Case Numbers: 3201626/2020; 3202576/2020
3201700/2020; 3202090/2020 and 3200325/2021

EMPLOYMENT TRIBUNALS

Claimants: **(1) Mr C Abanda Bella**
(2) Mr L Samnick
(3) Mr H-S Moune Nkeng

Respondents: **Barclays Execution Services Limited and 10 others**

Heard at: **East London Hearing Centre** (by Cloud Video Platform)

On: **11-14, 20, 24-28 April 2023; 2-5, 9-12,15-19, 24-26, 30-31 May 2023, 1-2, 8-9, 19 June 2023 (with the parties)**

19, 20, 27-29 June 2023; 17-19, 23-25, 29-30 July 2023; 20-21, 27, 29 September 2023; 8, 10 November 2023; 11 December 2023; 22 January 2024 and 25 February (in chambers)

Before: **Employment Judge Gardiner**

Members: **Ms M Daniels**
Mrs B Saund

Representation

Claimants: Each in person
Respondents: Ms C McCann, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:-

In respect of the claims brought by Mr H-S Moune Nkeng:

1. None of the complaints are well-founded. They are accordingly dismissed on their merits.

2. The complaints occurring before 9 April 2020 were not presented within the applicable time limit. There is no proper basis for disapplying the time limit under either the Employment Rights Act 1996 or the Equality Act 2010. Those complaints are therefore also dismissed because the Tribunal does not have jurisdiction to determine them.

In respect of the claim brought by Mr L Samnick

3. Although the complaint of failure to make a reasonable adjustment for disability at issue 14.8/14.10.6 was not presented within the applicable time limit, it is just and equitable to disapply this time limit.

4. The complaint of failure to make a reasonable adjustment for disability at issue 14.8/14.10.6 is well-founded and succeeds.

5. The remainder of the complaints are not well-founded and are dismissed.

6. Whilst complaints occurring before 12 February 2020 were not presented within the applicable time limit, it is appropriate to partially disapply the time limits to the extent that the Tribunal has jurisdiction to consider complaints after 30 July 2019, but not earlier. Earlier complaints are also dismissed on the basis that the Tribunal does not have jurisdiction to determine them.

In respect of the claims brought by Mr C Abanda Bella

7. The complaint itemised as issue 3.9.2 in claim 3202576/2020 is dismissed upon withdrawal.

8. Although the complaint of failure to make a reasonable adjustment for disability at issue 30.6/32.6 was not presented within the applicable time limit, it is just and equitable to disapply this time limit.

9. The complaint of failure to make a reasonable adjustment for disability at issue 30.6/ 32.6 in claim 3201626/2020 is well-founded and succeeds.

10. The remainder of the complaints are not well-founded and are dismissed.

11. Whilst complaints occurring before 13 February 2020 were not presented within the applicable time limit, it is appropriate to partially disapply the time limits to the extent that the Tribunal has jurisdiction to consider complaints after 26 July 2019, but not earlier. Earlier complaints are also dismissed on the basis that the Tribunal does not have jurisdiction to determine them.

REASONS

Introduction

1. These five claims concern the treatment of three of the First Respondent's employees over several years, who have each brought Employment Tribunal proceedings. All three worked in what became known as the Independent Validation Unit (IVU), part of the Model Risk Management (MRM) team. All three are of Black

African ethnicity and of Cameroonian national origin. Their native tongue is French, although all three are fluent English speakers.

2. In each of the five claims, Barclays Execution Services Limited was the First Respondent. The remaining Respondents were as set out in Schedule 1 to these Reasons.

3. In each of their claims, the issues to be determined were contained in a very lengthy list of issues, set out in Schedule 3 to these Reasons. Earlier versions of the list of issues had been considered at several previous Preliminary Hearings. In the case of the claims brought by Mr Louis Samnick and Mr Henry-Serge Moune Nkeng, the issues were only finalised as a result of case management orders sent to the parties on 2, 3 and 31 March 2023 and clarification provided in an order dated 12 April 2023. All three Claimants made complaints of direct race discrimination, racial harassment and victimisation. They also made complaints of protected disclosure detriment. Mr Christian Abanda Bella and Mr Samnick also raised various disability discrimination complaints in relation to events occurring towards the end of the period with which the Tribunal is concerned. This is because they have argued that the deterioration in their mental health as a result of workplace issues amounted to a disability.

4. In these Reasons, the First Respondent is referred to as the Bank. It was the employer of all three Claimants. The remaining Respondents are other employees or former employees of the Bank, who are said to be personally liable for incidents which have given rise to particular complaints. All of the Claimants' complaints are disputed by all of the Respondents. In addition, the Respondents argue that complaints about incidents which occurred more than three months before the Claimants first requested Early Conciliation are time barred.

5. The Final Hearing took place remotely over Cloud Video Platform. This format was decided at an earlier case management hearing. This course was adopted as a reasonable adjustment in view of the physical symptoms of Mr Moune Nkeng; and the mental and physical health conditions of Mr Abanda Bella. Although the Respondents had asked for there to be a hybrid hearing, with some parties and witnesses attending in person and some over video, this was not considered an appropriate way of doing justice in this case. Reasons for that decision were given at the time.

6. Each of the Claimants has represented themselves. Ms Claire McCann of counsel represented the Respondents. A daily transcript was prepared by a Court Reporter at the Respondents' expense and was sent to all parties and to the Tribunal at the conclusion of each day. As had been decided previously as a reasonable adjustment, Mr Samnick and Mr Abanda Bella were permitted to make a personal recording to assist them in recalling the evidence.

7. The Final Hearing spanned thirty-three days. The first day was a reading day. On the second day, the Tribunal needed to resolve further case management issues about timetabling, documents, redaction, and the format of Mr Samnick's witness statement. Evidence was then heard from each of the Claimants, in this order – Mr Moune Nkeng, Mr Samnick and Mr Abanda Bella. The Tribunal then took a further day to start reading the evidence of the Bank's witnesses. A second reading day took place after evidence from Mr Jeong Kim and from Mr Götz Rienacker. Thereafter, Mr Rienacker concluded his evidence and oral evidence was received from the remainder of the Respondents' witnesses. Mr Christopher Easdon gave evidence remotely from the Cayman Islands, Ms Elyse Gonzalez gave evidence remotely from New York; and Mr Laurence Gibson remotely from Canada. A list of all the witnesses is included as Schedule 2 to these Reasons.

