that did not acknowledge or simply deny that their relationship with the Claimant may have been a factor. We accept that there were perfectly good business reasons for each of the decisions. These were:

1055.1. That Oliver Stanford was a 'future book leader' and the role in Chicago enabled his career development; and

1055.2. For the same reasons Mat Hague could develop his potential on the West Africa bench and

1055.3. That the vacancy left by Mat Hague could be covered by a very junior trader without difficulty.

1056. Whilst we would accept that these reasons for the decisions were good reasons and were held both by Dan Wise and Jon Mottashed we find that the failure to discuss these as possibilities with the Claimant was informed by the reasons that Dan Wise and Jon Mottashed gave in their oral evidence and which we have extracted examples of above.

1057. Pausing there we are satisfied that the Claimant has established that he has suffered a detriment in respect of each of the roles identified above. He may not have been appointed given the good business reasons for appointing others but he did not have an opportunity to make any case why he should be preferred.

1058. The next issue for us is whether those reasons are to any material extent on the ground that the Claimant had made protected disclosures. It is necessary for us to look carefully at what Dan Wise and Jon Mottashed were saying.

1059. Having regard to all of the evidence relating to Jon Mottashed we consider the following matters to be important:

1059.1. it is clear to us that Jon Mottashed was placed in a very difficult position when the Claimant withdrew his good leaver status. He was instructed to restore the Claimant to his role which, for good reasons, he regarded as unethical.

1059.2. He was aware that at the same time the Claimant was saying he wished to return he was engaged in without prejudice negotiations. That caused him to question whether the Claimant genuinely wanted to return.

1059.3. When the Claimant did come back to work in January Jon Mottashed was very open to looking for a role for the Claimant and asked him to do the Marpol Project which he reasonably regarded as an important piece of work, His meeting with the

Claimant on 10 January 2019 was constructive and cordial. In the evening of 10 January 2019 the Claimant sent an e-mail to Jon Mottashed which was legalistic in tone and robustly criticised the steps that Jon Mottashed had taken. Jon Mottashed dealt with that calmly and met with the Claimant again to explain the importance of the project and that he would be trying to identify a more suitable role.

1059.4. On 22 January 2019 Jon Mottashed learned through ACAS that the Claimant was contemplating suing him in a personal capacity. He was shocked by that. We are unsurprised

1059.5. In March 2019, at the suggestion of Janine Knights, Jon Mottashed engaged the counselling service offered by BP he says, and we accept, that managing the situation of the Claimant was a significant factor in needing to seek that assistance.

1059.6. On 4 April 2019 the Claimant brought his fourth grievance in which he says that Jon Mottashed had lied when he had suggested that he had been actively looking for a meaningful role for him. He cited the appointment of others to the North Sea role as the basis for this allegation of dishonesty. He went on to say that neither Jon Mottashed nor Dan Wise had ever had any real intention of re-integrating him.

1060. Having regard to all these matters and the evidence Jon Mottashed gave in the witness box we have come to the conclusion that the reason he did not speak to the Claimant about any of the available roles was informed by the matters we have detailed above, and the entirety of his interactions with the Claimant from January forward, had led him to believe that he could not trust the Claimant. That begs the question, not to trust him to do what? We find that there was no lack of trust in respect of the ability of the Claimant to trade oil. The lack of trust related only to a fear that the Claimant would misconstrue matters and bring further grievances proceedings or complaints in formal e-mails. The lack of trust was not one way. The Claimant accepted that he did not trust Jon Mottashed.

1061. The issue for us is whether a lack of trust in the Claimant is on the facts of this case separate to the fact of the Claimant making disclosures (which for these purposes we are assuming were protected disclosures).

1062. One matter which we can deal with fairly shortly is the question of which disclosures had any impact on Jon Mottashed's reasons for acting as he did. We accept his evidence that he knew nothing of the NNPC disclosures until he read the Claimant's first grievances. We accept his evidence that the Claimant's first grievance did not play any part in his latter actions. The strongest evidence of that is that we accept that after he learned of those matters he did make real efforts to accommodate the Claimant. We accept that it was only the matters we have referred to above that informed his reasoning. It was the North Sea grievance that led Jon Mottashed not to trust the Claimant not any earlier disclosure.

1063. In their submissions Mr Rajgopaul and Ms Plews address this point. In deference to the efforts that they went to we shall set out the following passage of their submissions which although addressing a point relating to Sam Skerry they say is of equal application here:

*'Secondly, applying similar principles to those in **Martin v Devonshire** at §23, when considering the reason for particular treatment and the mental processes of any particular individual, the Tribunal should be very slow to draw a distinction between the effect of grievances and employment tribunal whistleblowing litigation based on those grievances. At a minimum, such distinction would require clear and cogent evidence. There are many good reasons why it would require a clear case before recognising the distinction: (i) the Tribunal claims are based on the grievances such that the two are intimately linked; (ii) the applicable causation test is one of material influence rather than "but for" causation, and common sense suggests that, when allegations are first raised in a grievance, they are likely to continue to have a material influence on decision-making, even if those allegations form the basis of a legal claim further down the line which also has an influence; (iii) recognising the distinction other than in the clearest of cases would risk undermining the purpose of the statutory protections given to whistleblowers in ERA – since bringing a claim cannot constitute a protected disclosure under ERA, it would be all too easy for respondents to assert in respect of any grievance later followed by a legal claim that it was the claim and not the grievance that caused the relevant detriment, with the result that the very act of exercising the protection given to whistleblowers by ERA led to them being treated detrimentally'*

1064. We accept the thrust of the submissions set out in the passage above. We have had regard to the cases we had referred to in our self-direction and the additional cases that the Respondents used to illustrate the general principles. We consider that every case will turn on its own facts and that we should be careful not to try and find analogies between the facts of our case and the facts of others. We would accept that in many cases a whistleblower will be implicitly or expressly criticising his employer and those who work alongside him/her. A whistleblower is entitled to be wrong. It follows that some whistleblowers will make ill-founded allegations. However, we would also accept that even if allegations are made in a reasonable manner the working relationships between the whistleblower and the person criticised may well be affected.

1065. We find that Jon Mottashed's lack of trust in the Claimant was separate from the fact that the Claimant had made protected disclosures. The trust had gradually been eroded by the actions of the Claimant since January 2019 which we have set out above. Jon Mottashed had tried to be an honest broker in a difficult situation and had been rewarded by correspondence bordering on the aggressive and ultimately being sued for a large sum in his personal capacity. The allegation that he had acted unlawfully in respect of the North Sea role was one which he could reasonably have regarded as misconceived. The consequences for him were that he became unwell. Only in those circumstances did he decide he could not work with the Claimant. The effect of those matters was that he formed a view that it would be impossible to work with the Claimant. The reason for the treatment was a complete absence of trust leading to a view that the parties could not have worked together in these circumstances.

1066. We must undertake the same analysis for Dan Wise. Dan Wise stated in his evidence that it was a lack of trust that informed his decisions about being able to work with the Claimant. We need to ask which actions led to that lack of trust. We have no hesitation in finding that the events of 2017 played no part in this at all. We have set out in answer to other allegations our findings that Dan Wise was entirely untroubled by the Claimant's disclosures in 2017 and that he supported the Claimant's concerns about Alsaa. We are

not satisfied that the Claimant was perceived by Dan Wise as the person who blocked the NNPC producer finance deal – he wasn't. We shall not repeat each of our findings here. However we do have particular regard to the fact that Dan Wise simply went along with the instruction from HR to reinstate the Claimant before he knew what the Claimant said about him in his grievance. We find that the 2017 disclosures played no material part in Dan Wise later not trusting the Claimant.

1067. Dan Wise said in his evidence that '*in terms of what we had said about one another, had had a breakdown in trust so I did think it would be difficult for him to work with me, for me, in Chicago'*. What we take from that is that Dan Wise felt that it would be impossible for the two of them to work properly together following what had been said by each of them in the grievance process.

1068. One matter that we must of course have regard to is the fact that in one respect we have agreed with the Claimant that Dan Wise's mental process was affected by the fact that the Claimant had taken parental leave when he assumed that the Claimant might be interested in taking good leaver status. We have found that he was correct in that assumption but that does not absolve him. We must also have regard to the fact that the Claimant was wrong in numerous respects and made serious allegations against Dan Wise some of which he has accepted were based on assumptions. Those allegations are a full-frontal attack on Dan Wise's integrity and behaviour.

1069. When Dan Wise talks about a breach of trust he does so in bilateral terms. We believe that he was right to recognize that the Claimant did not trust him. That is a matter which we must have regard when asking whether a lack of trust can be separate to the grievance that has triggered that state of affairs. In the case of Dan Wise we would accept that it was principally the grievance that had triggered this state of affairs.

1070. We have not found this an easy question. We have been assisted by asking whether these two individuals could realistically have been expected to work together professionally ever again. We do not think that would have been possible. So many of the Claimant's complaints about Dan Wise were wrong. Some were baseless. Some, like the allegation he had lost his temper, were distorted if not simply untrue. All the allegations were made forcefully. In those circumstances we do find that the lack of trust, which we agree made the working relationship impossible, is properly separate to the disclosures included in the Claimant's grievances. The fifth grievance postdates the point at which it is acknowledged that trust broke down and we need not consider them in relation to these three vacancies.

1071. Before we turn to the later changes in the crude team we shall deal with the issue of the efforts made by Sam Skerry and Janine Knights to secure a role for the Claimant during the period ending 4 July 2019 as this is the period specifically identified by the Claimant in his second ET1.

1072. The Claimant has suggested that the proposed changes were concealed from him and that Janine Knights e-mail of 25 June 2019 was an attempt by her to hide potential vacancies from him. We do not accept that that was the case. Janine Knights and Sam Skerry would have been acting upon what they were told by Dan Wise and Jon Mottashed. As we have indicated above there were good business reasons for adopting the changes that were made and by moving people around it could be said that the

changes did not give rise to any vacancy. We have found that part of the reason that Dan Wise and Jon Mottashed did not consider whether these changes opened up a role for the Claimant was that they both had lost any trust in the Claimant. Whilst we would accept that Sam Skerry and Janine Knights were aware of that we do not find that they believed that that was the reason for the changes made. We do not find that either sought to conceal the changes from the Claimant.

