EMPLOYMENT TRIBUNALS

Claimant: Mr M Daniels

Respondents: (1) United National Bank Ltd
(2) Mr B Firth

A**t:** London Central Employment Tribunal

On: 14 - 16, 20 - 22 September 2022;
23 September, 4 October ,1 November & 2 December 2022
in Chambers

Before: Employment Judge Brown
Members: Dr V Weerasinghe
Ms J Cameron

Appearances
For the claimant: Mrs L Banerjee, Counsel
For the respondent: Mr J Braier, Counsel

CORRECTED JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. **The first respondent automatically unfairly dismissed the claimant because he had made protected disclosures.**
2. **The claimant did not have the right to bring an ordinary unfair dismissal claim. It was 40% likely that the first respondent would have dismissed the claimant for a reason which was not unlawful, in any event.**
3. **The respondents subjected the claimant to a detriment on the grounds that he had made protected disclosures, by dismissing him.**
4. **The respondents did not subject the claimant to other separate detriments because he had made protected disclosures.**
5. **A remedy hearing will take place on 17 March 2023 for 1 day.**

CORRECTED REASONS

1. The claimant was employed by the first respondent as chief risk officer (CRO) from July 2019 until the termination of his employment on 1 April 2021. The first

respondent is a banking institution. The second respondent is its chief executive officer (CEO) and was the claimant's line manager.

2. The claimant presented his claim to the Tribunal 29 June 2021, following ACAS early conciliation from 27 April to 3 June 2021 (with the first respondent) and 9-10 June 2021 (with the second respondent). The claimant contends that he made a series of protected disclosures in the period January to March 2021, and he was dismissed and subject to detrimental treatment as a result.

3. The respondents defended the claim.

4. This hearing was to determine liability.

5. At the start of the hearing, the claimant made an application to amend his claim to add complaints of direct disability discrimination (including perceived disability discrimination) and discrimination arising from disability, relying on his autistic spectrum disorder condition. The Tribunal did not allow the claimant to amend his claim, for reasons it gave orally at the time.

6. The issues in the protected disclosure detriment and automatically unfair dismissal complaints had been agreed as follows:

1. Protected disclosure

1.1 Did the claimant make one or more qualifying disclosures as defined in section 43B ERA? The Tribunal will decide:

1.1.1 What did the claimant say or write? When did he do this? To whom was it said or written? The claimant says he made eighteen disclosures as set out in the Grounds of Complaint. The respondent says that it understands the claimant's factual case and does not require further information on this point.

1.1.2 Did he disclose information?

1.1.3 Did he believe the disclosure of information was made in the public interest?

1.1.4 Was that belief reasonable?

1.1.5 Did he believe it tended to show that:

1.1.5.1 a person had failed, was failing, or was likely to fail, to comply with any legal obligation (the claimant relies on section 48(1)(b) ERA for all disclosures). The claimant says he believed there was a legal obligation not to breach the first respondent's risk management framework, pursuant to section 166 of the Financial Services and Markets Act 2000 (as set out at paragraph 12 of the Grounds of Complaint and the claimant's further particulars of claim in email dated 24 August 2021);

1.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered (the claimant relies on section 48(1)(d) ERA for disclosures 15 and 17). The claimant says that the risk to health and safety related to a lack of resources, excessive working hours, and failure to track, report of control hours worked.

1.1.5.3 information tending to show any of these things had been, was being, or was likely to be, deliberately concealed (the claimant relies on section 48(1)(f) ERA for disclosure 16).

1.1.6 Was that belief reasonable?

1.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer?

2. Detriment for making a protected disclosure

2.1 Did the respondent do the things set out at paragraph 57 (and the paragraphs referred to therein) of the Grounds of Complaint? In summary the detrimental treatment complained of by the claimant is of (1) hostile and threatening treatment; (2) exclusion from meetings; (3) interference with his work (specifically the risk culture report and the claimant's intention to name Mr Haider in it); and (4) the decision to dismiss, and the way that this was communicated to the claimant. The claimant confirmed that he brings a claim against the second respondent for the detriment of dismissal.

2.2 By doing so, did it subject the claimant to detriment?

2.3 If so, was it done on the ground that he made a protected disclosure?

3. Automatic unfair dismissal

3.1 Was the reason, or principal reason, for dismissal that the claimant had made a protected disclosure?

4. Liability of respondents

4.1 In their proposed agreed list of issues prepared for this hearing, the parties raised a potential issue regarding the liability of the respondents and the vicarious liability of the first respondent.

4.2 It is the claimant's case that the respondents are jointly and severally liable for the detrimental treatment, and that the first respondent is vicariously liable for the actions of the second respondent. The claimant has been ordered to provide further information about which detriment is alleged against each respondent.

5. Remedy

5.1 What basic award is payable to the claimant, if any?

5.1.1 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? The respondent relies on the matters pleaded at paragraph 6 of the Grounds of resistance.

5.1.2 If so, to what extent?

5.2 What financial losses have the dismissal and/or detrimental treatment caused the claimant?

5.2.1 Has the claimant taken reasonable steps to replace his lost earnings, for example by looking for another job? If not, for what period of loss should the claimant be compensated?

5.2.2 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, should the claimant's compensation be reduced? By how much?

5.2.3 Did the ACAS Code of Practice on Disciplinary Procedures apply? If so, did the respondents unreasonably fail to comply with the ACAS Code? The claimant asserts that the respondents breached the code as they failed to follow any disciplinary /dismissal process. If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

5.2.4 If the claimant was unfairly dismissed, did he cause or contribute to the dismissal by his blameworthy conduct? The Respondent relies on the matter pleaded at paragraph 6 of the Grounds of Resistance. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

5.2.5 Did the claimant cause or contribute to the detrimental treatment by his own actions? The Respondent relies on the matter pleaded at paragraph 6 of the Grounds of Resistance. If so, would it be just and equitable to reduce the claimant's compensation? By what proportion?

5.3 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

5.4 Is it just and equitable to award the claimant other compensation?

5.5 Was the protected disclosure made in good faith? If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%? The respondents have not pleaded this defence.

7. The parties had also agreed a list of disclosures and detriments. At the start of this hearing the Claimant clarified that he no longer relied on some of the alleged protected disclosures (numbers 1 & 4) and detriments (numbers 1, 2, 9 and 11) as such, but as background evidence instead. These allegations have been struck through in the table below. Later, the Claimant also clarified that he did not rely on disclosure 5 as a separate protected disclosure, but as part of alleged protected disclosure 6.

ALLEGED PROTECTED DISCLOSURES

PD No.	Disclosure	Date	GoC para	s.43B(1) basis
~~1~~	~~In an email to Ahmed Nabi, C raised concerns about seeking approval for a credit limit after the trade had been conducted, in breach of the Risk Management Framework.~~	~~20.01.21~~	~~19~~	~~(b) (has failed)~~
2	In discussing the number of Bloomberg licences to be held, C made clear that he would support any option if Risk had independent access to Bloomberg. Faraz Haider wanted Risk to receive data requests from the front officer, and C pointed out this would conflict with specific controls agreed with the PRA/KPMG following the s.166 notice.	Unspecified, Jan 2021	21	(b) likely to fail
3	C raised verbally with the Head of Compliance (Toby Varkey) a potential conflict of interest in Mr Haider taking up a role as Head of Treasury (SMF 2/3) given that ahead of taking up the role he was a Board Member who took part in a decision to approve Treasury acting as a Profit Centre. C told Mr Varkey this breached the Conduct Rules set out in the Senior Management Regime and thus automatically breached the Risk Management Framework.	11 or 18.02.21	22	(b) Was failing/likely to fail
~~4~~	~~C wrote to the project team for Roshan Digital Accounts (a new product) expressing his concerns about them breaching the Risk Management Framework~~	~~Unspecified, Feb 2021~~	~~25~~	~~(b) Was failing/likely to fail~~

5	C raised concerns about Faraz Haider seeking to bypass trading controls	18-19.02.21	25	(b) Was failing/likely to fail
6	C stated in an email to Faraz Haider, Manzur Ahmed and Brian Firth that he saw Mr Haider's actions as breaching the credit risks/legal limits and required the position to be sold, and C restated this at the Credit Committee	18.02.21	29	(b) Had failed/likely to fail
7	C made requests by email to Toby Varkey (Chief Compliance Officer) for him to conduct a compliance review into whether a breach of procedure, namely risk control, had occurred	Unspecified, Feb 2021; 09.03.21	30	(b) Likely to fail
8	The Claimant contacted Masarrat Husein (the Chair of the Board Risk Committee) to raise concerns about the bank allowing behaviours including the bypassing of controls, in breach of the Risk Management Framework.	23.02.21	32	(b) Had failed/likely to fail
9	On Brian Firth objecting to C naming Faraz Haider in a risk culture report, rather than anonymising, C reminded Mr Firth in meetings that a failure to include these details would be in breach of a regulatory instruction and that they had to be included in the report.	11 and 17.03.21	33	(b) likely to fail
10	In respect of the Roshan Digital Account product, C emailed the project lead, Kuldeep Kandhari, to raise concerns that the bank was potentially in breach of the Risk Management Framework in respect of new product approvals, by not following the correct process and bypassing key committee reviews.	12.02.21	38	(b) Had failed/likely to fail
11	In a 1:1 meeting with Brian Firth, C raised the same matters identified at PD10	11.03.21	38	(b) Had failed/likely to fail
12	In a further 1:1 meeting with Brian Firth, C raised the same matters identified at PD10	17.03.21	38	(b) Had failed/likely to fail
13	At an Executive Committee meeting, C raised the same matters identified at PD10	12.03.21	38	(b) Had failed/likely to fail

14	C raised the same matters identified at PD10 in a 1:1 meeting with Andrew Rushworth, Head of Shared Services	19.03.21	38	(b) Had failed/likely to fail
15	In his FCA attestation C stated that there were insufficient resources to permit him to complete his role. In his annual appraisal C made a statement about the lack of sustainability in the current operations	22.12.20 06.01.21	42	(d) has been and is being endangered
16	On learning from Toby Varkey at a Controls Group Meeting that Mr Varkey had received the FCA Annual Attestations from all Executive Committee members except for C, C expressed concern at what appeared to be the deliberate concealment of a key control form	09.03.21	43	(f) information has been concealed re both (b) and (d)
17	In a meeting with Theresa Eplett, Head of HR, C referred to the Risk Management Framework and raised concerns about working hours and the failure by the bank to monitor working hours	11.03.21	44	(d) has been and is being endangered
18	In reports for the PRA, C raised concerns about the bank breaching its legal obligations	c.Jan 2021	46	(b) had failed/likely to fail

ALLEGED DETRIMENTS

(All detriment claims are brought against R1; all bar detriment 2 are brought against R2 as well)

No.	Detriment	Date	GoC para
~~1~~	~~Following the introduction by C of trading mandates designed to meet the stipulations in the report by KPMG, Raja Hussein from the bank's front office told C these changes would close the dealing desk~~	~~Unspecified~~	~~17~~
~~2~~	~~Following Faraz Haider joining the bank at the end of 2020, hostility to C significantly increased.~~	~~Unspecified~~	~~21~~
3	Following the raising by the Risk department of concerns about breaches of controls arising from a trade involving Nationwide Covered Bonds, a series of threats were issued to the Risk department stating that unless limits were agreed by Risk, issues would be elevated to the Board.	18-20.02.21	26
4	(As per 3 above), C saw emails from Faraz Haider threatening to elevate matters to the Board.	18.02.21	28

5	Following the email referred to at PD6, Brian Firth told C that he had personally had to contact each member of the Board about the issue and the matter had been resolved.	26.02.21	29
6	The initial decision was made to dismiss C	22.02.21	29
7	C was removed from his role before the compliance review referred to at PD7 was completed No disciplinary process was ever commenced.	Mar-Apr 2021	30
8	Faraz Haider objected to C attending an internal audit meeting to confirm the final report reviewing the Treasury function. The INEDs were critical of both the Head of Internal Audit and C for elevating the issue to them.	Feb 2021	31
~~9~~	~~Mr Firth raised objections to C naming Mr Haider in a risk culture report, a copy of which had been requested by KPMG~~	~~Unspecified, c.Feb-Mar 2021~~	~~33, 35, 36~~
10	Following the raising of concerns about the Roshan Digital Account (as per PD10-14), C was removed from all meetings – Executive Committee; Credit Committee; meetings with external legal advisors, Treasury and Operations – and was dismissed before the issues could be resolved.	Unspecified, Mar-01.04.21	39
~~11~~	~~Having raised issues about resources and working hours in his FCA annual attestation, C learnt that it had not been provided to the Chief Compliance Officer notwithstanding he had received the attestations from all other members of the Executive Committee~~ ~~The concerns raised were later cited by Mr Firth at the meeting on 23 March as a reason to consider the dismissal of C~~	~~09.03.21~~	~~42-43~~
12	In response to C's production of the reports referred to in PD18, Brian Firth stated he was unable to complete reading the first draft and *'would rather slit his wrists'*	Unspecified, c.Jan 2021	46
13	C was advised by email from the bank without any warning that they wished to terminate his employment, with the email enclosing one document which stated *'As we discussed at our meeting today we have concerns that you are not the best fit for the role of CRO at UBL. We have agreed to see if we can explore a mutually satisfactory resolution but we do reserve the right to continue those discussions in due course if we cannot resolve matters satisfactorily in the short term'*.	19.03.21	47
14	C contacted the Head of HR, Theresa Eplett, who confirmed the email and attachments were genuine and that the bank wished to dismiss C.	Unspecified	48
15	At a meeting on 23.03.21, Mr Firth apologised for the email, which he said had been sent to C in error, told C that the Board were unanimous	23.03.21	49

	in agreeing he should be dismissed, and told C he would be placed on *'gardening leave'*.		
16	C received a letter terminating his employment with immediate effect, with no process before dismissal and with no offer of a right of appeal.	01.04.21	50

8. On 15 September 2022, the Tribunal ordered the parties to prepare a List of Agreed and Disputed Facts in the protected disclosures. Having done this, the Respondent agreed that the Claimant's protected disclosure 8 was, indeed, a protected disclosure.

9. This hearing was to determine the liability issues only. At the start of the hearing, the Tribunal made clear that the Polkey and contributory fault issues in the case, insofar as they arose out of the facts of the liability issues, would be decided at this liability hearing. Separate, post-termination Polkey issues would be decided at any remedy hearing.

10. The Tribunal had been given an electronic bundle. 2 supplementary bundles were also provided. The witnesses used both electronic and hard copy bundles. In these reasons a mixture of hard copy page numbers ("p.") and pdf numbers ("pdf.") is used, reflecting the different bundles referred to.

11. The Tribunal also requested a chronology. The Claimant provided a chronology but it was not agreed.

The Facts

12. The claimant was employed by the first respondent ("the bank") as chief risk officer (CRO) from 28 July 2019, p460 – 466, until the termination of his employment on 1 April 2021. The first respondent is a banking institution. The second respondent is its chief executive officer (CEO) and was the claimant's line manager.

13. An organisation's Chief Risk Officer is the corporate executive with responsibility for assessing and mitigating regulatory, competitive and technological threats to an enterprise's capital and earnings. The CRO role is a regulated position and is one which has individual accountability as set out in the Senior Managers and Certification Regime ("SMCR"). The SMCR regime also covers all staff who are material risk takers and/or have defined regulatory responsibilities.

14. In the first respondent bank, the Claimant's CRO role was nominated for Senior Management Function 4 ("SMF 4"). This function has individual responsibilities for stress testing and Climate Change requirements. SMF 4 is a Prudential Regulation Authority ("PRA") approved position; the PRA must approve the individual, formally recognising their confirmation by issuing a letter of approval.