8. The witness statements cross referred to documents which were contained in various electronic bundles provided at the start of the Final Hearing. For the Respondents, there were three volumes of documents, comprising 1,907 pages in bundle 1, 10,396 pages in bundle 2, and 24 pages in bundle 3. Eighteen Excel spreadsheets also formed part of the documentary evidence. In addition, the Claimants relied on their own bundle of additional documents which had not been included in the Respondents' documents. This ran to 11045 pages. Further individual documents were introduced during the course of the hearing. By the conclusion of the hearing, there was no longer any dispute from the Claimants about the appropriateness of those documents where content had been clearly redacted by the First Respondent. There was still a dispute as to whether certain passages in particular documents had been deleted by the First Respondent such that the document before the Tribunal did not fully record the entire contents. The Tribunal does not accept that the First Respondent had tampered with any of the documents in this way or hidden relevant information behind evident redactions. The Tribunal accepts the sworn evidence of Ms Sarah Henchoz, a solicitor at Allen & Overy LLP (the Respondents' solicitors), confirming that particular redactions were of information which is not relevant to the issues to be decided.

9. Reference in these Reasons to documents in the bundle of documents are references to the corresponding page number of the Respondents' second bundle unless otherwise stated (e.g. **[245]** is a reference to page **245** of bundle 2). A reference to **[1/245]** is a reference to the first of the Respondents' bundles; **[3/10]** refers to the third of the Respondents' bundles; and **[C/245]** to page 245 of the Claimants' bundle.

10. The Tribunal made it clear at the outset that it would not read each document referred to in the witness statements or bundles. Rather, it would read those documents referred to in the witness statements which appeared to be significant in relation to

the issues to be decided. It was the responsibility of each party to ensure that the Tribunal's attention was drawn to those documents relied upon in relation to each issue – either in the course of cross-examination, or in closing submissions.

11. Where these Reasons refer to a document, the Tribunal has generally included the page number of the relevant document. This is to enable the full wording of the document to be readily viewed by the parties if desired. Given the necessary length of these Reasons, the Tribunal has attempted wherever possible to summarise the document or to quote only selectively from key passages. The Tribunal has read the entire document and has had regard to its full contents in the course of its deliberations and in reaching its conclusions. That also applies to the parties' written closing submissions.

12. Reasonable adjustments were made to the standard Tribunal sitting day in view of the health needs of particular participants or witnesses. This meant that breaks were taken at regular intervals when hearing evidence from certain witnesses or when requested by other participants. Breaks were also taken when requested by the Claimants during the course of their cross-examinations.

13. Various versions of a proposed hearing timetable were prepared. A final version was agreed. In order to complete the case within the time allotted, the Tribunal needed to carefully monitor the time taken by each party in its questioning. Although a degree of flexibility was permitted to allow more time for questioning those witnesses with a more central role, the original timetable was revised at the half-way point to provide a shorter and more realistic timetable for questioning those witnesses with more limited involvement. In that way, the case was able to be completed within the 33 days timetabled for reading, evidence, and oral submissions. This allocation was an expansion on the 30 days allocated to the claims when the Final Hearing had first been listed. None of the cross-examination carried out by any party was guillotined. Each party had a fair opportunity to ask its questions in relation to the issues to be decided.

14. The Tribunal is grateful for the respectful manner in which the case was presented on all sides; and for the parties' willingness to co-operate with guidance given by the Tribunal about the process of cross-examination when the Claimants started questioning the Respondents' witnesses.

15. There was only one occasion when the Tribunal had to give a particular direction to a participant about their conduct. At the end of the third day of Mr Abanda Bella's evidence, his choice of hoodie was challenged by Ms McCann, counsel for the Respondents. It had been noted that the hoodie was branded with an Andrew Tate "Top G" logo. Ms McCann asked him whether he regarded this as appropriate given the well-publicised allegations currently being investigated against Mr Tate. She noted that this was potentially offensive, particularly to female employees of the Bank

who he would be cross examining later in the case. Mr Abanda Bella initially sought to defend his choice of clothing, arguing that Mr Tate was no longer facing charges. He agreed, following further questioning, not to wear the hoodie for the remainder of the case, so that no offence could be taken by any participant in the proceedings.

16. At the conclusion of the evidence, closing submissions were completed in two days. The Respondents prepared extensive written closing submissions which were submitted to the Tribunal at the start of the penultimate day. The Tribunal took time to read the submissions and then asked questions of Ms McCann in relation to its contents. With the Tribunal's permission, the Respondents sent three schedules addressing the specific cases advanced by the three Claimants in advance of the final day, reserved for the Claimants' closing submissions. At the start of the final day, day 33, the Claimants lodged written closing submissions, which were read by the Tribunal. As had been agreed, they then had an hour each to make any oral submissions and to answer questions from the Tribunal.

17. On the final day of hearing, at the end of his submissions, Mr Samnick mentioned he had a further document he wanted the Tribunal to take into account. This was a document setting out guidance for how to conduct the year end performance reviews for different employee circumstances, including employees who were on long term sick leave. Mr Samnick said that the document in bundle 1 was not the version in force at the time of his 2019 appraisal. As a result, he wanted to introduce the earlier version of the document already included in the bundle. At that point, the Respondents' solicitor was on leave and so it was not possible to take instructions. It was left that instructions would be taken and the document would be provided to the Tribunal if there was no objection. The Tribunal had no further communication from either party on this point and has not been shown this particular document.

THE TRIBUNAL'S APPROACH TO ITS FINDINGS OF FACT

18. The volume of evidence put before the Tribunal has been vast. The witness statement bundle (albeit including two versions of Mr Samnick's witness statement) stretched to more than 2,400 pages. The Respondents' first two bundles covered around 12,300 pages; the Claimants' bundle extended to more than 11,000 pages and there were transcripts for around 30 days of oral evidence.