1073. The Claimant had met with Sam Skerry on 12 February 2019. She had made it clear in that meeting her view that as the Claimant had changed his mind about taking good leaver status after changes had been made he had a positive responsibility to look for another role. One outcome of that meeting was that Sam Skerry asked Simon Ashley to meet with the Claimant again on a without prejudice basis. Active negotiations followed. Sam Skerry was then tasked with assisting the Claimant to secure an alternative role. We have set out above a history of the efforts made by Sam Skerry and Janine Knights to follow through with this task. We have seen e-mails that demonstrate that Sam Skerry was actively consulting the vacancy lists to try and find a suitable role.

1074. The Claimant properly accepted in cross examination that during this period he had not engaged with the process of securing an alternative role in his dealings with Sam Skerry and Janine Knights. He also accepted that he had no basis to suggest that Janine Knights was not acting in good faith in her efforts to notify him of jobs that he might be interested in.

1075. We are satisfied that throughout this period Janine Knights and Sam Skerry were doing exactly as they had promised and were assisting in the search for an alternative role for the Claimant. It is suggested in submissions, following up from a comment by the Claimant in his evidence, that the reason why it appeared that the search for a role was a genuine exercise was precisely because the Claimant was not engaging. We do not accept that. In the meeting in May 2019 the Claimant was instructed on how to access the TAS system. If they had actively wanted the job search to fail then they need not have done more. Despite the Claimant's lack of engagement there were proactive steps taken to look for a job role.

1076. We have concluded that Sam Skerry and Janine Knights efforts to find the Claimant a role during this period were beyond any reasonable criticism. As such we do not accept that the Claimant has established any detriment inflicted by them. As there is nothing to complain of it is unnecessary to look at the reasons for any treatment. We are satisfied that neither Sam Skerry or Janine Knights did any act or omission during this period that was materially affected by the Claimant's disclosures.

<u>Later changes to the crude team</u>

1077. As we have set out in our findings of fact on in early November 2019 there was an announcement that Jon Mottashed's sabbatical would be covered by a combination of Graeme Alexander and Matt Jago. At the same time an announcement was made about Sarah Pearson's maternity cover.

1078. We shall deal with the question of whether the Claimant has suffered a detriment by not being considered for Sarah Pearson's maternity cover. We accept the evidence given by Dan Wise, and that of Sarah Pearson herself that the Claimant did not have the

skills to do that role. It was not a Senior Trader role and did not carry the bonus potential that the Claimant had enjoyed and expected. It was not a junior role, far from it, but it was a very different role to a Senior Trader. We find that this fully explains why Sarah Pearson did not put the Claimant on a list of suitable people who might cover her role. The test for a detriment is not a high one. We are prepared to assume that the Claimant would have been disappointed not to have been considered for this post. It is therefore necessary to make findings as to the reasons he was not considered.

1079. We have found that nobody actively considered the Claimant for this role. We cannot stop there but must ask why that was. We find that the reason was the same as Sarah Pearson had for not including the Claimant in her list. She and those who took the decision about who should cover this role would never have thought that the role was suitable for the Claimant. It was nothing like the senior trader role that he had successfully undertaken. The omission to consider the Claimant was not in any material sense because of the Claimant's disclosures but because nobody thought for a moment that this was a suitable role.

1080. The role vacated by Jon Mottashed was very different. There were elements of his role that the Claimant was fully skilled to undertake. These were the trading aspects of the role and the management of junior traders. There were other aspects of the role that we would accept Dan Wise reasonably believed the Claimant lacked the skills to perform. The role involved greater interaction with people outside trading. Dan Wise believed quite reasonably that the Claimant had struggled with some outside relationships. His appraisals in previous years, prior to any disclosures, provided support for this. Even with those concerns we are satisfied that this is a role that the Claimant might have been able to do. The split in the role could have accommodated the Claimant and Graeme Alexander making up for any of the Claimant's weaknesses. We note that Dan Wise had indicated that Graham Alexander's reward for undertaking this role would be reflected in his bonus. We are satisfied that the Claimant could reasonably be disappointed in not being considered for this role. Whether ultimately he would have been appointed is a separate question. Accordingly we are satisfied that he has established that he has been subjected to a detriment.

1081. We turn to the reason for the treatment. We would accept that Dan Wise did believe that the Claimant lacked some of the leadership/managerial skills necessary for this role. However in his evidence Dan Wise ultimately accepted that these were not the only reasons. When asked about his text exchange with Jon Mottashed, Dan Wise accepted that the meaning of his text messages *'if it is jz' and 'dont do that to me'* could be inferred from the messages themselves. He did not want to entertain the idea of appointing the Claimant to this role.

1082. We find that that amongst the reasons that Dan Wise had for not considering the Claimant for this role was the fact that he did not trust him. However we also find that there was an additional reason why Dan Wise was particularly opposed to considering the Claimant as a replacement for Jon Mottashed. In his evidence Dan Wise referred to the possibility that Jon Mottashed might return early from his sabbatical. He referred to Jon Mottashed being in a 'dark place' but hoping to return after the conclusion of the proceedings (which had the first listing proceeded would have taken place in 2020). We find that a further material consideration in Dan Wise's mind was the optics of asking the

Claimant to cover for Jon Mottashed in circumstances where Jon Mottashed had fallen ill dealing with the Claimant and the litigation.

1083. The issue for us remains the same were Dan Wise's reasons for not considering the Claimant for this vacancy separate from being on the grounds that he had made protected disclosures. We find that they are our reasoning on the 'trust' issue as set out above. With the passage of time there was a further factor which was the effect of the litigation. We find that the additional consideration of the optics of using the Claimant to cover the role of Jon Mottashed in these circumstances is a further reason not materially affected by the Claimant's disclosures.

3(cc) Rejecting C's appeal against the decision on the First and Second Grievances (and/or the contents of the written outcome on that appeal)

1084. This is an allegation levelled against David Knipe. We look first at whether the outcome of this appeal amounted to a detriment. We take the same approach in respect of the grievance process and appeal undertaken by Richard Wheatly and direct the reader to the passages above that set that out. The test for a detriment is not high. We have disagreed with David Knipe's conclusions in one respect (the influence of parental leave) but agreed with him in many other respects. The issues before David Knipe were wider than those before us.

1085. We have accepted some of the criticisms that the Claimant has made of David Knipe's approach. When dealing with the 2017 bonus he, like Richard Wheatley, placed a great deal of weight on the fact that there were robust systems in place rather than focusing on exactly why the Claimant was allocated the bonus he was or exploring the extent to which that might have been for unlawful reasons. We would accept that there were matters which could have been explored further.

1086. We are satisfied that the Claimant could have reasonably regarded the process and outcome of his appeal as a disadvantage. Accordingly he has satisfied us that there was a detriment.

1087. We then turn to the reason for the treatment. The reason that David Knipe implicitly puts forward was that he believed he had done a reasonable job and he thought he had reached the right conclusions. The key question is whether the fact that the Claimant had made disclosures played a material part in any failings.

1088. We have had regard to the fact that David Knipe was not the subject of any personal criticism when he heard the appeal. He was amongst the top 100 employees in BP far more senior than the Claimant or Dan Wise. We find that he had no obvious motivation to suppress any wrongdoing had he decided there was any.

1089. We have dealt mainly with criticisms of David Knipe's approach and conclusions. We need also to take into account the fact that in a number of respects he came to reasonable conclusions on the basis of the evidence he had. We have regard for the fact that he did not just rely on the evidence gathered and presented to Richard Wheatley but undertook further investigations himself.

1090. BP has satisfied us that the reasons that any failing in process, reasoning or outcome by David Knipe were in no material sense because of any disclosures by the Claimant.

3(ee) Attempting to find a basis to justify terminating Mr Zarembok's employment and/or taking steps to frustrate Mr Zarembok's ability to (re)integrate into, or obtain a role within, BP's workforce, by each of the following:

1091. Below we shall deal with each of the sub paragraphs listed under this general hearing. The list of issues makes it clear that each of the matters set out below is relied upon as a separate detriment. These allegations are the claims brought by the Claimant in his third ET1.

i. monitoring his activities.

1092. There was no dispute that the Claimant's activities had always been monitored. That was a regulatory requirement. There was also no factual dispute that in November 2018 and again in January 2019 Jeremy Tolhurst instructed the internal compliance team to increase the monitoring. In January he asked for historical data about the Claimant's attendance at the office and the activity that he undertook in comparison with other members of his team. We would accept that the Claimant could reasonably have regarded being singled out for this treatment as being a disadvantage. He could have regarded this as showing a lack of trust in him.

1093. We consider it significant that both the Claimant and Jeremy Tolhurst were alerted to the fact that the Claimant's correspondence was being read by a member of the compliance team. The Claimant had been sending correspondence and documents to his own e-mail address. That was the system working as it should. Given the nature of the role of a trader it is not surprising that BP put in place measures to protect its business. An employee who was expected to leave in the near future would be a greater risk than one who was not expected to leave.

1094. The Claimant has described Jeremy Tolhurst as 'kind and gentle'. It seems that he was an individual who he liked and trusted. Jeremy Tolhurst was responsible for compliance and that would include monitoring traders. The Claimant has not accepted Jeremy Tolhurst's word for it that the additional monitoring was his idea. He believes that the instruction came as a result of Jeremy Tolhurst discussing the Claimant's grievances with Dan Wise, Jon Mottashed and Sarah Pearson.

1095. We find that Jeremy Tolhurst was not aware of the existence of the Claimant's grievance when he gave the first instruction to monitor the Claimant more closely. That finding is parasitical on our findings in respect of Dan Wise and Jon Mottashed. Dan Wise knew that there was a complaint about him but that was it. We do not accept that Sarah Pearson told Jeremy Tolhurst about the contents of the grievance.

1096. We find that the initial reason for increasing the monitoring of the Claimant was, as Jeremy Tolhurst said, because the Claimant was expected to leave and he had been sending materials to his own e-mail address. We accept that e-mails and entry and exit times might flag up whether there was any reason for concerns.

1097. In respect of the further instruction in January we note that that instruction was copied into Sarah Pearson and also Philip Llewellyn. There is reference in the e-mail to a conversation the week before. In cross examination Jeremy Tolhurst accepted that he might have learned of the Claimant's work on Marpol.

1098. On 7 January 2019 the Claimant had returned to work in circumstances where Jon Mottashed had not expected him to return having assumed that HR would have resolved any difficulties over the good leaver request and its withdrawal. On 11 January 2019 the Claimant had sent a very hostile e-mail to Jon Mottashed. He had described the Marpol project as 'unnecessary busy work' and had indicated that he was doing it under protest. We accept Jeremy Tolhurst's basic account that he asked for the monitoring to be increased as the Claimant's return was unexpected. We accept that Jeremy Tolhurst remained concerned about compliance issues. Jeremy Tolhurst's e-mail of 14 January 2019 suggests that there is a need to look for abnormal entry and exit times. That is consistent with a compliance concern.

