EMPLOYMENT TRIBUNALS

Claimant: **Mr L Ramachandran**

Respondent: **Bechtel Ltd**

Heard at: Bury St Edmunds
(CVP and then in person)

On: 7 – 14 November 2022
17 – 24 April 2023
In Chambers: 25 – 28 April 2023
& 24, 25 & 30 August 2023

Before: Employment Judge Laidler
Members Mr B McSweeney
Ms S Williams

Appearances

For the claimant: Mr A Korn, Counsel

For the respondent: Ms A Mayhew KC

RESERVED JUDGMENT

1. Tamils are an ethnolinguistic group that fall within the term “ethnic origins” within the meaning of section 9(1) (c) of the Equality Act 2010.(‘EA’)

2. The claimant’s Shudra caste does not come within the meaning of ‘ethnic origins’ in the EA.

3. The claimant was not, in any event, treated less favourably because of his race or caste contrary to section 13 EA (including for the avoidance of doubt his dismissal)

4. The claimant was not subjected to a detriment because he had done a protected act contrary to section 27 EA.

5. The claimant did not make protected disclosures within the meaning of section 43B Employment Rights Act 1996 ('ERA').

6. The claimant was not, in any event, subject to a detriment on the ground that he had made a protected disclosure contrary to section 47B ERA.

7. The reason for the claimant's dismissal was redundancy, a potentially fair reason for dismissal within the meaning of section 98(2) ERA.

8. The claimant's dismissal was not automatically unfair contrary to section 103A ERA as the reason or if more than one the principal reason for the dismissal was not that he had made a protected disclosure.

9. The claimant's dismissal on the grounds of redundancy was unfair contrary to section 98(4) ERA.

10. An in person remedy hearing will be listed at which the tribunal will hear further submissions on the applicability of any Polkey reduction.

11. There was no breach of contract, and that claim is dismissed.

12. There was a continuing course of conduct and all claims brought were in time.

REASONS

1. The procedural history of this matter was set out in a Case Management Summary sent to the parties after the original hearing was adjourned part heard in November 2022. The matter was relisted and did resume on 17 to 24 April 2023 with the tribunal sitting in chambers between the 25 and 27 April 2023 with another day listed for the 7 July. The parties were advised in a letter from the Regional Employment Judge dated 10 July 2023 that Judge Laidler had sustained an injury and was currently unable to work, the 7 July discussion having been cancelled. That has regrettably caused the delay in forwarding this reserved judgment and reasons to the parties.

2. As was intimated when this case adjourned in November the respondent did pursue its Rule 50 application in a letter of 19 December 2022. Whilst it would have been the tribunal's preference that that application be determined prior to the adjourned full merits hearing it did not prove possible to do so taking into account the availability of the tribunal and the parties and their representatives. When the hearing resumed 17 April was a reading date for the tribunal and then the rule 50 application was heard at the start of 18 April 2023.

Decision on Rule 50 application

3. As was recorded in the case management summary sent to the parties on 4 January 2023 after the previous hearing in November 2022 Ms Mayhew raised at the very end of that hearing that the respondent was planning to renew its Rule

50 application it having been refused by E J Bedeau at hearing on the 3 October 2022. The tribunal expressed its concern as to whether it could deal with it but it was left that the application would be submitted – if so advised – and then the tribunal would determine how to deal with it.

4. It was not possible to list another hearing to determine how the application could be dealt with before this resumed hearing. By letter of 9 February 2023 the tribunal indicated to the parties that it still needed to be decided whether this tribunal could hear the application.

5. Written skeleton arguments were filed in relation to the application which had been made again by letter of the 19 December 2022. It was disappointing that the respondent's did not deal with the issue of whether this tribunal could deal with the application. The tribunal raised with the parties the decision in Serco Ltd v Wells UKEAT/0330/15 and adjourned to give the parties time to consider it. As a result, the respondent sent through copies of the following two EAT cases:

> Liverpool Heart and Chest Hosp NHS Foundatin Trust v Poullis EA - 2021 – 000439
> Ijegede v Signature Senior Lifestyle Operations Ltd EA – 2020 – 000047

It being argued that they refine the principles set out in Serco.

6. This tribunal is of the view however that the principles set out in Serco still remain those to be applied. That decision makes it clear, as do many others, that there must be certainty and finality in litigation. At paragraph 43 it stated that:

> before a Judge can interfere with an earlier order made by a Judge of equivalent jurisdiction there must be either a material change of circumstances or a material omission or misstatement or some other substantial reason,

7. The respondent argues that the provision now of the comparators witness evidence is that change of circumstances or some other substantial reason. This tribunal does not accept that.

8. The respondent chose to make the original application without the involvement of the comparators and any witness evidence from them. That was the primary reason why E J Bedeau refused their application. It is not open to the respondent to then obtain that witness evidence and seek to argue before this tribunal that that amounts to a material change of circumstances or some other substantial reason to justify it setting aside the decision of another tribunal.

9. The witness evidence of the three comparators makes it clear that they were not aware of the application until after it had been made when the judgment was drawn to their attention in various different ways. Ms Mayhew stated that it was a 'fine line' for the respondent to draw in dealing with the interests of third parties. That may be the case but the respondent in receipt of legal advice chose to make its original application without evidence from those on whose behalf the application was made. A decision was given on that application, and it is not for this tribunal to now hear the application afresh just because the respondent has

sought to and has obtained the evidence that the previous judge found to be missing.

10. The Rule 50 application was refused.

11. The extent of the documentation in this case was set out in the Case Management Summary. Some further documents were added during the Hearing. References to page numbers are to the number in the PDF bundle. The bundle exceeded 3000 pages and the witness statement bundle 250 pages. The tribunal read the witness statements and went to pages in the bundle witnesses referred to and to pages it was taken to in cross examination. The tribunal has only made findings on those matters that it needed to determine the issues and has not found it appropriate to refer to every document and piece of evidence it was taken to.

12. In addition, the tribunal heard evidence from:

The claimant (with a supplementary witness statement)
Santosh Dass on his behalf.

For the respondent from:

Gillan Hondebrink
Irfan Mirza
Mark Ashwin
Matt Park
Paul Hayes
Paul Oatham
Rajesh Narayan Athiyarath
Sandi Arthur
Terry Tadlock.

13. The issues to be determined remained those as identified at the Case Management hearing before Employment Judge Daniels heard on 6 January 2022 and attached to his summary by way of a schedule. That appeared in the bundle for this hearing at page 140 through to page 148. It is again attached to these reasons as a schedule. The representatives agreed at the outset of this hearing that it remained the issues that this tribunal had to determine. It was possible however to obtain some further clarity on some of the points as follows.

14. At paragraph 21 of the respondent's opening skeleton argument, it confirmed acceptance that Tamils are an ethnolinguistic group that fall within the term "ethnic origins" as provided by section 9 (1) (c) of the Equality Act 2010. The respondent also accepted that in principle cast may be covered by the statute but is putting the claimant to proof as to whether it is so covered.

15. It was noted that at paragraph 7 of the claimant's skeleton argument that the claimant "reserves his position as to whether caste discrimination can also amount to religious discrimination." Counsel was asked to confirm at the outset

of the hearing what the position was and it was confirmed that the claimant was not pursuing a claim of religious discrimination.

16. With regard to protected acts for the victimisation claim as set out at paragraph 59 of its Grounds of Resistance the respondent only accepts the 1st and 3rd as being protected acts within the meaning of the legislation

17. Although it was seen in an up-to-date schedule of loss that the claimant was relying on furlough as a detriment it was confirmed that such was not in the list of issues and was not being pursued.

The facts

From the evidence the tribunal finds the following facts.

18. The business activities of the respondent in the UK are split into three different business lines, Energy, previously known as Oil, Gas and Chemicals ('OG&C'), Infrastructure ('Infra') and Nuclear, Security and the Environment ('NS&E'). Paul Oatham, Regional Manager of HR – Europe, explained that the HR and employee relations function operates outside of those business lines and services all three areas in the UK. In addition, there is a separate ethics and compliance function ('Ethics') again servicing all three business lines.

19. Most of the respondent's work is project based across the world. An example can be taken from Paul Hayes witness statement who currently resides in Thailand on assignment but has in the past been based in Milan, Seoul and Abu Dhabi.

20. The claimant is a chartered electrical engineer. He commenced employment with the respondent on 20 February 2012 at salary grade 27 as Engineering Group Supervisor (EGS) based at their London Oil, Gas and Chemicals business divisions engineering office. The claimant's letter of offer appeared at page 2991 which with the enclosed Employee Handbook represented his contract of employment.

21. The claimant describes himself as of native and aboriginal Tamil race, ethnic and national origin originating from Tamil Nadu State South India and belonging to a "lower caste Hindu" in the Indian strata of Caste System. He stated that this is based on social division based on birth. His ancestors would have been earning from working as artisans and workers recognised as "Shudra" community in the religious platform. The claimant produced two documents one called "Community Certificate" stating that the claimant belonged to the Hindu Kammalar community which it stated was recognised as a backward class. The other document was headed "Other Backward Class Certificate" and again certified that the claimant from a village in the Tamil Nadu State belonged to the Hindu Kammalar backward class. (Pages 3074 and 5).

22. The claimant explained in evidence that Tamils are a distinct race/ethnicity by virtue of its unique characteristics namely being one of the oldest races, ethnicities, and civilisations in the world. The respondent has accepted that Tamils are an ethnic linguistic group that fall within the term "ethnic origins" as provided by section 9 (1)(c) of the Equality Act 2010.

23. The claimant further gave evidence with regard to caste and that Hindu religious writings classified the Hindu believers population into four major divisions Brahmin, Kshatriya, Vaishya and Shudra communities.

24. It is the claimant's case that high caste Hindus use a few methods to identify whether other fellow Hindus are high caste or low caste when they are unable to identify it from surnames. One example he gives in paragraph 9 of his witness statement is of casually asking during lunch or dinner or at a gathering "oh, you take non-vegetarian foods? I thought you are pure vegetarian". The second method the claimant gives as an example is touching a fellow Hindu's left back shoulder in a friendly manner and subtly rubbing it to verify whether he wears a white cross thread or not. He states that 'High caste Hindus have a ritual custom of wearing a white thread that they call a "sacred thread" from their left shoulder to the right crossing the chest thereafter up to the hip'). The third example the claimant gives is a straightforward asking "I think you are a Brahman; are you?"

25. As set out in the list of issues the claimant relies upon Rajesh, Bala, and Jaldhi, as his comparators, all High caste Hindus – Brahmin community.

26. In relation to race, ethnicity and national origin the claimant compares himself to Rajesh, non-Tamil race, ethnic origin from Mumbai, India, Chandra, non-Tamil, ethnic origin from Karnataka State, India and Jaldhi non-Tamil, from Gujarat State, India

27. The tribunal was taken to page 2993 which was the respondent's equal opportunity statement completed in relation to the claimant and the only box ticked on it was Indian. From that document the tribunal does not accept the assertion made by the claimant in paragraph 2 of his witness statement that his "mother tongue/race/ethnicity and religion details were noted in the respondent's internal system records". It was put to the claimant that the respondent would not have known that Tamil was his mother tongue from that document, but the claimant's evidence was that the comparators would have known. Rajesh accepted in cross examination that he knew the claimant was Tamil. The tribunal did not hear from the other comparators, so it does not know what they knew. Rajesh was clear however that he did not know the claimant's caste or how to identify it.

28. The claimant called Ms Santosh Dass, Chair of the Anti Caste Discrimination Alliance to give evidence. She explained the concept of caste and how it differs from class. She also explained how caste discrimination and 'Untouchability' can be extreme and gave examples.

29. Ms Dass referred to the Government Equalities Office research findings number 2010/8 "Caste Discrimination and Harassment in Great Britain". (Page 3125).

This research was commissioned to help inform the government whether to exercise the power under the Equality Act 2010 for caste to be treated as an aspect of race. The study was carried out in 2010. In the report's opening summary it stated as follows:

> "The term "caste" is used to identify a number of different concepts, notably, *varna* (a Hindu religious caste system), *jati* (an occupational caste system) and *biraderi* (often referred to as a clan system). The examples of caste discrimination identified related to the jati.

30. The study itself carried out by Hilary Metcalfe and Heather Rolfe of the National Institute of Economic and Social Research (page 3130) used as its starting point the definition of caste given in the Explanatory Notes to the Equality Act.
Mr Korn in his closing submissions relied on this section as a definition of 'caste discrimination' but it is noted that it is actually an attempt at a definition of caste itself not discriminatory conduct. The report discussed the concept of caste at section 3. It noted that caste had been described as 'more of a 'clan' system, where people draw support from each other as if in a club…' Caste can 'be part of one's identity' whilst respondents stated that 'culture differs with caste'.

31. At section 3.4 the report gave examples of caste indicators, the main ones including occupation prior to migration or that of a recent forefather in India, village in India from which the family came, last name (although noting this can be misleading), religion and temple of worship. Some respondents however explained that identification through village and last name was only possible for those from the same area.

32. After an offer of employment was made to the claimant there was email correspondence between the claimant and Barry Nicholls in connection with the offer. On 23 December 2011 the claimant stated he had decided to accept the basic pay of £72,000 and that he had been "convinced by Irfan on annual bonus (10%) and Provident fund, other benefits". Mr Nicholls replied on 24 December that "Bechtel employee bonus scheme is a reward for performance-based scheme and amounts paid are not guaranteed". The claimant accepted in cross examination that if the company was not performing well the bonus could of course go down. There was no contractual entitlement to 10% or any bonus.

Respondent's structure

33. Within the respondent there are two levels of supervisor. The 'functional supervisor (sometimes referred to as 'functional manager) and the direct 'line manager' (or 'supervisor). Much of the respondent's work is project based with teams made up of people from various different departments. The leaders of the relevant project team act as a supervisor and manage the people working on a particular project. Each discipline, including the electrical engineering discipline in which the claimant worked had its own head referred to as the 'Chief'. Rajesh, as Chief Electrical Engineer in London from April 2014 had functional responsibility for all the employees within the electrical discipline.

That included the conducting of performance management reviews up to early 2018. As set out by Rajesh at paragraph 5 of his witness statement up to that date that involved collecting the feedback on individual employees within his discipline, facilitating the completion of performance reviews and using this to conduct a peer review within the discipline, calibrate performance rating and make bonus recommendations.

34. In mid 2014 Matt Park was assigned to the BP West Nile Delta project (BP WND) as Project Engineering Manager. The claimant joined that project as an Electrical Engineering Group Supervisor ('EGS') in June 2014 and Matt Park became his supervisor which continued until mid 2018. As the claimant's supervisor Matt Park was involved in his performance assessment for 2015, 2016 & 2017.

35. Between December 2013 and August 2018 Paul Hayes was Manager of Engineering for the London office. In that role he led the engineering function and sat above the various department heads, the Chiefs, in London. Rajesh at that time was the Chief of the discipline in which the claimant worked and reported to Mr Hayes. Mr Hayes himself reported to Mark Ashwin who at the time was London General Manager of Oil, Gas and Chemicals ('OG&C').

36. In July 2018 the claimant moved from BP WND to the Hail & Ghasha project and Bala took over as his Supervisor from that time.

37. Paul Hayes was succeeded in his role in August 2018 by Nitin Kumar who Rajesh then reported to.

38. In June 2019 Rajesh moved onto the Reliance Project as a manager and held that position until April 2020. The claimant was assigned to that project and Rajesh was the claimant's supervisor and direct line manager.

39. Various changes took place in 2018. The functional management roles generally moved over to the Houston team with Terry Tadlock (Global Chief Electrical Engineer) taking over as the claimant's functional manager in place of Rajesh. Rajesh remained as Chief Electrical Engineer but no longer carried out functional management responsibilities.

Performance assessment prior to 2018.

40. Prior to 2018 the performance assessment operated in two parts, goals set by the employee against which they were assessed and a forced ranking calibration process.

41. Goals would be set by the employee at the beginning of the year and the annual assessment would be against those goals. The employee would be given a rating by their supervisor to indicate how they had achieved against each of those goals and an overall 'Goals Summary' rating given. That was split into categories, significantly exceeds expectations, exceeds expectations, meets expectations, meets most expectations and below expectations.

42. The employee would be advised of their Goals Summary rating by their supervisor. It was not subject to any calibration process and there was no link between it and bonus and salary decisions.

43. As a separate process there was a 'forced ranking' calibration process. Chief Electrical Engineers would give their employees a grade to reflect their contribution ('Overall Contribution' rating) within the categories of exceptional contribution; valued contribution 3; valued contribution 2; valued contribution 1 and the lowest under contribution. This would then go to senior management, for example Manager of Engineering, who would calibrate the rating to rank the employee alongside their peer group. This would be the same grade, in the same function and/or same area of the business. This would be done in accordance with HR guidelines to determine the bell curves for each rating i.e., the percentage of employees required to fall within each of these ratings. The outcome of this process had a direct effect on the bonus allocation and salary of the employee. Although the Overall Contribution rating would not usually be disclosed to employees, only the Goals Summary rating would usually be disclosed. The tribunal accepts the evidence of Paul Oatham (paragraph 14) that the reason the tribunal saw in the bundle copies of the performance assessments for Bala and Rajesh showing the Overall Contribution Rating is because those were the versions held by HR whereas the copies of the claimant's performance assessments for 2015, 2016 and 2017 are his copies and therefore do not record an Overall Contribution rating.