15. In February 2019, the Prudential Regulation Authority issued a *s166* Notice to the first respondent bank under *s166 Financial Services and Markets Act 2000*. Under *s166* the PRA has the power to obtain a report from a selected third party (the

"Skilled Person") about any part of a regulated firm's activities which concern it, or about which it wishes to know more. The skilled person then conducts an independent review directed to the issues which concern the PRA and sets out any remedial actions required. The PRA uses that report to determine the nature and extent of the ongoing supervisory relationship which it will have with that organisation and to determine whether any formal enforcement action is required.

16. Where the PRA requires remedial steps pursuant to the s166 report, compliance with them is important to avoid further intervention by the regulator. Such intervention could include withdrawal of a banking licence.

17. The bank's Board had appointed Steven Hall, Partner at KPMG, as the Skilled Person to conduct the s166 review. KPMG commenced a three-phase review, of which "phase 2" had two parts. Phase 1 was an Audit of the bank's Risk Management Framework. Phase 2 encompassed a Review and Recommendations. Phase 3 repeated the Audit to identify any material weaknesses and assess progress. The Skilled Person was required to report to the PRA on each phase.

18. Both the appointment of KPMG and the Phase 1 review of the Risk Management Framework had been completed before the Claimant's appointment. The Phase 1 review had generated a list of 116 issues to be resolved.

19. In May 2019 KPMG produced a second report, approving the first respondent's remediation plan put in place by the claimant's predecessor CRO, p100-118/104-122. The KPMG report approved the bank's proposed design of its Risk Management Framework.

20. As stated above, the claimant was employed by the first respondent bank from 28 July 2019. At the times relevant for these proceedings, the bank's CEO was Mr Brian Firth and its Independent Non-executive Directors ("INEDS") were Mr Richard Wilton, Mr Masarrat Hussain and Mr Bande Hasan.

21. On 17 - 19 August 2020 there was an email exchange between the Claimant and Richard Wilton, one of the bank's Independent Non-executive Directors ("INEDS") and chair of the bank's Board Risk and Compliance Committee ("BRCC"), concerning the bank's credit policy and exceptions to it. Mr Wilton disagreed with the Claimant that the new Credit Risk Policy had been approved. Mr Wilton said the BRCC Committee had said, in March 2020, that a consolidated version of three separate policy documents should be produced. He said Mr Hussain, another INED, had offered his assistance with that, pdf 195-196.

22. In 2020 the bank's Internal Audit department had appointed Accenture to undertake a review of the bank's progress against 37 of KPMG's recommendations. In the August 2020 email exchange, the Claimant also informed Mr Wilton that Accenture had advised that they considered the current Risk Appetites ("RAs") and Key Risk Indicators ("KRIs") were excessive and that the first respondent was a small bank and that they needed to be proportionate." Mr Wilton agreed that the current RAs and Key Risk Indicators were excessive, driven by the s166 issues. He agreed that the first respondent was a small bank and that the RAs and KRIs need to be proportionate.

23. Mr Masarrat Hussain, another of the bank's Independent Non-executive Director (INEDS), was copied into the email exchange on 19 August 2020. He replied to Mr Wilton, not copying in the claimant, expressing concern that the claimant appeared to consider that the bank's credit risk policy had been agreed. He also expressed concern that, despite the BRCC having required in March 2020 that a consolidated policy document be produced, and despite Mr Hussain having spoken to the claimant about this in both March 2020 and June 2020, the consolidated document had still not been produced.

24. The claimant told the Tribunal that, at this point, his team was extremely busy, his priority was to work on the s166 notice and that his team did not have the resources to carry the consolidation of the policies as well.

25. Mr Firth agreed in evidence that, at that time, the claimant's team needed to prioritise their s166 work.

26. On 24 August 2020 there was a Board Risk and Compliance Committee ("BRCC") meeting at which the claimant said that the bank would be required to submit climate change regulatory reporting data. At the meeting, Mr Hussain agreed that climate change data needed to be submitted, but said that the priority at that time needed "to be on providing the INEDs high quality portfolio data and ensuring that the Bank's passes its Phase 3 assessment by 2021-Q1". Pdf 197.

27. On 16 October 2020, the claimant sent all 3 INEDs, Messrs Wilton, Hassan and Hasan, and Mr Firth, some Terms of Reference which had been requested by the bank's BRCC at a recent BRCC meeting. He provided a number of alternative versions from different sources, pdf287.

28. On 22 October, Mr Hussain replied to all the recipients, but not to the claimant, saying that he considered that most of the claimant's changes were unnecessary, that the previous ones had been adequate for a bank like the first respondent and that the proposed less specific formulation would leave them open to interpretation and debate.

29. On 26 October 2020 Ms L Pacheco, head of Credit Risk, sent the bank's Credit Committee a proposal for a loan for £5.58m. The claimant had not supplied the one-page summary which the Credit Committee had asked on 8 October 2020 to be provided with each submission.

30. In a 29 October 2020 email Mr Hussain replied to his fellow INEDs, saying that he had a number of concerns about the proposal, including that the submission had omitted the 1-page summary which the claimant had been supposed to provide with each proposal, pdf 288.

31. In evidence, the claimant agreed that he had undertaken, on 8 October 2020, to provide a 1 page risk assessment document for proposals to the Credit Committee. He told the Tribunal that this risk assessment was delayed due to solicitors not having access to documents during covid19. It did not appear that the claimant explained this to the INEDs or the Credit Committee at the time the submission was sent to them.

32. On 13 November 2020 Mr Bande Hasan circulated a brief agenda for an INEDs meeting on 16 November 2020 to the Ineds and Mr Wilton. Mr Hussain replied to all, saying,

    "I would like us to discuss our CRO's concerns about - independence of UBLUK's risk mgmt being compromised by INEDs asking for clarifications about a credit proposal - implication that lack of 'availability' of INEDs can be addressed if INEDs are not involved in the approval process.

    I maintain that our CRO needs to become more practical about addressing the issues to meet the Feb 2021 deadline instead of getting into debates on issues that are ideal / theoretical. We are 3 weeks away from the Board and committee meetings and we have not seen any policies or ToRs or other items for approval. I assume they would arrive as part of the 900-page Board pack leaving very little time for review and comments", pdf 290.

33. Mr Wilton, replied further, saying, "I totally agree with the sentiment you have expressed. The CRO has become an irritant and should be directing his energy towards completing the deliverables emanating from the s166. February 2021 is a key milestone. The whole process is being over engineered and therefore disproportionate to the size of the Bank." Pdf 290.

34. In late November 2020, the claimant sent the INEDs his draft Consolidated Credit Risk Policy manual. In an email exchange between the INEDs on 24 November 2020, Mr Hussain commented on the draft, "I give up! After struggling through 25 pages and then browsing through the balance of the document, I have come to the conclusion that the document is not fit for purpose. ..I am tempted to tell the bank to just keep all the policies separate for the time being as this document cannot be given to KPMG. The amount of work required to produce a 'satisfactory' credit policy, in my opinion, is well beyond the current risk team's capabilities." Pdf 294.

35. In evidence, the claimant was asked about these criticisms, which he had not seen at the time. He said that he agreed with the INEDs' criticisms of the consolidated policy document, but said that his team did not have the capacity to draft the consolidated document along with their s166 duties.

36. On 22 December 2020, the claimant completed his annual FCA attestation. In answer to the statement, "I have adequate time to perform the function and meet the responsibilities associated with my role", the claimant indicated that the answer was "no" and made the comment, "In order to meet the project demands alongside day to day responsibilities annual leave has had to be deferred. These are exceptional arrangements in line with Covid 19 restrictions. In 2021 I would be unable to take annual leave if recruitment is not progressed", p549.

37. The claimant made similar comments in his appraisal form completed on 14 January 2021: *"Working hours have been exceptional this year with repeated late night finishes and several early morning (3am) document completion times. This is not sustainable. There has been a physical impact, personal challenges and key family events have simply been ignored by UBL UK."* Pdf 323. The claimant

relied on these statements, in both his attestation and his appraisal, as his Protected Disclosure 15.

38. The respondent agreed that the comments identified were made on the respective forms.

39. The claimant contended that, in his reasonable belief, the words tended to show a breach of working time regulations in respect of both working hours (Regs 4(1), 6(1) and 10(1)) and annual leave entitlements (Reg 13). The claimant contended that, in his reasonable belief, the words tended to show that this breach had both occurred and was likely to occur unless recruitment was progressed. The claimant also contended that, in his reasonable belief, the words tended to show that the health and safety of '*any individual'* (in this case the claimant and/or his team), had been, was being and was likely to be endangered through the impact of excessive hours on physical health. He also contended that he believed that the information tended to show a breach of the fraud controls within banking which require staff to take a two week period of annual leave.

40. The claimant further contended that, in his reasonable belief, the words also tended to show that there was a breach of the PRA Rulebook requirements, specifically: Fundamental rule 2 – "A firm must conduct its business with due skill, care and diligence"; Fundamental rule 5 – "A firm must have effective risk strategies and risk management systems"; Fundamental rule 6 – "A firm must organise and control its affairs responsibly and effectively."

41. In oral evidence, the claimant said that he was referring to members of his team as well as himself.

42. The respondent contended that none of the rules of the PRA rulebook were cited in the claimant's Grounds of Complaint, witness statement or oral evidence. It contended that the claimant did not refer to the working time regulations in these documents either.

43. The Tribunal decided that, in the claimant's mind at the time, the claimant considered he was disclosing information which tended to show that the respondent would breach its legal obligations to afford annual leave to its employees and that the claimant's health and safety would be compromised if he continued to work in the way he had done in the previous year. He specifically said that annual leave had had to be deferred. In his 14 January appraisal document, he also said that working hours had been exceptional, which was not sustainable and that there had been a "physical impact". The Tribunal decided that he was saying there had been a negative impact on his physical health.

44. Faraz Haider, the respondent bank's Executive Director & Chief Financial Officer, undertook a cost-saving review for the bank in late 2020 and early 2021. He proposed reducing the number of Bloomberg licences purchased by the bank.

45. The claimant asked Manzur Ahmed, Balance Sheet &Liquidity Risk Manager, as the Head of Market Risk, to respond to Mr Haider. Mr Ahmed had raised concerns regarding independent access to Bloomberg data by the bank's Risk function. He considered that Risk needed to be able to assess trades independently, without influence from the Front Office, who are assumed to have profit incentives. The

claimant told the Tribunal that care must be taken to avoid 'tipping off' dealers that Risk are looking at a particular trade or area. Mr Haider initially proposed that Risk would receive data requests via the front office.

46. The claimant told the Tribunal that he stated that removing Risk's licence would conflict with the specific controls that had been agreed with the PRA/KPMG following the s166 Notice.

47. In his email on the subject on 6 January 2021 to Mr Ahmed and Mr Haider, amongst others, the claimant said, pdf 302, "Manzur I noted your concerns raised during our team meeting but my dialogue with Rob cast a different light on the topic. I will try to talk to Faraz as well. Broadly there is no resistance to proceeding with the license purchase. My instruction is that we proceed with the license for Risk as this is aligned to the commitments made to the PRA to date. … However I would ask that we move forward on the Risk Bloomberg license promptly, as not having data would compromise our risk management framework at a time when we are under heightened review." The Claimant relied on this as his protected disclosure 2.

48. The claimant contended that these words contained information that Risk needed a specific licence, as well as direct access to data, in order to comply with their obligations under the s166 notice and the Risk Management Framework. The respondent denied this, noting the claimant's words did not address the s166 notice.

49. The Tribunal decided that the claimant disclosed the following information: "not having data would compromise our risk management framework at a time when we are under heightened review. It decided that "when we are under heightened review" referred to the s166 notice review.

50. Mr Haider responded to the claimant's email, "Sure. Michael. We will resolve this. Happy to share that Zeeshan has come forward to surrender the license he's using. That saves one. I also plan to talk to Bloomberg to get more clarity. In any case, living up to regulatory expectations and preserving Risk's independence and objectivity is top priority." Pdf 298.

51. The Claimant contended that he believed that his words, "My instruction is that we proceed with the license for Risk as this is aligned to the commitments made to the PRA to date. … However I would ask that we move forward on the Risk Bloomberg license promptly, as not having data would compromise our risk management framework at a time when we are under heightened review" tended to show that a breach of the bank's legal obligations under the s166 was likely to occur if the licencing renewal went ahead as proposed by Faraz Haider. Specifically, he contended that breaching a control agreed with KPMG would amount to a failure to co-operate with the skilled person under s166(7). He also contended that he believed that a breach of the Risk Management Framework would be a breach of the obligations under PRA rulebook, including the following: Fundamental Rule 5 – "*A firm must have effective risk strategies and risk management systems";* Risk Control rule 2.1A – "*A firm's risk management procedures must include effective procedures for risk assessment*"; Risk Control rule 3.4 – *"(1) the risk management function is independent from the operational*

functions and has sufficient authority, stature, resources and access to the management body. (2) the risk management function ensures that all material risks are identified, measure".

52. The respondents denied that the claimant reasonably believed the words tended to show those things. They did so because the claimant did not mention those PRA rules in his Grounds of Complaint, witness statement or oral evidence. The respondents also relied on the claimant's words in his email, which the respondents contended did not show that the email was written in a context of concern that the bank was probably going to require Risk to lose its Bloomberg licence and to receive data from the front office, but in a context where there was *'no resistance'* to proceeding with the licence purchase.

53. The Tribunal noted that the claimant specifically used the words," I would ask that we move forward on the Risk Bloomberg license promptly, as not having data would compromise our risk management framework at a time when we are under heightened review." The tribunal accepted that the claimant did reasonably believe that the bank was likely to be in breach of Fundamental Rule 5 and Risk Control rule 2.1A rules if Risk did not have its own licence. He said that, otherwise, the risk management framework "would" be compromised. The Tribunal has taken into account that the bank's risk management framework was, pursuant to the s166 process, subject to statutory review and agreement at the time.

54. The Tribunal also noted that Mr Haider's response did not show any resentment towards the claimant's request.

55. Mr Firth completed the claimant's appraisal for the year 2020 on 6 January 2021, pdf 322 – 331. The claimant first completed his own appraisal form, assessing himself against the criteria. He then met with Mr Firth and, following discussion between the two, Mr Firth awarded final scores against all criteria. In his final scores, Mr Firth assessed the claimant as meeting or exceeding expectations in all areas but teamwork, where Mr Firth recorded a need for development. Mr Firth awarded the claimant an "A" grade overall. It was not in dispute that that was a very good score. Mr Firth told the Tribunal that, at this point, he did not anticipate that the claimant would be dismissed soon thereafter.

56. In the claimant's appraisal, regarding "Work Quality", Mr Firth commented, "Work quality is good as confirmed by KPGM sign-off of Stage 2 (design) of s166", pdf 326. Regarding "Time Keeping and Deadline Management", Mr Firth said, "This year has been challenging with the s166, business volumes and the pandemic resulting MD having to put in longer hours for which I am very grateful" pdf 327. Regarding "Teamwork & Relationships", Mr Firth commented, "It appears that MD has a good relationship with the Risk Team and participates in team activities. MD needs to be more aware of the impact on other people on how he delivers and presents information, so as to not to alienate colleagues and lose impact. At times MD's emails are written in a way that antagonizes situations and people unnecessarily. There have been incidents where accusations have been made by MD prior to establishing all the facts, or verbal discussions, with individuals / teams and a full review been undertaken." Pdf 326.

57. In January 2021, the claimant produced a draft report for the PRA entitled, Board Report – Risk Management Skills, pp491-495. He provided this to Mr Firth on about 1 February 2021. In the report, the claimant said,

"*The majority of the skill gaps cause Operational Inefficiencies rather than material risk issues. There is an over reliance upon ExCo members to provide operational support, this limits ExCo member time on planning and supervisory responsibilities. In turn this leads to weakened controls, staff disengagement and stress. Evidence of Operational Strain (delays, poor quality reports, sickness) are rising.*

UBL UK is seeking to de-risk the portfolio and achieve an operationally simple, low risk portfolio that can be managed using relatively simple skills sets. This is practical and reasonable. However achieving this requires additional skills to manage the Risk Framework transition, the rapid portfolio growth and Operational transformation. At the same time significant regulatory change programmes are under way (Climate Change/ IFRS 9) with a pan-industry impact. Again, these require additional skills.