1099. We do not find that that was the full extent of Jeremy Tolhurst's reasons. His request for comparative data is unlikely to shed much light on compliance issues. We find that an additional purpose of the monitoring was informed by the stance taken by the Claimant on his return to work in January 2019 that he should be restored to his existing role as a book lead. The data Jeremy Tolhurst was asking for is relevant to establish that having applied for good leaver status the Claimant took his foot off the gas, delegated a large part of his duties to Oliver Stanford and Tara Behtash in preparation for leaving. We find that it was more likely than not that part of the purpose of gathering the data was to assist with any argument that nothing had changed and the Management of Change process could be reversed. Jeremy Tolhurst accepted in cross examination that he was "moving into understanding how committed he is to being with us". Jon Mottashed was sceptical that the Claimant really wanted to return. We are not surprised. There was evidence to support that suspicion. It was very likely that that suspicion was shared and Jeremy Tolhurst's evidence confirms that.

1100. We have accepted a number of points put forward by the Claimant. Where we differ is that we do not accept that the additional monitoring was gathered with a view to dismissing the Claimant on performance grounds. In early January 2019 that could not have been reasonably contemplated. Everybody knew that the Claimant had spent the latter part of 2018 handing over his work to his team. In early January 2019 the Claimant had been very dismissive of the Marpol project but there was no reason to believe that he would not have done a reasonable job if he had tried. We do not accept that there was any early-stage plan to look for a reason to dismiss the Claimant.

1101. We find that the reason for the November monitoring was compliance concerns. The reason for the increase in January 2019 was to gather material to rebut any claim by the Claimant that he was able to be reinstated to his old role as if nothing had happened coupled with an intention to find out if the Claimant was really serious about his return. Neither of these reasons is connected in any way to the Claimant's disclosures either in 2017 or in his grievances. We find that the decisions were not influenced in any material way by any protected disclosure.

ii. advising him of the possibility of terminating his employment for 'some other substantial reason' on 30 August 2019, 4 October 2019, 7 November 2019 [Ms Knights], and 20 December 2019.

1102. There is no dispute that the Claimant was warned on each of the occasions identified above that if an alternative role could not be secured then his employment might be terminated. We would accept that being warned of a loss of employment might be regarded by a reasonable employee as a disadvantage.

1103. A decision was taken by Jon Mottashed that he would not reverse the Management of Change process. He had tried to find work for the Claimant by asking him to do the Marpol project which the Claimant described as unnecessary busy work. By the dates set out above the Claimant had issued a claim in which he said that being asked to do this work was unlawful. The Claimant did not have a role in the Crude team. He had been told by Sam Skerry on 12 February 2019 that he should make the best of the Marpol project and look for other work. He had met with Sam Skerry on 20 May 2019 and it was spelt out for him that he needed to be pro-active in looking for work. The Claimant accepted in his evidence that he was not pro-active and that he did not at that stage engage with a search for alternative work.

1104. The Claimant was paid a substantial salary (at least by most people's standards). He was not doing any productive work. We find that it was not only sensible to warn the Claimant that this situation could not go on indefinitely but fairness demanded it.

1105. The Claimant says that the threat to dismiss him for 'some other substantive reason' was chosen as a means to deprive him of his unvested shares. Had he been dismissed for redundancy he would have been entitled to have his shares vest. We accept that later Simon Ashley in a naked attempt proposed that if the Claimant were to be dismissed he should be dismissed before his shares vested. That smacks of the sort of tactical move that elsewhere we have criticised the Claimant for.

1106. We consider that there was a respectable argument about whether the Claimant was potentially redundant or not. The reason he had been displaced was that he had applied for good leaver status and then changed his mind after changes were made. We can see why that might be described as 'some other substantial reason'.

1107. We know, because we saw the information being gathered for the 7 March 2019 meeting that if made redundant the Claimant might have expected a redundancy payment of circa £250,000. We leave alive the possibility that the label for any potential dismissal was chosen to assist BP's arguments about what might be due if the Claimant was dismissed.

1108. The reality was that the Claimant needed to be warned that the status quo would not continue indefinitely. Dismissal was a possibility. There were good ostensible reasons for including that information in the letters set out above. Those reasons were not influenced in any material way by the Claimant's disclosures. They were a statement of the obvious. Assuming that the choice of label is a separate detriment we are satisfied that if that label was chosen deliberately it was chosen to tactically advance BP's negotiating position in relation to any termination payment. We find that reason is also

separate from the fact that the Claimant made protected disclosures. We find that they had no material influence on the decision.

iii. not creating a role for Mr Zarembok within or giving him the opportunity to perform any of the roles available within the Crude Team, including without limitation: (i) Oliver Stanford's role when he moved to Chicago; (ii) Ms Adams' role (either the role she performed before or the one she performed after she took on the WAF Book Lead role); (iii) Mr Mottashed's role while he was off sick and/or on sabbatical; (iv) Ms Pearson's role while she was on maternity leave; and (v) Matt Hague's role (either the role he performed before being moved to the WAF Book, or the one he performed after that move);

1109. We have dealt with this above

iv. not informing Mr Zarembok of the changes to the Crude Team between July 2019 and 3 February 2020.

1110. The Claimant is correct to say that he was not notified of the changes to the crude bench between these dates. He learned of Jon Mottashed's ill health and sabbatical and Sarah Pearson's maternity leave only by a chance encounter. When the Claimant did find out about these changes they were acknowledged by Janine Knights. We would have accepted that the Claimant could have been reasonably disappointed by this and that he has established a detriment.

1111. We do not find that there was any deliberate attempt to conceal these changes. They were not discussed with the Claimant because they did not give rise to any vacancy. The reasons for the Respondents taking that view are exactly the same as we have set out in respect of issue 3(ee)(iii) above. We have explained why we have found that those reasons were separate and therefore not on the ground that the Claimant had made disclosures.

v. not finding or creating a role for Mr Zarembok (including without limitation by offering him a trial period and/or training in respect of each of the roles that he expressed interest in, and in respect of any other roles within BP that he may have been able to perform during this period.

1112. This allegation relates to the period when the Claimant's attempts to find a role were being managed by Janine Knights and Sam Skerry. The first question is whether the Claimant has established a detriment. We would accept that the Claimant would have wanted a role to have been created for him or would at least have considered a trial period in a role. We rather doubt whether the Claimant's disappointment would have been reasonable but it is unnecessary to decide that point as it is consumed in our findings about the reason for the treatment.

1113. We have indicated above that the senior trading roles in BP are linked to a revenue stream. It is that revenue stream that generates the profits to pay the extraordinarily high salaries that the traders receive. The headcount of any team is carefully managed. Whilst the headcount might be altered by a re-organisation such a reorganization would have to have regard to the effect on the existing team members. A role might be expanded

but the more senior the employee the less opportunity there would be for expanding a junior role. The Claimant would only have considered a job with a significant bonus potential. He had made that clear to Sam Skerry and Janine Knight.

1114. Sam Skerry had made it clear beyond doubt that she did not intend to 'create' a role for the Claimant at the meeting of 20 May 2019. That position never changed. We find that the reason Sam Skerry took that stance was for the reasons set out above. These were clearly articulated by Janine Knights in her evidence. The creation of a role or the significant expansion of a junior role would have been an extraordinary step. This was ruled out because of the financial and organizational reasons we have identified. The Claimant's disclosures played no material part in this decision.

1115. The possibility of a trial period has to be considered separately. There was less evidence on this direct point. Sam Norman did comment on the possibility of a trial period and he said that he would not give somebody a job and then take it away in 6 months later. What we understand him to be saying was that there were senior roles where the trader is responsible for a large revenue stream. Only if BP was satisfied that a person would be up to the job would they ever consider appointing a trader. There was evidence to the same effect from others. Objectively we can see the sense in this. These were not junior roles. There was a huge amount of money at stake. It may be a poor analogy but we can see why nobody would think about a trial period for an astronaut. We consider that a senior role in BP is in exactly the same territory.

1116. We find that the reason nobody proposed or agreed to a trial period for the available roles is that they did not consider the proposals sensible. The Claimant was either a suitable candidate for any job or he was not. We find that these reasons are not in any material sense informed by the fact that the Claimant made any disclosures.

vi. obstructing Mr Zarembok's attempts to find other roles (by each of the matters referred to in paragraphs 23, 29, 36, 37, 40, 41, 46 and 53 POC3), and not responding in a timely manner to Mr Zarembok's requests referred to in paragraphs 24, 25, 26, 30 and 37 [Ms Knights].

1117. **This** allegation concerns the actions of Janine Knights. The complaints overlap with the allegation that she did not reactivate his pass and that she misled him in respect of the experience needed for the power trader role. We have dealt with those aspects separately. As far as we can see the remaining complaints relate to delays in responding to correspondence and to failing to organize a meeting between the Claimant and any hiring manager.

1118. In our findings of fact we have identified that there were delays in Janine Knights responding to the Claimant. It is also the case that she only arranged for the Claimant to meet one hiring manager whereas the Claimant had asked to meet two others.

1119. We are satisfied that there were delays in organising meetings with hiring managers and that there were delays in responding to correspondence. As such we are satisfied that the Claimant might have reasonably regarded those matters as a disadvantage.

1120. We need to turn to the reason for any treatment. Some small part of the delays was caused by Janine Knights having a period of annual leave. During this period the

Claimant wrote a number of e-mails to Janine Knights which set out his position in the litigation. Janine Knights describes the tone of those e-mails as aggressive. We do not have to make a finding about that. Janine Knights wrote a number of long e-mails to the Claimant which carefully dealt with some of the assertions he raised. It is obvious to us that both parties at this time were in receipt of legal advice. There were ongoing proceedings and we have no doubt that any substantial piece of correspondence from Janine Knights was being vetted and approved by lawyers or her seniors before it was sent. We find that this would inevitably have caused delays.

1121. Janine Knights did not assist the Claimant with his request to meet Mark Flowerdew or Sam Norman but she did make her own enquiries about the requirements of each role. We have dealt extensively with the power trader role elsewhere. We accept that Janine Knights genuinely believed that the Claimant was not suitable for either role because of a lack of relevant experience. In respect of the feedstock role she was undoubtably right. When the Claimant later insisted on meeting those managers it was facilitated.