44. Employees in each group were assessed on their overall performance and contribution levels regardless of grade to meet the company's distribution profile across the following five ratings from highest to lowest level of contribution. At page 212 of the bundle was a document headed "rating relative to peers" dated 10 October 2016. This set out how the ratings should be distributed between the 5 available ratings in the following way: –

exceptional contribution	9.6% (12 employees but 13 to be added)
Valued contribution 3	31.2% (39 employees but 14 to be removed)
Valued contribution 2	38.4% (48 employees but 11 to be removed)
Valued contribution 1 (lowest) and	7.2% (9 employees but 16 to be added)
Under contributing	0.8% (1 employee but 12 to be added)

45. Feedback would be collected from the direct supervisors (Matt Park in the claimant's case) and immediate line managers by the Chief of each discipline. Based on this the Chiefs would make their initial contribution assessments, and these would be delivered to Mr Hayes. The chief of the relevant discipline, in the claimant's case Rajesh, would collate the feedback and using the calibration distribution guidelines award a rating known as their "overall contribution" based on performance feedback. It is that rating that the higher managers considered when making salary and bonus decisions and recommendations for promotion not the goal summary rating in the performance assessment form. Rajesh gave the claimant valued contribution, which is consistent with his recommendation for promotion.

46. Mr Hayes reviewed the ratings provided to him by Rajesh, made his final determination by looking at all employees across all disciplines in London to ensure the ratings were consistent. Once complete he would send this to the project managers, the London Office Manager (Vi Patel who was later succeeded by Mark Ashwin), the Global Chief Electrical Engineer (Terry Tadlock), the Corporate Manager of Engineering (Vikas Joshi) and the Manager of Functions in Houston (Priyana Ratnatunga)

47. Mr Hayes wished to have leave to amend paragraph 12 of his witness statement. He had referred to page 212 but on reviewing his statement had realised that that was not the correct version of the document as it did not show the claimant's ranking. The page he should have referred to was 3342 – 3348. This demonstrated that the claimant was ranked 27 of the 36 within the "valued contribution 2" category. Whilst the claimant's goal summary for his 2016 performance review was 'exceeds' this did not equate to an 'exceptional' rating under the calibration process. The tribunal agreed that Mr Hayes should have leave to amend his statement to correct the error as the claimant's representative would have the opportunity to cross examine him on it.

48. The document at page 3342 was dated 21 October 2016. It had a different calibration split as follows: –

Under contributing	10% (12 employees)
Valued contribution 1	(20% – 24 employees)
Valued contribution 2	30% (36 employees) the claimant was ranked 27 and Chandra 26
Valued contribution 3	20% (24 employees)
Exceptional 20%	(24 employees)

Post 2018

49. The performance assessment system changed in 2018. The assessment outcome became one rating rather than two (the Organisational Impact Rating instead of the Goals Summary Rating and the Overall Contribution Rating) with the final rating (the Organisational Impact Rating) communicated to employees during the performance assessment process which was arrived at following a calibration process.

50. There was consequently a move away from reviewing the goals set by employees at the beginning of the year and instead supervisors and employees would agree on priorities and then meet throughout the year to discuss the employee's progress against those priorities. Towards the end of the year the supervisor would then determine an overall assessment of performance. That initial performance rating is known as the "Supervisor Assessment Criteria Calculation" (SACC). That is based on the individual's attainment of certain specific goals and whether they attained a goal always, most of the time, some of the time or never. It is the employee who firstly completes a self-assessment of these goals and then the supervisor completes their assessment against the same goals. It is then an algorithm that produces an overall SACC score out of 3.

51. Using the SACC, the supervisor would select a "preliminary impact rating" of limited impact, meaningful impact or exceptional impact. This rating would be sent then to the calibration process coordinated by, at that time, Terry Tadlock. Employees are placed in peer groups and a forced distribution used to arrive at a final Organisational Impact Rating (OIR). The claimant's assessment for 2018 (page 2955) explained at the end of the document as follows:

> "The organisational impact rating is an assessment of an individual's overall impact during the year on the team, project and organisation relative to others in similar roles. Initially entered below by supervisors, ratings for respective team members from multiple supervisors are aggregated, compared to peers, and adjusted or "calibrated" by functional managers for overall consistency and fairness and to achieve an organisation distribution of the 20/70/10: 20% being exceptional impact, 70% meaningful, and 10% limited. The impact rating is one of the factors considered in bonus and salary award planning…"

52. There was also a change in the terminology. The meaningful contribution rating was subdivided into high, medium and low to determine bonus allocation.

53. As also explained on the claimant's 2018 assessment (page 2952) the other considerations when assigning the organisational impact rating included the employee's performance and development throughout the year, feedback from others, breadth and depth of skills and competence, contribution and the complexity of the role, level of teamwork/leadership and influence, flexibility, mobility and discretionary efforts and exhibiting 'visions, values and covenants' (VV&C behaviour)

54. The tribunal is satisfied that the employee's supervisor did not have the final say on the OIR as that is subject to the calibration process. It also accepts that it is difficult to make a comparison between pre-2018 assessments and those carried out after that date under the new system. For example, as explained by Mr

Oatham at paragraph 19 of his witness statement, before the changes it was possible for many employees to obtain a goals summary rating of exceeds expectations. That is not however comparable to an overall rating of exceptional impact after 2018 because of the calibration process. It is no longer possible for as many employees to receive the highest rating as only 20% in each peer group may achieve that. Instead, the majority (70%) from then on obtain a rating of meaningful impact.

Issue 1.3.1 the non-promotion of the claimant from grade 27 to grade 28 (Chief engineer) in 2016 and 2017 by Rajesh – alleged to be less favourable treatment because of the claimant's race, ethnic or national origin.

55. In the list of issues, the claimant relied on the Bala and Rajesh, as his actual comparators and/or on a hypothetical comparator. He relies on Bala in relation to his caste discrimination claim and Rajesh in relation to his caste discrimination and race discrimination claim (on the basis that he is non-Tamil). It was confirmed at this hearing that he only now relies upon Bala and in that respect only for his caste discrimination complaint. The comparator for the race discrimination complaint must therefore be hypothetical.

56. The respondent's witnesses were all consistent in explaining that moving from a grade 27 to a grade 28 engineering supervisor was a significant promotion. It was not something that was achieved just on length of service.

57. At page 158 of the bundle the tribunal saw the job description for Engineering Supervisor. For grade 27 the employee would be responsible for the activities on a "medium-sized project", would provide supervision and technical direction to subordinates, communicate complex technical issues and recommend solutions to higher management and the role required a broad knowledge of industry and regulatory standards.

58. For grade 28 however the job description made it clear that the candidate would be responsible for the activities on "extremely large complex projects". They would need to openly communicate with conviction and confidence in all technical and business matters throughout the company, review significant bid summaries and it required an extensive knowledge of industry and regulatory codes and standards. Paul Hayes gave evidence which the tribunal accepts that a grade 28 position typically required someone with 20 years plus experience whereas the grade 27 position he would have expected someone with 15+ years experience.

59. The tribunal saw an email of the 10 October 2016 from Paul Hayes to the chiefs in London by which he started the calibration process.

60. The claimant relies upon a document seen at page 239 of the bundle headed "All Proposed Promotions October 2016." This notes Rajesh as putting forward the claimant for promotion from grade 27 to 28 as he had "led his team while on the BP project and met all major milestones. He has led by personal example".

61. In the same document Jaldhi, who had been one of the claimant's comparators, was also put forward for promotion from grade 26 to 27 stating "excellent effort on BP project. Has worked very hard in the deputy EGS role to help his EGS meet the major milestone dates". EGS is Engineering Group Supervisor.

62. Paul Hayes (Manager of Engineering in London December 2013 – August 2018) gave evidence, and the tribunal accepts that he was aware of the claimant's performance because the claimant was a senior member of the Electrical Engineering Team on the BP West Nile Delta ("BP WND") project which was the major project in London during his tenure. He was also involved in various discussions with the claimant regarding his promotion from a grade 27 to a grade 28.

63. Mr Hayes gave evidence at paragraph 15 of his witness statement as to the process for promotion. The claimant accepted in cross examination that he was aware of this process. He accepted the proposition that was put to him that although Rajesh could recommend someone he could not force the managers above him to accept that recommendation. The first step in the process would be the Chief, in the claimant's case Rajesh, proposing an employee for promotion. Mr Hayes would then assess the recommendations and if he agreed would present the candidate to the project managers, the London office manager, the global Chief Electrical engineer, the corporate manager of engineering and the manager of functions. At each of those stages it was Mr Hayes role to present the candidate to senior management.

64. It was Mr Hayes evidence at paragraph 17 of his witness statement that an employee calibrated as "valued contribution 2" which was the claimant's position in 2016 and 2017 (page 264) would not present well for promotion especially when considering the broad grade 25 to 27 grouping. He would typically be looking for candidates who were graded as valued contribution 3 or exceptional for the move to grade 28. Length of service was not a determinative factor. This was put to the claimant in cross examination, but he did not really answer the question merely stating it could be with good grading.

65. Although the recommendation for promotion document put forward by Rajesh referred to the claimant leading the BP project well Mr Hayes had concerns from his own discussions with the claimant. He was concerned with the claimant's relationship with the client. He did not consider the claimant suitable for a recommendation for promotion because looking at his calibration ratings (which had not yet been completed) he was looking like a 'valued contribution 2" in 2018. Mr Hayes never put the claimant forward to his senior leaders as a candidate to be considered for promotion as he did not consider him suitable. That decision was taken by him and not Rajesh. Rajesh did not have the ultimate responsibility for that decision.

66. Leave was sought before Rajesh's evidence was heard to admit a new document. Rajesh had heard the evidence of Paul Hayes as a result of which the respondent carried out a further email search and found an email from Paul Hayes to the Chiefs of 10 October 2016 at 15:16 in which he asked that they

consider certain documents in the calibration process. One of these was to review the 'List View' for their respective discipline and adjust, as appropriate, (in red font). Rajesh gave evidence that attached and returned to Paul Hayes was his List on which he had (in red as instructed) put the claimant back at Valued Contribution 3, which was consistent with his recommendation for promotion.

67. The tribunal accepts that the claimant's contribution rating was subsequently changed in the calibration process to a 2 but not by Rajesh or by his influence but by those above him in the process, as evidenced by paragraphs 11 & 12 of Paul Hayes witness statement.

68. It is the claimant's case that Rajesh told him he would withdraw this recommendation. The claimant relies upon an email sent to him by Rajesh copied into Paul Hayes and Matt Park dated the 22 November 2016 (page 225). This email was part of a chain which started with an email from the claimant dated 17 November 2016. The claimant was the London electrical group lead and Sudhir Jayant was based in New Delhi. The claimant's initial email was about drawings that were pending for sign off and after a few emails the distribution list appeared to be extended. In the email of the 22 November Sudhir expressed concern that the claimant had been suggesting to various management that his electrical team was not concerned about quality. He also expressed concern that at various meetings the claimant was not "giving due diligence to our ideas, suggestions and constraints". It was to this chain of emails that Rajesh was replying to both the claimant and Sudhir. He stated he was "quite disappointed with the kind of email exchanges between the London and New Delhi electrical groups". He felt the tone and language pointed to a complete breakdown of trust between the two groups and if it was not addressed it would impact the schedule and quality of work. He requested both to stop exchanging those kinds of emails. He stated that they needed to reset the relationship between the two groups so they can work as one team. He stated he would be visiting New Delhi with the claimant, and they could discuss all issues during his visit.

69. In cross examination the claimant said it was before this visit to India that Rajesh threatened to withdraw his recommendation for promotion. He even suggested that Rajesh "made up this situation" referring to the emails. That was not an allegation put to Rajesh. What was put to him was that he blew it up out of all proportion which he denied. The tribunal accepts his evidence that he could see a breakdown in the relationship between the two offices if such correspondence continued. It was not usual for one to be blaming the other and Rajesh was concerned it was affecting the work on the project. The tribunal accepts that and finds it was a situation a supervisor was entitled to be concerned about. The tribunal is also satisfied that Rajesh did discuss this situation with the claimant and tried to support him. It was very important for people to maintain the morale of the team and have good relations. Rajesh raised this with Paul Oatham and got his approval to fly out to Delhi and meet the team and for the claimant to be involved in one of those trips.

70. The claimant in his witness statement at paragraph 27 alleged that Rajesh started to "exaggerate any sort of a normal project email communications" as if they were a big issue and gave the example of an email dialogue between Mr Jayant and Ms Vaidya. The exchange was seen at pages 217 - 219 of the bundle. The claimant accuses Rajesh of "acting in concert" with Ms Vaidya and Mr Jayant to stop his grade rise and career progression. What can be seen however is that the correspondence was started by Jaldhi and initially did not even involve Rajesh. Rajesh was then copied in. After an email from the claimant Ms Vaidya suggested to Rajesh that the claimant "has decided not to cooperate with NDEU team. Such emails are very disturbing and demotivating for the team". The tribunal is satisfied that was a genuine exchange with other members of staff raising concerns and certainly does not provide any evidence that those individuals were acting in concert with Rajesh to in some way curtail the claimant's career progression.

71. The claimant was taken to his 2015 Performance Review conducted by Matt Park (page 2889). Whilst he found the claimant to be hard-working and strong in technical terms he did not feel that organisationally the claimant was quite so strong especially when it came to planning and delivery. He commented that the claimant "is technically strong" but that he should flag any potential issues well in advance. He noted an area for development was with the claimant's relationship with the New Delhi team. The good productive relationship between London and New Delhi was crucial for the success of the project.

72. The 2015 Performance Review for Bala, the claimant's named comparator, was seen at page 2872. His Goals Summary Rating was 'exceeds expectations' (p2887). The claimant acknowledged in cross examination that Bala did receive a promotion in the first quarter of 2016 but he had been put forward for that promotion in 2015 (see email at p184 dated 12 March 2015). Bala was not therefore in competition with the claimant for the period October 2016. The respondent therefore asserts that he cannot be an appropriate comparator for that period when the claimant was put forward for promotion and the tribunal agrees that must be right.

73. Jaldhi was also not promoted and was also given a final modifier of valued contribution 2.

74. The claimant's overall Goals Summary Rating for 2015 was meets expectations and this was signed off 6 January 2016

75. In 2016 a process of obtaining upward feedback from juniors was introduced. A summary form was seen in relation to the claimant at page 194 having been initiated on 10 May 2016. This identified: –

> When people approach the claimant he sometimes interrupts them rather than listening fully. This means he does not hear the full message.
>
> The claimant can communicate in an emotional manner on the open floor which can damage relationships with individuals.

> When reviewing documents, the claimant takes a long time. He comments on non-critical items too close to the deadline or adds new comments that were missed in earlier reviews. This causes delays and excessive pressure unnecessarily.

The claimant's overall rating was "red" marked against the following behaviours which were to be continued:

1. The fortnightly team meetings are interactive and conducive to open discussion and information flow.
2. [the claimant] supports his team and stands up for us when he feels we are unfairly treated.
3. [the claimant] has strong technical knowledge which he uses to solve problems on the project.

.

76. The claimant did not accept the feedback and denied in cross examination it was from collective feedback. (email p3327). The tribunal is satisfied that it was gained by collective feedback which is how that process worked. When there had been a red rating it is expected that the employee agrees a development plan to address it. The claimant was initially reluctant to do so but by June had agreed a development plan dated 15 June 2016 (page 3330). Despite this Rajesh still put him forward for promotion in October 2016 as he felt that the claimant's otherwise good work should not be overshadowed by the poor feedback but did not put him forward in 2017. On the re-run of the Upward Feedback assessment within 3 months the claimant scored a 'yellow' and a 'green' and then in April 2017 all were green.

77. In the 2016 appraisal (p2928), signed off on the 3 January 2017 the claimant received an overall Goals Summary Rating of 'exceeds expectations.' However, Matt Park did note some areas that the claimant still needed to focus on including the relationship with the New Delhi team, his planning skills and the need to be on top of the workload and quantities. He further explained in evidence that although it was not at that time his decision he would not have put the claimant forward for promotion. He did not consider that the claimant had demonstrated the necessary skills and competencies to suggest he was ready to carry out the responsibilities that would go with a grade 28 role.

78. The tribunal was taken to a spreadsheet showing the claimant with a valued contribution 2 (page 251). Like a lot of the respondent's documents this had no date on it although Matt Park stated it was 11 October 2017. (Paragraph 16 his witness statement). It would seem likely it was a 2017 document as it has reference to the previous ranking of 2016. Matt Park explained that he had suggested a valued contribution 3 but on calibration that was adjusted to 2. It is at that stage that the claimant would be assessed against his peers leading to a lower rating. That would, as before then be reviewed by senior managers and it remained as 2.

79. On 27 May 2016 the claimant received a 'recognition' award from Matt Park for his leadership on a particular issue. Matt Park explained that such awards are to recognise people throughout the year and he would expect all leads on projects to receive at least one a year. It was not just the claimant who

received one as he would also recommend others for specific work. The tribunal accepts it was not inconsistent with his ratings.

80. Rajesh did not put the claimant forward for promotion in 2017. Although he received an 'exceeds expectations' rating in his performance review goals summary Rajesh gave him a 'valued contribution 2' rating relative to his peers. He did not feel that he warranted promotion and had concerns about the claimant's leadership abilities and his attitude to feedback. He also had concerns about the relationship with the New Delhi team. With the benefit of hindsight, he felt that he had been too hasty in putting the claimant forward for promotion in 2016. However, the tribunal accepts the evidence of Paul Hayes (paragraphs 18 & 19 of his witness statement) that he would have still considered the claimant for promotion in 2017 as it was their practice to consider those who had been put forward the previous year and been unsuccessful to explore whether their performance merited consideration for promotion once again. He did not consider the claimant to be appropriate for promotion in 2017 either.