Skill Management and Planning needs to be enhanced and it is recommended that the board receives an annual Skills Review Report.

The current budget is unlikely to fully meet the Training requirements identified. Consideration should be given to increasing the budget or reducing the pace of change applied to the portfolio."

58. The claimant relied on these words as his Protected Disclosure 18. The Tribunal found that the entire passage conveyed information. The claimant told the Tribunal that, in his reasonable belief, the words tended to show that the respondent was likely to be in breach of the PRA requirements around adequate resourcing and health and safety obligations towards staff and, in particular, the duty of care owed to staff to take reasonable steps to protect their health including mental health. In his submissions, he clarified that the specific PRA requirements he relied upon included: Fundamental rule 2 – "A firm must conduct its business with due skill, care and diligence." Fundamental rule 6 – "A firm must organise and control its affairs responsibly and effectively." General Organisational Requirements - 2.5 "A firm must take reasonable steps to ensure continuity and regularity in the performance of its regulated activities. To this end the firm must employ appropriate and proportionate systems, resources and procedures."

59. The Tribunal will return to this in its decision.

60. The claimant told the Tribunal that, in response to the report, Mr Firth said that he was unable to complete reading the first draft and 'would rather slit his wrists', than do so, pdf 513-518. The claimant relied on this as his detriment 12. This was the third version of the report. Mr Firth said that he has used similar words in the past in a relaxed context, but that he was not sure that he did in respect of this report, with which he did not have any issues.

61. The Tribunal found that Mr Firth did say he would rather slit his wrists than read the report, but that he did not have concerns about the content of the report. He said he found the report turgid. The Tribunal found Mr Firth was not successfully challenged in cross examined on the reason he said that he would slit his wrists. The Claimant did not give further context for the comment in his evidence. On the balance of probabilities, the majority of the Tribunal accepted that Mr Firth made the comment because he found the report turgid.

62. On 4 February 2021 Mr Husain emailed the Credit Risk team, raising concerns about an approval request (the "Shaviram" request) for which the claimant had provided a one page report, pdf 373-374. The claimant had approved the request from the Risk perspective, but Mr Husain said, "The cover note from the CRO is not a commentary by the CRO about the merits of the credit but just a listing of items and concerns raised. As approvers we can derive no comfort on why the CRO is satisfied with the issues raised. We would have expected the CRO to address the above mentioned concerns and the mitigants to the key risks and why he supports the proposal."

63. Mr Husain told the Tribunal that the claimant's note had not provided the Risk commentary the INEDs required. The claimant told the Tribunal that his provision of a note for the INEDs was a new process, so that developments and improvements to the process would naturally be expected.

64. The claimant then added a "sell-down" requirement to the Shaviram deal.

65. On 14 February 2021, one of the INEDs, Richard Wilton, complained in an email to Mr Firth and the claimant, amongst others, that the approving Committee was now being asked to approve terms and conditions which had not been included in the original proposal. He commented that they seemed to have been added by the claimant unilaterally. Mr Wilton said, "We have a changed structure chart but most of all a frustrated customer awaiting a decision from the Bank. The Bank's internal approval process is a shambles and not fit for purpose. I share Masarrat's frustration, this is a deal which can be approved but at the 11th hour why is the CRO seeking to impose conditions which are not practical?" pdf 376.

66. Mr Husain told the Tribunal that both Mr Wilton and he considered that, while the deal itself was potentially approvable, they should not have been presented with eleventh hour changes by their CRO, in particular without explanation and, even more so, where those changes were not viable in practice.

67. Mr Firth emailed the claimant further on the matter, saying, " The other day you mentioned to me that credit decisions in this Bank are taken by a Committee and not individually. However, you have unilaterally added a sell down condition to your approval of the Shaviram case, which was not discussed or agreed by the Credit Committee. The iNEDs along with me do not consider this to be necessary or practical. I also do not know whether this has been discussed with the customer and whether he would be supportive. I would be grateful if you could re-consider your requirement for sell-down of the excess over £10million so that we can get this transaction approved." Pdf 376.

68. The claimant then withdrew the additional conditions he had inserted. The claimant told the Tribunal that he had received a recommendation, from the credit admin department, that the sell-down was a necessary part of the structure for approval, so he added it to the proposal. He said that he accepted that his communication in this regard was not good.

69. Mr Husain told the Tribunal that the claimant's handling of the Shaviram approval was such that Mr Firth formally apologised to the INEDs on the Credit Committee for it by an email on 16 February 2021, pdf 393. "Firstly please accept my sincere apologies for the way in which this case has been presented to you for approval. No matter what KPMG write in their report the way we have presented this case for approval tells me that we still have to make further improvements. I will talk to you at our next iNEDs meeting about what we will do to make the necessary improvements."

70. The Tribunal noted that Mr Hussain's criticisms of this application for approval went beyond the claimant adding the sell-down requirement to the request for approval.

71. On 27 February 2022, the claimant emailed Toby Varkey, the respondent bank's Head of Compliance, asking him to confirm that he had briefed Faraz Haider ("the new Executive Director") on the correct usage of the Conflicts Register. He said that there were potential issues regarding "1. Decisions taken as a Board member, which have subsequently improved compensation or revenue generation. We would need to be able to evidence that no knowledge of a transfer to the UK was held when the Board took decisions. 2. Status. The ED has no function listed on the Staff Organisation Chart. There needs to be clarity regarding basis and authority for taking decisions at all times. 3. Personal conflicts.", pdf 431.

72. The claimant told the Tribunal that, in conversations on 11 or 18 February 2021, he raised concerns with Toby Varkey that there was a potential conflict of interest in Mr Haider taking up a role as Head of Treasury, given that, ahead of taking up the role, he was a Board Member who had been part of the decision to approve Treasury as a Profit Centre (thereby increasing the earnings potential for the Head of Treasury). The claimant said that he told Mr Varkey that this conflict would amount to a breach of the Conduct Rules set out in the Senior Management Regime and therefore also automatically a breach of the Risk Management Framework regarding potential conflicts of interest for Faraz Haider. He relied on this as his protected disclosure 3.

73. The Senior Management Regime includes Rule 1 – "you must act with integrity".

74. Mr Firth agreed, in his witness statement at [14.3], that the claimant had had a conversation with Toby Varkey in mid-February 2021, in which he raised the potential for there being a conflict of interest in Mr Haider becoming Head of Treasury, because he had been on the Board when the Board approved of Treasury as a Profit Centre. Mr Firth did not agree that the claimant told Mr Varkey this would amount to a breach of the Conduct Rules set out in the Senior Management Regime and thus automatically a breach of the Risk Management

Function. The respondents noted that the claimant did not say this in his witness statement.

75. The Tribunal decided that the claimant disclosed information to Mr Varkey, on 11 – 18 February 2021, that Mr Haider could have a conflict of interest, in that he had made the decision to approve the Treasury as a Profit Centre and had then taken up the role of Head of Treasury. The Tribunal decided that, in the claimant's belief at the time, the information tended to show that Mr Haider could have conflict of interest and be in breach of Senior Management Regime Rule 1.

76. On 12 February 2021, the claimant emailed the project lead of the bank's Roshan Digital Account product, Kuldeep Kandhari, raising concerns in respect of new product approvals. He relied on this as his protected disclosure 10, pdf 392.

77. The claimant said,

"I understand that you have told CAD that you are working on new legal forms that CAD will not be invited to comment upon until ExCo have been consulted.

Clearly I have no details currently but may I remind you of the New Product Approval Process. This requires sign off from several functions prior to ExCo being approached.

It may be timely to talk to Adam re the process, as I believe you will need to consult with a number of functions before ExCo can provide support, or you may breach our internal Procedures."

He relied on this as his protected disclosure 10.

78. The claimant contended that he reasonably believed that the information he disclosed tended to show that the risk management framework would be breached. He also contended that he reasonably believed that a breach of internal process was a breach of the bank's Risk Management Framework, which would be a breach of the obligations under PRA rulebook, including the following: Fundamental Rule 5 – "A firm must have effective risk strategies and risk management systems"; Risk Control rule 2.1A – "A firm's risk management procedures must include effective procedures for risk assessment"; Risk Control rule 3.4 – "(1) the risk management function is independent from the operational functions and has sufficient authority, stature, resources and access to the management body. (2) the risk management function ensures that all material risks are identified, measure and properly reported, is actively involved in elaborating the firm's risk strategy and in all material risk management decisions and is able to deliver a complete view of the whole range of risks of the firm" ; General Organisational Requirements ``2.1 - A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems."

79. The respondent contended that the bank's own internal processes were not legal obligations. The claimant contended that he was raising that the bank was potentially in breach of its risk management framework in respect of new product approvals by not following the correct process and bypassing key committee reviews.

80. The Tribunal accepted that the claimant disclosed information which in his reasonable belief tended to show that the bank was breaching its internal controls. The Tribunal will return to this in its decision, below. The Tribunal has decided that bank's internal controls constituted the bank's compliance with its legal duties as set out by the PRA.

81. On 18 February 2021 Mr Haider refused to attend a meeting with Panos Gregory, the bank's Head of Internal Audit, if the claimant would be present. Panos Gregory complained to Mr Firth that he was being placed under pressure in a manner which compromised his independence, p503. In a further email to Mr Firth, Mr Gregory said, "It is not appropriate for Faraz to put pressure on me in this way. I can invite anyone to my meeting who I think fit. The correct response is to have the meeting without him and simply state in the report that the CFO refused to attend the closeout meeting on the grounds that the CRO was invited. If agree to Faraz then I have succumbed to the pressure that he has put on me, which mean that I am not doing my job." P501

82. The claimant told the Tribunal, and the Tribunal accepted, that Mr Gregory had asked the claimant, as CRO, to accompany him to the meeting to provide him with support and advice during the meeting. The Claimant contended that the INEDs were critical of him and Mr Gregory for raising this matter with them. He relied on this as his Detriment 8. He told the Tribunal that, on 23 February 2021 at 12.31, he emailed Mr Husain requesting a talk, pdf407. In the email he said, ".. some concerns have been brought to my attention by Internal Audit. This may require elevation to the PRA and I will need to mention in a report requested by KPMG." He told the Tribunal that he had then spoken to Mr Husain.

83. In an email to Mr Wilton on 23 February 2021 at 18.12 Mr Husain recorded what the claimant had told Mr Husain,"- [The claimant] wanted to be part of the Treasury audit close-out but was told by Faraz that [the claimant] cannot attend. He wondered why Faraz was getting involved in this. - After the audit close meeting, Panos told [the Claimant] that the meeting was short and both Faraz and BF pressurized him to the extent that Panos felt he could not be 'independent'.- Panos also told him that Chair of the Audit Committee has been informed about this. - Such a pressure on Internal Audit would need to be reported to PRA by the CRO in accordance to regulations but MD was hopeful it is just a misunderstanding between Panos and Faraz/BF and reporting to PRA may not be necessary. - MD has to submit a response to KPMG by Friday Feb 26th about 'risk culture' and he will have to report this in his response. He is not sure how that would play out but it is possible that PRA, on reading the KPMG report, will require an investigation at UBLUK." Pdf 408.

84. The claimant relied on this conversation as his Protected Disclosure 8, pdf 407.

85. The claimant averred that this information tended to show that a breach of the Respondent's legal/regulatory obligations had occurred. He contended that Internal audit is a prescribed function under the PRA Rulebook, and the Head of Internal Audit is an SMF5. Internal Audit is defined as a control function within the PRA Rulebook which states that a control function: "means a function that is independent from the business units it controls and that is responsible for providing an objective assessment of the firm's risks or to review or report on those and which includes (but is not limited to) the risk management function, the compliance function and the internal audit function." The claimant contended that compromising the independence of internal audit is therefore compromising a control function specified by the PRA Rulebook.

86. The respondent accepted that it was reasonable, on what he had been told by Mr Gregory, for the claimant to believe that the information he provided to Mr Husain tended to show a breach of a legal obligation concerned with the independence of the internal audit function.

87. The respondent agreed that the claimant had made a protected disclosure to Mr Husain in this conversation.

88. The claimant also told the Tribunal that Mr Gregory told the claimant that Mr Gregory, "had been placed under severe pressure to withdraw his complaint" and that the INEDs had wrongly failed to record and investigate Mr Gregory's complaint about Mr Haider.

89. On 23 February 2021 at 17.32 Mr Wilton emailed Mr Firth and Mr Haider saying, "I have spoken to Panos making it clear that this has got out of hand. He has assured me that he will not allow MD to raise any matters which are outside of the scope of the Audit and will close MD down if he attempts to do so."

90. The Tribunal noted that the INEDs appeared to be dismissive of Mr Gregory's concerns and required Mr Gregory to limit the Claimant's role in the meeting with Mr Haider.

91. It was put to Mr Husain in cross examination that this was an example of the INEDs being irritated by the claimant's interventions. Mr Hussain replied, "possibly yes."

92. The claimant told the Tribunal that, on about 20 February 2021, Mr Ahmed from the claimant's team, told the claimant that he was concerned about emails Mr Ahmed had received from Mr Haider the previous weekend. Mr Ahmed explained that the emails were sent in the context that Mr Ahmed had raised the following concerns: A trade had been made to purchase Nationwide Building Society SONIA Index Linked 10yr bonds; Mr Ahmed was concerned that the limit had been requested after a trade had been completed; This was in breach of the procedures agreed during the Workshops on Trading Mandates, which demonstrated weak understanding of Procedures (embedding) and could be grounds for KPMG to find a serious failing in their final report, a draft of which was due at the end of February.

93. The claimant told the Tribunal that Mr Haider made a series of threats to Mr Ahmed that Mr Haider would elevate matters to the board unless Risk approved limits for this trade.

94. In a long email chain with the heading, “Limit Setup in Equation – Nationwide Building Society Sonia Index Linked 10Yr covered”, Mr Haider and Mr Ahmed set out their disagreement about the trade and approval of limits for it. Mr Firth and the claimant were included as recipients of the email chain.

95. On 18 February 2021 at 17.21 Mr Ahmed had said to Mr Haider that trading mandates did not confer obligor level limits, which had to be requested on a name basis via the Credit function or the CRO, before the execution. He said, “We are here to support the [Front Office] in generating revenue, but good governance, risk management and due process still need to be followed.” Pdf 143-4.

96. On 18 February 2021 at 20.15, Mr Haider had replied, saying amongst other things, ‘I strongly and absolutely disagree. What’s the point in giving a ‘mandate’ if each deal .. has to be approved by risk? The very purpose of mandate is to define a set of criteria .. within which treasury could invest. … Happy to take this disagreement to board level if not resolved at CEO level." Pdf 143.

97. Later in the same email chain, on 19 February 2021 at 15.36, Mr Haider had said, "This is a clear example of lack of understanding of treasury function by the risk team, wrong interpretation of the policies and creating inefficiencies within the organization. Something quite worthy of bringing into Board's knowledge” pdf 141, and, on 20 February 2021 at 12.44, Mr Haider had emailed saying, "The fundamental question remains in buying the bond in question the treasury acted within the relevant mandate and there's no exception or breach. Why did someone cry exception? I see this as a theme in the organization. I think this 'transaction' needs to be escalated to the board, not for any approval but for highlighting the problem we have in the organisation.” Pdf 143, 417.