19. The Tribunal has not read every single page of every document put before it. It has only read those pages to which its attention has been drawn in the course of the hearing, where it appears to be relevant to a particular issue. The Tribunal has not attempted to record every event referred to by either party in the course of the hearing. That would lengthen an already lengthy document and would not clarify its approach on the disputed issues. The fact that a document referred to by a party is not included in the findings of fact does not mean it has not been considered. The

same is true with arguments raised by any party during the course of the evidence or in submissions.

20. On many occasions a long document written by one of the Claimants is alleged to be a protected disclosure or a protected act. In many cases the Claimant has not identified particular passages within those documents on which they rely. In those cases, the Tribunal has considered the entirety of the document. It is clearly not appropriate to quote extensive passages from such documents within the Tribunal's Reasons, particularly where the Tribunal does not consider that the document as a whole amounts to a protected disclosure or a protected act. The Tribunal has attempted to summarise the main themes raised by the document. In so doing, it should not be assumed that the Tribunal has overlooked or failed to have regard to particular passages or particular themes not included in the summary. To enable those with access to the bundle of documents to look up the full version of the document, the Tribunal has kept page references within the narrative, and these have been identified in bold typeface.

21. The Tribunal has decided not to include detailed subheadings within the narrative of events in relation to each Claimant. This decision has been taken because at certain points in the chronology several different issues were being addressed in the same week or even on the same day. To assist the reader in navigating the Findings of Fact section, dates have been stated in bold. References have also been made to the disputed issues within the chronological narrative to highlight the significance of particular documents. For ease of reading and to avoid unduly lengthening this section, the issues have been summarised rather than referred to in full. They are attached in their original form in the Schedule. Issues which were withdrawn during the course of the hearing have been noted as withdrawn. Issues which had been withdrawn or struck out before the start of the hearing have been referred to as they were before the Tribunal with the words "Intentionally left blank". The Tribunal had no visibility of these issues, nor any information about when or why they were removed. They may have been removed after evidence was prepared (such as witness statements) and their inclusion at an earlier point may explain why we received evidence on a point that appears irrelevant to the current issues.

22. Given the factual complexity of this case and the very extensive list of issues, a confidential draft version of these Reasons was sent to the parties in advance of formal promulgation. The parties were asked for their comments on typographical or factual errors and to confirm that the Tribunal had addressed each of the issues that required a decision. In so requesting further comments, it was emphasised that this was not an opportunity to reargue matters on which a decision had already been made. Each of the three Claimants and the Bank provided very helpful comments. In the light of those comments, the Tribunal reconvened for one final time to deliberate on the points raised that required further fact finding or discussion.

23. The result of this further deliberation was some typographical and other changes were made to the text. Where particular arguments or factual matters had not been specifically addressed in the earlier draft, they were reviewed by the Tribunal Panel and, where appropriate, further detail has been added. Where applicable, the Tribunal's conclusions have been reviewed to reflect the further points raised. It is not the Tribunal's role to make factual findings on all evidence raised if this is not necessary for the conclusions; nor is it the Tribunal's role to address in these Reasons every argument advanced. To do so would substantially lengthen an already long set of Reasons. The Tribunal has aimed to provide sufficient detail to enable the parties to understand why they have won or lost on each point in issue.

24. Finally, the Tribunal is conscious that each of the Claimants have presented further claims. The Tribunal assumes that these claims relate to subsequent events after the latest date with which the Tribunal is concerned. None of those sitting on the Tribunal panel have had any involvement with the detailed case management of those cases, save that the Tribunal is aware those cases have been stayed to await the outcome of these cases, and save for Employment Judge Gardiner converting an Interim Relief hearing to a remote video hearing in case 3202025/2023 originally due to take place in person. Their existence has not influenced the approach to the merits of the issues before the Tribunal in these cases.

GENERAL FINDINGS OF FACT

The Bank's Independent Validation Unit (IVU)

25. The period covered by the events raised in these proceedings was a period in which the Bank's regulatory regime was subject to EU and US law, as well as to UK legislation. EU Regulations require financial institutions to validate the financial models underpinning their assessment of the risks assumed by their financial activities. There are similar regulatory requirements in US law.

26. The Tribunal needs to deal here with particular provisions (and related regulatory requirements) which are relied upon by the Claimants as part of their claims, said to be relevant regulatory requirements:

    a. EU Regulation No 575/2013 (Articles 294 and 369). These provisions apply only to models required for regulatory capital calculation purposes, sometimes referred to as RegCap models. This applies to market risk and counterparty credit risk models. It does not apply to pricing models, which was the work principally carried out by Mr Moune Nkeng, and much of Mr Abanda Bella's work. It became applicable on 1 January 2014. The legislation requires that a

Bank should have a process for independent validation of RegCap models. EU Regulation 575/2013 creates legal obligations.

b. BIPRU. These are the UK regulations governed by the Prudential Regulatory Authority (PRA). It is the domestic UK equivalent to EU Regulation 575/2013. Rule 7.10 provides details of the model standards and risk management practices that firms will be required to meet in order to use the VaR ("Value at Risk") model. Rule 13.6 sets out the rules relating to the CCR internal model method. Rule 13.6.67 sets out the validation requirements. Sub-paragraph (7) provides that static, historical backtesting on representative counterparty portfolios must be part of the CCR internal model method validation process. Firms must conduct such backtesting on a number of representative counterparty portfolios, chosen based on their sensitivity to the material risk factors to which the firm is exposed. Sub-paragraph (8) states that if the backtesting model is not sufficiently accurate, the firm must increase the credit risk capital component. Both of these Rules impose legal obligations.

c. The Market Risk Rule (MRR). This is the US equivalent of EU Regulation 575/2013.