81. The claimant states that he had career discussions at around the same time (3rd quarter of 2016) with Rajesh and then with Paul Hayes. (Paragraph 25 witness statement). He asserts that Mr Hayes said he had received some good feedback from both Mr Park and Mr Patel and advised the claimant to take up the Chief Electrical Engineer role in the future before moving to an Area Engineering Manager role which the claimant told him was his ultimate target role for the medium term. He asserts Mr Hayes positively asked him to work closely with Rajesh to prepare for the Chief Electrical Engineer role in due course.

82. The claimant went on in his evidence at paragraph 26 to state that a few days later when he was speaking to Rajesh he challenged him as to why he had spoken to Paul Hayes and asked for the Chief Engineer role. The claimant says he explained that he discussed his career progression and had not asked for any role but expressed his interest to move to an Area Engineering Manager role in the future. From hearing Paul Hayes evidence, the tribunal is satisfied they had a brief discussion about career paths in general terms but certainly no promise of any promotion but that there were more formal discussions with the claimant in 2018 which will be covered below.

83. In cross examination the claimant was adamant that Mr Hayes albeit a higher grade was influenced by Rajesh who was discriminating against the claimant. Paul Hayes he asserted was not acting in his own capacity but under pressure from Rajesh. The claimant said he only met Mr Hayes once and he listened to Rajesh and not him. The claimant's case is that he was influenced by his race and/or caste. The Tribunal accepts Mr Hayes evidence that he had no knowledge of the claimant's caste or that of his named comparators or whereabouts he or they originated from in India. He stated this in paragraph 37 of his witness statement and was not challenged on that in cross examination. The tribunal is satisfied that his decisions and that of senior management were their own and not influenced by Rajesh in any or any discriminatory way.

84. In relation to Bala who attained grade 28 the claimant accepted that his ethnic origin is Tamil and his mother tongue is Tamil. He compares himself however to Bala due to caste. The claimant was adamant that Bala's performance was not good. He had been his supervisor in 2015. He asserted that he came to hear about Bala's promotion very late and it had been kept secret. The tribunal has seen no evidence to support the allegation that caste had anything to do with the assessment of his performance. Bala cannot be an appropriate comparator as he was presented for promotion in March 2015 (page 184). He was not in competition with the claimant at that time whose complaints relate to 2016 and 2017.

85. The tribunal accepts the evidence of Rajesh (paragraph 33) that it was not unusual for someone not to be promoted from grade 27 to 28. Chandra, another grade 27, remains at that grade. Some employees remain at that grade for the rest of their time with the respondent. Further, Jaldhi who Rajesh recommended for promotion form grade 26 to 27 in 2016 only achieved promotion in 2022.

86. The claimant was taken to a report dated 12 July 2019 by Mr Kumar (p617) who investigated concerns raised by the claimant. He noted that these were raised in July 2018 and that the claimant had complained about not having been promoted for the last 7 years. He wanted to become an APE or Chief Engineer and get promotion to grade 28. The reason cited by the claimant for this non promotion was Rajesh. Mr Kumar noted he had spoken to various individuals and had a follow-up meeting on 18 August with the claimant. His summary was that the claimant needed to improve on his communication (listening) skills and also try to understand his strengths. He also noted that he had started to discuss the claimant with Irfan Mirza so that he was up to speed. Although the tribunal did not hear from Mr Kumar it did hear from Mr Mirza. He gave evidence and the tribunal accepts that he had frequent discussions with the claimant but that the claimant did not wish to pursue any form of formal complaint at that time.

Issue 1.3.2 *(a) The claimant's 2018 performance assessment in which the claimant was given an overall rating of "meaningful impact-low" with a score of 2.39/3.00 including the part Rajesh played in that assessment*

(b) following the decision to upgrade the claimant score back up to 2.61/3.00 not increasing the claimant's 2018 bonus to the appropriate amount for a "meaningful impact high" grading

(c) the claimant's 2018 bonus award remaining at £4500 (which was paid to the claimant in 2019). The claimant relies on a hypothetical non-Tamil comparator and/or actual comparator of Chandra and on a hypothetical non-low caste comparator and/or actual comparator of Bala.

87. It was confirmed that the claimant relies only on Chandra as his comparator.

88. The changes to the assessment process from 2018 have already been set out above. The tribunal does not accept the claimant's argument that they were changes in name only.

89. An Overview and Guidelines of the Annual Incentives Program 2018 was seen at p2784 of the bundle. Some key provisions were:

> 1.1 General
> …These annual incentive plans are discretionary. A payment made in one year does not guarantee participation in subsequent years.
>
> 3 Program Guidelines
>
> … Calibration – calibrated ratings will be used in conjunction with bonus planning for graded employees
>
> Award Planning
>
> Rating modifier for Meaningful (2) Rated employees – in order to differentiate this group and determine awards for compensation planning, this population may be broken out by High (~30%), Med (~40%) and Low (~30%) levels of contribution relative to peers within this rating category. This additional breakdown is used in the planning tool only and is not communicated to employees. There is no requirement to meet the indicated percentages: they are provided as guidelines to assist with meeting the budget allocation.

90. Terry Tadlock was responsible as functional manager for reviewing all the organisational impact ratings applied to the London electrical engineering discipline and he then calibrated them to ensure that they fit within the distribution bell curve of 20% exceptional, 70% meaningful and 10% limited impact. He then applied a rating modifier as set out above. His ratings were then reviewed by multiple levels of management.

91. The claimant's Performance Assessment for 2018 starts at page 2948 of the bundle and was conducted by Bala. The Organisational Impact was rated as Meaningful and that produced at SACC of 2.39/3.0.

92. As the claimant had been working under Matt Park on BP West Nile Delta up to May 2018 Matt Park's feedback was required for that period. He gave evidence which the tribunal accepts that he had numerous requests for feedback at this time and gave his verbally to Rajesh who communicated it to Bala in an email of the 18 January 2019 (p306). He described the claimant as having had meaningful impact on the project but that there were areas where he could improve in the future as follows:

> 'Lack of good communication and engagement with team members particularly during periods of high work pressure led to poor morale within the team.
>
> Some of the work pressure could have been alleviated by proper planning'

He should consider:

'Improve communication and engagement with team members (both London and Delhi offices) as well as with Client engineers.
Improve planning, try and visualise in advance obstacles that may affect schedule and act. Seek supervisor/chief's help early to avoid slippage of schedule'.

93. Those areas for improvement were put into the Performance Assessment as written by Rajesh in the email. (p2951)

94. Matt Park was interviewed by Paul Oatham as part of his Grievance Investigation on 16 August 2019. Paul Oatham recorded that:

'…he had not provided Laksh's input when requested to do so because of the demands of so many others. Rajesh had come to see him, and they agreed he would provide the input verbally and that Rajesh would pass it on to Bala. He did this but did not copy Matt on the email. Matt also said that he did not think the feedback he provided would have been a surprise to Rajesh as Rajesh had been heavily involved in the BP WND project.

I asked Matt about the substance of the feedback and whether it was accurately conveyed. He said he thought it was consistent with the feedback that he had discussed with Rajesh although the wording that he recalled being used in the email was harsher than the wording he would have used himself.

Matt went on to say that the feedback in the performance assessment was consistent with feedback that he had given to Laksh during his time on BP WND. He also commented that he was aware that discussions with Laksh about his concerns with advancement have been going on for some time and that Laksh tended to take some things from those discussions but not others.'

95. Mr Park confirmed this in evidence and the tribunal accepts that. It was clear that his approach when giving feedback was to focus on the positive and to ensure he gave constructive criticism where needed. That did not detract from his evidence that what Rajesh recorded and what went into the appraisal form was correct.

96. Also in his interview with Paul Oatham Matt Park explained that he did not consider the claimant 'the best person to close out BP WND' which was coming to an end in May 2018 and that he decided that the claimant was needed more on Hail and Ghasha. The claimant relies on an email sent to him dated the 22 May 2020 from Matthew Hobbs of BP addressed 'to whom it may concern'. This read like a reference and spoke highly of the claimant showing 'excellent electrical knowledge during his time on the WND project' and that he would 'highly benefit any team in the area of oil and gas or similar electrical infrastructure projects'. The tribunal accepts Matt Park's evidence that he saw this document in the bundle as a reference request made by the claimant.

97. Paul Hayes recalled two discussions with the claimant in 2018 and not 2016 as referred to above (paragraph 24 of his witness statement.) It was at this time that the claimant started regularly coming to speak to him outside normal working hours to tell him about the work he was doing and to express that he was looking forward to the salary review and promotion. Mr Hayes states that he explained the promotion process to the claimant. The claimant continued to visit him to have these types of conversation and after the third or fourth time

Mr Hayes told the claimant that coming and speaking to him directly about his promotion was not the best approach. He should not be lobbying his functional supervisor's boss as it may in the end disadvantage him and undermine his relationship with his chief. Mr Hayes suggested to Rajesh that they have a joint discussion with the claimant to discuss the promotion process and his career.

98. This joint meeting took place on 16 March 2018 (page 255). Mr Hayes states he explained how the promotion process worked to make sure the claimant understood it and how management evaluated candidates for promotion. The tribunal is satisfied that it was explained to the claimant that there was feedback from his current project BP WND which was not satisfactory particularly in how he treated people in his team, talked about certain issues in the open and his dealings with the client. In re-examination the claimant was asked what Rajesh had said to him about his removal from BP WND and the claimant's reply was 'need to go and work under Bala and that client not happy with you and go and support Bala'.

99. Further Mr Hayes explained he had received feedback from the client that the claimant talked and did not listen. Client relationships are very important at the claimant's level. Ultimately the relationship with the client had broken down to such an extent that the project manager, Mr Patel, wanted the claimant removed. That fact was not discussed with the claimant at the meeting but the tribunal is satisfied that what was emphasised was the importance of client relationships and that there had been some negative feedback about the claimant's performance.

100. Mr Hayes held a follow up meeting on the 20 March 2018 (page 256) with Rajesh and the claimant. Mr Hayes did not consider that the claimant took on board the feedback. Neither did the claimant raise any complaint that he believed he was not promoted due to his race or caste.

101. The claimant complained to Nitin Kumar (the Manager of Engineering at the time) about his performance review. The tribunal did not hear from Mr Kumar. From the evidence in the bundle however the feedback on BP WND was changed to state 'Laks supervisor on BPWND did not provide feedback that was requested through the MyImpact portal'. It recorded that the claimant had a 'meaningful impact on the project'. The claimant's Organisational Impact remained at Meaningful but his SACC moved to 2.61/3.0.

102. Rajesh's evidence was that he was not involved in that decision and only saw the revised appraisal as part of the bundle for this Hearing. He did not agree with the approach as BP WND constituted 5 months of the claimant's performance for 2018 and he considered that the comments on it should have been included.

103. Terry Tadlock also did not agree with that approach. He considered it very unprecedented that an employee would influence the assessment performance so much to get it changed. Had he been consulted he would have been against it.

104. Following a reminder from Terry Tadlock of the 26 March 2019 (page 349) that the 2018 Performance Assessments needed to be signed off and returned to supervisors the claimant replied that he was unable to do so. He stated that the BP WND feedback had been received by email from Rajesh and was 'very subjective and completely contradicts with my 2017 performance assessment.' He confirmed he had already raised this with London Engineering Manager and HR and understood the feedback was to be removed.

105. Terry Tadlock had already completed his calibration and the claimant had been rated meaningful – low (page 338). This was, as made clear in the policy, a ranking against the claimant's peers. The ranking had been passed through Senior Vice President, Principal Vice Presidents and project manager for final approval and signed off. The changes made to the claimant's Performance Assessment did not change Terry Tadlock's assessment of the claimant's calibrated Overall Impact Rating which is not based solely on the SACC. As explained in cross examination the impact relative to peers is the critical factor. London had merged with Houston and the relative to peers was to all grade 27 peers. Others had a higher organisational impact than the claimant in 2018.

106. The claimant asserts that he should have gone to meaningful high, the same as Chandra. Mr Tadlock explained and the tribunal accepts his evidence at paragraph 17 how Chandra's impact on BP WND came with positive feedback from others justifying his 'meaningful high' modifier. It reflected his Performance Assessment for 2018 (page 2953) in which Matt Park had given him a 'meaningful' for Organisational Impact and the SACC was 2.67/3.0. Chandra had led a team as EGS and had demonstrated teamwork and leadership in a complex role.

107. The change to the claimant's SACC did not affect the amount of bonus awarded to him as the process was concluded by 15 March 2019 and the SACC is only a partial contributor to an employee's overall OIR which is the relevant factor for the bonus. The bonus pool was also lower in 2018 compared to 2017 so all received a lower award.

108. A spreadsheet at p3338 showed the recommended range for the bonus payment. On that document the claimant was still being shown as 'unrated' as the rating modifier had yet to be applied to him. For someone rated as 2.1 ('meaningful low) the recommended range was 4.5 – 5.4% of salary. Another spreadsheet (p338) showed the amount paid to the claimant of £4500 which was 5.4% of salary i.e. at the highest end of the range. By the time of that document the claimant had been rated as meaningful low by Terry Tadlock and Rajesh was not involved in that process.

109. The spreadsheet at p3338 also shows that had the claimant been graded 'meaningful high' the range of bonus payment would have been 7 – 8% of salary and not 7 – 10% as argued by the claimant. As Chandra had been graded meaningful high he received a bonus of £6000 calculated at 7.2% of his salary.

Claimant's grievance 25 July 2019 – First protected act (p699) and protected disclosure. (issue 2.1.1 & 3.1.1)

110. By email of the 25 July 2019 the claimant raised a grievance concerning his 'unfair 2018 performance assessment and purposely curtailing my career growth'. He took issue with the initial rating of 2.39/3.0 and the 'negative comments.' He stated there had been a lack of input by Matt Park, his former line manager and that amendments had been made to the document 'without proper consultation with me' which only increased the rating to 2.61/3.0 'which is designed to keep me low'. He stated that the procedure was being used to block his potential career growth. Four annexes were attached. The claimant set out his reasons for the alleged unfair treatment being that there were 'unpleasant undercurrents at play'. Namely that he was a native Tamil and had worked his way up from a disadvantaged background. Rajesh and Bala were from Northern India and the claimant claimed there was a long history of poor treatment and dismissive attitude towards native Tamil people particularly from Indians from the northern end of the country. He also suggested that his low caste compared to their higher castes was another relevant factor. The claimant stated that 'I do not know if my ethnic origin is some or all of the driving force behind this blocking of my progression' but he felt he had to raise it and wanted it investigated.

111. The respondent accepts that this grievance was a protected act within the meaning of section 27 EA 2010 and the tribunal is satisfied that must be correct in view of the matters raised in it. The respondent does not accept that this grievance amounted to a protected disclosure within the meaning of section 43B ERA.

Issue 1.3.3 – Direct discrimination and victimisation (issue 2.2.1) – Rajesh's involvement in the conduct of the claimant's 2019 assessment whereby the claimant was given an overall rating of meaningful impact low and a score of 2.33/3.00.

112. The claimant no long relies on Bala but only Chandra as his comparator or a hypothetical comparator.

113. On the 17 July Irfan Mirza and Nitin Kumar had a conversation over instant messaging (page 698) about various matters including a suggestion of putting the claimant back on BP WND 'as the client personnel has changed and they have extended Chandra till June 2020 who would be better suited on Reliance'. It was only expressed as a proposal.

114. The claimant's performance appraisal for 2019 was conducted by Rajesh as the claimant was reporting to him. For the first half of the year, he reported to Bala and the claimant accepted it was right that he also fed into the assessment. This was requested by Rajesh on the 7 January 2020 and Bala replied on the same day (p1007). His feedback was put into the assessment form virtually verbatim. Bala gave examples of how the claimant had delivered and

demonstrated integrity in accordance with the respondent's covenants. In closing he stated that:

> 'I encourage Laks to contribute his supervisory experience in day to day planning of the work which will be of great assistance to the Lead. He should volunteer to do take (sic) more work and not restrict himself to the work give as RE [responsible engineer]. He should also develop skills of taking fast and practical decisions hen multiple tasks are laid in front of him'.

The claimant's evidence which the tribunal does not accept was that this would not have been said but for his caste. It was constructive feedback and the claimant has produced no evidence from which the tribunal could infer that it was related to the claimant's caste in anyway.

115. The claimant was also encouraged by Rajesh in the assessment to evaluate feedback offered by his previous supervisors and in the assessment form with an open mind as that would help him prepare for future roles. He was encouraged to seek feedback from his peers/juniors as again that would help him improve his skills and prepare him for future roles. The claimant was not prepared to accept in evidence that this was helpful.

116. The tribunal notes that in each category for assessment the claimant rated himself as 'always' achieving the goal and his supervisor 'most of the time'. His impact rating was assessed as meaningful and his Calculated Supervisor Rating 2.33/3.00. The claimant in evidence seemed to accept that the meaningful rating was 'right' but then appeared to go back on that by saying it was 'not reasonable given capabilities.'

117. The claimant's main issue however seemed to be the ultimate ranking of him by Terry Tadlock. In an email of the 23 January 2020, he confirmed that he intended to calibrate both the claimant and Chandra as meaningful and that within that category he would assess Chandra as having the higher relative impact than the claimant. Rajesh was asked to comment and replied that he agreed Chandra would rank higher than the claimant. If Jaldhi was in the mix at grade 27 his order would be Chandra, the claimant and Jaldhi. The claimant's evidence was then confusing. On the one hand he stated that Terry Tadlock was not discriminating against him but that it was Rajesh's assessment that was the 'tainted one'. Terry Tadlock had 'rubber stamped' what Rajesh said. The tribunal does not accept that as the case when there is clearly dialogue between Terry Tadlock and Rajesh. Further the claimant is positioned above Jaldhi who the claimant states is high class Brahmin and was one of his comparators.