1122. We find that Janine Knights did not assist the Claimant in meeting some hiring managers when she believed that the role was unsuitable. We would accept that this might have been frustrating for the Claimant as it did not give the Claimant a chance to persuade the hiring managers otherwise. However we find that the reason for the treatment was in no material sense that the Claimant has made protected disclosures. Janine Knights had been trying to engage the Claimant in looking for another role for months. We do not accept that she changed her stance in September 2019.

vii. refusing to reactivate his pass and/or keeping his pass deactivated and/or not enabling Mr Zarembok to have unrestricted access to the office building from 12 September 2019 until 3 February 2020 [Ms Knights].

1123. We have dealt with this above

viii. one or more people (whom Mr Zarembok is not able to identify) spreading rumours that Mr Zarembok was in a "quarrel" with BP about returning to work, or that he was a problem or a trouble maker (or words which convey a similar gist), or that people should avoid having direct conversations, or working, with Mr Zarembok;

AND

ix. one or more individuals (whom again Mr Zarembok is not able to identify, but likely in BP's HR or legal functions) communicating with individuals with whom Mr Zarembok was seeking to discuss potential job roles (including at least Messrs. Flowerdew, von Schweinitz, Alexander, and Norman) and providing them with advice on how to avoid personally engaging with Mr Zarembok;

1124. We shall deal with these two matters together because the conclusions that we have reached are closely related.

1125. We accept that there were rumours about the Claimant including speculation that he was in some sort of dispute with BP.

1126. We accept that each of 'Messrs. Flowerdew, von Schweinitz, Alexander, and Norman' were given advice about how they should manage their dealings with the Claimant. Each of them had been contacted by the Claimant seeking a meeting. Each of them had taken the view fairly swiftly that they needed advice on how to respond. In most cases they were assisted to draft a response which put off any meeting unless a vacancy was identified. Tammy Dehn was responsible for at least one such response. We agree with the Claimant that the responses were co-ordinated.

1127. We would have been assisted by a straightforward explanation about why the responses to the Claimant's requests for meetings were phrased as they were. We were told that several of those individuals took legal advice and we would accept that that advice is privileged.

1128. It is of no surprise that there were rumours going around that the Claimant was in a 'quarrel' with BP. He was. He had come back to work when he had been expected to leave. He had then disappeared in March when sent home by Simon Ashley. He had issued proceedings against two of his colleagues and BP. He had then contacted his colleagues asking about roles. The Claimant talks of the stony silence when he returned to the office in January 2019. Nobody had expected him to return. He says that nobody asked him why. We do not find that surprising it would have been fairly obvious that there had been some issue about his good leaver status. Whilst BP places a heavy emphasis on confidentiality around grievances it is unreal to expect people not to have noticed these events and not to have formed their own view of them.

1129. We find that the reason for the rumours that the Claimant was in a quarrel with BP is that the employees had correctly speculated or found out that that was the case. We do not find that the fact that these rumours were circulating was on the ground that the Claimant had made protected disclosures.

1130. We then turn to the reasons why the proposed meetings sought by the Claimant were 'managed' by either the HR or legal department or both. As we have said we have no direct evidence. We need to put these events into context. By January 2020 the Claimant had brought two claims naming two individual respondents and had started early conciliation against Sam Skerry and Janine Knights. Further litigation would have appeared inevitable.

1131. We have accepted elsewhere that Janine Knights and Sam Skerry's preference was to be a single point of contact for the Claimant.

1132. The evidence of Sam Norman was of assistance in this matter. He told us, and we accept, that his reaction was to not want to be drawn into any battle between the Claimant and BP. The other witnesses that we heard from expressed similar sentiments.

1133. We find that behind the scenes, these employees were assisted to brush off the Claimant's request because they did not want to get involved in any dispute and in particular did not want to be drawn into any litigation. We find that those behind the scenes shared the same concerns. Whilst we do not find BP's position attractive we find that wishing to avoid any future litigation or complaint is not a reason materially influenced by the Claimant's disclosures.

3(ff). keeping him de facto suspended (i.e. instructed not to attend the office without a pre-arranged meeting and/or not permitted to work in the office unless arranged and approved in advance and/or with his trading authorities and trading access removed) from June 2019 (i.e. from the period covered by the Second Claim) until 3 February 2020.

1134.

(3)(w) Attempting to avoid dealing with C's Third Grievance

1135. This allegation rests on the letter sent by Simon Ashley to the Claimant in response to the Claimant's third grievance which was sent on 18 March 2019. What is said to be an attempt to avoid dealing with the grievance is the suggestion made by Mr Ashley that informal discussions about the concerns raised take place before any formal grievance procedure.

1136. The suggestion made by Mr Ashley was in our view fair and sensible. The Claimant had made a complaint about being sent home and about his bonus. In respect of the latter Simon Ashley gave the Claimant details of the profit and loss on the books he managed and offered to provide further details if the Claimant wanted them. Simon Ashley did not refuse to allow the Claimant to bring a formal grievance but simply suggested that dealing with matters informally first would be *'more appropriate'*. When the Claimant insisted on bringing a formal grievance he was permitted to do so.

1137. ***Jesudason v Alder Hey Children's NHS Foundation Trust*** tells us that the threshold to establishing a detriment is not high. The act or omission must be seen from the perspective of the employee however that is qualified by the requirement that that perspective is reasonable. We do not consider that any reasonable employee would have regarded a suggestion that they be provided with additional information about the decisions that they impugned in an informal discussion before invoking a formal grievance was a disadvantage. This is particularly true when at the same time the parties were in active discussions aimed at resolving other disputes. It follows that the Claimant has not satisfied us that this action amounted to a detriment.

1138. If we are wrong about the issue of detriment we turn to the reason for the treatment. We can deal with this very briefly. We are satisfied that the reason for the treatment was the reason set out in the letter itself namely that Simon Ashley thought it more appropriate to follow the suggestion in the Respondent's grievance procedure and attempt an informal resolution of the grievances before proceeding with a formal grievance. We are satisfied that Simon Ashley was not influenced in any way by the Claimant's 2017 NNPC disclosures or by his first, second or third grievances. Those matters clearly form the background to Simon Ashley's suggestion but were not in any material sense the reason for it.

3(hh) not upholding his Third and Fourth Grievances (save in respect of the 2018 bonus) and/or the contents of the written outcome to the Third and Fourth Grievances (save in respect of the 2018 bonus)

1139. This allegation is directed to the grievance process and outcome arrived at by Haydee Vielma. It is a complaint made in the Claimant's third ET1.

1140. We have set out some general principles in respect of the proper approach to a complaint that an internal process was tainted by improper considerations. Such a complaint may be maintained about the process despite the fact that a Tribunal has reached the conclusion that the outcome was correct. However to succeed in those circumstances the Tribunal would need to find that the process was tainted by improper considerations – here the making of protected disclosures. Whether errors in procedure or reasoning are sufficient to rebut an assertion that the manager attempted to resolve the grievance in good faith is a question of fact for the Tribunal.

1141. Haydee Vielma had 4 separate matters that she needed to resolve these were:

1141.1. Whether the Claimant had been suspended without justification on 7 March 2019 and was a retaliation for making protected disclosures; and

1141.2. Whether the Claimant's 2018 bonus award was retaliation for making protected disclosures

1141.3. Whether there had been an improper failure to find the claimant a role on the Crude team (or another role; and

1141.4. Whether the Claimant had been improperly excluded for consideration of the North Sea role both in retaliation for making protected disclosures.

1142. As we have set out in our findings of fact above there was an initial question as to whether it was appropriate to deal with the allegation that there was a suspension without cause on 7 March 2019 because of the difficulty in separating the reasons for this from the matters subject to without prejudice privilege. We find that this was regarded as a problem that required some consideration. Much the same area of dispute was dealt with by Employment Judge Russell at a preliminary hearing. In the event a decision was taken, and communicated to the Claimant, that this would be dealt with in the grievance process.

1143. Haydee Vielma interviewed the Claimant. Her notes of interview disclose her asking questions about the Claimant's protected disclosures and asking why the Claimant believed that these and taking parental leave were behind any of the matters he complained of.

1144. In their written submissions on behalf of the Claimant Mr Rajgopaul and Ms Plews take issue with the fact that in the introductory passages of her witness statement Haydee Vielma said: '*in my view we **have to** trust our internal processes … I understand that the Claimant had concerns but we have a whole system in place and a Code of Conduct and I have no reason to believe that it wasn't working as it should'*. We would accept that had Haydee Vielma been charged with investigating whether there had been wrongdoing in connection with the NNPC deals this would have demonstrated an unacceptably concluded view. This was not what Haydee Vielma was required to investigate. None the less we take the point that Haydee's Vielma's confidence in one set of systems does provide support for a submission that she was likely to have confidence in other systems such as the matters she was actually asked to investigate. We are invited to infer from this statement that she was unimpressed with the Claimant speaking up about these matters. We take that submission into account.

1145. The Claimant criticises Haydee Vielma for not accepting that he was *'de facto'* suspended. The suggestion is that taking a pedantic stance is indicative of a desire to protect BP. We would accept that there was minimal difference in effect in being asked to remain out of the office pending negotiations and being suspended from duties. BP's disciplinary policy unsurprisingly talks about suspension. It is correct that the Claimant was not and could not have been suspended for the reasons envisaged in that policy. That was the conclusion that Haydee Vielma reached in her outcome letter. We accept that that conclusion led her to assert that the Claimant had not been 'suspended'. We accept that that was a somewhat semantic stance but the Claimant's grievance was that he had been suspended 'on no grounds whatsoever'. Haydee Vielma did go on and say that she had accepted the explanation given to her by Simon Ashley that the Claimant had been asked to stay out of the office because of negotiations. There was evidence to support Haydee Vielma's conclusion that this was the reason the Claimant had been asked to stay at home. This had been the reason given at the time which the Claimant had not acknowledged in his grievance or his correspondence.

1146. The next criticism of Haydee Vielma is that she had not dealt with the ongoing nature of the suspension. We note that the grievance was raised on 18 March 2019 when there were still active negotiations. We accept that Haydee Vielma has focused on the initial reasons for the suspension. She did not investigate whether those reasons remained the only reasons for the continued state of affairs. Having regard to the way in which the Claimant put his complaint at the time and when interviewed, we do not consider that this is a surprising omission. The focus of the complaint was very much on the initial decision.