d. SR 11-7. This is supervisory guidance issued by the US Federal Reserve, Office of the Comptroller of the Currency (OCC). As it explains, it is "intended for use by banking organisations and supervisors as they assess organisations' management of model risk" **[C/287]**. It therefore applies to capital requirement models rather than pricing models. Although it sets out risk management principles and supervisory expectations, it makes clear that details may vary from bank to bank as the practical application of this guidance should be customised **[C/267]**. It does not have an EU equivalent. The Tribunal finds that it does not impose legal obligations. However, up until September 2018, this was not necessarily fully understood by those operating within this particular field. That is why the Federal Reserve's Board of Governors issued a statement on 11 September 2018 clarifying that "supervisory guidance does not have the force and effect of law and the agencies do not take enforcement actions based on supervisory guidance". On 8 April 2021, the Federal Register stated that the Board of Governors of the Federal Reserve System was adopting a final rule codifying this 11 September 2018 statement. In so doing "the final rule confirms that the Board will continue to follow and respect the limits of administrative law in carrying out its supervisory responsibilities" [Emphasis added]. It drew a distinction between issuances by Federal agencies that serve to implement acts of Congress (known as "regulations" or "legislative rules") and non-binding legal obligations. Although it was described as a final rule, it was not described as a "legislative rule". It did not give the 2018 Supervisory Guidance legal force.

Even if did, then it did not have retrospective effect. All of the alleged protected disclosures pre-date 8 April 2021.

27. In addition, Mr Moune Nkeng relies on the Sarbanes Oxley Act. This is a US federal law mandating certain practices in financial record-keeping and reporting for US corporations. The Tribunal is not persuaded that it applied to emails of a UK company. Whilst Mr Moune Nkeng refers to this Act in his List of Issues, he does not mention it in his witness statement.

28. The role of the Bank's IVU is to discharge the applicable regulatory requirements. It is also to check the level of risk assumed by its activities more generally. Quantitative Analysts (QAs) would devise models to assess the risk assumed by particular financial practices. The role of the IVU was to provide independent review and challenge to pricing and trading book risk models. The Tribunal accepts the evidence of Mr Raphael Albrecht that the focus of the IVU was to assess a) the conceptual soundness up to prevalent modelling standards, b) the suitability of the models for their dedicated purpose and c) the robustness of the implementation with respect to changing exposures and market conditions. Part of the rationale of the IVU is to help identify model limitations – namely to find potential issues that a user might encounter even if using the model in line with the declared purpose, and to identify ways of removing them or otherwise mitigating any unavoidable adverse effects. It required the IVU to challenge the developers on their models. It also required a collaborative approach from those in the IVU to work with the model developers to find solutions to the limitations identified.

29. Up until June 2019, the head of MRM was Mr Eduardo Canabarro. He was based in the US. He has not given evidence at this Final Hearing. He is not directly accused of specific wrongdoing in the Agreed Lists of Issues, although Mr Samnick has argued that Mr Canabarro issued an order to manage him out of the Bank. He was replaced by Ms Konstantina Armata who held this role until 2022, for the remainder of the period with which these claims are concerned. Under them and based in the Bank's London office as head of the IVU was Mr Kim. His corporate grade was that of Managing Director. He managed various managers, all with the corporate title 'Director'. None of them sat on the Bank's Executive Board or were statutory Directors with particular legal responsibilities in company law. Those at the corporate grade Director included Mr Rienacker and Mr Rood. Mr Rienacker's sub-team focused on particular types of models, including equity and pricing models. Mr Rood's sub-team focused on risk models. Mr Kim, Mr Rienacker and Mr Rood have all given evidence. Mr Rienacker line managed Validators including Mr Abanda Bella and Mr Moune Nkeng. Mr Rood line managed Validators including Mr Samnick. The size of the IVU varied over time. Typically, it had between 15 and 20 people. It was diverse in terms of the racial and national origins of its members – those who were White

British were in a significant minority throughout the time period covered by the allegations in this claim.

30. Since about 2017, there would generally be three individuals named on each validation report. This was the report finalised at the end of every validation project. The team member assigned to undertake the validation was usually employed at the corporate grade of Vice President or Assistant Vice President and would be designated as Validator. Their draft report would be reviewed and revised following input from a Lead Validator, usually someone at the corporate grade of Director, such as Mr Rood or Mr Rienacker. It would then be approved by a more senior manager, usually Mr Kim. They would be noted on the validation report as the Approver. The report would only be finalised once it had been signed off by the Approver.

31. Whilst this was the standard practice on the validations on which the Tribunal has heard evidence, the Bank's policy indicated that those at Vice President grade were able to be the Approver for Tier 2 and 3 validations. These were less significant validations than Tier 1 validations. For the most part, the models reviewed by the Claimants as part of their day-to-day duties had not yet been approved. That was why they were being reviewed by the IVU. As a result, at that point, they were still in draft and were not yet in force. Prior to approval, any deficiencies in the models did not have immediate consequences for the Bank or more widely, whether financial or legal. The Tribunal finds that each of the Claimants was fully aware that the models they were validating had not yet been implemented. At the point of implementation, it is only if a RegCap model (including a VaR model) is approved which is not 'fit for purpose' and has not been appropriately validated that there could even potentially be a breach of any legal obligations under EU Regulation 575/2013 or BIPRU.

32. Typically, there would be several drafts of each validation report. Revisions would be made following further input from the model developers, from the Lead Validator, or from changes made by the Validator themselves. Those working in the IVU needed strong written and verbal skills, with an ability to communicate complex concepts in a clear manner. Where this was regarded as an area for personal development, this would be discussed as part of the annual appraisal process. The same appraisal process regularly commended individuals for particular challenges they had raised about specific models. These individuals included Mr Bill Chen, Ms Marta Karpowicz, Ms Huayi Li and Mr Nadir Maouche, who were all subsequently promoted.

33. Whilst each team member would tend to specialise in a particular asset class, the Bank expected them to be able to work across different asset classes. This was included in the Job Description they were given at the outset of their employment. In this way, fluctuations in the validation workload across all asset classes could be covered at any particular time, using the existing pool of Validators to best advantage. This pattern of work allocation enabled Validators to expand their validation

experience, so making them potentially more suitable for promotion to Vice President or to Director level. Directors tended to be responsible for broader types of asset classes.