98. The claimant relied on these emails as his detriments 3 and 4.

99. The tribunal noted that, during the lengthy email exchange, Mr Firth commented, pdf 142, “Dear All I suggest the way forward as follows: 1. Has there been a breach of Policy? In my view there has, as paragraph 13 of the Trading Book Policy states that a counterparty limit must be in place prior to purchase. … 2. The breach needs to be rectified. Lourdes has started that ball rolling - thank you. 3. It appears from the comments in the email trail below that the Trading Policy / Mandates may need modifying so that they are more practical. I suggest the Front Office make proposals in writing for Risk to consider as part of the annual review of the Policy.”

100. Mr Firth accepted, in evidence to the Tribunal, that Mr Haider’s reference to escalation of the Nationwide matter to the board was a threat from Mr Haider, as such escalation was outside the usual process. He also accepted that it was not conduct he would condone; he told the Tribunal that he did not regard it as professional.

101. The claimant relied on this email correspondence as demonstrating that he and his Risk team were viewed by Mr Haider as a nuisance and an obstruction. He

contended that Mr Haider's response, threatening a board referral when Mr Ahmed said that 'process' needed to be followed, was evidence that the threats were influenced by the protected disclosures around this deal.

102. The claimant explained, in his oral evidence, that he relied on Protected Disclosures 5 and 6 as the protected disclosures which gave rise to this detriment.

103. Protected Disclosure 5 is no longer pursued.

104. On 22 February 2021, still in the (now forwarded) email chain entitled Limit Setup in Equation – Nationwide Building Society Sonia Index Linked 10Yr covered", the claimant emailed Mr Haider, Mr Firth, Lourdes Pacheco, Theresa Eplett and Ahmed Nabi at 10:04 and 11:32 at pdf 138-139.

105. He relied on this as his Protected Disclosure 6.

106. At 10.04 he said, 'Approval is declined and they ae to sell. Reason -failure to follow correct process. Costs are to be marked against Treasury and deducted from their bonus at year end." Pdf 139. Mr Haider responded at 10.37 saying, "No need to sell. There's no breach. The investment is in line with trading mandate No7 of the trading book policy.." pdf 138.

107. At 11.32 on 22 February the claimant replied to Mr Haider further saying, "Sell to resolve or I need to elevate to the PRA via the INEDs". Pdf 138. At 11.35 on the same day Mr Haider replied further saying, "Please do if you believe there's need to."

108. The claimant averred that the words used convey the information that the correct process had not been used for the approval of the trade in question and that, unless the failure was remedied, it was sufficiently serious that it would need to be reported to the PRA, indicating a breach of a legal/regulatory obligation.

109. The respondent did not agree that the claimant could aggregate the contents of any meeting with Mr Firth and/or any part of the Risk Culture Report with the contents of the 22 February 2021 email in order to build a composite disclosure. It said that there was no suggestion that the words used in those emails were in any way embedded into the latter communications for aggregation to be appropriate. The respondents contended that the claimant did not plead that the 22 February emails were aggregated with those other communications to form a single disclosure, nor was that the claimant's evidence either in writing or orally. The respondents contended that the claimant's comments in the email lacked any factual content or specificity about what process he considered there had been a failure to follow. The Tribunal will return to this in its decision, below,

110. The claimant told the tribunal that his concern, at the time, was that Mr Haider was behaving in a way that showed that the bank's statements made to the PRA regarding the bank's s166 reforms were invalid. He relied on the FCA Principles for Business 11 which states 'A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice'.

111. Chronologically, Mr Haider's threats to elevate the matter to the Board were all made by Mr Haider before the emails from the claimant which are relied on as Protected Disclosure 6.

112. At 11.00 on 22 February 2021 the respondent bank had an INED and Management Meeting attended by Richard Wilton, Bande Hasan, Masarrat Husain, Faraz Haider and Mr Firth, pdf 401-405.

113. The minutes of the meeting recorded that it ended at 1.15pm

114. It was not in dispute that an initial decision to dismiss the Claimant was made at this meeting. The Claimant relies on this as his detriment 6.

115. The minutes of the meeting record the following exchanges,

> " BF [Mr Firth] said that he had some concerns about the CROs behavior, which had become increasingly more erratic even though the sl66 was coming to an end. BF said that his main concern was captured by Accenture in their report last year, where they concluded that the Bank needed to focus on closing the gaps identified by KPMG in credit risk as a priority. BF said he did not think that the CRO had given enough attention to this major risk area, and consequently policies had not been updated and approved, and resourcing was not adequate or matched to the Bank's business needs.
> BF added that he thought the CRO over-engineers solutions, which creates more problems. BF said that as the s 166 was coming to an end now would be a good time to consider whether the current CRO was the right person to take the Bank forward.
> MH [Mr Husain] said that he had concerns about the CRO, recollecting that on several occasions the CRO had agreed to do something but nothing then happened. MH said that the consolidated credit policy that had been requested in March 2020 was still in his opinion not in a fit state. MH agreed that the CRO spent too much time on the non-core activities instead of focusing on the real priorities.
> BH said that he thought the CRO was not suited to a small bank, and did not show enough support to the lLoD. BF said that given the consensus of opinion, the best way to proceed would be to raise the concerns with other members of the Board. If they are in agreement, then BF, MH and RW would engage with the PRA."

116. The respondents' witnesses were cross examined about this decision. Mr Husain agreed that the notes did not refer to the claimant having introduced a "sell down" requirement on the Shaviram deal.

117. Mr Firth told the Tribunal that, seeing that the s166 process was coming to an end, he felt that the claimant had done a good job on s166, but that Mr Firth's attention turned to life post-s166. He considered that the claimant might not be the right person for the bank; his concerns included that the claimant was reluctant to do things the Board were asking him to do.

118. On 22 February 2021 at 20.21, the claimant emailed a request to Toby Varkey to conduct a view of a "Limit Breach", pdf 406. He relied on this as his protected disclosure 7.

119. The subject of the email was “Fact Find – Limit Breach’. The claimant said, “There has been a reported breach of Limits in that a trade was completed and then a Limit was requested. Credit Counterparty controls are a key part of the Risk Management Framework, hence concerns have been raised regarding the bypassing of controls (Credit Limits). Please could you review the procedure followed and establish if correct procedures were in fact followed, if Policy was observed and if Limits were in place prior to the trade being completed.’”

120. The claimant averred that the information conveyed in this email was that a trade had been completed prior to a limit being set and that this was in breach of the set limits around credit counterparties. He contended that the information conveyed was also that these controls were important to the Risk Management Framework and that the controls had been by-passed.

121. Mr Firth did not agree that the claimant believed that any information he gave tended to show that controls had been bypassed. The respondents contended that the claimant’s email was in conditional terms, speaking of a ‘reported’ breach and asking Mr Varkey, as Chief Compliance Officer, to conduct a review determine if there had been a breach.

122. The Tribunal found that the claimant did disclose information that there had been a reported breach of trading limits “in that a trade was completed and then a Limit was requested.” The tribunal also found that the claimant reasonably believed that this information tended to show that a breach of the Respondent’s legal/regulatory obligations had occurred; he said, “Credit Counterparty controls are a key part of the Risk Management Framework.” Again, this is discussed in more detail in the Tribunal’s decision below. The Tribunal decided that the claimant was asking for an investigation, having disclosed information that a breach of the Risk Management Framework had happened.

123. In his witness statement, the claimant told the Tribunal that, on 24 February 2021, in a meeting with Theresa Eplett, he had raised concerns regarding a breach of the bank’s Risk Management Framework. He told the Tribunal that he had “said explicitly that we needed to hold individuals to account, and that I wanted guidance as to how to do this in fair and transparent way in line with HR policy.” He said that Ms Eplett had advised the claimant that there should first be a “fact-find, which could then be followed by individual actions.” He also told the Tribunal that Ms Eplett had advised that the bank’s appraisal process could hold individuals to account for repeated Risk Procedure and Policy breaches and that Risk could comment on individual engagement with the Risk culture. The claimant told the Tribunal that he wanted to ensure that Risk would be able to comment on any discretionary awards made at the year end. He said that this was a legal obligation set out in the FCA Handbook under Remuneration Principles – Sysc 19.D.3.4 & Sysc 19.D.3.7.

124. This meeting on 24 February 2021 was not pleaded as containing a separate disclosure but the claimant relied on what he said in this meeting as relevant to what he said to Ms Eplett on 11 March 2021. He relied on what he said in his meeting with Ms Eplett on 11 March 2021 as his protected disclosure 17.

125. The Tribunal accepted that the claimant said these things to Ms Eplett on 24 February. The claimant made a brief, but contemporaneous, note of his conversation, pdf 410.

126. The claimant also told Ms Eplett that a health helpline was not working, pdf 410.

127. While, in his witness statement, he told the Tribunal that he had raised health concerns in relation to his Risk team's very extended working hours on 24 February. He agreed in evidence that he had not done so in this 24 February meeting, but said he had done this on 11 March 2021.

128. On 24-25 February 2021, the claimant provided the bank with his strategy assessment document required by the PRA, pdf 418-419.

129. Mr Husain emailed Mr Firth about this document saying, "I believe Michael has gone far beyond what PRA is expecting as '...an assessment of the broader bank strategy beyond S166 remediation.' His paper goes into a lot of detail and his verbose views of what needs to be done as well as recommendation. He even goes into recommending what he believes the Board should be asking for. Frankly the whole document is well over-the-top and can be covered in a 2-page letter response to PRA. There is no need to tell the regulators as to what a bank is supposed to do nor go into motherhood statements in a document to the regulators or give his recommendations when not asked for." Pdf 418.

130. Mr Husain told the Tribunal that the PRA had asked for the CRO's assessment of bank strategy after s166, but that what the claimant had produced was "a lot of muddled statements and what bank should be doing and what regulator should be doing." Mr Husain gave evidence that the claimant had been asked to give an assessment of the strategy and nothing more.

131. On 26 February 2021 Mr Firth told the claimant that he had personally had to contact each member of the Board to resolve a matter. The claimant contended that this related to his protected disclosure 6. The claimant relied on Mr Firth's comment to him as his Detriment 5. Mr Firth accepted that he had spoken to all members of the Board to resolve an issue and had relayed this to the Claimant. He said that this was in connection with Shivaram, rather than Nationwide.

132. The claimant averred that being told that one had been the subject of a discussion with Board members was designed to discourage further issues and 'close down' discussion on the point. He contended that he felt that this was to his detriment and took place because he had made protected disclosures regarding the Nationwide trade.

133. The Tribunal found that Mr Firth did tell the claimant that he had spoken to the individual members of the board to resolve an issue. On the balance of probabilities, the Tribunal was unable to find that it related to any particular issue which had arisen on any particular trade.

134. On about 25 February 2021, during their weekly discussion, Mr Firth objected to the claimant naming individuals in a risk culture report for KPMG and told him not to send the report.

135. The two men continued their discussion about this matter verbally and via email. Mr Firth proposed a two-stage report: the first would report a quantified metric to which the CRO could talk regarding emerging issues; the second would be a more detailed report for use by Mr Firth, which would identify individuals. Mr Firth could then follow up with those individuals, in line with his individual responsibilities for Culture with the Bank. This proposal was agreed.

136. On 25 February, the claimant also emailed Mr Haider saying, "Monthly I report to Exco on Risk Culture. The intent is to provide a document that stimulates discussion and enables Exco / Risk to identify issues and resolve them. .. My approach is to document issues as I feel we have a good opportunity to achieve something positive here. … I have to submit this report to ExCo (and KPMG) and will ask the Chair if I can share it tomorrow. However I also wanted to reach out to you ahead of the meeting so we could discuss that I am trying to resolve a behaviour, not attack an individual." Pdf 411.

137. Mr Firth was copied into the email exchange and replied to the claimant on 25 February 2021 saying, "I am not supportive of you sharing with ExCo this report, particularly when you name individuals. Therefore I insist that you do not share this report with the ExCo and KPMG." Pdf 411 – 412.

138. On 9 March 2021, the claimant learned that his FCA attestation had not been provided to the Chief Compliance Officer, Toby Varkey.

139. The claimant suggested in evidence that Mr Firth had deliberately not provided it to the Chief Compliance Officer. The claimant told the Tribunal that he was not chased for his attestation and that Mr Varkey had confirmed that he had received all other senior employees' attestations. Mr Firth gave evidence that it may have gone astray in a number of places, including Mr Firth's PA, or in HR, where the form would have been sent.

140. On the balance of probability, the Tribunal accepted that the attestation form had not, in fact, been deliberately supressed. It accepted Mr Firth's evidence that it may have gone missing in a number of different places and that Mr Firth was already aware of the matters in the attestation, so that he had no reason to supress it. The relevant statement on the attestation form, "In order to meet the project demands alongside day to day responsibilities annual leave has had to be deferred. These are exceptional arrangements in line with Covid 19 restrictions. In 2021 I would be unable to take annual leave if recruitment is not progressed", p549, did not appear to be likely to alarm Mr Firth.

141. The attestation process is an annual regulatory requirement; attestation forms must be no more than 12 months old (Financial Services & Markets Act 2000, s63F(5)).

142. The claimant contended that he raised, with Toby Varkey, that there may have been deliberate concealment of his attestation form. He relied on this as his Protected Disclosure16.

143. Mr Varkey did not give evidence. The respondent accepted that the claimant raised with Mr Varkey whether his FCA Attestation form had been received and that Mr Varkey confirmed that it had not, but that he had the forms of all other ExCo members. The respondent accepted that the claimant asked Mr Varkey if he knew why. The claimant's oral evidence to the Tribunal was that Mr Varkey did not respond to this question.

144. The respondent contended that, on the claimant's oral evidence, that the claimant did not suggest to Mr Varkey that Mr Firth had deliberately concealed his form. There were many possible explanations for its non-receipt by Mr Varkey, so it would not have been clear to Mr Varkey that the claimant was asserting there had been deliberate concealment of his form.

145. The Tribunal found that the claimant did not say that his form had been suppressed, neither did he give evidence about any other information he gave to Mr Varkey, from which the Tribunal could conclude that they discussed concealment of the form.

146. The claimant told the Tribunal that, in a regular weekly catch up meeting with Mr Firth on 11 March 2021, the Claimant raised 30 breaches of internal processes arising from the approach being adopted with the Roshan product launch. The claimant contended that this was a repeat of his alleged protected disclosure 10, when, in an email of 12 February 2021, entitled "New Product Approval Process", he said to Kuldeep Kandhari, "*I understand that you have told CAD that you are working on new legal forms that CAD will not be invited to comment upon until ExCo have been consulted. ..Clearly I have no details currently but may I remind you of the New Product Approval Process. This requires sign off from several functions prior to ExCo being approached. .. It may be timely to talk to Adam re the process, as I believe you will need to consult with a number of functions before ExCo can provide support, or you may breach our internal Procedures."* P383. He relied on this as his protected disclosure 11. He also relied on having repeated such matters in a meeting with Mr Firth on 17 March 2022 as his protected disclosure 12.

147. The claimant's oral evidence was that he does not now recall the exact words he used to Mr Firth in their meeting on 11 March 2021, but it was to the effect of: 'I have done the following to make it safe but hang on we have created a situation which should never have existed'. He told the Tribunal, 'I would have mentioned regulatory responsibilities.. 'I was very clear that we needed to capture individual breaches, that need arises from sysc19 but I would talk in terms of regulatory framework etc. Very real concerns about bypassing controls and the need to hold individuals to account'.

148. The respondents agreed that the claimant and Mr Firth met at 2 weekly meetings on 11 and 17 March 2021 and that, during those discussions, the claimant raised concerns about the Roshan Digital Account product. Mr Firth's evidence, as set out in his witness statement at paragraphs [14.11-14], was that the discussion did not concern matters of internal process, but rather the nature of the product itself. Mr Firth told the Tribunal that, on 11 March, the Claimant referred to there being 22 outstanding queries, and Mr Firth told him to document them and share them with the project team, so that they could be tracked on completion. Mr Firth told

the Tribunal that the Claimant did not provide to Mr Firth any detail on any of those outstanding matters.