118. Terry Tadlock's evidence was clear that in calibrating the claimant against his peers he had 10 employees in the pool of which he considered that seven had a higher overall impact than the claimant. He gave the example at paragraph 34 of his witness statement that one of those peers had been a deputy chief for half of the performance year and an EGS on a project. Chandra was an EGS on two projects. The tribunal cannot see that Mr Tadlock was really challenged on this paragraph when he concluded that others had a greater impact than the

claimant who 'performed roles as an individual contributor, rather than assisting on the overall management and planning of projects…'

119. Further Terry Tadlock sought input not just from Rajesh but from others including Darren Reed who he emailed on 24 January 2020 (p1037). He then emailed all the direct supervisors on the 11 February 2020 (p1060). When Rajesh returned the spreadsheet he had adjusted the claimant from 'meaningful – low' to 'meaningful – medium'. Even though he then had too many employees with that ranking Terry Tadlock decided to keep the claimant at meaningful – medium even though that meant that the rating modifiers did not comply with the distribution curve he was required to apply. At some point in the process though the claimant was moved back to 'meaningful – low'. Mr Tadlock stated it could have been Ramesh Balasubramanian, Energy GBU manager of Engineering or Darren Reed, Manager of Engineering (London) or someone else at senior management level. What he was clear about and was not challenged on was that it was not Rajesh and the reason for it was to comply with the distribution curve.

Issue 1.3.4 – direct discrimination and victimisation - the respondent awarding the claimant a reduced bonus of £3800 after the 2019 performance assessment.

120. The recommended range for grade 27 meaningful low rating was between 4.5 – 5.4% of annual salary (between £3,826 - £5,492). The claimant was awarded £3800 as amounts were rounded down.

121. Chandra rated 'meaningful – high' and therefore received a higher bonus than the claimant, the bonus range being 7.1 to 8.1% of annual salary. He received £6500. The claimant would not have received a bonus of between 7 – 10% of salary if he had been ranked as meaningful high as that was not the range.

2nd protected act and protected disclosure – 18 March 2020 (issue 2.1.2 & 3.1.2) – that the claimant informed Mark Ashwin he was proposing to raise a further grievance in relation to the 2019 performance assessment.

122. There is no dispute that the claimant and Mark Ashwin spoke on the 18 March 2020. The claimant had obtained an email from the Reliance client providing him with positive feedback (17 March 2020, p1139). Mark Ashwin expressed his concern that the claimant had obtained this. The claimant explained that as Rajesh was relying on supposed negative feedback he had felt the need to do so. The claimant raised his dissatisfaction with the 2019 performance appraisal. Although Mark Ashwin does not recall the claimant stating that this was further discrimination by Rajesh he did accept that the claimant said it was 'retaliation' for him raising a grievance the previous year. He also accepted that the claimant had said to him he wanted to raise a grievance about it and that he had said to him he could. The tribunal is satisfied having heard the evidence that the claimant did make it clear to Mark Ashwin that he considered the 2019 performance appraisal to have been 'retaliation' against him for raising his first

grievance and that he was going to raise another. There was therefore another protected act.

123. It is noted in Mr Korn's closing submissions that he states that both Rajesh and Mark Ashwin knew that the claimant was likely to raise a further grievance and that Mark Ashwin was told this by Rajesh in his meeting with him immediately after the performance review which took place on the 12/13 March 2020 and further meeting which was held subsequently including on 18 March 2020. It was not one of the issues that Rajesh also believed that the claimant would raise a grievance and where the tribunal has such an extensive list of issues it has concluded it must keep to those and it is not appropriate to add to them during the course of the final hearing and/or at submissions.

124. It was also part of the claimant's case and an alleged act of victimisation and whistleblowing detriment that Mark Ashwin became angry at this meeting. Having heard the evidence the tribunal is satisfied that Mark Ashwin did query with the claimant and was not happy that he had gone direct to a client for feedback but it does not find he became angry.

3rd protected act and protected disclosure – 19 March 2020 Grievance – (issue 2.1.3 & 3.1.3)

125. The claimant submitted his second grievance to Paul Oatham by email on the 19 March 2020 (p2206). He stated that the 2019 Performance Assessment had been unfair and 'purposely curtailing my career growth as a retaliation'. He specifically alleged that his low rating by Rajesh was retaliation for raising a grievance against him the previous year and that the company's performance assessment procedure had intentionally been used to block the claimant's potential career growth by way of "strong retaliation". The respondent accepts that it is a protected act and the tribunal finds that it was. The respondent does not accept that this grievance amounted to a protected disclosure within the meaning of section 43B ERA.

126. The claimant sent various attachments in support of his grievance. These included his 2019 performance assessment, his 2019 grievance and enclosures, his 2016 and 17 performance assessments and his 2017 annual incentive plan document. In a 6 page Annex he set out his complaints in more detail (page 1135). In this document the claimant talks about the unfair treatment he has received which he called a "well planned plot by Rajesh Narayan to curtail my entire career growth further within Bechtel" and he talks in numerous places about it being retaliation for the raising of his 2019 grievance. The claimant does not refer to his caste or race or suggest that they were the reasons for this treatment.

127. The claimant sent further information to Paul Oatham on 21 March (page 1179) which was forwarded to Terry Tadlock on the same day.

128. The grievance was addressed to Paul Oatham who asked Sandi Arthur to act as the investigating manager. She was an experienced member of the HR team. It was clearly not appropriate for Paul Oatham to investigate another grievance. The claimant also raised his concerns with the respondent's ethics team by email of 28 March 2020 (page 1259). Nancy Higgins of that department replied to the claimant on 1 April 2020 that issues relating to compensation and performance assessment were best addressed by employee relations through the UK grievance process. She assured the claimant that allegations of retaliation would be dealt with through the grievance process. Ethics and compliance would not be opening a parallel case and therefore it was not necessary for the claimant to copy her in on correspondence relating to the grievance. The claimant replied that the main issue was "ethical violations and retaliation" and that he had lost confidence in the HR grievance procedure. He was not in a position to trust anyone in the current situation and requested Nancy Higgins to "take up the case". It remained the position that the claimant's grievance was investigated by Sandi Arthur an employment relations expert.

129. Sandi Arthur met with the claimant on 26 March 2020 to discuss his grievance with him (page 2256). The claimant did not accept her minutes of that meeting and had struck through in particular a section in which she discussed with the claimant him obtaining direct feedback from the client. Sandi Arthur did not accept his amendments.

130. Having heard from the claimant with the details of his grievance Sandi Arthur had interviews with:

The claimant, 1 April 2020
Rajesh, 15 April 2020
Darren Reed, 16 April 2020
Terry Tadlock, 24 April 2020
Mark Ashwin, 22 April 2020 and
Irfan Mirza, 1 May 2020.

131. The tribunal accepts her evidence that she recused herself from any involvement in furlough or redundancy discussions with the claimant so as to 'maintain impartiality whilst I investigated his Grievance' (paragraph 42 of her witness statement). She also stated that she had no power to intervene in the redundancy process and to withdraw the claimant's 'at risk' and neither did she consider it appropriate to intervene in it.

132. A lot of the cross examination of Sandi Arthur did not seem relevant to the issues and the respondent's counsel felt the need to raise this on several occasions. It has not been alleged that her conduct of the investigation was an act of discrimination. The tribunal has therefore limited its findings to what she concluded and her process rather than an in depth analysis of each and every interview she conducted and further findings are set out below.

Issue 1.3.5 – direct discrimination, victimisation & protected disclosure detriment - by advising the claimant that he was being given 4 weeks notice of removal from the Reliance project on 20 March 2020.

133. The claimant relies only on Chandra as his actual comparator.

134. There was a dispute in the evidence between the claimant and Rajesh concerning the likely length of the Reliance project. The claimant asserted in evidence (para 121 and orally) that he was due to stay on the project until the end of June 2020. From the evidence heard the tribunal finds that was not the case.

135. Rajesh explained in evidence and to Sandi Arthur as part of her investigation (p 1623) that he had obtained approval from the client for all full time London team members on his task to work until the end of June 2020, to avoid him having to continually ask for approvals. That did not mean that any particular individual would be working on the project until the end of June. That would depend on the tasks he/she were performing, the work still to do and the available manhours. On the 10 March 2020 Rajesh had instructed that another member of the team be given notice that their last working day on the project would be 20 March 2020.

136. The tribunal saw an email chain starting on 12 March 2020 from Dogan Eralp to Rajesh and others sending a Manhour report for review and on 13 March to provide staffing plans in certain categories as described. Rajesh replied with his forecast till the end of June. Queries were raised and on the 23 March Rajesh replied that he had adjust RS hours, MR's and his own by a few more weeks. The Manpower Report showed that the claimant would complete his assigned tasks in the following few weeks and would not be required on the project after 17 April. As set out in his statement to Sandi Arthur there were others whose role was coming to an end at that time. The claimant stated in cross examination that he was permanent staff and not hired for a specific project but the tribunal is satisfied that all staff had to be assigned to a project which paid for them. The claimant did accept in evidence that the work was project driven. The respondent's Redundancy Procedure (p2776), Section D in describing the respondent also noted that as a 'project-based' company, changes to the workforce may often result from the actual or imminent completion of a particular project or projects and a dearth of new projects.' Contrary to the proposition put to Rajesh in cross examination the tribunal accepts that agency workers were not kept on.

137. Those whose hours were extended to the end of June 2020 had specific skills needed for the project including Chandra. In fact, however, the project was suspended, and they were required to 'de-mobilise' everyone from it in mid April 2020 save for Rajesh and Mark Ashwin. Rajesh continued to perform some work until June 2020 when he was placed on furlough.

138. In the list of issues, the claimant named Mark Ashwin as one of the discriminators. The tribunal accepts his evidence that he was not involved in informing the claimant that his role on Reliance was ending and neither did Mr Joshi.

139. The emails show that the discussions about Reliance and it coming to an end started before the submission of the claimant's second grievance. On 19 March 2020 at 9.58 am Rajesh notified Terry Tadlock, Darren Reed and Mark Ashwin that the claimant's assignment on Reliance would finish on 17 April and that he would inform him the next day and that they should 'consider this date for planning his next assignment.' He confirmed that he had told him on the 20 March.

140. Much was made of Terry Tadlock's response (p1148) that they should make plans for the claimant's redundancy notice. Terry Tadlock was clear in his evidence to this tribunal that he had "overstepped myself" when asking that plans be made for the claimant's redundancy notice. The tribunal accepts that the context of this comment was that they had already started closing offices in the US on 18 March due to COVID-19 and had started processes in Houston. He acknowledged that he was not familiar with UK law and processes and the tribunal accepts the respondent's evidence that they were not at that point making the claimant redundant.

141. Further the tribunal accepts Rajesh's evidence that at time of advising the claimant his role on Reliance was coming to an end he had not been made aware or seen the claimant's grievance. In fact he never did despite his interview with Sandi Arthur.

Issue 1.3.6 – Direct discrimination, victimisation and protected disclosure detriment - refusing claimant's application to return to BP WND

142. The claimant compares himself to Jaldhi. In the list of issues in relation to the victimisation claim the claimant names Mark Ashwin and Vikas S Joshi.

143. On 21 March 2020 the claimant email Darren Reed (then Manager of Engineering) stating that he understood from Chandra that there was a requirement for 'electrical discipline support to BP WND for around 4+ months'. The claimant accepted in cross examination that there was no specific application made by him. Darren Reed forwarded the email to Emma Harniman, Project Engineering Manager for BP WND, asking her if there was a role on the project for electrical and explaining that the claimant's end date on Reliance had been brought forward. She replied:

> 'We have 50% budget for Chandra, as the last electrical EGS. Could he not be partly freed up and Laksh stay on Reliance?

144. Darren did not think so as Chandra was needed 100% on Reliance until June but he would check with Rajesh.

145. In an email of 26 March 2020 (page 1223) Matt Park was putting forward both Jaldhi and the claimant for electrical work to Emma Harniman and Mark Woolaghan.

146. Matt Park gave evidence that Jaldhi transferred to BP WND in May 2020 as there was a piece of work suited to his skills set and the project specifically requested him. Jaldhi was still grade 26 and at the level required. They were not looking for a lead engineer. The Personnel Acquisition Approval Form dated 7 May 2020 was seen at page 2115 confirming Jaldhi starting 1 June – 31 December 2020. The 'originator' who signed was Emma Harniman and the approval by Mark Woolaghan.

147. The claimant explained in evidence that Mr Joshi was named in relation to this allegation because Rajesh was working with him to not keep him on. This was all done to get him out of the company. What the emails show however is that it was Emma Harniman who was in charge of this issue and it was nothing to do with Rajesh, Mark Ashwin or Mr Joshi.

1.3.7 - direct discrimination, victimisation and protected disclosure detriment - Rajesh and Mark Ashwin carrying out an allegedly unfair assessment of claimant in selection pool

148. In the list of issues the claimant compared himself to Bala, Chandra, Jaldhi and Rajesh. Mr Korn confirmed that it is the claimant's case that Rajesh, Chandra and Jaldhi should have been in the pool.

149. The respondent's redundancy policy (page 2776) dealt at Section E with 'Measures to avoid or Minimise Redundancy' and stated that:

> Workforce requirements in terms of numbers and skills are reviewed regularly. Where reductions have to be made the following measures should be considered before redundancies are affected:
>
> Imposing a freeze on recruitment, other than where this is essential
>
> Considering redeployment and/or retraining opportunities
>
> Revisiting the use of subcontract labour, and temporary and casual staff
>
> Reducing the amount of overtime working in the organisation, or units
>
> The implementation of short time working, job sharing et cetera where appropriate
>
> In considering the above measures, the company shall have regard to the profile of the workforce so as to ensure that the company has the right balance of staff in terms of numbers, skills and experience to meet its business objectives. This will require having due regard to the requirements of current and future projects on which the company is engaged.

150. Section G dealt with selection criteria and provided that:

> The first consideration shall be to identify an appropriate pool or pools (where relevant) from which selection will be made. This will involve an assessment of the functions/departments in which reductions are required, the number of redundant positions and the need to retain a balanced workforce.
>
> Once the pool of affected employees has been identified, selection for redundancy from that pool will be based upon a number of criteria.
>
> The following primary criteria will be considered and taken into account when making the selection for redundancy
>
> Performance
>
> Teamwork and leadership
>
> Skills – specialist and multiple skills
>
> Supervision
>
> Client requirements
>
> Where the application of primary criteria produces similar results, the following secondary criteria will be considered and may be taken into account:
>
> Development potential
>
> Absenteeism
>
> Disciplinary record
>
> Relevant educational qualifications
>
> Appropriate professional qualifications

151. Sections H and I dealt with collective and individual consultation, but both the claimant and his representative made it clear that their case in respect of redundancy was not with regard to consultation but the basis of selection and the pool in which the claimant was placed.

152. The claimant accepted in cross examination that there was a redundancy situation due to pandemic and consequential lack of projects. In his written closing submissions Mr Korn confirmed that but asserted that the claimant's case is that the real reason for his redundancy was his removal from the Reliance project in retaliation for raising his first grievance, threatening to raise a further grievance and the assessments given by Rajesh in 2019 and 2020 (paragraph 154)

153. In March 2020 as a result of the COVID - 19 pandemic as well as commodity price decreases and unavailability of finance for projects it was becoming clear to the respondent that lots of projects had been or were soon to be suspended by clients. The Reliance project was shutting down during April 2020. Matt Park was then on the PTTGC project and that gradually saw the client reduce the funding available and it was necessary to reduce the number of staff on that project in stages. It became clear they needed to take action to reduce the London workforce. Just before Matt Park took over from Darren Reed in early April 2020 the respondent launched a collective consultation in respect of the OG&C to start the redundancy process in London.

154. There were 162 employees in the London OG&C business unit at this time. To start with it was envisaged 65 redundancies would be made (p1262, Insolvency Service HR1 form) but this later increased in early May 2020 to 120 out of a total of 162 OG&C employees in London. (p1840 HR1 form.) The consultation period was then extended to 45 days with the agreement of the employee representatives. In fact, 49 employees were made redundant in London between June and September 2020. A further 12 employees on international oil and gas assignments were made redundant and 15 resigned between April and December 2020. Notifications were also being made to the Insolvency Service in relation to other areas of the business namely Corporate Functions and Services. (p1266) but the collective consultations carried out separately. The minutes of the first meeting were subsequently amended to record that the date of the 5 May 2020 on the HR1 form should have been noted as the date on which the first redundancy notice would be issued and not the at risk notification which could be earlier in the process.

155. As Manager of Engineering Matt Park was heavily involved with this redundancy process. He worked with the management team but also in view of the amount of work involved Gillan Hondebrink (Onshore Engineering Manager) to support him.

156. The Tribunal accepts that there was collective consultation with employee representatives (for example page 2006 5 May 2020) but as it is not one of the issues before this tribunal it does not propose to go into the factual details of the collective consultation in any more detail, save insofar as is necessary for the issues it has to determine. It is however necessary to record that the meetings started on the 6 April 2020 and were then to be held every Tuesday. That first meeting recorded very clearly how the global situation had proved to be very difficult for the business. The context was 'unprecedented'. Mark Ashwin was noted as saying that:

> 'MA reinforced that the impact of COVID-19 is being felt across all GBU's and global locations. Not one business line has been left unaffected. MA noted that from an OG&C perspective, while COVID-19 is at the forefront of everyone's mind, the impact has been exacerbated by the current oil price war between Russia and Saudi Arabia. This has caused not only a collapse in oil prices, but a significant loss of confidence for our customers and a subsequent decline in new project opportunities. The business line that started 2020 with ten potential projects for OG&C is no longer a reality. Workload has significantly decreased and our workload projections in future are notably stressed. Resizing the business is therefore a necessity**."**

157. At the second meeting that was held on the 9 April. Irfan Mirza confirmed that the respondent had a standard process rolled out annually across all business units. Generally carried out towards the end of the first quarter that is "geared towards identifying our talent and suitably ranking and rating our talent". He explained that functional managers will organise employees into core groups based on specific attributes such as skill requirements and job responsibilities. He went on:

> "rating managers will be nominated in order to carry out the initial process, which will eventually lead to an overall ranking score per peer group. Ultimately, the intent of this process is to ensure there is a fair selection of employees in the event there is a workforce reduction. The key thing here is that while this is an annual process, it is generally a management tool and this is not generally shared with the wider audience. We are now in a position where we would be facing workforce reductions, so now the relevant questions below would apply".