1147. Criticism is then made of the fact that in her outcome letter criticisms are made of the Claimant's work on the Marpol project. Those criticisms were based upon what Jon Mottashed had told her supported in a small way by Dan Wise. In any judicial process it would be unfair to make criticisms based on material a person is unaware of without giving an opportunity for that person to comment. Whilst the standards of a domestic tribunal are more flexible we would accept that Haydee Vielma should have given the Claimant an opportunity to comment upon this before criticising him. We consider that the Claimant's attitude to being asked to do the Marpol work was highly relevant to his criticism of Jon Mottashed for not finding him a role. As such it was a matter that was not properly explored.

1148. We find that there are some issues with the way that BP sets about investigating grievances. It is sensible to interview the complainant first that way a proper understanding of the grievance can be ascertained. We find that BP then interview potential witnesses and take statements. Those statements are not generally shared. A conclusion is then reached with no further meeting. We would accept that that does risk some unfairness unless the decision maker is alive to the possibility that a further meeting with the Claimant might be necessary. Such a step is not mentioned in the BP grievance policy but is not ruled out by that policy either.

1149. The Claimant made other points in cross examination. We have taken those matters into account but do not deal with them all here.

1150. Stepping back and looking at the conclusions reached by Haydee Vielma we start by saying that in our view her conclusions in respect of the 2018 Bonus issue and the North

Sea role were strongly supported by the evidence she obtained and we have reached exactly the same conclusions. It is clear that Haydee Vielma shared the view expressed by Sam Skerry in February 2019 that the Claimant having withdrawn his application for good leaver status could not expect to return as if everything could remain the same. She made it clear that she believed that the Claimant needed to work with the Respondent to try and find a role. We find that that stance was one which on the basis of what she had been told by the Claimant and others was not unreasonable. We accept that Haydee Vielma's interpretation of the Claimant's suspension complaint was a little pedantic.

1151. Looking at matters overall whilst there were some valid criticisms and things which could have been done better we find that Haydee Vielma did a passable job of attempting to resolve the Claimant's grievances in an even-handed way.

1152. We have reached exactly the same conclusions as Haydee Vielma. For the reasons we have explained that does not mean that the Claimant has not suffered a detriment. We find that he could reasonably be disappointed with the way Haydee Vielma approached the grievances for the reasons set out above.

1153. When we turn to the reason for the treatment we are satisfied that Haydee Vielma did her best to resolve the grievances and the fact that the Claimant had made disclosures did not play any material part in her reasons for the process followed and the conclusions reached.

3(jj) Ms Knights not telling the truth to Mr Zarembok about the contents of a conversation she allegedly had with Mr Flowerdew on 24 September 2019 [Ms Knights

1154. The allegation maintained by the Claimant in his grievance and in his cross examination of Janine Knights was not merely that she did not tell the truth but that she had lied about the requirement for previous power experience. In our findings of fact we have accepted that in her e-mail to the Claimant of 20 September 2019 Janine Knights misstated the view of Mark Flowerdew that power trading experience was an essential requirement of the role. We have not found that she was dishonest when she did so. At the highest she was careless. The Claimant never applied for this role. He knew how to and could have done. He spoke to Mark Flowerdew himself and was aware of Mark Flowerdew's own views on power trading experience. We have considered whether the fact that Janine Knights got her information wrong could amount to a detriment. We are satisfied that it could.

1155. We then turn to the question of whether this error was made on the grounds that the Claimant made protected disclosures (assuming for these purposes that the disclosures were protected. We would accept that a person could act on the ground that another person has made protected disclosures by being careless. As we have stated elsewhere there was no criticism of Janine Knights in any of the disclosures. Janine's explanation for any mistake is that if it was an error at all it was an honest error untainted by the disclosures. We have set out in our findings of fact matters which could have led Janine Knights to get the 'wrong end of the stick'. We have also set out a general finding that Janine Knights made many efforts to assist the Claimant in finding a role even when he was unresponsive. Having regard to all of the evidence we are not satisfied that when

Janine Knights told the Claimant that power experience was essential for the Power Trader role her reasons for doing so were influenced to any material extent by the fact that the Claimant made disclosures.

3(kk) rejecting his appeal against the outcome of his Third and Fourth Grievances (save in respect of the 2018 bonus) and/or the contents of the written outcome to his appeal against the Third and Fourth Grievances (save in respect of the 2018 bonus).

1156. This allegation concerns the actions of David Speed. We have already set out our conclusions that the process and outcome of a grievance process might amount to a detriment even where the Tribunal have come to the conclusion that the decisions reached were right. In this case we have reached the same conclusions as David Speed although for different reasons. We have identified above that David Speed did not fully deal with all of the matters raised by the Claimant. His approach was to look at explanations for any treatment without fully exploring whether those explanations were the exclusive reasons for any treatment. We have identified other failings above. In short the approach taken was not perfect, there were sufficient errors that regardless of the outcome the Claimant could have reasonably considered that he had been disadvantaged. He has therefore established that he has been subjected to a detriment.

1157. We then turn to the reason for the treatment. As in the other similar allegations the issue is whether we are persuaded that the reasons for any of the failures we have identified are 'innocent' human errors. Ultimately the question is whether any failings were on the ground that the Claimant had made disclosures.

1158. We have regard to the fact that David Speed was a senior employee. He was not at that stage the subject of any personal criticism. There is no obvious reason why he would wish to retaliate against the Claimant for making protected disclosures. We are invited to find that David Speed, consciously or not, regarded the Claimant as a troublemaker. We accept that David Speed was aware of all of the matters the Claimant relies upon as being protected disclosures.

1159. Our overall impression of the process undertaken by David Speed was that he took time to read all of the material he needed to. He met the Claimant and the notes of the hearing show that the issues raised by the Claimant were explored. David Speed then composed questions for a number of the people involved. Those questions were relevant and in most cases neutral. David Speed then set out his conclusions in a reasoned letter. In some respects (the 2018 bonus) there is no challenge to the conclusions. In other respects there was evidence to support the conclusion.

1160. We have had regard to all of the evidence. The bits of the investigation that were done well and the bits that the Claimant has established were done badly. We have come to the conclusion that the failures were not in any material sense because of any disclosures by the Claimant. We accept that David Speed did his best to resolve the Claimant's grievances. The failures identified by the Claimant are not a sufficient basis for us to infer that the disclosures played any part in the reasons for any failings.

3(ll) not finding or creating a role for Mr Zarembok (including without limitation by offering him a trial period and/or training in respect of each of the roles that he

expressed interest in, and in respect of any other roles within BP that he may have been able to perform during this period [Ms Hegarty];

1161. We have dealt with the issues of creating a role and offering trial periods above. Whilst this allegation is directed towards Niamh Hegarty the reasoning above is equally applicable here. BP were never going to create a role from scratch for the Claimant for good commercial reasons. A role at a senior level might have been expanded but no such role was apparent to Ms Hegarty. Trial periods for such responsible positions were unacceptable for commercial reasons. We find that any omission in this respect was not on the ground that the Claimant had made any disclosures.

3(mm) refusing to reactivate his pass and/or keeping his pass deactivated and/or not enabling Mr Zarembok to have unrestricted access to the office building from 4 February 2020 to 10 April 2020 [Ms Hegarty].

1162. We have dealt with this above

3(nn) rejecting his fifth grievance and/or the contents of Ms Hegarty's letter to Mr Zarembok of 10 April 2020 [Ms Hegarty].

AND

3(oo) dismissing him [Ms Hegarty].

1163. In our findings of fact we have briefly summarised the process followed by Niamh Hegarty to resolve the Claimant's grievances and to come to a conclusion about whether his employment should be terminated. Our overall impression was that Ms Hegarty went to a great deal of trouble to revisit many of the matters covered by others in the earlier grievance procedures. She reviewed the factual circumstances that had led the Claimant to be out of his original role as well as such efforts as there had been to find an alternative. She was asked to, and did, look at the issue of trust at the same time.

1164. The Claimant at an early stage suggested that Ms Hegarty was merely going through the motions when dealing with his fifth grievance and his employment. This was an unfortunate allegation to make at that stage given the task that Ms Hegarty had set herself.

1165. Given the events of March 2020 and the fact that Ms Hegarty had other significant responsibilities we consider that she reached her conclusions efficiently and without undue delay. She set out her conclusions in a lengthy reasoned letter. We take note of the fact that Niamh Hegarty had been encouraged to reach a swift decision by Simon Ashley. It is to her credit that she recognised that she should not do so.

1166. Mr Rajgopaul and Ms Plews in their written submissions and cross examination focused on what they said were flaws in procedure and unjustified conclusions. They say that the reasons given for some matters are to be equated with the decisions being taken because the Claimant made protected disclosures. We have had careful regard to the entirety of their submissions but shall deal with what we consider are the most important points before reaching more general conclusions.

1167. We accept that having his fifth grievance dismissed and being dismissed are matters that the Claimant could reasonably believe to be to his disadvantage. Our focus is on the reason for the treatment. As for the other grievance processes what we need to decide is whether the decisions were made by Niamh Hegarty as a genuine effort to come to a conclusion for not materially affected by any disclosures. At this stage we are not considering whether her decisions made were right or fair or whether the process was flawed. However these matters may assist in supporting inferences that there was some improper conduct. Whether they do is a question of fact.

1168. The first matter that we shall deal with is a criticism made of the Claimant that he made a baseless allegation against Janine Knights of lying to him about the Power trader role needing power experience. Mr Rajgopaul extracted a concession that the basis for the allegation was the difference between what Janine Knights had told the Claimant and what Mark Flowerdew had told him. Niamh Hegarty accepted that. She did however go on to draw a distinction between being told something which turns out to be incorrect and a lie. We have come to the same conclusions as Niamh Hegarty about whether Janine Knights lied or not. She certainly passed on information which was not the same as what Mark Flowerdew told the Claimant. That is not necessarily a lie. We agree that her description of the Claimant's allegation is harsh. Her stance needs to be seen against the full picture. The Claimant had also made attacks on the integrity of Sam Skerry. We consider that Niamh Hegarty honestly believed that those attacks were without any reasonable foundation.

1169. Niamh Hegarty criticised the Claimant for describing Sam Skerry's statement that his good leaver application had been accepted as a 'falsehood'. In submissions the Claimant says that that is unfair. It was correct that the application had not been formally approved. Niamh Hegarty did not dispute that the Claimant was strictly correct. What she criticised him for was for equating the error to dishonesty. We believe that she was perfectly justified in regarding the Claimant as saying much more than Sam Skerry had got something wrong. The submissions made rob the allegation of its context. The Claimant has also suggested that Sam Skerry was disingenuous in her attempts to assist him with finding a role. We find that Niamh Hegarty was entirely justified and could have honestly believed that the Claimant was attacking Sam Skerry's integrity and not merely saying she had made an error. We ask why anybody would bring a grievance about a mere error?.