149. The respondents accepted that there had been breaches of internal processes within the lead-up to the Roshan product launch.

150. The Tribunal accepted the claimant's evidence that he did raise concerns about the failure to follow agreed process in relation to the Roshan Digital Account launch with Mr Firth on 2 occasions on 11 and 17 March 2021. The Tribunal considered that it was likely that the claimant did so, but that Mr Firth could not now recall the detail of the claimant's concerns.

151. 12 March 2021 the claimant attended an ExCo meeting when the Roshan Digital Account launch was again discussed. The notes of the meeting, pp 513-520, p518, recorded that "There are approximately 23 outstanding issues regarding the Roshan SBLC. CRO suggested a further meeting as they are nowhere near the finish line with this project yet, ahead of UBL's Roshan Digital Account webinar on 18 March 2021." The claimant relied on what he said in this meeting as his Protected Disclosure 13. Mr Firth attended this meeting and the Tribunal decided that Mr Firth would have been aware of what the claimant had previously said about these issues.

152. The claimant told the tribunal that, on 17 March 2021, in a weekly meeting, the claimant informed the Mr Firth that anonymising the risk culture report, so that individuals responsible for alleged breaches were not named, would be a breach of regulatory instruction. The claimant told the Tribunal that, when Mr Firth told him to anonymise the report, the claimant responded with words to the effect "It is a regulatory obligation."

153. The claimant relied upon oral discussions with Mr Firth on 11 and/or 17 March 2021 during their regular weekly meeting as his Protected Disclosure 9. The claimant's oral evidence was that the PRA had requested a copy of the Risk Culture report and, when he provided the draft to Mr Firth, the words from Mr Firth were "Do not send that report" - to which the claimant responded words to the effect of, "It is a regulatory obligation"

154. Mr Firth denied in his witness statement at paragraph [14.9] that any such conversation occurred. In his witness statement, the claimant did not say that this was discussed in those meetings, nor that he used the words alleged. In the claimant's witness statement he said that the question of anonymisation of names in the Risk Culture Report had been discussed and resolved between the claimant and Mr Firth in February 2021.

155. The claimant told the Tribunal that he raised the matter again because he felt that the matter still needed to be raised, so that individuals would take responsibility for their actions and their bonuses would be affected by recorded breaches.

156. The Tribunal accepted his evidence – the claimant was not one to let matters drop. It therefore found that the claimant told Mr Firth in meetings on 11 and 17 March that anonymising the risk culture report, so that individuals responsible for alleged breaches were not named, would be a breach of regulatory instruction.

157. The claimant told the tribunal that, in a one to one meeting with Mr Andrew Rushworth, Head of Shared Services, on 19 March 2021 he raised failures to follow the bank's internal processes in relation to the Roshan Digital project. The claimant gave evidence that he had used words to the effect that there had been 'control failings', 'pressure on a control function' 'by-passing of the risk function' and breach of the Risk Management Framework. He relied on this as his Protected Disclosure 14.

158. It was put to Mr Firth in cross examination that he could not counter paragraphs [236] – [239] of claimant's witness statement, where the claimant set this out. Mr Firth did not disagree in evidence. The Tribunal accepted the claimant's evidence that he raised these matters with Mr Rushworth.

159. The claimant told the Tribunal that from about 11 – 19 March 2021 to 1 April 2021 the claimant was removed from all meetings. There was no dispute that he did not attend meetings from 19 March 2021. He relied on this as his Detriment 10.

160. On 19 March 2021, the claimant was inadvertently informed by the bank that they wished to terminate his employment. He relied on this as his Detriment 13.

161. Theresa Eplett confirmed to the claimant that the communication was genuine. The claimant relied on this as his Detriment 14. Pdf 59-60.

162. On 23 March 2021 Mr Firth met with the claimant and informed him that he would be dismissed and would be placed on gardening leave before then. The claimant relied on being told he would be dismissed as his detriment 15. Mr Firth's script for the meeting included the following: "Your role is critical to the Bank but we have concerns that you are not the best fit for this role here. You will recall our discussions in your EOY that: you should place more emphasis on prioritising tasks so that they are delivered in line with Board expectations; and we would like to see more long term planning and clarity regarding priorities. No issues with performance or Fitness and Propriety to carry out role but concerns that you are not the right fit for UBL: focus and priorities are not aligned with the size and resource of UBL. Your previous experience has been with much larger organisations; failing to deliver within required timescales due to getting side tracked on different 'non-core' agendas (like climate change); lack of clarity in long term planning and priorities; over-engineered solutions creating more problems (eg, approach to credit risk policies). This view was shared by Accenture who reflected this in their interim report feedback. Your skills and experience might be better suited to a larger organisation rather than as CRO for the Bank. Also conscious that you referenced in your EOY appraisal that: 2020 was a tough year; the working hours were exceptional and not sustainable; and without significant improvement there was no incentive to remain within the firm." Pdf 59 and 60.

163. On 1 April 2021 there was a Board meeting. The minutes recorded, "BF [Mr Firth] informed the Board on the latest news in relation to the Bank's CRO (MD). BF explained that he had significant concerns about the CRO's lack of focus and over engineering of work and potential solutions to address prevailing and sometimes non-existent issues. BF advised that after sharing these concerns with all Board members there was unanimous agreement that the current CRO was not the right

person for the role to take the Bank forward post- remediation. BF said that he along with the Chair of the BRCC had met with MD and informed him of these concerns earlier in the week. BF informed that an exit package was offered, but declined by MD. As no further response has been received from MD, the Bank has dismissed him today from the position of CRO." pdf 440.

164. The respondents contended that the board ratified the claimant's dismissal. This was disputed. There was no dispute that the claimant was, in fact, dismissed with effect from 1 April 2021, pdf 437.

165. The letter of dismissal said, "As discussed at our meeting last week we do not consider that you are the best fit for your role at UBL UK. Your background is working for a much larger financial services organisation and we are concerned that your focus and priorities do not seem to be aligned with the size and resource of UBL UK; you fail to deliver within required timescales because you get side tracked on non-core agenda issues; there is a lack of clarity In your long term planning and priorities; and some of your solutions are over engineered which In turn creates more problems. For these reasons it is with regret that we have reached the decision to terminate your employment.

    This letter is to notify you that UBL UK is terminating your employment in accordance with the notice provisions in your contract of employment dated 17 and 23 July 2019 (the "Employment Contract"). Your Employment Contract terminates with immediate effect and your last day of employment is Thursday, 1 April 2021. You will receive all salary and benefits up to the Termination Date in the usual way on the next normal payroll date."

166. The claimant accepted in oral evidence that Mr Varkey played no part in the decision to dismiss him.

167. The claimant was not offered as appeal against his dismissal. He was removed from his role, prior to completion of the compliance review, without any disciplinary process. He was not given an outcome to concerns he had raised in his alleged Protected Disclosures 10-14. He relied on all these matters as his Detriments 7, 10 and 16, pp419A.

168. Mr Firth told the Tribunal that the claimant was not removed from any meetings until after the decision to dismiss had been communicated to him. He said, "At that time it is true that he was placed on garden leave, partly to give him time to consider the Bank's settlement offer and partly to protect the Bank as he had significant access and approval rights which it was not appropriate should be maintained once he was aware of the decision to dismiss him and very antagonised by it."

169. Mr Firth told the Tribunal that the dismissal letter was drafted by the respondents' then solicitors, and the bank acted on their advice that, because the claimant did not have two years' service, there was no obligation to follow any "fair" process in dismissing him, or to provide him with any right of appeal.

170. Mr Varkey's investigation report into the alleged limit breach, referred to in the claimant's alleged protected disclosure 7 was completed on 10 May 2021, after the claimant's departure.

Law

171. An employee who makes a "protected disclosure" is given protection against his employer subjecting him to a detriment, or dismissing him, because he has made such a protected disclosure.

172. "Protected disclosure" is defined in *s43A Employment Rights Act 1996*: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

173. "Qualifying disclosures" are defined by *s43B ERA 1996*,

174. "43B Disclosures qualifying for protection

(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following - ……..

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…

(d) that the health or safety of any individual has been, is being or is likely to be endangered,..

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

175. The disclosure must be a disclosure of information, of facts, rather than opinion or allegation (although it may disclose both information and opinions/allegations). Although there is no strict dichotomy between an allegation and the disclosure of information, a bare assertion, devoid of factual content, such as, "You are not complying with health and safety requirements", will not constitute a valid protected disclosure, *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR 325 [24] – [25].

176. In order for a statement to be a qualifying disclosure for the purposes of s43B(1) ERA, it had to have sufficient factual content and specificity capable of tending to show one of the matters listed in paragraphs (a) –(f) of that section*, Kilraine v LB Wandsworth* [2016] IRLR 422.

177. in *Simpson v Cantor Fitzgerald Europe*, both the EAT ([2020] ICR 252) and the CA ([2021] IRLR 238) held there is also no such rigid dichotomy between information and queries: EAT at [para 42] and CA at [para 53]. The key question is whether the statement carries information of sufficient factual content and specificity to satisfy the *Kilraine* threshold.

178. It is possible to aggregate more than one communication to collectively amount to a protected disclosure, *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540, where the EAT held at [22] that an earlier communication can be read together

with a later one as 'embedded' in it, such that two communications can, taken together, amount to a protected disclosure, though it is a question of fact for the ET whether they do so. In the EAT decision in *Robinson v Al Qasimi* [2020] IRLR 345, Lewis J gave guidance at [para 71] as to when it was appropriate to read a later disclosure with an earlier one, namely when the later disclosure 'expressly or by necessary implication refers to, or incorporates, the information provided in the earlier disclosure'. He held it may do so: By referring expressly to the earlier disclosure; By attaching or enclosing a copy of the earlier protected disclosure; or The context may make clear that the later disclosure is to be read with the earlier one.

179. In *Kraus v Penna plc* [2004] IRLR 260, the EAT held [para 24] that where the word 'likely' is used, it means that the information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation.

180. In *Fincham v HM Prison Service* [2002] (UKEAT/0925/01), the EAT held at [33] that, in a case reliant of a failure to comply with a legal obligation, there must be some disclosure 'which actually identifies, albeit not in strict legal language' the breach of legal obligation relied upon. In *Bolton School v Evans [*2006] IRLR 500, the EAT said that it is not fatal that the worker does not identify the breach of legal obligation but it would have been obvious to all what breach was being relied upon: see [41]. In *Twist*, however, the EAT considered the judgment in *Fincham* did not establish a generally applicable rule [para 91], relying on *Bolton School* to support that conclusion [paras 92-95]. Linden J did not consider *Bolton School* to provide an exception to the rule in *Fincham*, but rather that there was no such requirement [para 102].

181. A qualifying disclosure is a protected disclosure if it is made to the employee's employer, or other responsible person, *s43C ERA 1996.*

Automatically Unfair Dismissal

182. A whistleblower who has been dismissed by reason of making a protected disclosure is regarded as having been automatically unfairly dismissed, *s103A ERA 1996*, "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".

183. Where a claimant lacks two years' qualifying service (and hence is unable to bring an ordinary unfair dismissal claim), the burden rests on him to prove that the reason/principal reason for his dismissal is that he made a protected disclosure: see *Ross v Eddie Stobart Ltd* [2013] (UKEAT/0068/13), at [paras 16-17, 23].

184. A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee; Cairns LJ in *Abernethy v Mott, Hay and Anderson* [1974] IRLR 213, at [13]:

Detriment

185. Protection from being subjected to a detriment is afforded by s47B ERA 1996, which provides: "47B Protected disclosures
(1)A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer….”"

186. A "whistleblower" who has been subjected to a detriment by reason of having made protected disclosures may apply for compensation to an Employment Tribunal under *s48 ERA 1996.* On such a complaint, it is for the employer to show the ground upon which any act was done, *s48(2) ERA 1996.*

187. While s47(2) ERA purports to exclude dismissal of an employee as a detriment, the Court of Appeal held, in *Timis v Osipov* [2019] IRLR 52, that a dismissal can be relied upon under *s.47B* as a detriment against a co-worker and accordingly the employer will be vicariously liable for any such claim. Thus a claimant can now bring both a claim under s103A and under s47B in respect of the act of dismissal.
Detriment

188. The term 'detriment has been explained by Lord Hope in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at 34:“ .. [the] tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. …….. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment."

Protected Disclosure Detriment – Causation

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

190. The making of a protected disclosure cannot shield an employee from disciplinary action, including dismissal, which is taken for reasons other than the fact that the employee has made a protected disclosure, *Bolton School v Evans* [2007] ICR 641.

191. Simler J, in Osipov v Timis UKEAT/0058/17/DA agreed with counsel for the appellant that the "proper approach" to inference drawing and the burden of proof in section 47B ERA cases is as follows [115]:

"(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.

(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight at paragraph 20.

However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."

Discussion and Decision

192. The Tribunal took into account all its findings and the law before coming to its decision. For clarity, it has expressed its decisions separately under individual issues.

193. The Tribunal decided, first, whether the claimant had made protected disclosures.

Alleged Protected Disclosures

194. **PD2 - In discussing the number of Bloomberg licences to be held, C made clear that he would support any option if Risk had independent access to Bloomberg. Faraz Haider wanted Risk to receive data requests from the front officer, and C pointed out this would conflict with specific controls agreed with the PRA/KPMG following the s.166 notice. (GoC 21)**

195. The Tribunal decided that the claimant disclosed the following information: "not having data would compromise our risk management framework at a time when we are under heightened review. It decided that "when we are under heightened review" referred to the s166 notice review.

196. The Tribunal accepted that the claimant did reasonably believe that the bank was likely to be in breach of Fundamental Rule 5 and Risk Control rule 2.1A, if Risk did not have its own licence. He said that, otherwise, the risk management framework "would" be compromised. The Tribunal has taken into account that the bank's risk management framework was, pursuant to the s166 process, subject to statutory review and agreement at the time.

197. Further, the Tribunal concluded that the Claimant reasonably believed that the bank's Risk Management Framework constituted its fulfilment of its obligations under PRA rulebook, including the following: Fundamental Rule 5 – "A firm must have effective risk strategies and risk management systems"; Risk Control rule 2.1A – "A firm's risk management procedures must include effective procedures for risk assessment"; Risk Control rule 3.4 – "(1) the risk management function is independent from the operational functions and has sufficient authority, stature, resources and access to the management body. (2) the risk management function ensures that all material risks are identified, measure". The wording of these rules refers precisely to risk management procedures and systems.

198. The Tribunal concluded that the Claimant reasonably believed that the PRA rulebook constituted legal obligations, particularly in light of the mandatory wording of the rules: "A firm must..".

199. The Tribunal rejected the Respondent's argument that the Claimant did not reasonably believe that the rules were independent legal obligations, rather than simply principles of good regulation. The Tribunal took into the Respondent's contentions that: because the terms in which the rules are set are, in the main, of such breadth and generality that they can only operate as guidance rather than as anything more concrete than that; the Rules lack any specificity or prescription about when a breach occurs, instead adopting relative and objective terms in respect of which it cannot be said that there is any bright-line where a breach will have been committed; it is always possible to find a rule under the PRA Rulebook which can be raised in respect of any perceived imperfection – however minor – in the bank's processes and the actions of its staff, so that it cannot sensibly be maintained that it is reasonable to believe that information tends to show a breach of a legal obligation simply because the Claimant is able at trial to identify a broadly defined rule in the PRA Rulebook to which the information can be attached; This is all the more so given that the Claimant was the Chief Risk Officer and ought therefore to be expected to have a greater understanding of the PRA Rulebook and its application than other less qualified individuals. The Claimant's knowledge counts against the reasonableness of his asserted beliefs.

200. However, the Tribunal considered that the Claimant was the bank's Chief Risk Officer with responsibility for assessing and mitigating regulatory, competitive and technological threats to the bank's capital and earnings. His CRO role was a regulated position and had individual accountability as set out in the Senior Managers and Certification Regime ("SMCR"). His role was partly to identify potential regulatory breaches and the threats posed by them.