34. Mr Kim told the Tribunal that he spent about half his time engaged in validation work. The other half of his time was spent carrying out management or strategic responsibilities. Mr Rienacker spent about 70-80% of his time on validation tasks, and the remainder of the time on management responsibilities.

Allocation of work

35. It was for Mr Rienacker and Mr Rood to allocate validation projects between their direct reports. Some of the validation work was regarded as more urgent than other work. This was either because there was an imminent deadline, or because the model being evaluated concerned financial transactions that were a specific focus of the regulatory authorities. Such work was designated Tier 1 work, with less urgent or less critical work referred to as Tier 2 or Tier 3 work.

36. Validators developed particular expertise on certain types of validation models. In accordance with their Job Description, they could be asked to assist with validations in other asset classes and even be asked to carry out validations for other IVU Directors. This would include asking Validators primarily working on pricing models to work on risk models. The latter often had tight deadlines and so required extra resources to be allocated at short notice. Each year various models needed to be validated as part of the annual CCAR submission. CCAR stands for Comprehensive Capital Analysis and Review. This is a US mandated stress test regime to establish whether lenders have enough capital to cope with unexpected economic events. These were particularly important validations, impacting on the extent to which the Bank was able to make payments of dividends to its shareholders. Deadlines for these CCAR validation reports tended to fall in the first three months of the calendar year.

Performance evaluation

37. Up to and including the 2015 performance year, there would be two performance reviews (sometimes referred to as an appraisal) of each employee in each calendar year – a mid-year appraisal and an end of year appraisal. The mid-year appraisal would typically take place around September and the end of year appraisal in January or early February. A standard template would be used on both occasions to record self-assessment and line manager feedback. Employee performance would be assessed on a six-point scale.

38. In 2016 the performance evaluation system changed. There was still a meeting to discuss performance at the mid-year stage. However, no formal template was used to record employee performance at that point. A standard template was still used to record performance at the end of each calendar year. The six-point assessment scale became a three-point scale – Outstanding, Strong and Needs Improvement. A rating would be awarded for the 'What' – the standard of the employee's work in relation to their specific objectives. A rating would also be given for the 'How' – how the employee had performed in relation to the Bank's five values: Respect, Integrity, Service, Excellence and Stewardship.

39. As part of the performance review process, employees were encouraged to submit a self-appraisal reviewing their performance and providing feedback from stakeholders with whom they had worked. This had to be entered into the performance review system by a deadline, usually towards the end of October. After this deadline, no self-appraisals could be entered into the system. They could still be completed and submitted to their line manager by email. The purpose of the deadline was to enable self-appraisals to be available to line managers when providing their written feedback.

40. At the time of the events with which these claims are concerned, the Bank had no specific guidance applicable to conducting the performance review process for employees who were on long term sickness. The following guidance was adopted in late 2021 or 2022 **[1/1861]**:

> "If an employee has worked for 93 or more calendar days in the performance review period but goes on / is due to go on leave prior to or during the year-end review period, the year-end performance review (and rating decisions) should be undertaken on the same basis as for all other employees. In other words, against the 'what' and the 'how' as discussed and agreed with the employee at the start of and throughout the performance period as part of continuous performance improvement. The year end performance review (and rating decisions) should be completed with reference to their performance up to the date they go on leave …
>
> Where an eligible employee is absent from the business during the year-end review period, their manager should contact them to encourage them to complete their self-review, where it is appropriate for them to do so (which can be done in PT or by using the performance review template) and to obtain feedback. Managers should take this opportunity to discuss what support the employee may need in completing these activities. Where it is not practical or appropriate to make contact with the employee, managers should consider an alternative individual who could make contact on their behalf or seeking feedback themselves on the employee's behalf from a broad range of relevant stakeholders to help them with their year-end manager assessment …

If an employee is absent and no review conversation can take place within the agreed timescale, managers should consider the earliest appropriate time to share the year-end review, where possible in discussion with the employee."

41. In about September or October of each year, Mr Kim would discuss the performance of each member of his team with the Directors who reported to him. This would lead to a rank order, in which Mr Kim's team members were ranked from the top to the bottom performer in relation to each corporate grade. Around 80% of employees were graded 'Strong', with 10% awarded 'Outstanding' and 10% graded 'Needs Improvement'. Those who consistently achieved one or more ratings of 'Outstanding' were considered candidates for promotion. Although the Bank had no formal promotion procedure, the Bank followed a well-established process. The process involved managers identifying promotion candidates; an assessment of whether promotion would be consistent with a team's organisational strategy; and approval by the Group Chief Risk Officer and (in the case of promotions to Director) the relevant person in the Reward team; and then an interview process. The Bank held periodic promotion clinics to explain the promotion process to those employees who were looking to be promoted [**1/1400**], and to offer an opportunity to ask questions. Those employees who were rated 'Needs Improvement' were expected by HR to be put on a Performance Improvement Plan (PIP). This rank order also had a significant impact on compensation decisions.

42. The ratings awarded would significantly influence decisions taken about pay rises and bonuses. These were decided by Mr Kim in conjunction with HR. Ultimate decisions on compensation would be made by managers more senior than Mr Kim. The size of the individual bonus awards would be influenced by the size of the variable pool available for distribution. Decisions were communicated to employees at a face-to-face meeting with Mr Kim. This took place after the appraisal meeting and was usually held in February. If an employee received one 'Needs Improvement' rating, this generally led to a halving or further reduction in the employee's bonus. Where an employee received two 'Needs Improvement' ratings, generally no bonus would be paid.

Raising concerns

43. Where an employee chooses to raise a written concern about an issue at work with HR, this is first passed to the Raising Concerns team (RC team). The RC team are independent of the management structure of particular departments and their areas of work. The RC team triages whether the concern should most appropriately be considered as a "grievance" or as part of the whistleblowing procedure. If the latter, it will be referred to the I&W team for investigation, although it is a matter for the employee if they would like their identity kept confidential. If the former, it will be referred back to the relevant Employment Relations team for further consideration.