158. Irfan Mirza then went on to answer specific questions. He explained that once an individual was identified as at risk it was at that point that the pool they fall in would be discussed as would the number at risk within that pool. The functional group for OG&C being based in Houston rating managers had been identified across the functions in London and it was they who would complete the initial rating exercise. Project management team also based in London would have the opportunity to review and approve those. He was clear that management would know the capabilities of the employees. He stated that they had a programme running at that point to complete the rating and ranking exercise which should be concluded globally by the 17 April with the intention to assess that at the beginning of May and then communicate it.

159. A question was specifically raised as to whether the workforce ranking would be aligned with the annual performance reviews and Mr Mirza confirmed that it would "to an extent". What was being measured was performance both:

> "current and sustained, which has a significant weighting but in addition to that, we are actually assessing skills, leadership and teamwork. It should be aligned with what was communicated during an employee's annual review, but this does not take into account other criteria".

160. At a meeting on the 16 April Mark Ashwin stated that the OG&C picture had worsened over the weekend. Of the three projects in London two were now in danger. Reliance was suspended by the client due to COVID-19 restrictions and work finishes in the next two to three weeks. Whilst a project meeting in relation to PTTGC was not until the 20 April early indications were unfavourable. The high probability was that that project would now be going into "hibernation mode". He stated that "our landscape has drastically changed and we are currently trying to assess the situation and our plan moving forward".

161. Matt Park explained at paragraph 49 of his witness statement how he assessed the results from the 2020 Workforce Ranking (WFR) exercise and which roles

were considered the key or core roles that could not be released in order to determine who to place at risk of redundancy. The workforce Ranking had been carried out by Terry Tadlock and Darren Reed had been actively involved in reviewing this before Matt Park took over the role at the end of April 2020.

162. Terry Tadlock accepted that he was responsible for the Workforce Ranking but stated it was a separate process from the redundancy. The tribunal was taken to "Workforce Ranking – Ranking Manager Guide April 2018" (page 2739). In the introduction to this document, it was explained that the Workforce Ranking was developed in 2015 by HR as a tool for the respondent's organisations to organise their employees into groups with specific common attributes such as "skill requirements and job responsibilities and then rank the employees within each group". In the guidance for the rating manager was a section "rating and ranking activities" at 2.4 which provided: –

> Employees are rated on 10 items of performance, skills, teamwork/leadership and the value of their contributions (12 items for supervisors). The rating activity is organised by peer groups. The ranking managers sees a list of all the peer groups with their employees. After selecting a peer group, a list of their employees assigned to that peer group is displayed and the ratings can be entered. After all employees have been rated, the ranking function can be run to assign a rank and quartile placement to each employee".

163. Employees were scored for Workforce Ranking against specific criteria namely: –

Quality ethics and safety

Dependability and focus

Communications

Customer relations

Business awareness

Decision-making

Technical competence

Multiple skills

Teamwork

Flexibility initiative and innovation

Leadership and

Accountability

164. At page 2750 was seen rank rating and ranking information which contained guidelines on weighting. These it was confirmed are fixed ratings within the tool and Appendix 1 gave further guidance on how to rate the employees. Much of this document dealt with how to input the information into the system. The document did not however refer to workforce ranking been used as part of a redundancy exercise. Mr Tadlock accepted that although he considered that there was some overlap between WFR and the primary and secondary selection criteria set out in the redundancy policy.

165. As the Global Chief Electrical Engineer Terry Tadlock determined the specific peer groups designed to group employees by common attributes such as skill requirements and job responsibilities. For the 2019 and 2020 workforce ranking process HR sent him the previous years workforce ranking peer groups along with the current employee population. He then validated and updated the peer groups and assigned individuals to each. For 2019 and 2020 the London peer groups remained fixed and in electrical engineering were: –

Electrical supervising engineer (grades 27 and 28)

Electrical senior engineer (grades 25 to 26)

Electrical senior designer (grades 25 to 27) and

Electrical engineering (grades 22 to 24)

166. The workforce ranking process is an annual process which took place even when there was no redundancy situation. In cross-examination Mr Tadlock confirmed that in conducting the workforce ranking he would consider employees behaviour back at least 2 years if not further depending on their grade and responsibilities. He would complete his preliminary workforce ranking and take input from others including Rajesh as a “sense check”. It with his evidence that any input by Rajesh did not change his view of the ranking. By that time Rajesh was not the functional manager in London. He had transitioned to a role in Reliance.

167. In the spreadsheet seen at page 1217 Jaldhi had a weighted score of 144, Chandra 165, Bala 160 and the claimant 112. This put the claimant at number 3 in his peer group of 4 people. The lowest scored was 98. Mr Tadlock explained at paragraph 74 of his witness statement how he scored the claimant a 2 against certain factors such as his communication, customer relations, decision-making, leadership and accountability, based on his performance feedback and Mr Tadlock’s own knowledge of the concerns identified around his relationships with clients, for example BP WND, his communication with his team (the New Delhi issues) and his leadership skills and accountability. He had however scored the claimant a higher score of 3 against other criteria such as technical competence and multiple skills because he had always viewed him as technically competent. After carrying out his scoring Mr Tadlock accepts he had discussions with Rajesh and nothing changed following those. This

spreadsheet had approximately 100 people on it. The tribunal cannot accept that Mr Tadlock knew every one of those individually to enable him to apply the scores without reference to their managers.

168. The scores were then sent to HR for a final review. At page 1870 the scores show overall weighted scores have been converted into ranking scores which appear to be different from what Mr Tadlock had done. The claimant's ranking is then 60, Bala 67.83, Chandra 71.64 and 40 to the lowest employee in that group. This was because HR in Houston applied a secondary weighting process. The relative rankings however as reached by Mr Tadlock remained the same with the claimant ranked 3 out of 4 in his peer group. The tribunal did not hear evidence from the person who did this secondary weighting process nor what it was.

169. Terry Tadlock was not involved in the designation of core and non-core for the redundancy exercise. At paragraph 71 of his witness statement, he confirmed he was however involved in the discussions and agreed with the labelling applied.

170. The tribunal has not seen documentary evidence nor heard from the person responsible for the designation of core and non-core.

171. On 14 April 2020 Darren Reed sent a spreadsheet to Matt Park (p1303). The tribunal did not hear from Darren Reed but Matt Park's evidence was that this was a working document of Darren Reed covering all the engineering employees based in London. It did give a designation of core or non-core, impact ratings, notice pay, potential work end dates. It was Mr Park's understanding that it contained information taken from the 2020 workforce ranking dataset. This document was not however a working spreadsheet that Mr Park worked from. He used data shared in a different format usually from the HR team. This spreadsheet now ranked Rajesh at 1 of 4, Chandra at 2 of 4, Bala at 3 of 4 and the claimant at 4 of 4. With Jaldhi ranked 1 of 1. The tribunal has not seen or heard evidence of how those 'forced rankings' were arrived at. This is different to the rankings Terry Tadlock had and also the claimant was not in the same group of four that then had an unnamed person in it.

172. At page 1337 the tribunal saw an email from Darren Reed dated 16 April 2020 forwarding a further spreadsheet to Matt Park which did contain core and non-core designation against the employees.

173. Another list entitled 'OG&C Highly Valued FT or PT at Risk' was seen at page 1520 which appears to be from Mr Joshi. Matt Park was not familiar with this other than from the bundle. It looked to him that Mr Joshi had taken an extract of what he considered to be the core personnel. It does not have the claimant's name on it. Mr Park acknowledged in cross-examination that he was not aware of a document which set out the criteria to be applied in determining whether someone was core or non-core. He stated however that it had a definition of personnel who were essential to the business. In an email dated 22 April 2020 Mr Joshi described wishing to refer to the personnel as "highly valued people"

and that he was purposely avoiding the words “core team” for “confidentiality reasons”. It goes without saying that as Mr Joshi was not one of the witnesses before this tribunal it has not been able to clarify with him what he meant by this or how he graded employees as core or highly valued. Mr Tadlock was not copied into this email and document and stated in evidence he was not aware of it. He stated he did not read anything into this to say that Mr Joshi had picked who was core and non-core but he was sharing this information with his management teams.

174. Terry Tadlock gave further explanation of the designation of “core” as being applied to someone who in the worst-case scenario of the business having no work would be retained whilst they tried to win new work to get the business back to normal levels of activity and profitability. To be viewed as “non-core” meant they were not viewed as key to being retained in a worst-case scenario where the respondent had no work from clients. He stated that the designations depended on a review of the employee’s skill sets and whether they would be essential to helping the respondent win new work whilst maintaining a reasonable distribution across job grades so they could remain competitive in the market. It was he said independent of the workforce ranking exercise. The respondent’s OG&C London office being heavily focused on who were a key customer. Terry Tadlock therefore stated that who was viewed as core was determined by who would be key to winning new work from Reliance. Rajesh and Chandra were viewed as core because they had significant experience with Reliance and had demonstrated a track record of performing well with that client. Both of them had the capability to perform as an Electrical EGS, PEM and small scale project managers which flexibility would have been valuable for a core team dedicated to winning new work. That is why they were viewed as core. The management of the business unit set maximum numbers as to how many core individuals could be selected. Roughly 20 individuals in OG&C engineering plus more in non-engineering functions up to 40 to 55 individuals in total. Ultimately 49 OG&C were made redundant in London. This demonstrated that some non-core employees who achieved high scores under the workforce ranking relevant to their peers were still retained.

175. Terry Tadlock also stated that Jaldhi was also initially viewed as core because he had significant experience in project execution and had the most recent experience performing large-scale electrical calculations using a particular program. Ultimately that was changed however to non-core because electrical was overrepresented in the core team and that programming work could be performed in other offices or by Chandra. If the claimant had a greater ability to win new work from Reliance than Chandra as his peer at grade 27 he would have been designated as a member of the core team. Chandra however was the target lead for Reliance, they knew him and have had a positive experience with him and were keen to keep working with him.

176. The claimant and Bala together with various other employees in the London electrical team were designated as non-core. The overall number of core team members was intentionally small and intended to reflect a worst-case scenario of the minimum number they would need to retain to win work and build the business back up.

177. At paragraph 72 of his witness statement however Mr Tadlock stated that being labelled as core or non-core was not equivalent to being identified and placed at risk or selected for redundancy. An employee could have scored and ranked highly on the workforce ranking exercise but if they were not viewed as having essential skills to build back up the business they may not be deemed core. The core and non-core labels were not used as a factor in the categories Mr Tadlock considered when scoring employees in preparation for the London workforce ranking exercise nor were they labels used by HR in the workforce ranking data they exported preparation for the London redundancy process. However the business was still keen to retain core employees so Mr Tadlock stated "this may have been a factor considered when making final decisions on redundancies together with the relevant employees workforce ranking score and their fit and the availability of alternative positions for the employee – *although I was not involved in this process*" (paragraph 72 of his witness statement – emphasis added).

Issue 1.3.8 – direct discrimination – continuing to carry out a selection process and/or placing the claimant 'at risk' of redundancy when his second grievance was unresolved.

178. As already noted Matt Park was assisted by Gillan Hondebrink. He was involved in trying to find alternative employment for those at risk of redundancy. He explained in his witness statement how other areas of the business were also affected by a downturn in work and had launched their own collective redundancy exercise. It was therefore difficult to find any role in the other divisions for the oil and gas employees. What he made clear however in his witness statement (paragraph 14) was he was never involved in assessments of a candidate's suitability for a role. He was only processing the applications to the right teams.

179. On 20 April 2020 Gillan Hondebrink had a discussion with the claimant to advise him that he was being placed on furlough. The claimant was to be on furlough receiving full pay from 21 April to 12 May 2020. During the call the claimant objected to this decision because in his words it had been made in the middle of an ongoing HR matter. Gillan Hondebrink was not familiar with this and only later found out that the claimant was referring to his grievance. The claimant subsequently wrote to Sandi Arthur on 20 April (page 146), copied to Nancy Higgins in Ethics objecting to being placed on furlough and stating that this was "further retaliation". The claimant stated in this email: –

> "Despite the retaliation investigation proceedings, this is happening intentionally. Please note that I am registering my protest here. This incident further strongly reaffirms the retaliation claim I have reported in my grievance".

180. The claimant made it clear that he was asking for his name to read be removed from the redundancy list "which was hatched by my supervisor Rajesh".

181. Nancy Higgins again replied to the claimant stating that ethics and compliance would not be conducting a separate investigation. All the issues he had raised including his concerns now raised about furlough were appropriate for investigation as part of the UK grievance process.

182. The claimant wrote to Sandi Arthur on 29 April 2020 about the "continuously retaliation manoeuvres" happening against him. He stated that he had become aware of new personnel on the Reliance project for the past few weeks and stated again that there is a "strong nexus working against me" in London to remove him from the respondent and he now realised that that same nexus were trying to save someone else's job. He listed events from July 2019 to the at risk discussion as evidence of the retaliation.

183. By email of 7 May 2020 Paul Oatham answered some concerns the claimant had with regard to a particular paragraph in the letter about furlough and confirmed that if the claimant was given notice of redundancy following a period of furlough his acceptance of the letter would not compromise his ability to challenge his selection for redundancy (page 2043)

184. The one witness who stated that it had been considered whether the redundancy process should be suspended pending the outcome of the claimant's grievance was Paul Oatham. Irfan Mirza stated that he knew in late March 2019 that the claimant had raised a grievance but did not recall seeing it until these proceedings. Matt Park, who was dealing with the redundancy, stated in his witness statement that he 'was loosely aware' that the grievance was ongoing. He speculated that those handling it 'were probably of the view that these processes should be kept entirely independent and separate from the redundancy procedure'.

185. Sandi Arthur investigating the grievance did not have the power to suspend the redundancy process but there is no evidence she discussed this with anyone even though the claimant had stated he wanted the at risk status removed.

186. The claimant has not established facts from which the tribunal can conclude that those making those decisions were motivated in any way by the claimant's race or caste.

Issue 1.3.9 – direct discrimination, victimisation and protected disclosure detriment- advising the claimant he was at risk of redundancy on 27 April 2020

187. On 27 April Irfan Mirza wrote to Gillan and Matt Park with regard to an at risk discussion with the claimant. He suggested they have a call and that an invite be sent to the claimant in advance. What was sent to the claimant organised by Gillan Hondebrink was a Microsoft teams meeting invite with the subject being "short chat". Mr Hondebrink tried to explain in cross examination that phrase was used to avoid employees being put through days of 'unrest and concern' on receipt of the invite particularly as the country had just gone into lockdown. The tribunal does not find that an appropriate notice to an employee to attend a meeting at which they are to be told they are at risk of redundancy.

188. The claimant replied to this invite on the same day stating that "since the ethical issue and retaliation grievance proceedings are going on I can attend the meeting with you and Irfan only in the presence of the ethical and retaliation case investigation officer Sandi Arthur. Hence, please include Sandi in your chat invite". It was decided by the respondent that Sandi would not join the call.

189. At the 'at risk' meeting Gillan Hondebrink clearly had some guidance points in writing from HR as an aide memoir to discuss with the employee. (page 1713). This included the finding of suitable alternative employment. The form provided as follows: –

> "Finding suitable alternative employment
>
> Summarise the individual's preferences (location needs/mobility/right to work) and current situation and ask whether anything has changed. Remind the employee that if any of their preferences change to let you know.
>
> Redeployment
>
> Reassure the employee that the functional team will continue to look for suitable opportunities within their parameters
>
> Suitable alternative employment
>
> If a role is found which is at the same grade and for which the employee has the relevant skills and experience and could be regarded as suitable alternative role, then this role will be offered.
>
> In these circumstances, if the employee declines the offer they could potentially lose their right to a redundancy payment.
>
> Take this opportunity to the individuals respond to any of the above points and raise any issues that they may have in respect of being considered for redundancy.
>
> Internal vacancy list
>
> Please refer to the internal career transition pack with the employee.
>
> Employees can apply to any opportunity advertised on the internal vacancy list on talent works. Reiterate it is the employee's responsibility to: review the internal talent works vacancy list any suitable alternative roles, to apply for vacant role was advertised and to secure opposed.
>
> Employees should be advised to keep track of their own applications, feedback and outcomes."

190. In the notes at the end of this document which summarise the discussion with the claimant it was recorded that the chances of the Reliance project coming back in three weeks time was slim. The claimant noted his main concern was that if Reliance came in he wouldn't be selected for it and introduced his "retaliation case". It was noted that "this is not part of this discussion and it was requested that these two items not be interwoven". This ties in with Matt Park's evidence that he thought HR wanted to keep the grievance and redundancy separate.

191. The claimant was sent an ‘at risk’ letter (page 1705), the redundancy procedure and internal career transition guide (page 2818).

192. On 2 May 2020 claimant sent further information to Sandi Arthur making further allegations of violation of corporate ethics by Rajesh. Sandi Arthur took advice from a colleague in the ethics department who replied to her on 11 May 2020 that she would review it with the appropriate ethics and compliance officer and investigations.