201. As such, it was his responsibility to identify when the bank's risk management framework, and the bank's regulatory obligations, had been breached. The Claimant was not an uninformed, non-expert, who was raising minor, perceived imperfections. Even if the PRA rules were expressed in general terms, it was the Claimant's role, in interpreting and implementing the bank's risk management systems, to provide the required precision at the bank in relation to obligations which were expressed in more general terms in the PRA handbook.

202. Accordingly, in the light of:

202.1 the Claimant's belief as to the Risk Management Framework constituting its fulfilment of its obligations under PRA rulebook

202.2 The Claimant's own role as CRO, and his attendant expertise and duties;

the Tribunal considered that, when the Claimant told the Bank that its risk management system was being breached, he had a reasonable belief that the bank was breaching its legal obligations.

203. The Tribunal accepted the Claimant's contention that there is a public interest in banks complying with their regulatory obligations since these obligations, particularly those around risk management, are designed to ensure prudent operation of banks in a manner which minimises the risk of bank failure with the attendant devastating impact on members of the public. This is heightened when a firm is under a s166 notice, since a s166 is one of the tools used by the PRA to fulfil their statutory obligations.

204. The Tribunal also accepted that the Claimant reasonably believed that the information in this email was in the public interest. He believed that he was ensuring that the bank complied with its important regulatory obligations.

205. The Tribunal therefore concluded that the Claimant made a protected disclosure when he sent the contents of the email in PD2.

206. **PD3 - C raised verbally with the Head of Compliance (Toby Varkey) a potential conflict of interest in Mr Haider taking up a role as Head of Treasury (SMF 2/3) given that ahead of taking up the role he was a Board Member who took part in a decision to approve Treasury acting as a Profit Centre. C told Mr Varkey this breached the Conduct Rules set out in the Senior Management Regime and thus automatically breached the Risk Management Framework. (GoC 22)**

207. The Tribunal decided that the claimant disclosed information to Mr Varkey that Mr Haider could have a conflict of interest, in that he had made the decision to approve the Treasury as a Profit Centre and had then taken up the role of Head of Treasury. The Tribunal decided that, in the claimant's belief at the time, the information tended to show that Mr Haider could have conflict of interest and be in breach of Senior Management Regime Rule 1.

208. The Tribunal accepted the Claimant's contention that the information tended to show that there had been a breach and/or the was an ongoing breach of the conduct rules set out in the Senior Management Regime. Specifically : Rule 1 – *"you must act with integrity"*. The Tribunal accepted the Claimant's contention that acting with integrity must incorporates acting in a manner consistent with normal statutory and equitable directors' duties, such as the obligation to avoid conflicts of interest.

209. The Tribunal rejected the Respondent's assertion that the Claimant did not reasonably believe his disclosure tended to show that breach of these rules had happened or was happening. While the Claimant did not know when Mr Haider learned of his Treasury role appointment, he did know that Mr Haider had made a decision which would profit him in that role and was now, in fact, in post. The

Tribunal considered that the Claimant was a serious individual and was raising a serious matter. While the Claimant was not certain of all the facts, the Tribunal concluded that the Claimant had a reasonable belief that the information *tended to* show there had been a breach and/or the was an ongoing breach .

210. The Tribunal accepted the Claimant's contention that there is a public interest in directors and Senior Managers (particularly those under the SMCR) and those holding an SMF role (as Mr Haider did) acting in accordance with their statutory and equitable duties and in accordance with their regulatory code of conduct. These provisions are intended to protect investors and shareholders from unethical conduct by those responsible for running financial institutions. The Tribunal accepted that the Claimant had that public interest in mind. In any event, the Respondent agreed that, had the Claimant been in a position to assert that a Board member of the Respondent bank took a decision for his own benefit, it would be in the public interest to make a disclosure.

211. PD3 was a protected disclosure

212. **PD6 - C stated in an email to Faraz Haider, Manzur Ahmed and Brian Firth that he saw Mr Haider's actions as breaching the credit risks/legal limits and required the position to be sold, and C restated this at the Credit Committee (GoC29).**

213. The Claimant's emails of 22 February 2021 10:04 and 11:32 at p134-136 to Lourdes Pacheco, Brian Firth, Zeeshan Haider and Theresa Eplett and Ahmed Nabi, said: 'Approval is declined and they ae to sell. Reason -failure to follow correct process" "sell to resolve or I need to elevate to the PRA via the INEDS"

214. The Claimant's emails were part of an email chain about the Nationwide deal, in which a member of the Claimant's team, Mr Ahmed, had said to Mr Haider that trading mandates did not confer obligor level limits, which had to be requested on a name basis via the Credit function or the CRO, before execution. Mr Ahmed had said, "We are here to support the [Front Office] in generating revenue, but good governance, risk management and due process still need to be followed." Pdf 143-4.

215. In the same email chain, on 19 February 2021, Mr Haider had said, "The fundamental question remains in buying the bond in question the treasury acted within the relevant mandate and there's no exception or breach. Why did someone cry exception? …"

216. Mr Firth had also commented, pdf 142, "Dear All I suggest the way forward as follows: 1. Has there been a breach of Policy? In my view there has, as paragraph 13 of the Trading Book Policy states that a counterparty limit must be in place prior to purchase. … 2. The breach needs to be rectified."

217. The Claimant averred that the words he used convey the information that the correct process had not been used for the approval of the trade in question and that, unless the failure was remedied, it was sufficiently serious that it would need to be reported to the PRA, indicating a breach of a legal/regulatory obligation.

218. The respondent did not agree that the claimant could aggregate any part of the Risk Culture Report with the contents of the 22 February 2021 email in order to build a composite disclosure. It said that there was no suggestion that the words used in those emails were in any way embedded into the latter communications for aggregation to be appropriate. The respondents contended that the claimant did not plead that the 22 February emails were aggregated with those other communications to form a single disclosure, nor was that the claimant's evidence either in writing or orally. The respondents contended that the claimant's comments in the email lacked any factual content or specificity about what process he considered there had been a failure to follow.

219. The Tribunal decided that the Claimant's emails were, however, part of an email chain in which Mr Ahmed, Mr Haider and Mr Firth had all discussed a possible breach of trading mandates and policies. While the Claimant's emails were brief, his words, "Reason -failure to follow correct process" referred to the breach of policy that Mr Ahmed and Mr Firth had identified. That was clear from the email chains. It was appropriate for the Claimant's emails to be aggregated with those earlier communications, as they were a continuation of that exchange.

220. The Claimant averred that this information tended to show that a breach of the Respondent's legal/regulatory obligations had occurred or if the situation was not remedied was likely to occur in respect of the trade. He contended that a breach of internal process was a breach of the Risk Management Framework which would be a breach of the obligations under PRA rulebook, including the following: a. fundamental Rule 5 – "A firm must have effective risk strategies and risk management systems" b. Risk Control rule 2.1A – "A firm's risk management procedures must include effective procedures for risk assessment" c. Risk Control rule 3.4 – "(1) the risk management function is independent from the operational functions and has sufficient authority, stature, resources and access to the management body. (2) the risk management function ensures that all material risks are identified, measure and properly reported, is actively involved in elaborating the firm's risk strategy and in all *material risk management decisions and is able to deliver a complete view of the whole range of risks of the firm"* by-passing processes prevents risk from meeting this obligation. d. General Organisational Requirements ``*2.1 - A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting* procedures and effective control and safeguard arrangements for information processing systems.

221. The Respondent denied that the Claimant reasonably believed the words used tended to show a breach of the sections of the PRA Rulebook identified above. It contended that the Claimant did not identify any of the above-mentioned rules in his Grounds of Complaint. or his written or oral witness evidence. Secondly, it said that the words used in the 22.02.21 emails lacked any reference to legal obligations at all, let alone identifying any of the rules set out above. Thirdly, the Claimant's position in the emails was that the matter could be resolved by the sale of the bonds. That was not consistent with the Claimant reasonably believing that the information provided by him tended to show a breach of legal obligations in

purchasing those bonds. Fourthly, as identified in Mr Firth's witness statement at (14.6), and as repeatedly emphasised by the Claimant in oral evidence, this was a matter of internal procedure rather than policy and accordingly not something which the Claimant could reasonably have believed to have been in breach of a legal obligation. Fifthly, the Claimant was aware from the content of the earlier emails on this issue that the situation arose from a genuine dispute between Treasury and Risk about whether the trade was consistent with internal policy and procedure. They contended that the Claimant did not reasonably believe that the risk management framework or PRA rules had been breached.

222. The Tribunal decided that the Claimant clearly did believe that PRA rules had been breached: that was strongly indicated by his words: "I need to elevate to the PRA via the INEDS". The Tribunal considered that the Claimant was highly unlikely to escalate anything to the PRA unless it was a serious breach of rules.

223. It also decided that the Claimant clearly believed that the particular breach of internal policies and procedures amounted to a breach of the bank's risk management framework. He clearly considered that there had been a serious breach, given his proposed escalation to the PRA. The Tribunal considered that he was reasonable in this belief. It was noticeable that Mr Firth himself had said that he believed there had been a breach of the Trading Book Policy. It was also noticeable that Mr Ahmed had said that risk management had to be observed by the treasury in respect of this trade. Others in the bank clearly believed that there had been a breach of process and policy. The Tribunal considered that, given the Claimant's expertise and experience, his belief that this breach of policy amounted to a breach of the bank's risk management and therefore its legal obligations to the PRA, was reasonable.

224. The Tribunal accepted that there is a public interest in banks complying with their regulatory obligations. There is a public interest in banks not breaching limits which are set specifically to prevent a bank operating in a manner which increases the chance of failure. The Tribunal accepted that the Claimant had this in mind when he said the matter would need to be escalated to the PRA. The PRA is the public body regulating banks.

225. PD6 was a protected disclosure, made in compliance with s.43C.

226. **PD7 - C made requests by email to Toby Varkey (Chief Compliance Officer) for him to conduct a compliance review into whether a breach of procedure, namely risk control, had occurred (GoC30)**

227. The Claimant relies upon the email of 22 February 2021 to Toby Varkey, CC: Panos Gregory and Theresa Eplett, in which the claimant emailed a request to Toby Varkey to conduct a view of a "Limit Breach", pdf 406.

228. The subject of the email was "Fact Find – Limit Breach'. The claimant said, "There has been a reported breach of Limits in that a trade was completed and then a Limit was requested. Credit Counterparty controls are a key part of the Risk Management Framework, hence concerns have been raised regarding the bypassing of controls (Credit Limits). Please could you review the procedure

followed and establish if correct procedures were in fact followed, if Policy was observed and if Limits were in place prior to the trade being completed.'"

229. The claimant averred that the information conveyed in this email was that a trade had been completed prior to a limit being set and that this was in breach of the set limits around credit counterparties. He contended that the information conveyed was also that these controls were important to the Risk Management Framework and that the controls had been by-passed.

230. Mr Firth did not agree that the claimant believed that any information he gave tended to show that controls had been bypassed. The respondents contended that the claimant's email was in conditional terms, speaking of a 'reported' breach and asking Mr Varkey, as Chief Compliance Officer, to conduct a review determine if there had been a breach.

231. The Tribunal found that the claimant did disclose information that there had been a reported breach of trading limits "in that a trade was completed and then a Limit was requested." The tribunal also found that the claimant reasonably believed that this information tended to show that a breach of the Respondent's legal/regulatory obligations had occurred; he said, "Credit Counterparty controls are a key part of the Risk Management Framework." The Tribunal decided that the claimant was asking for an investigation, having disclosed information that a breach of the Risk Management Framework had happened

232. The Tribunal has already found that the claimant reasonably believed that a breach of the bank's internal process was a breach of the Risk Management Framework, which would be a breach of the banks' obligations under PRA rulebook. As above, the Tribunal found that the Claimant believed that identifying breaches of the risk management framework was in the public interest. There is a public interest in banks complying with their regulatory obligations. There is a public interest created by immediate threat to the banks' capital and liquidity controls caused by failing to follow the correct procedures.

233. PD7 was a protected disclosure, made in compliance with s.43C.

234. **PD8 - The Claimant contacted Masarrat Husein (the Chair of the Board Risk Committee) to raise concerns about the bank allowing behaviours including the bypassing of controls, in breach of the Risk Management Framework. (GoC 32)**

235. The claimant relied upon an oral discussion which took place between Mr Husein and the claimant on 23 February 2021, when the claimant said that that Panos Gregory had reported to him that he felt he had been put under pressure to the extent where he felt that his independence was compromised in relation to the organising of an audit close out meeting. The information conveyed was that Mr Gregory had reported pressure around who attended a close out meeting at a level which he felt impacted on his independence and that this would be a reportable matter to the PRA as a breach of regulation.

236. The Respondent accepted that it was reasonable, on what he had been told by Mr Gregory, for the claimant to believe that the information he provided to Mr Husain tended to show a breach of a legal obligation concerned with the

independence of the internal audit function and there was a public interest in banks complying with regulatory obligations consistent with the maintenance of the independence of an internal auditor.

237. PD8 was a protected disclosure, made in compliance with s.43C.

238. **PD9 - On Brian Firth objecting to C naming Faraz Haider in a risk culture report, rather than anonymising, C reminded Mr Firth in meetings that a failure to include these details would be in breach of a regulatory instruction and that they had to be included in the report. (GoC 33)**

239. The Claimant relies upon oral discussions with Mr Firth on 11 and/or 17 March 2021 during their regular weekly meeting. The Claimant's oral evidence was that the PRA had requested a copy of the Risk Culture report and when he provided the draft to Mr Firth the words from Mr Firth were "Do not send that report" in response the Claimant said words to the effect "It is a regulatory obligation".

240. The Tribunal accepted his evidence – the Claimant was not one to let matters drop. It therefore found that the claimant told Mr Firth in meetings on 11 and 17 March that anonymising the risk culture report, so that individuals responsible for alleged breaches were not named, would be a breach of regulatory instruction. He conveyed that information.

241. The Claimant averred that the information tended to show that there would be a breach of the legal obligation under the PRA Rulebook specifically: Fundamental Rule 7 – "A firm must deal with its regulators in an open and cooperative way…" Individual Conduct Rule 3 – "you must be open and co-operative with the FCA, the PRA and other regulators". Risk Control Rule 3.4 – "A firm must ensure the following (2) the risk management function ensures that all material risks are identified, measured and properly reported," Risk Control Rule 3.5 – "A firm must ensure that the head of the risk management function is an independent senior manager with distinct responsibility for the risk management function.

242. The Tribunal found that the Claimant believed that failure to send the report would be a breach of legal obligations to provide information to regulators; he specifically said it would be.

243. However, the Tribunal did not consider that it was reasonable for him to do so. The Claimant and Mr Firth had reached a resolution on the content of the risk culture report a number of weeks before the meetings of 11 and 17 March. The report was an internal mechanism the Claimant adopted, rather than a regulatory requirement, and accordingly there were no regulatory requirements as to its form or format.

244. PD9 was not a protected disclosure

245. **PD10 - In respect of the Roshan Digital Account product, C emailed the project lead, Kuldeep Kandhari, to raise concerns that the bank was potentially in breach of the Risk Management Framework in respect of new product approvals, by not following the correct process and bypassing key committee reviews. (GoC 38)**

246. The Claimant relies on the email of 12 February 2021 from him to Kuldeep Kandhari subject New Product Approval Process see page [383]. The Claimant relies on the entire email "I understand that you have told CAD that you are working on new legal forms that CAD will not be invited to comment upon until ExCo have been consulted. Clearly I have no details currently but may I remind you of the New Product Approval Process. This requires sign off from several functions prior to ExCo being approached. It may be timely to talk to Adam re the process, as I believe you will need to consult with a number of functions before ExCo can provide support, or you may breach our internal Procedures."