The Bank's Race at Work report

44. In 2018, the Bank conducted an investigation into the position and experiences of its Black Asian and Minority Ethnic (BAME) employees. The Tribunal accepts that this was done in response to a government commissioned review in 2017 considering the UK workforce as a whole. The resulting report was entitled "Race at Work" and was published in April 2019 **[1/1866]**. Shortly before the publication of the report, the Bank became a signatory to the Race at Work Charter and reported its UK Ethnicity pay gap for the first time.

45. The findings of this report are heavily relied upon by each of the Claimants in support of their race discrimination complaints. As a result, the Tribunal needs to make findings about the report's conclusions.

46. The report considered the overall BAME population within Barclays UK. It did not focus only on the London offices, the specific position within the MRM area in general, or the IVU in particular. It noted that the overall BAME population within Barclays UK was 14%, of which 3% was Black, 10% Asian and 1% other. It noted that there was an "ethnicity tipping point at AVP. BAME colleagues are under-represented in more senior grades and are overrepresented at the BA level compared to White colleagues". It noted that 88% of Black colleagues were in BA grades compared to 78% of White colleagues. It recorded that around 6% of those at Director level were BAME. Just under 1% (3 out of 323) of Directors were Black and only one out of 63 Managing Directors was Black (1.4%). The same percentage (1.4%) of Vice Presidents were Black.

47. The report noted that Black colleagues were facing particular challenges. It noted that they reported the lowest engagement and had the highest attrition. The Bank convened Listening Groups to gain insight into the experience of BAME colleagues. Thirty-four colleagues attended of whom 13 were Black, 9 Asian, 2 were Mixed Race and 10 were Unknown. Three of these groups were run in London, whilst one group was run in Liverpool and one in Birmingham. It is unclear whether any of those participating were from the MRM area. None of the Claimants have given evidence of participation in one of the three London Listening Groups. The views of participants were recorded. The summary of one theme was "colleagues described a sense of effort not being commensurate with progress and of career progression not meeting expectations. They felt they had to work harder than their White peers to gain equivalent level of recognition". The summary of another theme, labelled "Being the Out-Group", was "they described a sense of roles being pre-allocated to in-group members before they'd been advertised, or despite a selection process".

48. The UK-wide ethnicity pay gap reports noted that the mean and median pay levels for all Black employees was lower than for White employees. As explained in the report "The pay gaps shown above reflect the underrepresentation of Black employees in senior and mid-level roles" **[C/187]**.

Racial profile of the IVU

49. The racial profile of team members within the IVU does not reflect the racial profile of the Bank as a whole. BAME employees were significantly more represented in senior positions than in the Bank wide figures in the Race at Work report. The most senior member of the IVU, Mr Kim, at Managing Director level is of Asian ethnicity. During the period with which these claims are concerned, promotions were given to Mr Bill Chen and Ms Li, both again of Asian ethnicity. It appears that there were around ten employees at Vice President level throughout this period of which two (Mr Abanda Bella and Mr Samnick) were Black.

EXECUTIVE SUMMARY OF MR MOUNE NKENG'S CASE

50. Mr Moune Nkeng's employment at the Bank started on **6 January 2014**. He was employed at Assistant Vice President grade, Wholesale & Funding IVU Trading Model Validation, reporting to William Hicks. On **30 March 2014** he moved to the IVU pricing model team headed by Mr Kim, reporting on an operational basis to Mr Rienacker. His formal line manager was Mr Sam Dickson until about **2016**.

51. On **25 August 2015**, Mr Moune Nkeng suffered a serious injury to his right knee whilst playing football for the Bank's football team. His recovery from this injury was prolonged and incomplete. He required further right knee surgery in **May 2016**; surgery to his left knee in **December 2016**; and a third operation on his right knee **in June 2017**. Although he took short periods of sick leave after each operation, he continued working either from home or in the office. There is a dispute about the amount of time Mr Moune Nkeng spent working in the office and whether he was there through personal choice or at the Bank's request.

52. Mr Moune Nkeng argues he made his first protected disclosure and his first protected act at a Culture Focus group meeting on **24 August 2018**. He did not raise any complaints about matters occurring before July 2019 with his employer, although in these proceedings his allegations date back to 2015.

53. On **15 August 2020**, Mr Moune Nkeng presented his first claim to the Tribunal. On **23 January 2021**, he presented his second claim to the Tribunal. He brings complaints under several employment tribunal jurisdictions for which he seeks a remedy. These are complaints of protected disclosure detriment, victimisation (i.e. detriment because he had done a protected act), direct race discrimination,

harassment relating to race, instructing, causing or inducing basic contraventions, and aiding contraventions.

54. The Tribunal has not upheld any of Mr Moune Nkeng's complaints for the reasons given in the Conclusion section dealing with each issue he raises in turn. In any event, the Tribunal does not have jurisdiction to consider many of Mr Moune Nkeng's complaints given the operation of statutory time limits.

EXECUTIVE SUMMARY OF MR SAMNICK'S CASE

55. Mr Samnick started his employment with the Bank on **4 October 2010** as a Vice President (Portfolio Analytics Group), reporting to Mr Patrick Gillen. In **October 2012**, when Mr Gillen left the Bank, Mr Samnick started reporting to Mr Kim. He was subsequently line managed by Mr Marcos Protopapas for a brief period and then by Mr Albrecht until about **October 2015**. In late 2015, Mr Ron Rood was recruited as Mr Albrecht's replacement and became Mr Samnick's line manager. He line managed Mr Samnick from early 2016 until late 2019. At that point, Mr Rood was the subject of a grievance from Mr Samnick accusing him and Mr Kim of disability discrimination and other matters. Mr Samnick was found another line manager, Mr Patel.

56. In **September 2018**, Mr Samnick was placed on a PIP. In **November 2018**, Mr Samnick attended an interview for an internal transfer to carry out a similar role to his existing role in the Large Model Framework (LMF) team. He was unsuccessful.