193. Sandi Arthur invited the claimant to a meeting to discuss her grievance outcome findings before sharing the final report with him. By letter of 30 April 2020 the claimant replied that his ‘at risk’ notification must be withdrawn. Sandi Arthur explained that that could not happen and persuaded him to attend a meeting with her which he did on 4 May 2020.

194. The detailed report was seen at pages 1911 to 1931. No evidence had been found in support of the claimant’s claims that Rajesh had retaliated against the claimant or curtailed his career growth due to the grievance the claimant submitted in 2019. In particular Sandi Arthur had concluded it would not be possible for the claimant to return to the Reliance project as it had been suspended by the client. With regard to the claimant’s performance assessment in 2019 she concluded that it was consistent with the claimant’s previous reviews and did not constitute retaliation. His rating had been reviewed by various levels of senior management in accordance with the calibration process and she did not recommend a further review of his rating. Nor did she identify any evidence that the claimant’s preferred rating of an exceptional impact was fair given the feedback the claimant had received from various managers and not just Rajesh. Further the claimant’s at risk notification of redundancy would not be withdrawn, although she recommended a second at risk discussion to explain the meaning of this status and begin discussion regarding alternative assignments and options. Rajesh did not have authorisation or involvement in the at risk lists so Sandi Arthur did not consider that the claimant being placed at risk was an act of retaliation on the part of Rajesh.

195. The claimant appealed the outcome of his grievance on 7 May 2020. It was agreed that this would be referred to ethics and compliance in view of the concerns the claimant had expressed about the HR department. It was felt that the claimant might appreciate someone with an ethics background to deal with the appeal. This was passed to Berengere Parmly. The outcome of the appeal was delivered to the claimant on 16 June 2020 (pages 2468 - 2477). It was not upheld. The tribunal did not hear from the appeals officer.

196. By letter of 7 May 2020 the claimant was advised that they had completed the consultation process and had not been able to identify a new position for the claimant. So that his redundancy could be deferred it was confirmed the claimant had agreed to be placed on furlough under the UK government job retention scheme. This was to be effective 11 May 2020 to 30 June 2020. The letter specifically recorded that if the claimant had not been offered to resume his prior position or a suitable alternative position at the end of the furlough he

agreed that his employment would be terminated by reason of redundancy. It then went on to set out the payments that would be made. (Page 2040)

197. The claimant must have raised concerns with Paul Oatham on 7 May as he emailed the claimant providing further clarity about that letter. He confirmed that if at the end of the period of furlough the claimant was made redundant the letter he had been sent would not compromise his ability to challenge his selection for redundancy.

198. The tribunal was taken to examples of Gillan receiving lists of vacancies from other colleagues of his. (See page 1574) he explained in cross examination that he did not make assessment as to the claimant's or any employee's suitability for any roles. It was the project or the business line that would make that decision. They would do that without interview as there are processes enabling them to check an individual's CV on line. He was not part of that process.

199. On 1 May 2020 Gillan had sent several employees including the claimant a list containing potential positions in the Infrastructure and NS&E business units (page 1858). The email stated that the list included positions currently filled by other personnel where there was a possibility to "swap out" Bechtel staff based upon similar capabilities and subject to project (including client) approval. The recipients (which included the claimant) were asked to review the list and contact Gillan should they have any further queries or were interested in applying for a specific role. The process would be submission of a CV through himself to HR who would then liaise with the respective project teams for review. These positions were in addition to those shown in TalentWorks.

200. The tribunal saw the notes of an internal chat (page 1861) between the claimant and Gillan on 1 May when the claimant asked to know more about the electrical engineering position related to Crossrail. He referred specifically to the Handover Lead role. He was asked to send Gillan and Matt Park an email with queries or expressing an interest. The claimant did this (page 1948) asking for a job description for the Handover Lead position. Gillan explained he did not have one but that there was a requirement for the candidate to have good Network Rail assurance understanding and good experience and rail systems including experience when working in a Rail Project Close Out. He later suggested that the claimant ensure his CV demonstrated that experience and then to share a copy with him.

201. On 5 May 2020 (page 1947) the claimant emailed Gillan following a discussion the previous day stating that whilst his core experience was predominantly on Oil and Gas, Chemical fields for 20 years he had also worked for about 4 years plus on infrastructure projects. He had not worked so far on any Network Rail projects but he was confident that his CV would suit the two following positions in Crossrail – Engineering. He attached his latest CV for those two positions, Infrastructure Rolling Stock Interface Manager and Handover Lead. Mr Hondebrink explained in his witness statement and in oral evidence that he would then pass the claimant's CV to HR.

202. In an email exchange on 11 May 2020 (page 2030) Gillan explained to the claimant that position for Interface Manager had been placed on hold as there was a strong internal candidate. He confirmed however that the claimant's CV was submitted for the other role of Handover Lead that morning. The tribunal saw his email of 11 May submitting that application (page 2029). The claimant was not successful but Gillan gave evidence that no one he put forward was.

203. On 11 May 2020 Gillan sent all at risk a further list of potential opportunities in Infrastructure and NS&E. The claimant must have applied before for a role of MEP Delivery Manager as an email was seen from Gillan to him of 5 June 2020 stating that he had not been successful as the role had been filled by a rail experienced candidate from the Infrastructure group business unit. He encouraged the claimant to keep reviewing TalentWorks and that he would advise him should any additional "agency swap out positions" became available.

204. Bala had also applied for the same two roles and was not successful either.

205. Matt Park was also involved in trying to find alternative employment for those employees placed at risk. There were very few if any opportunities available in oil gas and chemicals at this time which would have been the most suitable positions for those in the engineering team. They therefore had to look for roles within other business units.

206. Matt Park heard from the claimant on 15 July 2020. (Page 2523 and 2507). The claimant specifically raised a "TSA job within ENPPI" however that opening was not suitable for a full-time electrical engineering position as it required very few job hours and so was not deemed appropriate for the claimant. Matt Park recalls that they were not successful in placing anyone from the engineering team in a role in the other business units during this period. Although Jaldhi was assigned to BP WND project in mid May 2020 this was a short term position. Infrastructure business unit was also going through a redundancy exercise and there were many infrastructure employees seeking out new roles who had more relevant experience than the candidates from the engineering team the claimant had been in. The NS&E roles required very specific nuclear experience which the oil and gas employees did not tend to have.

Issue 1.3.10 – direct discrimination, victimisation, automatically unfair dismissal for making a protected disclosure and ordinary unfair dismissal – making the claimant redundant.

207. Matt Park was responsible for determining which employees within engineering would be given notice of redundancy. It was becoming clear in early July 2020 that there had been no change in the situation i.e. no new work had come in and no alternative roles were available for the claimant. Matt Park worked with Mark Ashwin as the London office manager to discuss who would be given notice of redundancy. The HR team then assisted in putting together a final list. This was seen at pages 2508 and 2509. The claimant was listed as an individual who needed to be served with notice.

208. The claimant was given his notice at a meeting on 28 July 2020 by Matt Park. The letter which was subsequently sent was seen at pages 2561. The claimant was given the right of appeal but did not appeal the decision. The claimant was advised that as there was no work to be done he would be placed on garden leave. He objected asking to be released straightaway with pay in lieu of notice. He was asked to make the request in writing and Mark Ashwin confirmed his approval to release the claimant early and pay him in lieu of notice on 29 July 2020. (Page 2566). The claimant's employment terminated on 31 July 2020.

RELEVANT LAW

209. **Equality Act 2010**

Section 9 Race

(1) Race includes—

(a) colour;

(b) nationality;

(c) ethnic or national origins.

(2) In relation to the protected characteristic of race—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.

(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

Explanatory Note to the Equality Act 2010

Section 9: Race

47. This section defines the protected characteristic of race. For the purposes of the Act, "race" includes colour, nationality and ethnic or national origins.

48. The section explains that people who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group. A racial group can be made up of two or more different racial groups.

49. The section also enables a Minister of the Crown to amend the Act by order so as to add "caste" to the current definition of "race". When exercising this power, the Minister may amend the Act, for example by including exceptions for caste, or making particular provisions of the Act apply in relation to caste in some but not other circumstances. The term "caste" denotes a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed "untouchable") are known as Dalit.

Code of Practice on Employment (2011)

Ethnic origin

2.39 Everyone has an ethnic origin but the provisions of the Act only apply where a person belongs to an "ethnic group" as defined by the courts. This means that the person must belong to an ethnic group which regards itself and is regarded by others as a distinct and separate community because of certain characteristics. These characteristics usually distinguish the group from the surrounding community.

2.40 There are two essential characteristics which an ethnic group must have: a long shared history and a cultural tradition of its own. In addition, an ethnic group may have one or more of the following characteristics: a common language; a common literature; a common religion; a common geographical origin; or being a minority; or an oppressed group.

2.41 An ethnic group or national group could include members new to the group, for example, a person who marries into the group. It is also possible for a person to leave an ethnic group.

2.42 The courts have confirmed that the following are protected ethnic groups: Sikhs, Jews, Romany Gypsies, Irish Travellers, Scottish Gypsies, and Scottish Travellers.

S13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

S27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

123 Time limits

(1) Subject to section140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

210. Employment Rights Act 1996

43B Disclosures qualifying for protection.

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

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

(e) that the environment has been, is being or is likely to be damaged, or

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

47B Protected disclosures.

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

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

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

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

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

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

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

(2) This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K.

103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure

111 Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

211. **Employment Tribunals (Extension of Jurisdiction Order 1994**

Time within which proceedings may be brought

7. Subject to article 8B**,** an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or…

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

Relevant Case Law

212. **Caste**

In Mandla v Lee [1983] IRLR 209 the House of Lords held that the Court of Appeal had erred in concluding that Sikhs are not a 'group of persons defined by reference to … ethnic …origins' within what was section 3 of the Race Relations Act and therefore not a 'racial group' for the purposes of the Act. Lord Fraser of Tullybelton stated:

> '11. For a group to constitute an ethnic group in the sense of the 1976 Act, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community. The conditions which appear to me to be essential are these: – (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups.'

213. This guidance was applied in Chandhok and another v Tirkey [2015] IRLR 195 when it was held that references to caste considerations in the claimant's race discrimination claim would not be struck out. Mr Justice Langstaff (President – as he then was) stated that:

> 42
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> The effect of the principles expressed in *Mandla and JFS* [R v Governing Body of JFS and others [2010] IRLR 36 SC] is to give a wide and flexible scope to the meaning of 'ethnic origins'. Given the stress to be placed on the word 'origins' in that phrase, descent is, as *JFS* shows, clearly to be included within it, at least where it is linked to concepts of ethnicity. This is emphasised by the fact that the argument that 'descent' was not part of 'race' as defined by the 1976 Act was made by counsel for the school, urging that any inclusion of it depended on applying Article 1(1) of ICERD; it should not be, he submitted, since the inspiration for that Article had been caste based discrimination, and it was confined to it. This argument was rejected. However, this demonstrates to me the close link between descent and caste.

43

On analysis, each of the grounds save the fourth which is relied on by the appellants depends upon the effect of s.9(5) as originally enacted and as amended by the ERRA upon the interpretation to be adopted of s.9(1). In agreement with Michael Ford QC who appeared for the intervener I consider that this places a weight upon s.9(5) which it cannot bear. In my view there is a distinction to be drawn between the intention of Parliament when it enacts legislation, and its subsequently displayed understanding of the effect of the legislation it has enacted. The two are not the same, however closely it may be hoped they will align. Once statute is enacted it has the meaning a court will assign to it. The meaning of a statute, and the intention of Parliament in and when enacting it, may be found from a number of sources: the words themselves, the apparent thrust of the legislation, material identifying the vice which the enactment of the statute was sought to remedy, relevant international obligations which it may be assumed Parliament intended to satisfy rather than flout. But Parliament's own view – even by inference from that which it subsequently expresses legislatively – as to that which the legislation meant cannot be conclusive as to its meaning. That is a matter for the courts applying the tools at their disposal which I have summarised above, as to the application of which there are many examples, amongst which are the passages from Underhill LJ's judgment in *Rowstock* to which Mr Samson drew attention.

44

Nor do I accept that the answer to the question whether 'caste' as a distinct concept exists as a separate strand in the definition of race is determinative. If the answer is it does not, this still does not exclude the words otherwise appearing in s.9(1) from bearing their usual interpretation, applying the canons of construction I have précised above. Since 'ethnic origins' is a wide and flexible phrase (Mandla) and covers questions of descent (JFS) at least some of those situations which would fall within an acceptable definition of caste would fall within it. In the course of argument I was referred to the summary by a leading academic writer, Annapurna Waughruay, in 'Capturing Caste in Law: Caste discrimination and the Equality Act 2010' (2012) 14 Human Rights Law Review 359–379, in which she said:

> 'There is no agreed sociological or legal definition of caste, but a number of salient features can be identified. Castes are enclosed groups, historically related to social function, membership of which is involuntary, hereditary (that is determined by birth) and permanent ... Unlike class, it is not generally possible for individuals or their descendants to move into a different caste. Caste is governed by rules relating to commensality (food and drink must only be shared by others of the same caste) and is maintained by endogamy (marriage must be within the same caste). It entails the idea of innate characteristics and hierarchically graded distinctions based on notions of purity and pollution, with some groups considered to be ritually pure and others ritually impure. A crucial feature of caste in South Asia is the concept of "Untouchability", whereby certain people are considered to be permanently and irredeemably polluted and polluting, hence "untouchable", with whom physical and social contact is to be avoided. Despite the notional nature of caste, Untouchability is conceptualised as an innate physical property separating the Untouchables from the rest of society'.

> The fact that there is no single definition of caste, as the parties before me were agreed, does not mean that a situation to which that label can, in one of its manifestations, be attached cannot and does not fall within the scope of 'ethnic origins'.

214. In determining discrimination claims and applying the burden of proof provisions the tribunal must take note of the guidance given in Madarassy v Nomura International 2007 IRLR 246 CA by Mummery LJ that:

> The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination

Protected disclosure

215. Cavendish v Munro Professional Risks Management Ltd v Geduld [2010] IRL 38 made clear that:

> In order to fall within the statutory definition of protected disclosure, there must be a disclosure of information. There is a distinction between "information" and an "allegation" for the purposes of the Act. The ordinary meaning of giving "information" is conveying facts. For example, communicating information about the state of a hospital would be stating that: "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". However, an allegation about the same subject-matter would be "you are not complying with the health and safety requirements".

216. Section 43B makes it clear that the claimant must show not only that he had a reasonable belief that the disclosure tended to show one of the statutory failures but also that it was made in the public interest. This has both a subjective, what the claimant believed and an objective element, was it reasonable in the circumstances. In Babula v Waltham Forest College [2007] IRLR 346 the Court considered the requirement of reasonable belief holding as follows:

> **79**
> It is also, I think, significant that s.43B(1) uses the phrase 'tends to show' not 'shows'. There is, in short, nothing in s.43B(1) which requires the whistleblower to be right. At its highest in relation to s.43B(1)(a) he must have a reasonable belief that the information in his possession 'tends to show' that a criminal offence has been committed: at its lowest he must have a reasonable belief that the information in his possession tends to show that a criminal offence is likely to be committed. The fact that he may be wrong is not relevant, provided his belief is reasonable, and the disclosure to his employer made in good faith (s.43C(1)(a)).

82
In this context, in my judgment, the word 'belief' in s.43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the 'belief' must be 'reasonable'. That is an objective test. Furthermore, like the EAT in *Darnton*, I find it difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knows or believes that the factual basis for the belief is false. In any event, these are all matters for the employment tribunal to determine on the facts.

217. In Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) 2018 ICR 731, CA the court stated that even where the disclosure relates to a breach of the worker's own contract of employment or a matter that is personal in nature, there may still be features of the case that make it reasonable to regard the disclosure as being in the public interest, as well as in the personal interest of the worker. It suggested that the following factors might be relevant:

- the numbers in the group whose interests the disclosure served
- the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
- the nature of the wrongdoing disclosed, and
- the identity of the alleged wrongdoer.

218. In Fecitt and others and Public Concern at Work (intervener) v NHS Manchester [2012] IRLR 64, the Court of Appeal considered what was required in a case of alleged detriment and stated:

1) The NHS had not breached s.47B by redeploying or removing shifts from the claimants or by failing to take proper steps to prevent their victimisation by their colleagues following their whistleblowing acts.

With regard to the causal link between making a protected disclosure and suffering detriment, s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. If Parliament had wanted the test for the standard of proof in s.47B to be the same as for unfair dismissal, it could have used precisely the same statutory language. *Igen* is not strictly applicable since it has an EU context. However, the reasoning which informed the analysis in that case is that unlawful discriminatory considerations should not be tolerated and ought not to have any influence on an employer's decisions. That principle is equally applicable where the objective is to protect whistleblowers, particularly given the public interest in ensuring that they are not discouraged from coming forward to highlight potential wrongdoing. This creates an anomaly with the situation in unfair dismissal where the protected disclosure must be the sole or principal reason before the dismissal is deemed to be

automatically unfair. However, that is simply the result of placing dismissal for this particular reason into the general run of unfair dismissal law.