247. It was agreed that the Claimant sent the email of 12 February 2021 and that it contained the words set out above.

248. The Tribunal found that the information conveyed was the bank's New Product Approval Process required sign off from several functions prior to ExCo being approached, so that a failure to involve CAD and other functions before ExCo would be a breach of internal procedures. While the claimant used the word "may", he was sending a polite email and stated clearly what was required under the policy, so that a failure to follow the policy would be a breach of internal procedures.

249. The tribunal found that the claimant reasonably believed that the information tended to show that the New Product Approval was likely to be breached. The claimant was warning Mr Kandhari that Mr Kandhari's stated intention, "that CAD will not be invited to comment upon until ExCo have been consulted" appeared to be in breach of the agreed policy.

250. The Tribunal has already found that the claimant reasonably believed that a breach of internal process is a breach of the Risk Management Framework, which would be a breach of the obligations under PRA rulebook. The specific provisions relied upon by the claimant were the same as those set out in the Tribunal's findings on PD6 above.

251. The Tribunal therefore accepted that the claimant disclosed information which in his reasonable belief tended to show that the bank was breaching its internal controls. He believed that the internal controls constituted the bank's compliance with its legal duties as set out by the PRA.

252. As with PD6, the Tribunal accepted that the claimant believed that the information was disclosed in the public interest because there is a public interest in banks complying with their regulatory obligations. It accepted the claimant's contention that there is a particular need to manage the introduction of New Products given the risk inherent in something which has no track record to analysis to assess risk levels**.**

253. PD 10 was a protected disclosure, was made in compliance with s.43C.

254. **PD11 and 12- In a 1:1 meeting with Brian Firth, C raised the same matters identified at PD10 (GoC 38)**

255. The Tribunal accepted the claimant's evidence that he did raise concerns about the failure to follow agreed process in relation to the Roshan Digital Account

launch with Mr Firth on 2 occasions on 11 and 17 March 2021. The Tribunal considered that it was likely that the claimant did so, but that Mr Firth could not now recall the detail of the claimant's concerns

256. The Claimant's words were to the effect of *'I have done the following to make it safe but hang on we have created a situation which should never have existed' 'I would have mentioned regulatory responsibilities' 'I was very clear that we needed to capture individual breaches, that need arises from sysc19 but I would talk in terms of regulatory framework.'*

257. The Tribunal found that the information conveyed was there had been multiple breaches of the New Product approval process and the bypassing of control steps and that it generated regulatory issues, including those around capturing individual accountability.

258. The Tribunal found that, in the claimant's reasonable belief, the information tended to show that a breach of the risk management framework, particularly provisions in the New Product Approval policy, was likely if the approach was repeated. The claimant told Mr Firth that there only hadn't been breaches of policy on the Roshan Digital Account because of the claimant's intervention. The Tribunal repeats its findings on the claimant's reasonable belief that a breach of internal process was a breach of the Risk Management Framework which would be a breach of the obligations under PRA rulebook. The specific provisions relied upon are set out under PD6 above. It repeats its findings on the Claimant's reasonable belief that there was a public interest in banks complying with their regulatory obligations.

259. PDs 11 and 12 were protected disclosures.

260. **PD13 - At an Executive Committee meeting, C raised the same matters identified at PD10 (GoC 38)**

261. The Claimant relies on comments made at the ExCo meeting on 12 March 2021, notes of which appear at p513-520, with the key passage on p518: "There are approximately 23 outstanding issues regarding the Roshan SBLC. CRO suggested a further meeting as they are nowhere near the finish line with this project yet, ahead of UBL's Roshan Digital Account webinar on 18 March 2021." The respondent accepted that the claimant used these words at this meeting.

262. The Tribunal found that the claimant did no more than identify that there were a number of outstanding issues and that the deadline was fast approaching. The claimant provided no information about the content of those issues, nor that any or all of the enumerated issues tended to show a breach or likely breach of a legal obligation. The disclosure lacked the necessary specificity and content to amount to a disclosure of information.

263. PD13 was not a protected disclosure.

264. **PD14 - C raised the same matters identified at PD10 in a 1:1 meeting with Andrew Rushworth, Head of Shared Services (GoC 38)**

265. The Tribunal accepted the claimant's evidence that, in a one to one meeting with Mr Andrew Rushworth, Head of Shared Services, on 19 March 2021 he raised failures to follow the bank's internal processes in relation to the Roshan Digital project. The claimant gave evidence that he had used words to the effect that there had been 'control failings', 'pressure on a control function' 'by-passing of the risk function' and breach of the Risk Management Framework.

266. The Tribunal found that the claimant conveyed information that there had been a breach of the Risk Management Function, including pressure applied to a control function and by passing of the risk function.

267. It found that he reasonably believed the information tended to show that a breach of the risk management framework, particularly provisions around New Product Approval had occurred. A breach of internal process is a breach of the Risk Management Framework which would be a breach of the obligations under PRA rulebook. He reasonably believed that there was a public interest in banks complying with their regulatory obligations.

268. PD14 was a protected disclosure.

269. **PD15 In his FCA attestation C stated that there were insufficient resources to permit him to complete his role. In his annual appraisal C made a statement about the lack of sustainability in the current operations (GoC 42**

270. The Claimant relies on the FAC attestation completed on 22 December 2020 and submitted soon after to Mr Firth. The precise words relied upon are

    270.1 In answer to the statement "*I have adequate time to perform the function and meet the responsibilities associated with my role"* the Claimant indicated that the answer was no and gave the comment:

    270.2 "*In order to meet the project demands alongside day to day responsibilities annual leave has had to be deferred. These are exceptional arrangements in line with Covid 19 restrictions. In 2021 I would be unable to take annual leave if recruitment is not progressed*" p549.

    270.3 The Claimant also relies upon the comments in his appraisal form completed on 14 January 2021: *"Working hours have been exceptional this year with repeated late night finishes and several early morning (3am) document completion times. This is not sustainable. There has been a physical impact, personal challenges and key family events have simply been ignored by UBL UK."* p323.

271. It was agreed that the comments identified were made on the respective forms.

272. The Tribunal decided that, in the claimant's mind at the time, the claimant considered he was disclosing information which tended to show that the respondent would breach its obligations to afford annual leave to its employees and that the claimant's health and safety would be compromised if he continued to work in the way he had done in the previous year.

273. The Tribunal found that the claimant did reasonably believe that the information was in the public interest. There is a public interest in firms adhering to their statutory obligations in relation to working hours, annual leave and the protection of the health and safety of members of the public.

274. This was a protected disclosure, made in compliance with s.43C.

275. **PD16 - On learning from Toby Varkey at a Controls Group Meeting that Mr Varkey had received the FCA Annual Attestations from all Executive Committee members except for C, C expressed concern at what appeared to be the deliberate concealment of a key control form (GoC 43)**

276. The Claimant relied on the oral conversation with Mr Varkey in which the Claimant asked Mr Varkey whether his was the only attestation not received and whether any explanation had been provided to Mr Varkey for this.

277. The Tribunal found that the claimant did not say that his form had been suppressed. The claimant did not give evidence about any other information he gave to Mr Varkey during this exchange. The Tribunal concluded that the claimant asked questions, but did not disclose information.

278. PD16 was not a protected disclosure.

279. **PD17 - In a meeting with Theresa Eplett, Head of HR, C referred to the Risk Management Framework and raised concerns about working hours and the failure by the bank to monitor working hours (GoC 44**

280. In his witness statement, the claimant told the Tribunal that, on 24 February 2021, in a meeting with Theresa Eplett, he had raised concerns regarding a breach of the bank's Risk Management Framework. He told the Tribunal that he had "said explicitly that we needed to hold individuals to account, and that I wanted guidance as to how to do this in fair and transparent way in line with HR policy." He said that Ms Eplett had advised the claimant that there should first be a "fact-find, which could then be followed by individual actions." He also told the Tribunal that Ms Eplett had advised that the bank's appraisal process could hold individuals to account for repeated Risk Procedure and Policy breaches and that Risk could comment on individual engagement with the Risk culture. The claimant told the Tribunal that he wanted to ensure that Risk would be able to comment on any discretionary awards made at the year end. He said that this was a legal obligation set out in the FCA Handbook under Remuneration Principles – Sysc 19.D.3.4 & Sysc 19.D.3.7.

281. This meeting on 24 February 2021 was not pleaded as containing a separate disclosure but the claimant relied on what he said in this meeting as relevant to what he said to Ms Eplett on 11 March 2021. He relied on what he said in his meeting with Ms Eplett on 11 March 2021 as his protected disclosure 17.

282. The Tribunal accepted that the claimant said these things to Ms Eplett on 24 February. The claimant made a brief but contemporaneous note of his conversation, pdf 410.

283. The claimant also told Ms Eplett that a health helpline was not working, pdf 410.

284. On the claimant's account, he did not disclose information about "working hours", or a "failure by the bank to monitor working hours". The claimant's evidence about this meeting referred to a different matter entirely.

285. PD17 was not established on the evidence.

286. **PD18 - In reports for the PRA, C raised concerns about the bank breaching its legal obligations (GoC 46)**

287. In the Claimant's oral evidence he confirmed that this point related to the Board Report – Risk Management Skills, p491-495, of January 2021 provided to Brian Firth. He relied on the conclusions section

288. "The majority of the skill gaps cause Operational Inefficiencies rather than material risk issues. There is an over reliance upon ExCo members to provide operational support, this limits ExCo member time on planning and supervisory responsibilities. In turn this leads to weakened controls, staff disengagement and stress. Evidence of Operational Strain (delays, poor quality reports, sickness) are rising. UBL UK is seeking to de-risk the portfolio and achieve an operationally simple, low risk portfolio that can be managed using relatively simple skills sets. This is practical and reasonable. However achieving this requires additional skills to manage the Risk Framework transition, the rapid portfolio growth and Operational transformation. At the same time significant regulatory change programmes are under way (Climate Change/ IFRS 9) with a pan-industry impact. Again, these require additional skills. …Skill Management and Planning needs to be enhanced and it is recommended that the board receives an annual Skills Review Report. … The current budget is unlikely to fully meet the Training requirements identified. Consideration should be given to increasing the budget or reducing the pace of change applied to the portfolio."

289. The Respondent accepted that these words were used in this draft of the Board Report – Risk Management Skills of January 2021.

290. The Tribunal found that the entire passage conveyed information. The Claimant averred that the information tended to show a breach of the PRA requirements around adequate resourcing and health and safety obligations towards staff and in particular the duty of care owed to staff to take reasonable steps to protect their health including mental health. Specific PRA requirements relied upon include: Fundamental rule 2 – "A firm must conduct its business with due skill, care and diligence." Fundamental rule 6 – "A firm must organise and control its affairs responsibly and effectively." General Organisational Requirements - 2.5 "A firm must take reasonable steps to ensure continuity and regularity in the performance of its regulated activities. To this end the firm must employ appropriate and proportionate systems, resources and procedures."

291. The Tribunal accepted that, in the claimant's mind, he conveyed that lack of adequate resources was likely to result a breach of a legal obligation. The claimant identified that changes to the Risk Framework and climate change regulatory programmes were required, but he said, "The current budget is unlikely to fully meet the Training requirements identified." The Claimant stated that he had

inadequate resources to achieve the necessary Risk Framework and regulatory change programmes.

292. Once more, the claimant had a reasonable belief that there was a public interest in banks complying with their regulatory obligations

293. PD 18 was a protected disclosure.

294. **Alleged Detriments**

295. **Detriment 6 The initial decision was made to dismiss the Claimant on 22 February 2021.**

296. The Tribunal considered whether the second and, therefore, the first respondent had subjected the claimant to a detriment by making an initial decision to dismiss him on 22 February 2021.

297. Mr Firth told the Tribunal that, seeing that the s166 process was coming to an end, he felt that the claimant had done a good job on s166, but that Mr Firth's attention turned to life post-s166. He considered that the claimant might not be the right person for the bank; his concerns included that the claimant was reluctant to do things the Board were asking him to do.

298. This reasoning appeared to be reflected in the minutes of the 22 February 2021 meeting:

" BF [Mr Firth] said that he had some concerns about the CROs behavior, which had become increasingly more erratic even though the sl66 was coming to an end. BF said that his main concern was … that the Bank needed to focus on closing the gaps identified by KPMG in credit risk as a priority. BF said he did not think that the CRO had given enough attention to this major risk area, and consequently policies had not been updated and approved, and resourcing was not adequate or matched to the Bank's business needs.

BF added that he thought the CRO over-engineers solutions, which creates more problems. BF said that as the s 166 was coming to an end now would be a good time to consider whether the current CRO was the right person to take the Bank forward.

MH [Mr Husain] said that he had concerns about the CRO, recollecting that on several occasions the CRO had agreed to do something but nothing then happened. MH said that the consolidated credit policy that had been requested in March 2020 was still in his opinion not in a fit state. MH agreed that the CRO spent too much time on the non-core activities instead of focusing on the real priorities.

BH said that he thought the CRO was not suited to a small bank, and did not show enough support to the lLoD. BF said that given the consensus of opinion, the best way to proceed would be to raise the concerns with other members of the Board. If they are in agreement, then BF, MH and RW would engage with the PRA."

299. The INEDs had made a number of similar criticisms of the claimant before this meeting. For example, on 29 October 2020 email Mr Hussain told his fellow INEDs the claimant had omitted a 1-page summary to support a proposal, pdf 288; On 13 November 2020 Mr Hussain replied said, "I maintain that our CRO needs to become more practical about addressing the issues to meet the Feb 2021 deadline instead of getting into debates on issues that are ideal / theoretical. We are 3 weeks away from the Board and committee meetings and we have not seen any policies or ToRs or other items for approval..", pdf 290. Mr Wilton, replied, saying, "The CRO has become an irritant and should be directing his energy towards completing the deliverables emanating from the s166. … The whole process is being over engineered and therefore disproportionate to the size of the Bank." Pdf 290. In an email exchange between the INEDs on 24 November 2020, Mr Hussain commented on the claimant's draft his draft Consolidated Credit Risk Policy manual, "I give up! After struggling through 25 pages and then browsing through the balance of the document, I have come to the conclusion that the document is not fit for purpose. .." Pdf 294

300. Mr Firth was copied into most of those criticisms. The criticisms did relate to the claimant being reluctant to do things the Board was asking him to do.

301. However, the tribunal noted that claimant's appraisal had been undertaken on 6 January 2021, when he was assessed as meeting or exceeding expectations in all areas but teamwork, where Mr Firth recorded a need for development. The claimant was awarded an A grade overall, which was acknowledged by the respondents to be a very good score. Mr Firth's evidence was that, at this point, he did not anticipate that the claimant would be dismissed soon thereafter

302. All the criticisms, which were later recorded in the decision to dismiss the claimant, were therefore known to Mr Firth when gave the claimant an A grade in his appraisal and did not anticipate he would be dismissed.

303. The Shivaram approval issues occurred in early February 2021. They did not involve a protected disclosure by the claimant. The INEDs and Mr Firth were very unhappy about the way the claimant handled the Shivaram approval process. On 14 February 2021, one of the INEDs, Richard Wilton, complained in an email to Mr Firth and the claimant, amongst others, that the approving Committee was now being asked to approve terms and conditions which had not been included in the original proposal. He commented that they seemed to have been added by the claimant unilaterally. Mr Wilton said, "… The Bank's internal approval process is a shambles and not fit for purpose." pdf 376. Mr Firth challenged the claimant about his conduct saying, "… you have unilaterally added a sell down condition to your approval of the Shaviram case, which was not discussed or agreed by the Credit Committee. The iNEDs along with me do not consider this to be necessary or practical." The claimant accepted that his communication in this regard was not good.

304. The Shivaram approval issues were not mentioned in the notes of the decision to dismiss.

305. The respondents did not give evidence of any other issue with the claimant's conduct between his appraisal and the INED meeting when the provisional decision to dismiss was taken.