57. He took time off work on sick leave from **30 July 2019** until **12 August 2019**, followed by a period of annual leave from **15 August 2019** until **2 September 2019**. On **3 September 2019**, the Bank's records noted he was working from home. Thereafter he was signed off on sick leave from **4 September 2019** and had not returned to work when he issued his employment tribunal claim. He lodged a formal grievance on **14 October 2019**, and a further grievance on **22 October 2019**. On **24 February 2020**, Mr Samnick was told his 2019 performance rating was 'Needs Improvement'. He would not be receiving a pay rise or a bonus. On **11 May 2020** he received Mr Easdon's outcome letter rejecting each of the grievances he had submitted against the Bank.

58. Mr Samnick's first protected disclosure is said to have been made at a group meeting held in the **middle of 2012**. His first protected act is said to have been made in a performance review self-assessment document he prepared in **November 2017** as part of the assessment of his performance during 2017. He accused Mr Rood of "bullying, harassment and discrimination".

59. On **25 June 2020**, Mr Samnick presented the only claim with which this Tribunal is concerned. On **23 February 2021**, Mr Samnick resigned from his employment at the Bank. He had obtained a role at another financial institution at the corporate grade of Executive Director. When he left the Bank he remained a Vice-President, which was the same corporate grade on which he had started over ten years earlier.

60. Mr Samnick brings complaints under several Tribunal jurisdictions. These are complaints of protected disclosure detriment, victimisation (i.e. detriment because he had done a protected act), direct race discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment relating to disability, harassment relating to race, instructing, causing or inducing basic contraventions, and aiding contraventions.

61. His complaint of failure to make a reasonable adjustment in relation to the process of his 2019 performance appraisal succeeds. Although it falls outside the statutory time limit, it would be just and equitable to extend time to enable Mr Samnick to receive a remedy. All the remaining complaints fail.

EXECUTIVE SUMMARY OF MR ABANDA BELLA'S CASE

62. Mr Abanda Bella started working for the Bank on **27 March 2017**. His corporate grade was Vice President and his title was 'Pricing Model Validation'. He reported to Mr Rienacker. There was a mid-year discussion about his performance on **4 October 2017**. His 2017 annual appraisal took place on **24 January 2018** when he was graded 'Strong' for the 'What' and 'Strong' for the 'How'. In **March 2018**, Mr Rienacker suggested he swap teams with a colleague, who was also at the same corporate grade. Mr Abanda Bella declined that suggestion. He remained in Mr Rienacker's team.

63. His mid-year performance discussion took place on **4 September 2018**. Mr Abanda Bella left the meeting after about 10 minutes, dissatisfied with the way his performance was viewed. At his 2018 year-end appraisal held on **15 February 2019**, Mr Abanda Bella was told he had been given a 'Needs Improvement' performance rating for the 'How'. On **21 February 2019**, he was told that his bonus would be reduced by 75%. On **21 June 2019** he started a two-week long period of sickness absence for work related stress, being absent until **8 July 2019**. On **26 July 2019**, he started a second period of sickness absence, which has continued to date. His sick pay ended on **31 October 2019**.

64. On **19 February 2020**, Mr Abanda Bella's 2019 appraisal was carried out in his absence. He was assessed as 'Needs Improvement' for both the 'What' and the 'How'. He continued to be on long-term sick leave. His application to Unum for permanent health payments to be made as he continued to be off sick was initially

unsuccessful, as communicated to him in February 2020. That decision was subsequently reversed on appeal, such that Mr Abanda Bella received and continues to receive ill health insurance payments.

65. Mr Abanda Bella argues that he made a series of protected disclosures starting on **8 August 2017**, for which he has suffered various detriments. He also argues that certain of his communications amount to protected acts from **20 September 2017** onwards. He says he has suffered detriments as a consequence. He issued his first formal grievance on **15 October 2019** and a much more detailed second grievance on **11 November 2019**. Thereafter, he submitted several further grievances. In a grievance outcome letter sent on 21 October 2020, Mr Easdon dismissed all of the Claimant's grievances.

66. Mr Abanda Bella issued his first ET1 on **18 June 2020** and his second ET1 on **20 September 2020**. At the time of the Final Hearing, he remained an employee of the Bank, albeit on long-term sick leave. He had been in receipt of monthly payments from Unum permanent health insurers although there was no evidence as to the duration over which these payments continued.

67. Mr Abanda Bella complains of protected disclosure detriment, victimisation (i.e. detriment because he had done a protected act), direct race discrimination, harassment relating to race, indirect race discrimination, discrimination arising from disability, failure to make reasonable adjustments, indirect disability discrimination, harassment relating to disability and detriment for raising health and safety issues.

68. The Tribunal has upheld his complaint that there was a failure to make reasonable adjustments in relation to his 2019 performance appraisal. The remainder of his complaints fail. In any event, the Tribunal would have found it did not have jurisdiction to consider many of his complaints because of the operation of statutory time limits.

SPECIFIC FINDINGS OF FACT – MR MOUNE NKENG

69. Mr Moune Nkeng completed his education in France, where he majored in Finance as part of a post graduate degree in Mathematics and Computer Science. **In September 2012** he joined BNP Paribas CIB working in their London office as a Portfolio Analyst. He worked there on model validations for around a year before applying to the Bank. He started work with the Bank on **6 January 2014** at the corporate grade of Assistant Vice President.

70. The Summary of Key Terms described his position in the following way "Your role will be Wholesale IVU (Traded and Funding Risk), Assistant Vice President, Barclays Risk or such other role as the Company reasonably decides from time to time".