Where a whistleblower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical – indeed sceptical – eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistleblower necessarily provides a strong prima facie case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer. However, it cannot be the case that the employer is necessarily obliged to ensure that whistleblowers are not adversely treated in such situations. That will sometimes be an impossible objective. Frequently there will be contending parties who each claim to be whistleblowers. In such circumstances, if the parties cannot work harmoniously the employer will necessarily have to separate them and subject one of the whistleblowers to a detriment. It cannot be assumed that the first to blow the whistle necessarily deserves the fullest protection. There will also be cases where it will not be practicable to resolve the dispute by removing from the situation those who are unsympathetic to the whistleblowers because of the potential damage it will cause to business. They may be key personnel in the operation of the business. These are extremely difficult conflicts for an employer to resolve…

In the present case, the NHS had discharged the burden of proof of causation by showing that the making of the protected disclosure had played no part whatsoever in the relevant acts or omissions. The redeployments had been done in order to resolve the dysfunctional working situation. Similarly, Mrs Hughes had not been denied the opportunity to work shifts because she was a whistleblower…

219. Kuzel v Roche Products Ltd [2008] EWCA Civ 380 considered where the burden of proof lies in protected disclosure cases concerning dismissal and stated that:

When an employee positively asserts that there was a different and inadmissible reason for his dismissal, such as making protected disclosures, he must produce some evidence supporting the positive case. That does not mean, however, that in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.

Having heard the evidence of both sides relating to the reason for dismissal it will then be for the employment tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.

The employment tribunal must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the employment tribunal that the reason was what he asserted it was, it is open to the employment tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or of logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must be that asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

Redundancy

220. The relevant factors the tribunal must consider in relation to an ordinary unfair dismissal case are still those laid down in Williams & Ors v Compare Maxam Ltd 1982 ICR 156:

1. Whether the selection criteria were objectively chosen and fairly applied,
2. Whether employees were warned and consulted about the redundancy
3. Whether, if there was a union, the union's view was sought
4. Whether alternative work was available.

To the above list needs to be added that the employer should also identify the 'pool' from which employee to be made redundant are to be selected. The employer need only show that it has applied its mind to this issue but failure to do so could render the dismissal unfair.

Time limits and continuing acts

221. In Sougrin v Haringey HA [1992] ICR 650 CA the court found that:

The Industrial Tribunal had correctly found that the employers' decision to place the appellant black nurse at a lower grade than a white colleague and to reject her appeal against the grading was not a "continuing act" within the meaning of s.68(7)(b) of the Race Relations Act. The Industrial Tribunal was entitled to hold, therefore, that the appellant's complaint, which was presented over five months after her grading appeal was rejected, was out of time.

The employers' grading decision was a one-off act with the continuing consequence that the appellant was paid less than her white colleague. The decision of the House of Lords in Barclays Bank v Kapur [1991] IRLR 136 did not provide support for the contention that the appellant was subjected to a continuing act of discrimination. In Kapur [1991] IRLR 136, in stating that there would be a continuing act lasting throughout the period of employment continued to pay lower wages to coloured employees, Lord Griffiths was clearly referring to the case of an employer who has a policy of paying coloured employees less than their white counterparts. In the present case, there was no suggestion that there was a policy or rule that a black nurse could not be upgraded.

222. In Virdi v Commissioner of Police of the Metropolis and another [2007] IRLR 24 the EAT held that:

> The employment tribunal chairman did not err in finding that the three-month time limit "beginning when the act complained of was done" for presenting a claim of discrimination, laid down by s.68(1) of the Race Relations Act, began to run, in respect of the claimant's unsuccessful application for promotion, on the date when the decision was taken to reject the claimant's internal appeal rather than the following day when he was notified of the decision. Accordingly, the chairman correctly concluded that the claimant's claim, which was submitted on 2 September 2005, concerning the rejection of his appeal on 2 June 2005, was out of time by one day.
>
> An act is "done" when it is completed and the act is complete for the purpose of the time limitation when the decision is taken rather than when it is communicated.
>
> In the present case, the date the decision was taken to reject the appeal was when the act was done within the meaning of s.68(1) and it followed that the claimant's claim was a day late.

223. In Aziz v FDA [2010] EWCA Civ 304 CA the court cited the useful guidance given in Hendricks

> 31. In Commissioner of Police of the Metropolis v Hendricks [2002] EWCA Civ 1686; [2003] ICR 530, a police officer alleged racial and sexual discrimination against herself over a period of 11 years. The ET, relying on section 68(7)(b) of the 1976 Act and a similar provision of the Sex Discrimination Act 1975, held that it had jurisdiction to hear the police officer's complaints. That decision was reversed by the EAT but restored by the Court of Appeal.
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> 32. Mummery LJ, with whom May LJ and Judge LJ agreed, gave guidance on the correct approach at paragraphs 48 to 52 of his judgment. I shall read out the relevant parts only of those paragraphs:
>
> > "48. On the evidential material before it, the tribunal was entitled to make a preliminary decision that it has jurisdiction to consider the allegations of discrimination made by Miss Hendricks. … She is, in my view, entitled to pursue her claim beyond this preliminary stage on the basis that the burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of an 'act extending over a period'. I regard this as a legally more precise way of characterising her case than the use of expressions such as 'institutionalised racism', 'a prevailing way of life', a 'generalised policy of discrimination' or 'climate' or 'culture' of unlawful discrimination"
> >
> > 49. At the end of the day Ms Hendricks may not succeed in proving that the alleged incidents actually occurred or that, if they did, they add up to more than isolated and unconnected acts of less favourable treatment by different people in different places over a long period and that there was no 'act extending over a period' for which the commissioner can be held legally responsible as a result of what he has done, or omitted to do, in the direction and control of the Service in matters of race and sex discrimination. It is, however, too soon to say that the complaints have been brought too late.

…

52 ... the focus should be on the substance of the complaint made that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would be given to run from the date when each specific act was committed"

33. In considering whether separate incidents form part of "an act extending over a period" within section 68(7)(b) of the 1976 Act, one relevant but not conclusive factor is whether the same individuals or different individuals were involved in those incidents: see British Medical Association v Chaudhary, EAT, 24 March 2004 (unreported UKEAT/1351/01/DA &UKEAT/0804/02DA) at paragraph 208.

CONCLUSIONS

RACE

224. ***Tamil***

The respondent has accepted that Tamils are an ethnic linguistic group that fall within the term “ethnic origins” within the meaning of section 9(1) (c) of the Equality Act 2010. The tribunal is satisfied that that is correct. The Code of Practice on Employment in discussing ethnic origins states that the group must regard itself and be regarded by others as a distinct and separate community because of certain characteristics which distinguish it from the surrounding community. It must have a long shared history and a cultural tradition of its own. Having heard the evidence of the claimant the tribunal is satisfied that is indeed the case with Tamils.

Caste

225. The tribunal is however not satisfied that two of the essential characteristics set out by the Court in the case of Mandla are satisfied in relation to the claimant’s Shudra caste. As opposed to his Tamil ethnicity it cannot be said that there is a long shared history so far as his caste is concerned and nor does it have cultural traditions of its own including family and social customs and manners. Neither is their evidence of a common geographical origin or a common language and literature. The claimant’s witness Ms Dass was primarily giving evidence of the caste system overall and then particularly highlighting discrimination against ‘untouchables’. The tribunal also had more documentary evidence of such discrimination in the bundle and this was also highlighted in the 2010 Report referred to. However, whilst acknowledging that such takes place that does not assist this tribunal with what is a legal definition and the need to consider the factors set out in Mandla. Mr Korn in his written closing submissions states that she distinguished caste from class. That is

the case and that distinction is understood but it does not then follow that caste, in this case, comes within the statutory definition.

226. Whilst accepting that the Court in Chandok found that caste could come within the meaning of 'ethnic origin' this tribunal does not find it has sufficient evidence to conclude that on the facts of this case the claimant's Shudra caste comes within the meaning of 'ethnic origins' in the Equality Act.

Burden of Proof and Knowledge

227. Even if the tribunal had concluded that caste, as relied upon by the claimant, came within the meaning of the s9 of the Equality Act it is for the claimant to establish facts from which the tribunal could conclude that the respondent had committed an unlawful act of discrimination against him. The tribunal also accepts that none of the alleged discriminators were aware of the claimant's caste and this did not play any role in any of their decision making.

228. The guidance given in Madarassy is most pertinent to the facts of this case. There is no doubt that the claimant vehemently believes that he was discriminated against. That however is not sufficient. A difference in treatment and a difference in protected characteristic is not enough for the burden to pass to the respondent. There must be something more and there is not on the facts of this case.

229. As has been noted in the tribunal's findings the claimant expanded in his oral evidence on his conspiracy theory. He has no evidence whatsoever in support of his theory that Mr Joshi, who had overall responsibility for the respondent's worldwide Oil & Gas was influenced by Rajesh (paragraph 68 claimant's witness statement). When pushed in cross examination for the link that he made it was that he had seen Mr Joshi a few times in London and seen him talk to Rajesh. They both came from Mumbai and were talking in a 'close way'. The claimant acknowledged that Mr Joshi was not involved until 2019. He then had to fall back to his contention that Rajesh influenced all the other superiors from 2016 – 2019. It is fanciful and not supported by the evidence. The claimant has not given any evidence about his own contact or involvement with Mr Joshi.

230. Mr Korn in paragraph 23 of his closing submissions refers to Darren Reed's interview with Sandi Arthur when she investigated the claimant's Grievance. (p2364) He relies on a section of the interview 'where [Darren Reed] refers to evidence of an 'Indian clique'. The tribunal has considered that interview and finds it important to place Mr Reed's words in context. Sandi Arthur asked him if the claimant had ever mentioned the phrase 'Indian Mafia to you or have you heard it'. His reply was that he had not heard that phrase from the claimant but had heard it used many times within the respondent and that it seemed a 'common term'. He went onto state:

> 'I've been at Bechtel a long-term right, the first I heard the phrase was for PM's (project managers) who were of Indian nationality who had a reputation of being aggressive.

> We are talking 2000 – 2005. The Indian Mafia at that time meant that if you weren't doing your job right they would let you know... Deal with it in a way that was not beneficial for you and your job position.
>
> To be honest I have not experienced that attitude for a long time in Bechtel. To be honest, we are missing that, we've all gone a little bit soft, since 2010, it's not all been nice".

234. Mr Reed, who the tribunal did not hear from, was answering a question put to him about a phrase and whilst it is true he acknowledged he had heard it used he dated this as 2000 – 2005 way before the events this tribunal is concerned with.

235. Darren Reed also said something else in his interview which the tribunal finds summarises in Mr Reed's words the conclusions it has reached in this matter. Whilst acknowledging the claimant did good work he found that the claimant "views himself very very highly and he is in a competitive pool of engineers who perform better than him". He continued: –

> "We are not in a position where we have 30 in the electrical group, it's a small group of people and competition is fierce. They all do their job well. There is no one we are carrying. The bonus ranking and salary ranking... When everyone is performing well, it's hard and challenging to get a bell shaped curve it's unfortunate that some people will be at the bottom of that curve".

The claimant believes he was the best performing worker and was not prepared to accept any suggestion that was not the case. The tribunal is satisfied that he was encouraged by managers to accept and work on constructive criticism as to his communication style and relationships with clients but did not wish to do so.

236. The tribunal has given its conclusions in relation to each issue below and to save repeating it each time is satisfied that neither the claimant's ethnic origin of being Tamil nor his caste played any part in any of these issues.

1.3.1 – failure to promote 2016 and 2017 – direct discrimination only

2016

237. This is an allegation against Rajesh who did put the claimant forward for promotion in 2016. The claimant's comparator for this allegation is Bala and he alleges that the failure to promote was an act of race and caste discrimination.

238. Rajesh did however put the claimant forward for promotion in 2016 but having made his recommendation the decision on promotion was not his but Paul Hayes. He had to rank each job grade grouping against their peers and the claimant in his view fell mid range. It was Paul Hayes who decided not to put the claimant forward for promotion. The tribunal is satisfied that Paul Hayes was not aware of the claimant's caste or his Tamil origins or the place of origin or caste of his comparators.

239. The first important matter to note is that promotion was not a 'given' due to length of service. The tribunal accepts that many would not achieve promotion above grade 27 as that entailed much greater and managerial responsibility.

240. In 2016 and 2017 the process in place at the time did initially require a recommendation to be made by the chiefs but then it went to Paul Hayes and then he had to present those selected to his senior management. There was a three stage process.

241. Paul Hayes had to rank each employee in job grade grouping against their peers. The claimant was ranked 27 out of 36 so mid – range and decided despite Rajesh's recommendation not to put him forward for promotion.

242. The claimant compares himself to Bala. He had however been put forward for promotion in March 2015 so was not in competition with the claimant in the 2016 round and is therefore not an appropriate comparator. A hypothetical comparator would be someone not of the claimant's race/caste who had performed in the same way as the claimant and that person would not have been promoted either due to where they fell in the peer group ranking.

2017

243. The claimant was not recommended for promotion by Rajesh in 2017 but he was still considered by Paul Hayes as he had been recommended the previous year. He still did not consider that the claimant was appropriate for promotion to grade 28. Contrary to the closing submission made (paragraph 33) that he was not considered in that year he was in fact and it was Paul Hayes who determined that he should not be promoted and the tribunal has already concluded that he did not know about the claimants ethnic origins or caste. The tribunal repeats its conclusion above as to why Bala is not an appropriate comparator. The hypothetical would be someone also assessed at valued contribution 2 who would not have been considered suitable for that promotion.

Issue 1.3.2. (a) – 2018 performance assessment

244. For the allegations arising from 2018 onwards about performance assessment the tribunal must take account of the fact that the system had changed. The employee was now marked against set criteria rather than being self-selected by the individual and/or the supervisor. Once they had been assessed against those criteria the Supervisor Assessment Criteria Calculation (SACC) was arrived at. That was then used with other factors to arrive at the Organisational Impact Rating (OIR) using a forced ranking calibration process. A further distribution modifier was applied by senior managers and not Rajesh.

245. The claimant appeared to compare the assessments he had been given between 2015 to 2017 with those of his comparators in 2018 and 2019 to

suggest that they demonstrated he should have continued to have the same level of performance assessment. However, the tribunal accepts the evidence of the respondent that performance assessment required consideration of the year of assessment only. The claimant is therefore incorrect in comparing the early years with the later but in any event he remained consistently at a medium level of performance throughout.

246. As the claimant had worked on two projects it was necessary for both Matt Park and Bala to provide their feedback. The tribunal accepts as genuine that Matt Park was too busy at the time he was required to send his feedback via the MyPortal and that he gave it orally to Rajesh who agreed to pass on the feedback. The tribunal heard from both Matt Park and Rajesh who were clear and the tribunal accepts the feedback provided was fair and reflected the claimant's performance. It is correct that Mr Park in giving evidence stated that he may have used different wording but that did not detract from his agreement with the feedback given by Rajesh on his behalf.

247. Rajesh as the functional supervisor of BP WND was also able to provide feedback in his own right. The respondent's witnesses were consistent that the claimant was removed from BP WND due to a client request. In re – examination the claimant accepted he was told by Rajesh that the client wasn't happy with him.

248. The claimant's SACC score of 2.39/3.00 was the weighted aggregated calculation of the supervisor's ratings. It was based on the algorithm once all the scores had been entered. This had been done by Bala and not Rajesh. There has been no evidence that Bala was in any way influenced to act in a discriminatory fashion by Rajesh.

249. The OIR is a comparative rating with a forced distribution bell curve which requires 70% in the meaningful impact category. The tribunal is satisfied that Rajesh had no involvement with the calibration process. It placed the claimant fairly in the 70% of employees within his grade.

250. There was then a further calibration where the rating of meaningful was given a further modifier of high, medium or low. This was a forced calibration process within peer groups and was determined by Terry Tadlock. It was he that gave the claimant a low rating. The tribunal is satisfied that was consistent with the gaps that had been identified in the claimant's teamwork and leadership coupled with the client request that he be removed from the project. The new project of Hail & Ghasha was of lower complexity also.

251. The claimant's comparator in relation to this issue is Chandra or a hypothetical comparator. Chandra was in the same peer group being grade 27 and the respondent accepts that he is a comparator. However, although he was given an OIR of meaningful which was the same as the claimant his SACC was 2.67. Terry Tadlock consequently allocated him a modifier of high and that was approved by senior management. There is therefore a non discriminatory reason why his score was higher.

Issue 1.3.2 (b) – not increasing to 'meaningful impact high'.

252. Following the claimant raising a complaint about his rating Nitin Kumar suggested that the BP WND feedback be removed which the respondent's witnesses and the tribunal accepts was an unusual thing for the respondent to do. With that removed the claimant's SACC became 2.61. This did not justify a meaningful high modifier based on the claimant's performance. Terry Tadlock's evidence at paragraph 16 of his witness statement was that the removal of the BP WND feedback did not change the OIR as the feedback remained valid. It further didn't remove the fact that the client had asked for the claimant to be taken off the project. Terry Tadlock still took them into account when considering the claimant's modifier, meaningful low and the bonus.

253. The claimant relies on Chandra as his comparator. It is correct that he received a SACC of 2.67 but as a stronger performer was rated by Terry Tadlock as meaningful high. This was down to his performance and the tribunal has not found any facts from which it could conclude that the claimant was treated less favourably due to his ethnic origins/caste.

Issue 1.3.2 (c) – claimant's bonus for 2018 remaining at £4,500.

254. As set out above the fact that the BP WND feedback was removed did not detract from the fact that that had been given. Terry Tadlock's evidence was clear that it did not affect the OIR which remained at low. The claimant received the bonus to which he was entitled with the meaningful low modifier. Any other performer rated in that way would have received the same bonus.

255. The following issues are also relied upon by the claimant as acts of less favourable treatment for making protected acts and also in certain cases detriment for making protected disclosures. The tribunal has therefore given its conclusions on protected acts and disclosures at this point and then will give its conclusions in relation to each cause of action under each issue.

Victimisation

Protected acts

256. The respondent accepted that the two grievances amounted to protected acts but disputed that the claimant informed Mark Ashwin on 18 March 2019 that he was proposing to raise a further grievance. As set out in its findings of fact the tribunal has accepted that was made clear to Mark Ashwin on that date, so there were three protected acts.