1170. The Claimant takes exception to the conclusions reached by Ms Hegarty about Marpol and his work on the project. The difficulty for the Claimant was that he had been asked to do a piece of work that Jon Mottashed and others properly regarded as an important and strategic project. The work was well within the Claimant's capabilities. The Claimant's very robust response was to describe this as 'busy work'. It was unsurprising that in this context Sarah Pearson and Jeremy Tolhurst viewed the only work that they were presented with as being poor had it been produced by an intern. The purpose of looking at this matter from Niamh Hegarty's perspective was not to assess whether his employment should be maintained not because of his poor work but because of a lack of trust. The piece of work seen by Jeremy Tolhusrt and Sarah Pearson was the only evidence of the Claimant's commitment to doing a professional job. We do not find that the approach of Niamh Hegarty was seriously unfair. We accept that she regarded the written work produced as indicative of the Claimant's commitment and perhaps gave

insufficient weigh to the fact that the Claimant had not been allowed to complete the project.

1171. Niamh Hegarty criticised the claimant for not accepting Jeremy Tolhurst's assertion that he had been the person responsible for increasing the monitoring. We find that there was a basis for that criticism. The Claimant was saying that Jeremy Tolhurst, whom he trusted, could not have been responsible. He did not accept that when he was told it was the case at the meeting of 10 March 2020.

1172. We would accept that Niamh Hegarty did not deal well with the vacancies that opened up in the crude team as a result of Oliver Stanford moving to Chicago. She was aware that there were 'sensitivities' but did not explore those. Had she done so she may have discovered that neither Jon Mottashed nor Dan Wise would have felt able to work with the Claimant.

1173. Niamh Hegarty in her outcome letter suggested that the Claimant was merely going through the motions in respect of the Senior Supply Co-Ordinator role. That was a very robust decision. Niamh Hegarty had commented upon how excited the Claimant had been about that role. She knew that he had put in an application. He had not asked to see the hiring manager but that was not a good indicator or his genuineness. There was some basis for perhaps a more limited finding. When the Claimant was told the anticipated salary he said nothing. We would accept that it is possible to read that as being a lack of interest. We would accept that Niamh Hegarty would have genuinely believed that the Claimant was not interested from that point onwards. In fact the Claimant was not even going to be interviewed. That was a matter known before he was dismissed.

1174. We have had regard to these points and the others set out in detail by Mr Rajgopaul and Ms Plews. We would agree with them that what these points do taken together is demonstrate that Niamh Hegarty had been extremely robust in some of her findings often taking evidence against the Claimant at a high level.

1175. The criticisms of Niamh Hegarty do have to be seen against the entirety of the decisions that she made. In terms of the decision to dismiss the Claimant Niamh Hegarty's reasons show that she was not relying on just one matter. She was relying on a pattern of behaviour. Her ultimate conclusion was that the Claimant had demonstrated that he had insufficient trust in BP to enable the employment relationship to continue.

1176. We accept that there was a reasonable basis to conclude;

1176.1. That the Claimant really intended to leave even after he withdrew his good leaver application and that those were his reasons for not telling Jon Mottashed that he had changed his mind; and

1176.2. that the Claimant had aggressively dismissed Jon Mottashed's efforts to find him a temporary role on the Marpol project and that the Claimant's description of that work was wholly unjustified; and

1176.3. That he had questioned the integrity of Sam Skerry and Janine Knights from August onwards certainly initially with no reasonable basis; and

1176.4. There was a good reason to conclude that the Claimant had not engaged with Janine knights and Sam Skerry until late August 2019. The Claimant has admitted that this finding was right.

1177. We need to decide whether the Claimant's disclosures were a reason for any treatment. It is said by the Claimant that that is self-evidently the case. For example the Claimant is criticized for referring to Janine Knights as a liar. What is said is that is inseparable from criticizing him for making protected disclosures. We have had regard to all of the points made.

1178. The authorities that we have cited above show that the manner in which a disclosure is made or the effect that it might have on the employers business may be a separate reason from the fact that a disclosure was made at all.

1179. Had the Claimant restricted his allegation of dishonesty to Janine Knights then any distinction between the disclosure and the criticism might have been harder to draw. However the Claimant made other robust attacks on the integrity of others. In that context a criticism of the Claimant for making baseless accusations and thereby demonstrating a lack of trust is not necessarily to be equated with the disclosure itself. This is not so much a case of the manner of making the disclosures but of the effect of making the disclosures in the terms adopted had on the working relationships.

1180. We have no doubt that Niamh Hegarty genuinely felt that the time had come to declare the obvious, that the working relationships, which required mutual trust, were completely destroyed. That impression was formed after a review of a great deal of documentation. Many letters and e-mails from the Claimant were robust or bordering on the aggressive. In that respect they differed from the Claimant's habitual polite presentation in person. Niamh Hegarty referred to this in her letter and we are unsurprised that she considered that this eroded the trust required.

1181. We have concluded that Niamh Hegarty had a genuine belief in her conclusions and that she came to those conclusions without being materially influenced by the Claimant's protected disclosures. We find that the manner in which the Claimant expressed himself in some of the disclosures which was criticised as unjustified was in the context an entirely separate reason from the disclosures themselves.

1182. It follows that we do not find that the dismissal decision or the grievance outcome was on the ground that the claimant made disclosures.

Time Limits – Section 48 claims

1183. In our conclusions above we have found only one instance of unlawful conduct. We have found that the fact that the Claimant took Parental leave was a material influence on Dan Wise's decision to approach him and ask whether he was interested in good leaver status. We need to consider whether that claim has been presented within the time limit imposed by Section 48(3) of the Employment Rights Act 1996. Before we do so we shall make some more general findings in case we have made any errors in our other conclusions. We shall not deal exhaustively with every possible point as it is disproportionate to do so.

1184. The majority of the claims that have potentially been presented out of time concern the Claimant's first claim. The Claimant presented that claim on 18 March 2019. Having regard to the ACAS early conciliation certificate an act or omission not forming part of a series of similar acts or an act extending over a period would be outside the ordinary time limits unless:

1184.1. As against BP, it occurred after 10 October 2018; and

1184.2. As against Jon Mottashed, it occurred after 17 October 2018; and

1184.3. As against Dan Wise, it occurred after 23 October 2018.

1185. The ordinary time limit referred to above can be disapplied if it was not reasonably practicable for the claim to have been presented earlier AND if it was presented a reasonable time thereafter. The Claimant had engaged a solicitor as early as September 2018, specialist Counsel not much later. Even if the Claimant had not retained lawyers we would have held that he was quite capable of researching any relevant rights and the applicable time limits. He had no physical or mental impairment that prevented any claim being brought. In those circumstances provided the Claimant knew of the act said to be a detriment we find that it was reasonably practicable for the Claimant to have brought any of his claims within the statutory time limits.

1186. As far as we have identified the only matter where the Claimant's actual knowledge was in issue related to the increased surveillance of him undertaken on Jon Mottashed's instruction. The Claimant was aware of general surveillance but only learned of the increased surveillance when he made a subject access request. In his witness statement the Claimant says that he learned of this on 4 July 2019. His complaint about this is included in his third claim which was presented on 15 February 2020. Whilst we would have accepted that it was not reasonably practical for the Claimant to have brought this claim until he knew about the increased surveillance it was reasonably practicable to have brought the claim or contacted ACAS within three months from then. Accordingly any lack of knowledge does not bring this claim within the ordinary time limits.

1187. We then turn to the one claim that we would uphold. The first question for us is whether Dan Wise asking the Claimant if he was interested in applying for good leaver status was an act extending over a period. We would accept that Dan Wise's impression that the Claimant would be open to retiring predated and postdated him asking the Claimant about retirement. We do not accept that this means that the actions of Dan Wise in asking the Claimant about this amounted to an act extending over a period. We find that the act of asking whether the Claimant was interested in retiring was a one-off act. At best it was an act with continuing consequences. In fact we would say that the Claimant's application for good leaver status was a consequence of him agreeing that he was ready to retire. We must focus on the act and not the consequences of any act.

1188. We have not found any other unlawful act falling within the ordinary time limit. Accordingly applying ***Arthur v London Eastern Railway Ltd*** we must conclude that we do not have jurisdiction over this claim and are unable to provide any remedy.

Unfair dismissal

1189. There is no dispute that the Claimant was dismissed and so the first issue for us is the reason for the dismissal. The Claimant says that his dismissal was for a reason falling within Section 103A of the Employment Rights Act 1996. We have set out above our finding that Niamh Hegarty's reasons for dismissing the Claimant were not materially influenced by his disclosures. The test in Section 103A is of course much higher. It would be necessary for us to find that the disclosures were the reason or principal reason for the dismissal. It follows that our earlier conclusion on the Section 47B claim is sufficient to dispose of this.

1190. As we have set out above it is for BP to establish that the reason or principal reason in Niamh Hegarty's mind was one of the potentially fair reasons listed in Sub-sections 98(1) or (2). BP says that Niamh Hegarty's reasons for the dismissal were 'some other substantial reason'.

1191. The first matter that we must decide is whether, as a matter of fact, the reasons given by Niamh Hegarty in her dismissal letter, and adopted in her evidence were the reasons for the dismissal. We find that they were. Those reasons can be summarised as being that she had concluded that the Claimant had so little trust in the people with whom he came into contact that restoring a proper working relationship was impossible. A further consideration was said to be that the Claimant had not been in an identified role since March 2019 at the latest and that there was no immediate prospect of finding a role.

1192. In her letter dismissing the Claimant Niamh Hegarty set out her findings about the whole range of the Claimant's complaints from the period when he returned to work in January 2019. At this stage we are not concerned about whether Niamh Hegarty's conclusions were fairly reached but only with the question of whether the reasons she gave for the dismissal were her actual reasons. We find that they were. The fact that the dismissal letter sets out not only the conclusions but is fully reasoned provides a starting point that those reasons were genuinely held.

1193. When Niamh Hegarty was cross examined she was challenged both as to her conclusions and as to the fairness of the process. Whilst she made some concessions about both, the overall thrust of her evidence was that she believed she had done an adequate job and reached sound conclusions. We are satisfied that the reasons that she gave in her dismissal letter were the reasons that she had in her mind.