306. Accordingly, the Tribunal considered what had changed, in such a short space of time between 6 January 2021 and 22 February 2021, which meant that the previously "A" grade appraised Claimant was now subject to a decision to dismiss him.

307. The Tribunal has found that the claimant made a number of protected disclosures between 6 January 2020 and 22 February 2021.

308. For example, the claimant insisted on Risk having its own Bloomberg licence on 6 January 2021 (PD2). He provided his draft report for the PRA entitled, Board Report – Risk Management Skills to Mr Firth on about 1 February 2021 (PD18). On 11 – 18 February 2021, he raised concerns with Toby Varkey about Mr Haider's conflict of interest (PD3). On 12 February 2021 the claimant emailed the project lead of the bank's Roshan Digital Account product, Kuldeep Kandhari, raising a breach of new product approvals policy (PD10). The Claimant had also made protected disclosures in his appraisal form completed on 14 January 2021: *"Working hours have been exceptional this year with repeated late night finishes and several early morning (3am) document completion times. This is not sustainable. There has been a physical impact, personal challenges and key family events have simply been ignored by UBL UK."* (PD15).

309. In particular, the Claimant's emails of 22 February 2021 10:04 and 11:32 at p134-136 to Brian Firth and Zeeshan Haider, amongst others, were protected disclosures (PD6) . They said 'Approval is declined and they ae to sell. Reason - failure to follow correct process" "sell to resolve or I need to elevate to the PRA via the INEDS." These emails were sent at the beginning of, and/or well before the end of, the meeting at which the initial decision to dismiss was made.

310. The preceding email chain demonstrated that Mr Haider was exceeding exercised about the claimant's Risk function's approach to the Nationwide matter. Mr Haider had threatened to take the matter to the board, which Mr Firth agreed was unprofessional of Mr Haider. Mr Haider responded to the claimant's emails, initially at 10.37, early in the INED meeting on 22 February, indicating his ongoing disagreement with the claimant and Risk's decisions on Nationwide. Mr Haider was attending the INED meeting when he was replying to the claimant's emails.

311. The claimant's comments in these emails, "sell to resolve or I need to elevate to the PRA via the INEDS" indicated the strength of the disagreement between the claimant and Mr Haider on the Nationwide matter.

312. The 10.04 email protected disclosure was the claimant's most recent protected disclosure, before the decision to dismiss. Mr Haider, in particular, appeared to be contemptuous of the claimant's (and the claimant's team's) advice on the Nationwide matter.

313. Given that all the reasons recorded as justifying dismissal pre-existed the claimant's A grade appraisal, the Tribunal concluded that they were not the true reasons for the decision to dismiss him.

314. Taking into account all the evidence, the Tribunal concluded that the claimant's escalating protected disclosures were the true cause of the decision to dismiss him on 22 February. It decided that the respondent considered that the claimant was not the "right person" for the CRO job going forward because of his continued protected disclosures, the most recent of which Mr Haider derided.

315. Mr **Firth** was part of the 22 February decision to dismiss. The decision to dismiss was a detriment, putting the claimant's job in immediate jeopardy. As such, Mr **Firth** was liable for that detriment under *s.47B ERA* as a co-worker and the employer bank was vicariously liable for his actions.

316. The Tribunal makes clear that Mr Firth alone did not make the decision to dismiss the claimant. In other respects, the Tribunal acknowledged that Mr Firth was supportive of the Risk function. For example, Mr Firth agreed that there had been a breach of policy in the Nationwide matter. The most trenchant criticisms of the claimant, expressed in emails, had come from the INEDS and not from Mr Firth. It appeared that Mr Firth may not have dismissed the Claimant if the matter had been left solely to him. He had given the claimant his good appraisal rating. The INEDs and Mr Haider appeared to find the claimant's interventions more irritating than Mr Firth did.

Automatic Unfair Dismissal

317. The decision made on 22 February was later effected by the Board on 1 April 2021. There was no evidence that there was any change in the reasons for dismissal after 22 February 2021. The Claimant had already been told, on 19 March 2021, that he would be dismissed. There was nothing to indicate that the other Board members brought anything fresh to the dismissal decision on 1 April 2021.

318. For the avoidance of doubt, the Tribunal decided that the claimant had shown that the principal reason for the decision to dismiss him was his protected disclosures. They were the true reason for the dismissal in the minds of the meeting attendees on 22 February.

Dismissal. Polkey Deduction

319. The Tribunal considered what was the likelihood that the first respondent would have dismissed the claimant in any event.

320. The Tribunal noted that the claimant did not have 2 years' service - and would not have had 2 years' service until 28 July 2021. As a result, the first respondent would not have needed a fair reason to dismiss the claimant. That made a dismissal more possible, in general.

321. On the Tribunal's findings of fact, the INEDs' criticisms of the claimant in 2020 would not have resulted in the claimant's dismissal; a dismissal on those grounds would have been at odds with Mr Firth's overall opinion of the claimant in 2020.

322. The claimant's appraisal did record that the claimant needed to improve his teamwork, but the Tribunal noted that this was the only area requiring

improvement and was not serious enough to detract from the A grade. It also noted that his relationship with his own team appeared to be good. That showed that the claimant was capable of fostering positive working relationships.

323. The tribunal considered that Mr Firth was, in general, a fair-minded individual and, in other circumstances, was likely to have been prepared to warn the claimant of his failings and give him a chance to improve.

324. Nevertheless, the INEDs' 2020 criticisms of the claimant were real and substantial and were separate from his protected disclosures. The tone of the INEDs' 2020 emails, not related to the protected disclosures, indicated significant unhappiness with him and some doubts about his ability, or willingness, to undertake tasks required of him.

325. Further, the INEDs and Mr Firth expressed further major criticism of the claimant's actions on the Shivaram deal. The claimant acknowledged in evidence that his communication was not good in this regard. The tribunal noted that the claimant appeared to have acted somewhat capriciously; first adding conditions to the deal without consultation and then removing them almost immediately he was challenged.

326. The tribunal noted that the s166 process was coming to an end. It accepted that, at that point, the bank was considering what, and who, bank required in its "business as usual" operations.

327. On all the evidence, there were significant and ongoing concerns about the claimant's judgment and communication. The claimant did not have 2 years' service so there was some significant likelihood that the bank would have dismissed him in any event.

328. However, first respondent had considered him a good employee and employers are unlikely to dismiss senior employees lightly, even if they do not have 2 years' service. Such dismissals will inevitably be somewhat disruptive and costly, in recruitment, legal and settlement expenditure. The good appraisal was a strong indication that, absent his protected disclosures, the claimant would have remained in employment.

329. The Tribunal concluded that there was a significant risk that the first respondent would have dismissed the claimant in any event, but that it was not "more likely than not" that it would.

330. It decided that it was, therefore, 40% that the first respondent would have dismissal the claimant lawfully in any event, quite apart from his protected disclosures.

Other Detriments

331. **Detriment 3 and 4 18-20.02.21 Following the raising by the Risk department of concerns about breaches of controls arising from a trade involving Nationwide Covered Bonds, a series of threats were issued to the Risk department stating that unless limits were agreed by Risk, issues would be**

elevated to the Board. C saw those emails from Faraz Haider threatening to elevate matters to the Board.

332. The claimant explained, in his oral evidence, that he relied on PD5 and 6 as the protected disclosures for this detriment. PD5 is no longer pursued, so the claimant is limited to PD6.

333. This claim must fail for simply chronological reasons. The threats to elevate the matter to the Board were all made by Mr Haider before the emails from the claimant which are relied on as PD6. Mr Haider's emails that refer to elevation are as follows: 18 February 2021 at 20:15, pdf143; 19 February 2021 at 15:36, pdf141; and 20 February 2021 at 12:43 p541Supp2, 6.

334. The claimant's first email on the matter was not until 22 February 2021 at 10:04

335. The threats therefore predated the claimant's protected disclosures. Indeed, the claimant told the Tribunal that, on about 20 February 2021, Mr Ahmed told the claimant that he was concerned about these emails, which Mr Ahmed had received from Mr Haider. It was clear that the claimant had not been involved up to that point. Accordingly there is no *prima facie* case that Detriment 3 was done because the claimant made PD6. It was clear that the threats were made in response to Mr Ahmed's emails, not the claimant's. The threats were not on the grounds of the claimant's protected act.

336. **Detriment 5. Following the email referred to at PD6, Brian Firth told C that he had personally had to contact each member of the Board about the issue and the matter had been resolved 26.02.21**

337. On 26 February 2021 Mr Firth told the claimant that he had personally had to contact each member of the Board to resolve a matter. The claimant contended that this related to his protected disclosure 6. – relating to the Nationwide deal The claimant relied on Mr Firth's comment to him as his Detriment 5. Mr Firth accepted that he had spoken to all members of the Board to resolve an issue and had relayed this to the Claimant. He said that this was in connection with Shivaram, rather than Nationwide.

338. The Tribunal has found that Mr Firth did tell the claimant that he had spoken to the individual members of the board to resolve an issue. On the balance of probabilities, the Tribunal was unable to find that it related to any particular issue which had arisen on any particular trade.

339. The Tribunal therefore decided that, on the facts, it could not conclude that the claimant had been subject to a detriment because of PD6. The burden of proof did not shift to the respondents to show that Mr Firth's action was not because of the claimant's protected disclosure.

340. In any event, the Tribunal concluded that Mr Firth's actions did not amount to a detriment. Mr Firth had resolved an issue by reassuring all board members; he smoothed ruffled feathers and prevented the board members from having ongoing concerns. A reasonable employee in the claimant's circumstances would consider that they had been protected by Mr Firth's reassurances, not that they had been jeopardised.

Detriment 7 C was removed from his role before the compliance review referred to at PD7 was completed. No disciplinary process was ever commenced

341. The claimant complains that his removal on 1 April 2021 meant that he was removed before the compliance review, requested under PD 7, was completed.

342. The claimant accepted in oral evidence that Mr Varkey played no part in the decision to dismiss him. Mr Varkey's report was not written up until 10 May 2021, more than a month after the claimant's departure. There was no evidential link between a report not published until 10 May 2021 and the claimant's termination. The burden of proof did not shift to the respondents to show that the circumstances of the report were not caused by the claimant's protected disclosures.

343. In any event, the Tribunal did not find that the claimant's removal before the report would be a detriment separate to dismissal and the natural consequences of dismissal. A dismissal inherently involves the employee being removed from all involvement in the workplace, including ongoing processes.

344. **Detriment 8 Faraz Haider objected to C attending an internal audit meeting to confirm the final report reviewing the Treasury function. The INEDs were critical of both the Head of Internal Audit and C for elevating the issue to them.**

345. This allegation appeared to relate to two detriments. First, that Mr Haider objected to the claimant attending an internal audit meeting to confirm the final report reviewing the Treasury function. Secondly, INEDs criticising both the claimant and Mr Gregory (Head of Internal Audit) for elevating the issue to them. The claimant explained in oral evidence that he relies on PD8 for this detriment. That is, him when he told Mr Husain.

346. The first part of the detriment could not have resulted from PD8, as it post-dated the detriment. Mr Haider objected to Risk attending the audit meeting by way of an email at 20:00 on 18 February 21 p503/Supp1, 44. PD 8 concerned a telephone conversation the claimant held with Mr Husain at around 13:00 on 23.02.21 pdf408.

347. Regarding the allegation that the INEDs criticised the claimant and Mr Gregory for elevating the issue to them, the Tribunal found that it was not a detriment to the claimant for an INED to criticise Mr Gregory. In addition, the claimant's witness statement did not contain evidence of an INED criticising him for raising the issue and there was no document in the bundle showing INEDs criticising the claimant for elevating the matter to them. The claimant highlighted an email from Richard Wilton outlining a conversation he had had with Mr Gregory, which included assurances that the claimant would play a limited role in the audit meeting p393 - "he will not allow MD to raise any matters which are outside of the scope of the Audit and will close MD down if he attempts to do so."

348. The Tribunal did not find that limiting the Claimant's role to the scope of the audit, which was the item to be discussed in that meeting, was a detriment. Keeping

discussions in meetings relevant to the subject of the meeting is effective and efficient management. No reasonable employee would consider themselves disadvantaged by efficient management.

349. **Detriment 10 Following the raising of concerns about the Roshan Digital Account (as per PD10-14), C was removed from all meetings – Executive Committee; Credit Committee; meetings with external legal advisors, Treasury and Operations – and was dismissed before the issues could be resolved**.

350. There is no dispute that the claimant did not attend meetings from 19 March 2022 onwards. The Tribunal did not have evidence of any particular meeting from which the claimant had been excluded before that date.

351. The claimant was told that he would be dismissed on 19 March and was put on gardening leave shortly afterwards. Not attending meetings after being given notice of dismissal is an unexceptional incident of dismissal. There was no evidence that the claimant was removed from meetings in an unusual or peremptory way. The Tribunal found that this was not a separate detriment.

352. **Detriment 12 In response to C's production of the reports referred to in PD18, Brian Firth stated he was unable to complete reading the first draft and *'would rather slit his wrists'***

353. The Tribunal accepted Mr Firth's evidence that he was talking about the wordy content of the report and not about the claimant's disclosures in the report. This was not a detriment on the grounds that the Claimant had done a protected act.

354. **Detriment 13C was advised by email from the bank without any warning that they wished to terminate his employment, with the email enclosing one document which stated 'As we discussed at our meeting today we have concerns that you are not the best fit for the role of CRO at UBL. We have agreed to see if we can explore a mutually satisfactory resolution but we do reserve the right to continue those discussions in due course if we cannot resolve matters satisfactorily in the short term'.**

355. **Detriment 14 C contacted the Head of HR, Theresa Eplett, who confirmed the email and attachments were genuine and that the bank wished to dismiss C**

356. **Detriment 15 a meeting on 23.03.21, Mr Firth apologised for the email, which he said had been sent to C in error, told C that the Board were unanimous in agreeing he should be dismissed, and told C he would be placed on *'gardening leave'*.**

357. **Detriment 16 received a letter terminating his employment with immediate effect, with no process before dismissal and with no offer of a right of appeal.**

358. The respondents did all these things.

359. The claimant contended that the manner of the claimant's dismissal was harsh and perfunctory. He contended that the provision of the script, the confirmation of

its accuracy and the confirmation in the subsequent meeting and letter were all done with a total lack of regard for the seniority of the claimant and his contribution to the business over the last 18 months.

360. The Tribunal did not agree with the claimant's characterisation of these acts. The email and script confirming his dismissal were sent to him by mistake. Human error is not a detriment to the claimant. Ms Eplett was honest with the claimant about the veracity of the documents. Honesty with an employee is not detrimental treatment either, albeit that the news of the dismissal itself would have been distressing. The reasons the respondents gave for his dismissal were not disrespectful. The claimant did not have employment rights and the respondents were therefore entitled to dismiss him without following a fair process. To do so was not a detriment in addition to the dismissal itself.

361. The Tribunal found that these alleged detriments were, in reality, incidents of the dismissal. They were not separate from the fact of his dismissal. Tribunal did not find that Respondent deliberately humiliated the claimant when dismissing him because he had made protected disclosures.

Conclusion

362. Accordingly, the Tribunal concluded that the respondents subjected the claimant to the detriment of dismissal because of his protected disclosures. The first respondent automatically unfairly dismissed the claimant because he had made protected disclosures. It was 40% likely that the first respondent would have dismissed the claimant lawfully in any event. However, the respondents did not subject the claimant to any other detriments on the grounds that he had made protected disclosures.

363. A remedy hearing will take place on 17 March 2023 for 1 day. The parties should agree directions for preparation for that remedy hearing.

Employment Judge Brown

8 December 2022
Corrected judgment dated:
5 January 2023

Sent to the parties on:

10 January 2023