Whistleblowing

257. The claimant relies upon the same three matters as protected disclosures. It is necessary for him to show that he had a reasonable belief that the matters he was raising tended to show one of the relevant failures under S43B ERA and also that they were in the public interest.

258. In the first grievance on 25 July 2019 the claimant did assert in the first annex that he felt there 'are also more unpleasant undercurrents at play' and that he did not know if his 'ethnic origin is some or all the driving force behind the blocking of my progression'. The tribunal accepts that the claimant had a reasonable belief that the respondent was failing to comply with a 'legal obligation' namely not to discriminate against employees. However, the claimant must also show he had a reasonable belief that the disclosure was made in the public interest. The tribunal does not accept he had any such belief at the time the disclosures were made and makes no reference to such in his witness statement. The claimant was concerned solely with his own sense of grievance and what he believed he should be entitled to. Mr Korn now argues on his behalf that when a disclosure of discrimination is made against an employer that is as the respondent an international company employing people from a variety of ethnic and racial backgrounds it should 'normally be treated as satisfying the public interest test. That was not of concern to the claimant when he raised the matters and neither does the tribunal accept it as a general proposition of the state of the law. There is nothing in the written disclosures made to suggest that the claimant was in anyway concerned with the 'public interest' but rather that he was expressing concerns at how he perceived he had been treated. There was not in the words used in Chesterton Global a wider group whose interests the disclosures also served.

259. The tribunal makes the same points in relation to the third protected disclosure, the grievance raised on 19 March 2020 in which the claimant refers to 'retaliation' for raising his first grievance which the tribunal accepts could be an assertion of victimisation within the Equality Act. The same conclusions are reached however about public interest that there is nothing in the grievance to suggest that the claimant believed what he was raising affected a wider group and was in the public interest. It is again solely about the claimant's appraisal and the outcome he wanted was to give *him* a rating of at least 2.8/3.00 or above with exceptional impact. Nothing that would affect a wider group.

260. The tribunal has accepted that when the claimant met with Mark Ashwin on the 18 March he did indicate to him and Mark Ashwin was aware that the claimant intended to raise another grievance and that it came within the meaning of section 27 (1)(b) as a protected act. However in relation to that there was not sufficient information disclosed in the conversation for it to come within the meaning of a protected disclosure and neither again was it made in the public interest.

Issue 1.3.3 – 2019 performance assessment – direct discrimination and victimisation for raising the first grievance.

261. Rajesh carried out the claimant's 2019 performance assessment as the claimant's supervisor on Reliance. Bala also gave feedback for the time that the claimant was on the Hail and Ghasha project reporting to him. The claimant was rated as meaningful. What became clear in cross examination was that the claimant did not take issue with the rating of meaningful but with the modifier of low. Terry Tadlock had made it clear in emails to his supervisors that the modifier would reflect the employee's relative organisational impact in their respective peer group. It was he who considered Chandra had a higher relative impact than the claimant and rated them accordingly.

262. When Terry Tadlock asked Rajesh as to where he would place Jhaldi in terms of relevant impact if he was promoted to grade 27 Terry Tadlock having suggested he would be above the claimant, Rajesh, who the claimant considers to be the prime discriminator, stated that he viewed him as a lower relative impact than the claimant.

263. It was Terry Tadlock's view that the claimant performed roles as an individual rather than assisting in the overall management and planning of projects and therefore his impact was less than Chandra. Rajesh was not inputting into the modifier that the claimant would receive. In fact, Rajesh increased the claimant's modifier to meaningful medium but as the claimant was on the border and according to the numbers in the bell curve Terry Tadlock felt he should have been kept at meaningful low. However even though it was in breach of the bell curve Terry Tadlock kept the claimant at meaningful medium. This was put back to low when it went to more senior management.

264. The claimant was not treated less favourably on the grounds of race or caste. Neither was the rating an act of victimisation but a fair assessment of the claimant's impact.

Issue 1.3.4 – Bonus of £3800 in 2019 – direct discrimination and victimisation for raising the first grievance

265. The way in which this issue was worded was that the claimant was really awarded a "reduced bonus". It was not a reduced bonus there being no entitlement to a particular figure.

266. Rajesh proposed a bonus of £5500 for the claimant which was at the higher end of the relevant range on the basis the claimant was assessed as meaningful – medium. When the modifier was reduced however to meaningful low that reduced the bonus to £3800 reflecting a smaller bonus pool. That was not Rajesh's decision. Indeed his initial recommendation had been higher.

267. Chandra was given a modifier of high and therefore received a higher amount as the range with that modifier was between 7.1 and 8.% of salary.

268. Not only was there no race or caste discrimination but this was not an act of victimisation. It was done because of the relevant impact to the business and the modifier applied and not because the claimant had raised a grievance.

Issue 1.3.5 – removal from Reliance – direct discrimination and victimisation

269. The Reliance project had been a significant project and was initially expected to end in December 2019 but it had been extended to a proposed date of June 2020. Although the respondent had hoped to obtain more work as the project progressed there was no guarantee it would continue after June 2020. When Rajesh provided a forecast for hours to the end of June as requested of him in March 2020 he anticipated the claimant's work on the project would finish on 17 April 2020. In fact, the project was suspended as at 15 April 2020. The reason for the claimant's assignment ending was due to the client requirements as he and others were no longer required on the project. There was a non - discriminatory reason for giving the claimant notice that his time on the project was ending.

270. The claimant relies on Chandra as his comparator or a hypothetical comparator. The Tribunal accepts the evidence of Rajesh that Chandra was kept on the project as his performance included flexibility and his wider skills set was of use for the work that was going to continue.

271. Whilst the claimant relies on the fact that he sent his second grievance on 19 March 2020 the staffing plan had already been updated. The Tribunal accepts the evidence of Rajesh that he was unaware of the second grievance at the time he was preparing that staffing plan. The tribunal has concluded that there is no causal connection between the first protected act which was the grievance on 25 July 2019 and the decisions taken in relation to Reliance in 2020.

Issue 1.3.6 – application to BP WND – direct discrimination and victimisation

272. Contrary to the way this allegation is put the claimant did not make an application for a role on 23 March 2020 rather he expressed an interest in potential work on BP WND. He was not applying for a specific role which he was then refused. There was no vacancy.

273. At paragraph I22 of his witness statement this is where the claimant suggests he was refused the role by Mr Joshi who 'acted in concert with Mr Ashwin's project and engineering management team in London'. This is pure speculation and the claimant has as has already been noted in the tribunal's findings produced no evidence of any such conspiracy.

Issue 1.3.7 – Unreasonable and discriminatory selection pool – direct discrimination and victimisation.

274. The claimant accepted in evidence that his complaint is about the pool and not about the consultation.

275. As will be set out in its conclusions on ordinary unfair dismissal the tribunal has concerns about the use of the workforce ranking and the way that the core and non core designations were applied. It was not however used and applied to the claimant for discriminatory reasons. It was the respondents practice to use the workforce ranking for the redundancy exercise and to then ascertain who on it they considered core and non core when trying to retain a balanced workforce after a redundancy exercise.

276. The tribunal does not accept the argument advanced on behalf of the claimant that when he was removed from the Reliance project there was a plan to make him redundant and that the process the respondent used was to 'put that plan into effect'. (Closing submissions paragraph 121.). One of the reasons that the tribunal has set out some details of the collective consultation is to place the redundancies in context of what was going on globally for the respondent at the onset of the pandemic. There were redundancies taking place in at least three business units including the one in which the claimant was working. To suggest all of that was put in place as part of a plan to remove the claimant is to use the words that the respondent's counsel sometimes used "fanciful."

277. The claimant fell in the pool for grades 27 & 28 and was ranked 3 out of 4. It does not accept the arguments advanced on behalf of the claimant that this was based on discriminatory assessments as it has already concluded that they were justified and not discriminatory. The claimant has not established facts from which the tribunal could concluded that his ranking against his peers in the workforce ranking was due to any form of discrimination or an act of victimisation for raising his grievances.

Issue 1.3.8 – continuing to carry out the selection process whilst claimant's second grievance unresolved – direct discrimination and victimisation.

278. It is the claimant's argument that the reason why the redundancy process should have been put on hold was because it is clear that if the grievance had been successful this would have impacted on the claimant's ranking under the WFR (Counsel's closing submissions paragraph 133). The tribunal does not accept that would have necessarily been the case. The grievance could have been upheld, the claimant's performance assessments he challenged sent for re-assessment and still remained unchanged. There are numerous permutations of what might have occurred. The respondent's HR representative determined that the grievance and the redundancy process should be kept separate and that was also Sandi Arthur's view270. . This was

not a decision taken on the basis of the claimant's race or caste but how they considered a grievance and redundancy process should be dealt with.

279 Mr. Korn at paragraph 132 of his closing submissions stated that the claimant's principal complaint is that in breach of the ACAS Code of Practice on Discipline and Grievance Procedures paragraph 46, no consideration was given to suspending the redundancy process prior to the resolution of the claimant's grievance. What that provision actually says is where an employee raises a grievance "during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance". This was not a disciplinary process but a redundancy and it is stated in the foreword to the ACAS Code that the Code does not apply to dismissals due to redundancy.

280. Mr Korn went on to suggest in his submissions (paragraph 136) that the tribunal should infer that no decision was taken to suspend the redundancy process 'because there was a plan at the highest level to use the redundancy process as a means to make the claimant redundant'. This may be what the claimant believed but there was no evidence and there are no facts from which the tribunal could conclude that there was such a plan and that it was based on the claimant's race and/or caste.

281. The grievance and appeal process were in fact completed prior to the end of the claimant's employment. Neither were upheld and the conduct and outcome of those processes are not alleged to be discriminatory in these proceedings. Also the claimant did not appeal his redundancy dismissal.

Issue 1.3.9 – advising claimant at risk 27 April 2020 – direct discrimination and victimisation.

282. The claimant was put at risk in the first instance due to the effect of the pandemic on the business and because of the use by the respondent of its workforce ranking and designation of core and non – core. Whatever the tribunal may find in relation to that process in relation to the ordinary unfair dismissal claim the claimant has not established facts from which the tribunal could concluded that he was treated less favourably on the grounds of his race/caste. The claimant was one of many placed at risk at about this time.

283. The claimant relied on Jaldhi and Rajesh as comparators in relation to caste and race discrimination. They are not however appropriate comparators as the were in different selection pools for justifiable reasons. If he had been compared to them he would have still been at risk as he scored lower than either of them.

284. The placing the claimant at risk was entirely unrelated to the raising of his grievances. There was a downturn in projects and work for the respondent as a result of the pandemic as a result of which a major collective redundancy exercise took place.

Issue 1.3.10 – making the claimant redundant - direct discrimination and victimisation.

285. It follows from the conclusions above that the tribunal has not found anything from which it could conclude that in its conduct of this collective redundancy process and the termination of the claimant's employment by reason of redundancy it acted in a discriminatory way towards the claimant nor an act of victimisation.

Further detriments

Those said to be victimisation and whistleblowing detriment.

Issue 2.2.3 – Mark Ashwin responding in an angry and negative manner on 18 March 2020

286. As found in its findings the tribunal does not find that Mark Ashwin responded angrily. Nor that he did so because the claimant had previously raised a grievance or intimated he was about to.

287. There were no protected disclosures made by the claimant so the claim of detriment fails and that applies to all matters claimed as whistleblowing detriment and automatically unfair dismissal under s103A fail.

Ordinary Unfair dismissal

288. There was a redundancy situation. The respondent had a need for less people as a result of various projects ending or being brought to an end as a result of the onset of the global pandemic. The respondent is dependent on funding for projects to which its employees are then assigned. Without those projects which the Tribunal accepts were ending or declining as a result of COVID the respondent had a need for less people. The tribunal does not accept the proposition put forward by the claimant's Counsel in closing submissions that the real reason for the claimant's redundancy was his removal from the Reliance project in retaliation for raising his 1st grievance, threatening to raise a further grievance and the assessments he was given by Rajesh in 2019 and 2020.

289. The Reliance project came to an end in April 2020. The claimant's work on it also ended. It was not as the tribunal has found earlier in retaliation for raising a grievance one year earlier.

290. The claimant in cross examination did actually accept that there was a redundancy situation.

291. The tribunal must then consider whether the respondent acted fairly in all the circumstances in treating that as a reason to dismiss the claimant. It must consider the guidance issued in Williams & Ors v Compare Maxam Ltd 1982 ICR 156.

292. The employees were warned and consulted with and it was confirmed by the claimant's Counsel and the claimant in cross examination that consultation was not one of the issues that he relies upon in this case.

293. What the tribunal has found however is that the process applied by the respondent was far from transparent and in fact has been difficult for it to follow. The Tribunal accepts and understands that the respondent had a workforce ranking process which it carried out annually irrespective of a redundancy situation. That ranked employees according to various predetermined criteria and within their grades. Weighting was applied to the ratings given to employees. The respondent relies upon the workforce ranking by stating that it had placed the employees in comparative pools set before the redundancy exercise was announced. That may be the case that the tribunal has been unable to establish where it was laid down by the respondent in any of its policies or documents that a redundancy exercise would be carried out using the workforce ranking.

294. Further although it could be said that the workforce ranking exercise covered some of the selection criteria set out in the respondent's redundancy policy they do not all align.

295. In deciding who was to be placed at risk the respondent then designated who was core or non-core independent to, the respondent says, the workforce ranking to ensure that the respondent maintained the required balance of staff. This profile is provided by section E of the redundancy policy in which it says that the company shall have regard to the profile of the workforce so as to ensure that it has the right balance in terms of 'numbers, skills and experience to meet its business objectives' but no where does it refer in the policy to core and non core. It is however not clear how that designation of core and non – core was determined.

296. The tribunal also heard evidence and saw documentation that Mr Joshi and Ramesh Balasubramanian then considered the core and non-core ranking. The tribunal did not hear evidence from them and has no idea what factors they took into account in their determinations.

297. The Tribunal accepts the submission made on behalf of the claimant that the claimant never had the opportunity to challenge his workforce ranking or his selection as non-core. Even though there is reference to workforce ranking in at least one of the collective consultation meetings that does not detract from the unfairness of the ranking not being discussed with the employee.

298. The claimant asked many times for his at risk status to be removed while his grievance was investigated. The only person who said that they had considered this was Paul Oatham although the tribunal saw no documentary evidence of that. Sandy Arthur who was from employee relations and was investigating the grievance said she had no power to take such action. It is noted however that the appeals officer did ask whether any processes could be suspended. The respondent relies on the fact that the appeal decision had been given by the

time that the claimant's employment ended. That is indeed the case but what the tribunal has concluded goes to unfairness is that the respondent seemed determined to keep the two processes namely the investigation of the grievance and the conduct of the redundancy process completely separate. That adds an element of unfairness when the claimant in his grievance was asserting that being placed at risk was a retaliation for raising his earlier grievance. No one seems to have considered that the grievance was linked to the workforce ranking in which it referred to his rating.

299. Counsel for the claimant put lines of questioning to the respondent's witnesses about the claimant not being advised of his right to be accompanied to the at risk meeting. He did not accept that the ACAS Code of Practice on Disciplinary and Grievance did not apply to redundancy. In his closing submissions Counsel made the same point at paragraph 155 (VI). The tribunal does not accept that proposition and the statutory right to be accompanied did not apply.

300. With regard to the search for suitable alternative employment the obligation is on the employer to assist in finding this. All Gillan Hondebrink seems to have done is send the claimant lists. The tribunal heard that the claimant applied for some roles and know he was not successful but no evidence has been heard as to why he was not successful and the detail of the process that was gone through in reaching those decisions.

POLKEY

301. The tribunal agree with the submissions made on behalf of the claimant that its need further submissions on this issue once the parties have considered these reasons.

BREACH OF CONTRACT

302. There was no contractual entitlement to a bonus. In cross examination the claimant stated that he was told the maximum amount was 7 – 10 %. Barry Nicholls email to the claimant of the 24 December 2011 explained clearly that the bonus scheme was performance based (both individual and the company) and that no amount was guaranteed. The claimant accepted that he was told it was not guaranteed in cross examination.

303. Mr Korn in closing submissions accepted that the claimant did not have a contractual right to a specific bonus but argued he had a 'reasonable expectation' of receiving 7 – 10% of his salary. Mr Korn went on to argue that the process followed by the respondent in awarding the bonus was 'arbitrary, irrational and capricious' and discriminatory. That it was discriminatory has not been accepted by this tribunal for reasons set out above. Neither does it find it was irrational.

304. In 2008 at a meaningful low rating (which the tribunal has accepted was justified and not discriminatory) the range for the bonus was 4.5 – 5.4% of salary. The claimant received £4500 which was the top of that range.

In 2009 the claimant was awarded £3800 which although at the lower end of the scale was still within it.

305. The bonus awards were not arbitrary or irrational as alleged or at all. There was no breach of the express or implied terms of the contract and this claim is dismissed.

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306. The claim form was received on the 2 November 2020 yet some allegations go back to 2016. The respondent submits that all allegations occurring before 6 June 2020, namely the promotion and performance related matters are out of time. It argues that they are one off acts and not part of a continuing act.

307. The tribunal has some sympathy with the arguments put forward by the respondent. However, the claimant's case is that Rajesh was the individual responsible for the alleged discriminatory conduct and that there was a continuing course of that conduct from 2016. The tribunal is prepared to accept the claimant's arguments in that respect and has determined the complaints on their merits.

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Employment Judge Laidler

Date: 31 August 2023

Sent to the parties on: 1 September 2023

For the Tribunal Office