1194. There were two strands to Niamh Hegarty's reasoning. It is incumbent on us to make a finding about the principal reason for the dismissal. We find that the 'lack of trust' reason is separate from the 'out of role' reason although the facts are intertwined. We have regard for the fact that the dismissal letter itself focuses on the lack of trust issue. That would tend to suggest that this was the issue in the forefront of her mind at the time and we find that this was the principal reason for the dismissal. The existence of a further reason for the dismissal is not irrelevant. It is necessary to consider that at the stage when we assess the fairness of the dismissal.

1195. We must then decide whether the 'lack of trust' reason is 'some other substantial reason' for the purposes of Section 98. It has been long understood that mutual trust and confidence is an essential feature of an employment relationship. Where that trust is seriously damaged an ongoing working relationship may be hard or impossible to maintain.

1196. We have had regard to the authorities we have set out above. ***Perkin v St George's Healthcare NHS Trust*** was a case where robust allegations of impropriety against others so damaged the working relationships that the resulting dismissal was held to be a substantial reason. Niamh Hegarty's reasons are not identical but are similar to those in that case.

1197. Niamh Hegarty's reasons for the dismissal draw on her findings that the Claimant had made widespread allegations of bad faith and dishonesty including against herself. The Claimant had brought 4 grievances and two appeals but did not accept the explanations that he was given for the treatment he complained of.

1198. We find that Niamh Hegarty's reasons for dismissal are directed towards the damage to the employment relationship and whether it can be made to work in the future. We are satisfied that the conclusions that Niamh Hegarty reached about the apparent lack of trust that the Claimant had in those he had dealt with and the resulting impact on the working relationships was a substantial reason. Her conclusions were that the employment relationship was unsustainable because of a lack of trust. We would accept that that is a potentially fair reason for a dismissal.

1199. Having found that the dismissal was potentially fair we need to move on and ask whether the dismissal was actually fair applying the test in Section 98(4). We must not be tempted to substitute our view for that of BP. Our role is to consider whether the dismissal fell within a range of reasonable responses. We should not compartmentalise procedural and substantive matters. We need to look at the entirety of the process right through to the outcome of the appeal.

1200. Where we have addressed the Claimant's contention that the dismissal was on the ground that he had made protected disclosures we have dealt with what we regarded as the more important attacks on the process and conclusions of Niamh Hegarty. Niamh Hegarty reached an overall conclusion that trust had broken down to the extent that the Claimant's ongoing employment was unsustainable based on a number of matters. We must have regard to the soundness of each of those matters but must not lose sight of the fact that we are assessing the fairness of the overall conclusion. Just because some stand in Niamh Hegarty's reasoning or approach might be criticised does not necessarily lead to a We would ask that our reasons in respect of this claim be read together with our analysis of the process and outcome followed by Niamh Hegarty set out above.

1201. A great deal of the cross examination of Mr Nawbatt KC focused on extracting concessions from the Claimant about the lack of trust he had in those he dealt with. He properly made a large number of concessions about that. However that is not material which we should take into account in assessing whether the dismissal was fair or unfair. We need to look at the reasons in Niamh Hegarty's mind. We are entirely satisfied that she believed that the working relationship was so corroded that it could not continue. We believe that she had a reasonable basis for that decision for the reasons we have set out above. In our findings of fact we have referred to some of the correspondence sent by the Claimant. A number of the witnesses who received that correspondence told us how startled they were at the tone or content of those e-mails.

1202. In deciding whether the absence of trust in the relationship was a sufficient reason for the dismissal we find that Niamh Hegarty was entitled to and did take into account that some 12 months after the Claimant had been displaced from his role no role had been identified.

1203. The Claimant says that it was wholly unfair to dismiss him when he had an outstanding application for the Senior Supply Coordinator role. We find that Niamh Hegarty could reasonably have assumed that that role was not suitable. Objectively the evidence of Hayley Millard convinced us that there was not the remotest possibility of the Claimant being appointed to that role.

1204. We are alive to the fact that we would have upheld one part of the Claimant's claim had it been presented earlier. An employer could not usually expect a tribunal to find that a dismissal citing a loss of trust would be fair where it was responsible for that loss of trust. Here Dan Wise's actions were a fraction of the reasons why the Claimant lost trust in the Respondent. We have had this in mind when reaching our conclusions.

1205. The Claimant attacks the appeal conducted by Trina Nally as being insufficiently robust. We would accept some of that criticism. However we remind ourselves that the purpose of the appeal was not a complete rehearing. We would accept that Trish Nally's interview with Niamh Hegarty was as the Claimant suggested akin to a fireside chat. The context was two extremely senior HR professionals reviewing a decision that trust had broken down. We accept that there were aspects of the appeal that could have been more robust.

1206. We remind ourselves that we must not substitute our views about what we might have done or decided. We need to ask whether the decision to dismiss fell within the band of reasonable responses. We find that it did. The conclusion reached which was essentially that the relationship had irretrievably broken down was one which was open to this employer. Had we made the decision for ourselves we would have reached the same conclusion. The had been efforts for a year to find the Claimant an alternative job. We accept that a reasonable employer would have thought about separating the Claimant from those in whom he had lost trust but with no obvious role that was not possible.

1207. Niamh Hegarty thought about the possibility of workplace mediation. She rejected that on the basis that she did not believe that it would resolve the fundamental difficulties. That was a conclusion we find was reasonably open to her.

1208. Having regard to the entirety of the evidence and submissions we find that the dismissal of the Claimant was fair. We do not see how any employment relationship could have survived.

1209. We do not need to deal with the issue of 'good faith'. Which is an issue only for remedy.

<u>Parting remarks</u>

1210. Again it is necessary to apologize for the delay in providing this decision. There have been too many false dawns for which the employment Judge apologizes. The judgment

is long and may have typing mistakes and misspellings. If the parties would like these to be corrected please let the tribunal know and a certificate of correction can be completed. If we have failed to deal with any material part of the case then the parties should ask us to reconsider any decision.

1211. Again we thank the parties for their assistance with this difficult case.

Employment Judge Crosfill
Dated: 26 October 2022

Schedule 1
Final agreed list of issues

Protected disclosures

1. Did C make one or more of the following disclosures (as particularised in the Particulars of Claim (**"POC"**), C's Responses to R's Requests For Information (the **"F&BPs"**), the Second Particulars of Claim (POC2) and the Third Particulars of Claim (POC3)):
    a.
    b. The September Abodunrin Disclosure (paragraph 20 POC);
    c. The Wise & Pearson Disclosure (paragraph 27 POC);
    d. The Goodridge and Obaseki Disclosure (paragraph 28 POC);
    e. The Milnes Disclosure (paragraph 34 POC);
    f. The East Disclosure (paragraph 37 POC);
    g. The November Abodunrin Disclosure (paragraphs 39 and 40 POC);
    h. The Llewellyn Disclosure (paragraphs 41 and 42 POC);
    i. The 5 and 10 October 2018 grievance (paragraph 65 POC);
    j. The 18 March 2019 Grievance (paragraph 8 POC2);
    k. The 4 April 2019 Grievance (paragraph 12 POC2);
    l. The 30 August 2019 appeal against the Third and Fourth Grievances (paragraph 13 POC3);
    m. The 17 December 2019 Grievance (paragraph 44 POC3)?

2. If so, did any or all of those disclosures amount to a qualifying and protected disclosure within the meaning of sections 43A and 43B of the Employment Rights Act 1996 (**"ERA")** for the reasons set out in the POC, the F&BPs, POC2 and POC3 including consideration of whether each relevant disclosure was a disclosure of information which, in the reasonable belief of C, was made in the public interest and tended to show that:

a. A person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject (1.b to 1.m above);
b. That a criminal offence had been committed, was being committed or was likely to be committed (1.b to 1.m above);
c. Information relating to any of the above matters was being or was likely to be deliberately concealed.

Whistleblowing detriments

3. If so, did R1 (and, where indicated in square brackets, R2 (**"Mr Wise"**), R3 (**"Ms Knights"**) or R4 (**"Ms Hegarty"**)) subject C to one or more of the following detriments and, if so, was it on the ground that he made one or more of the above protected disclosures:

a.

b.

c. From November 2017 to the end of February 2019 Mr Wise ceasing to consult C on strategic decisions (including in respect of bonuses for more junior traders), ignoring C's suggestions on team structure and strategy [Mr Wise];

d. Mr Wise making the comments in C's 2017 year-end review referred to in paragraphs 49 and 50 POC [Mr Wise];

e. Halving C's bonus for the 2017 financial year [Mr Wise];

f.

g. Moving C's seat to the end of the bench from April 2018 [Mr Wise];

h. Mr Wise repeatedly asking C when he was going to cease trading and pushing him to apply for Good Leaver status from April to June 2018 [Mr Wise];

i.

j.

k.

l. Mr Wise not taking any steps to: (i) retract his announcement to the trading team that C was leaving after 30 November 2018; (ii) meet with C following Mr Wise's email of 30 November 2018; (iii) restore C's roles or responsibilities after 30 November 2018; and/or (iv) provide C with appropriate duties or responsibilities after 30 November 2018 [Mr Wise];

m.

n. Mr Mottashed: (i) informing C on 10 January 2019 that he would not reinstate C to his previous role; (ii) asking C to carry out a data gathering exercise from 10 January 2019; (iii) not reinstating C to his previous role; and/or (iii) not providing C with appropriate duties or responsibilities after C withdrew his request for Good Leaver status [Mr Wise];

o. Not restoring C's roles and responsibilities or providing C with appropriate duties or responsibilities between 6 November 2018 and the end of February 2019;

p.

q. Not inviting C to apply for, or discussing with C, the North Sea Trader position, and/or not considering C for/appointing C to the North Sea Trader position;

r. Not upholding C's First and Second Grievances and/or the contents of the written outcome to C's First and Second Grievances;

s.

t.

u. On 7 March 2019 instructing C to leave the office and not return, and thereafter withdrawing his trading authority and trading systems access;

v. Not permitting C to return to work (in the office or at all), or restoring his trading authority or access to trading systems at any time since 7 March 2019;

w. Attempting to avoid dealing with C's Third Grievance as referred to paragraph 11 POC2;

x.

y.

z.

aa. Not creating a role for or taking any (or any adequate) steps to find a role for C during the period from 13 February 2019 to 4 July 2019 (alternatively any part of that period);

bb. Mr Mottashed deciding that he would not reintergrate C into his team;

cc. Rejecting C's appeal against the decision on the First and Second Grievances (and/or the contents of the written outcome on that appeal);

dd.

ee. Attempting to find a basis to justify terminating Mr Zarembok's employment and/or taking steps to frustrate Mr Zarembok's ability to (re)integrate into, or obtain a role within, BP's workforce, by each of the following[1]:

    i. monitoring his activities;

    ii. advising him of the possibility of terminating his employment for 'some other substantial reason' on 30 August 2019, 4 October 2019, 7 November 2019 [Ms Knights], and 20 December 2019;

    iii. not creating a role for Mr Zarembok within or giving him the opportunity to perform any of the roles available within the Crude Team, including without limitation: (i) Oliver Stanford's role when he moved to Chicago; (ii) Ms Adams' role (either the role she performed before or the one she performed after she took on the WAF Book Lead role); (iii) Mr Mottashed's role while he was off sick and/or on sabbatical; (iv) Ms Pearson's role while she was on maternity leave; and (v) Matt Hague's role (either the role he performed before being moved to the WAF Book, or the one he performed after that move);

    iv. not informing Mr Zarembok of the changes to the Crude Team between July 2019 and 3 February 2020;

[1] Each of the sub-paragraphs to this sub-paragraph ee are also relied upon as separate detriments.

v. not finding or creating a role for Mr Zarembok (including without limitation by offering him a trial period and/or training in respect of each of the roles that he expressed interest in, and in respect of any other roles within BP that he may have been able to perform during this period;

vi. obstructing Mr Zarembok's attempts to find other roles (by each of the matters referred to in paragraphs 23, 29, 36, 37, 40, 41, 46 and 53 POC3), and not responding in a timely manner to Mr Zarembok's requests referred to in paragraphs 24, 25, 26, 30 and 37 [Ms Knights[2]];

vii. refusing to reactivate his pass and/or keeping his pass deactivated and/or not enabling Mr Zarembok to have unrestricted access to the office building from 12 September 2019 until 3 February 2020 [Ms Knights[3]];

viii. one or more people (whom Mr Zarembok is not able to identify) spreading rumours that Mr Zarembok was in a "*quarrel*" with BP about returning to work, or that he was a problem or a trouble maker (or words which convey a similar gist), or that people should avoid having direct conversations, or working, with Mr Zarembok;

ix. one or more individuals (whom again Mr Zarembok is not able to identify, but likely in BP's HR or legal functions) communicating with individuals with whom Mr Zarembok was seeking to discuss potential job roles (including at least Messrs. Flowerdew, von Schweinitz, Alexander, and Norman) and providing them with advice on how to avoid personally engaging with Mr Zarembok;

ff. keeping him *de facto* suspended (i.e. instructed not to attend the office without a pre-arranged meeting and/or not permitted to work in the office unless arranged and approved in advance and/or with his trading authorities and trading access removed) from June 2019 (i.e. from the period covered by the Second Claim) until 3 February 2020;

gg.

hh. not upholding his Third and Fourth Grievances (save in respect of the 2018 bonus) and/or the contents of the written outcome to the Third and Fourth Grievances (save in respect of the 2018 bonus);

ii.

jj. Ms Knights not telling the truth to Mr Zarembok about the contents of a conversation she allegedly had with Mr Flowerdew on 24 September 2019 [Ms Knights];

kk. rejecting his appeal against the outcome of his Third and Fourth Grievances (save in respect of the 2018 bonus) and/or the contents of the written outcome to his appeal against the Third and Fourth Grievances (save in respect of the 2018 bonus);

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2 Where Ms Knights was involved in the relevant action.

3 In respect of Ms Knights' own refusals.

ll. not finding or creating a role for Mr Zarembok (including without limitation by offering him a trial period and/or training in respect of each of the roles that he expressed interest in, and in respect of any other roles within BP that he may have been able to perform during this period [Ms Hegarty];

mm. refusing to reactivate his pass and/or keeping his pass deactivated and/or not enabling Mr Zarembok to have unrestricted access to the office building from 4 February 2020 to 10 April 2020 [Ms Hegarty];

nn. rejecting his fifth grievance and/or the contents of Ms Hegarty's letter to Mr Zarembok of 10 April 2020 [Ms Hegarty];

oo. dismissing him [Ms Hegarty].

Claims under MAPLE

4. The parties agree that C submitted a request for parental leave in around May 2017 and took parental leave for the period January - April 2018. Did R1 subject C to a detriment because he took or sought to take parental leave contrary to Regulation 19 MAPLE and section 47C ERA by doing any or all of the matters referred to at 3.c to 3.l and 3.o above?

Time limits

5. To the extent that any of the acts referred to at 3.c to 3.oo above occurred outside the primary time limit under section 48(3) ERA does the Tribunal have jurisdiction to consider those claims having regard to whether the relevant detriments constitute a series of similar acts or failures to act within the meaning of section 48(3)(a) ERA and/or that they amount to an act extending over a period within the meaning of section 48(4)(a) ERA? C is not seeking a general extension of time on the basis that it was "not reasonably practicable" to present his claim in time however, if it is found that any detriment is outside the primary time limit because the relevant decision was taken or omission occurred prior to the date that C became aware of it, then C will seek an extension on the basis that it was not reasonably practicable for him to bring a claim in time because he was unaware of it.

Automatically and ordinary unfair dismissal

6. Was the sole or principal reason for Mr Zarembok's dismissal one or more of the above protected disclosures, such that his dismissal was automatically unfair under section 103A ERA?

7. If not:

   a. did R1 have a potentially fair reason for dismissal, namely Some Other Substantial Reason;

b. was dismissal for that reason fair or unfair having regard to the factors in section 98(4) ERA?

Schedule 2
The agreed cast list

Name	**Job Title/Role**
Jonathan Zarembok	The Claimant.
Named Respondents	
Jon Mottashed	Claimant's line manager and GOE London Book Lead from 1/9/18.
Dan Wise	GCH for Crude Oil Trading since December 2015. Claimant's line manager until 31/8/18.
Janine Knights	HR Manager for IST from 1 April 2019
Niamh Hegarty	Grievance Manager for G5. Dismissed Claimant.
Grievance Managers and Grievance Appeal Managers and HR supports	
Richard Wheatley	Grievance Manager for G1.
Tina Johansen	Mr Wheatley's HR support for G1.
David Knipe	G1 Appeal Manager.
Laura Milanovic	Mr Knipe's HR support for G1 Appeal.
Haydee Vielma	Grievance Manager for G3 and G4.
Louise Brown	Ms Vielma's HR support for G3 and G4.
David Speed	Grievance Appeal Manager for G3 and G4.
Tanya Singh Sassen	Mr Speed's HR support for G3 and G4 appeal.
Tammy Dehn	Ms Hegarty's HR support for G5.
Trina Nally	Grievance Appeal Manager for G5 and appeal against dismissal.
Melissa Creevey	Ms Nally's HR support for G5 appeal and appeal against dismissal.
Others (in alphabetical order by surname)	
Dan Abodunrin	Head of IST's account opening team and senior IST official for anti-bribery and corruption.
Sylvana Adams	Crude Oil Trader on WAF bench from December 2018.
Graeme Alexander	IST-ESA Supply Manager. Assumed some of Mr Mottashed's responsibilities when he went on sabbatical from 1/1/20.
Simon Ashley	Vice President HR IST & HR Director for BP Shipping and Trading (formerly IST)
Tara Behtash	Crude Oil Trader on the Med Book.
Bradley Berwick	Senior Investigations Manager, Business Integrity. Conducted BI investigation.
Martin Bradshaw	The Claimant's companion to his meeting on 9 January 2020.
Marco Candeloro	Global Crude Commercial Manager.
Alberto Challita	Hiring manager for Oil Derivatives Trader role.
Beth Cook	Head of HR, GOA, based in Chicago.
Anne Devlin	Senior Crude Oil Trader, applied for Good Leaver and left in December 2018.
Matthew East	Senior Counsel in the First Respondent's GOE team until October 2019.
Andrew Finlinson	Crude Oil Trader on the Med Book.
Stephanie Flack	HR Manager in IST prior to Ms Knights.
Jas Flora	Talent Acquisition Specialist, supporting IST and Shipping teams at the First Respondent.
Mark Flowerdew	Head of European Power Trading, IST. Hiring manager for Power trader role.

Brian Gilvary	CFO of First Respondent (until June 2020).
John Goodridge	Head of Marketing & Origination for Global Oil Europe (February 2015 to June 2017) and then Head of Marketing & Origination, West Africa from June 2017 until 31/1/20.
Rob Gosman	GCH of gasoline trading.
Matt Hague	Crude Oil Trader. Moved to the WAF book in the autumn/winter of 2019.
Alan Haywood	CEO of IST until April 2020
Matt Jago	Crude Oil Trader. Assumed some of Mr Mottashed's responsibilities when he went on sabbatical from 1/1/20.
Morten Joergensen	Member of Origination team. Seconded to North Sea trading bench from January 2019.
Tanya Jones	The Claimant's companion at meetings on 12/9/19, 30/10/19 and 10/3/20.
Tim Kaiser	Gasoline Trader in Light Ends trading team.
Janet Kong	Regional Business Leader North America, based in Chicago.
Philip Llewellyn	Regional Compliance Director E&C IST GOE. Left the First Respondent in January 2020.
Emma Locke	Investigated detriments the Claimant alleged he personally suffered in G1.
Hayley Millard	Gasoline Asset Trader in IST. Hiring manager for SPSC role.
Andy Milnes	Interim Head of IST, EAO while Ms Skerry was on maternity leave.
David Myers	Hired externally for the North Sea trading role, his recruitment was announced on 19/2/19.
Val Nefyodova	HR Business Partner/People Advisor, supporting GOE.
James Norman	In-house employment lawyer at First Respondent.
Sam Norman	Hiring manager for Bio Feedstock Trader role.
Mychael Obaseki	Head of Origination for Nigeria, based in Nigeria.
Wale Otegbola	CEO of Alsaa Gas and Shipping and the proposed agent for the 2017 Producer Finance Deal.
Sarah Pearson	Crude Commercial Manager, IST, from April 2016 until December 2019
Jennifer Pierce	The Claimant's companion at meetings on 22 October 2018, and 24 April and 20 May 2019.
Donald Porteous	GCH for Crude Oil Trading until December 2015 succeeded by Mr Wise.
Brian Quartey	Member of Origination team.
Sam Skerry	Regional Business Leader Global Oil Europe.
Oliver Stanford	Crude Oil Trader on WAF Book. Relocated to Chicago from 14/9/19.
Jeremy Tolhurst	Crude Commercial Manager.
Xavier Venereau	Head of Production & Finance.
Wilhelm von Schweinitz	Fuel Oil Trader. Claimant contacted him about possible opportunities in Jan 2020.