71. From **March 2014** he was transferred into the Traded Models Sub-Team, reporting to Mr Rienacker. He had been interviewed for this role by Mr Rienacker. Mr Rienacker agreed Mr Moune Nkeng should move to his area of work. Mr Moune Nkeng continued to report to Mr Rienacker from then until 1 December 2020. For some of this period, Mr Dickson was the Claimant's functional line manager. Much of Mr Moune Nkeng's work was spent on equity validations. In **November 2014**, his performance was assessed as being 'Good' for the 2014 year. This was the fourth highest of the six performance ratings used by the Bank at that point. In cross-examination, Mr Moune Nkeng accepted that this 'Good' ranking was not a good ranking, because it was in the bottom half of the potential grades. Following a discussion with his Directors, Mr Kim ranked him in tenth place out of the ten Vice Presidents or Assistant Vice Presidents working under him. Mr Duncan Harrison was ranked in first place, Ms Li in second and Ms Karpowicz in third. All three were rated 'Very Strong', the second of the six performance designations. Only one other colleague was rated 'Good'. This was Mr Jiangchun Bi, who is of Chinese ethnicity.

72. Mr Moune Nkeng noted on his 2014 appraisal that he wanted to improve his knowledge "in the equity world especially". He said he wanted to "learn to express [my] view clearly to the non-technical audience (wording, communication, emails, meeting)". This was recognition that this was an area of relative weakness, where there was scope for personal improvement. Mr Rienacker provided additional comments on Mr Moune Nkeng's 2014 appraisal **[206]**. These were balanced, noting his positive attitude and his ability to work independently, whilst also identifying particular areas for development. These included "further improve his analytical skills and math-finance/modelling knowledge; increasing his attention to detail, avoiding premature or incorrect results; and be more consistent in his performance and contribution and always keep a strong motivation to deliver the best possible results". It was recommended that he work on his communication and presentation skills. Mr Rienacker stated "Henry-Serge's performance was overall good, but falling slightly short of the high expectations we have in our team". There is no complaint in these proceedings about Mr Rienacker's assessment in his 2014 appraisal.

73. In **late 2014**, Mr Moune Nkeng and Mr Rienacker had discussed his performance objectives for the following calendar year. Mr Rienacker suggested, and Mr Moune Nkeng agreed, that he should focus on soft skills, including improving his communication and presentation skills, attending relevant courses where available **[256-7]**. Mr Harrison, who is White, was given a similar objective by Mr Kim for the 2015 performance year.

74. Towards the **end of 2014**, Ms Li, who was also an Assistant Vice President, was promoted to Vice President. She had already been at the Bank for three years when Mr Moune Nkeng joined.

75. Mr Moune Nkeng makes no race discrimination or racial harassment allegations in these proceedings against Mr Rienacker or Mr Kim in relation to how he was treated from **March 2014 until September 2015**. In evidence and submissions, he complained about the way he was treated in his year-end performance review for 2014. This was not something he had complained about at the time or in any of his subsequent grievances. It did not feature as a criticism in his Particulars of Claim or in the final List of Issues. As a result, we do not find it convincing (as he now argues) that there were significant errors in the approach taken during the 2014 year end performance review, or that these were based on any contravention of employment law obligations.

76. Mr Moune Nkeng alleges in his witness statement, seemingly for the first time, that Mr Kim frequently referred to him and Mr Samnick as the 'French legion' during the Christmas team dinner held in **mid-December 2014**. This allegation is not substantiated by reference in the witness statement to any contemporaneous documentation. It is not an allegation that Mr Moune Nkeng chose to include in either of the formal grievances that he lodged in mid-2020. The allegation is strongly rejected by Mr Kim. The Tribunal does not accept that such a comment was made by Mr Kim. Had it been made within earshot of Mr Moune Nkeng or Mr Samnick, both would have objected to the comment – if not, at the time, then subsequently when they started raising race discrimination allegations. This is an allegation that was not included as part of the original Claim Form and was not permitted to be added as a discrete race discrimination allegation by way of amendment.

77. Mr Moune Nkeng suffered a serious knee injury playing football after work on **25 August 2015**. He updated Mr Rienacker and Mr Kim at the end of the following day, having been assessed by the doctors. His email stated "I need some physio and rest a lot. Tomorrow another consultation …I'll work from home until next Monday to see how it goes. I might be in the office early next week (with some sticks)". Mr Kim responded "that's a relief, it sounds better than feared. But pls do try to work from home until properly healed rather than take any risk with further injury!". Mr Rienacker added "Get better soon and yes pls try to work from home as much as you need". On **Tuesday 1 September 2015**, the day after the August Bank Holiday, Mr Moune Nkeng emailed "I'm working from home all this week". The following **Monday, 7 September 2015**, he updated Mr Rienacker telling him that he "would be working from home all this week again".

78. In an email sent by Mr Rienacker to Mr Moune Nkeng on **10 September 2015**, he wrote "Pls see also the current test plan attached to this email. We can go over the details again when you are back in the office (or per phone if you still need to work from home next week)". Mr Moune Nkeng responded to emphasise that his recovery was okay but still painful. He expected to be discharged within two weeks. He did not take issue with what Mr Rienacker had suggested in his email about a meeting. Mr

Moune Nkeng now alleges that the email of **10 September 2015** amounted to racial harassment – namely that "[Mr Rienacker] suggested that he and Mr Moune Nkeng should have a catch up in the office in relation to the multi FiDEs project, two weeks after Mr Moune Nkeng sustained a severe right knee injury" **[HSMN issue 1/12.1]**.

79. This factual allegation mischaracterises what Mr Rienacker was saying in his email. He was asking Mr Moune Nkeng for a discussion about multiasset FiDEs. He was not specifying where that discussion should take place. One potential venue was the office. Mr Moune Nkeng himself had mentioned he may be back in the office in the near future. Another potential format was that the discussion could take place by phone if, as Mr Rienacker, put it "you still need to work from home next week".

80. On **Monday 14 September 2015**, Mr Moune Nkeng told Mr Rienacker he would be working from home but dialling in for meetings. In his response, Mr Rienacker suggested that they have their weekly catch up. It is implicit in what Mr Rienacker said that this would be by telephone. He ended his email "Wish you a speedy recovery".

81. Over the subsequent days, Mr Moune Nkeng continued to provide email updates and indicated he would continue to work from home. Mr Rienacker continued to wish him well with his recovery.

82. On **24 September 2015**, Mr Moune Nkeng booked a face-to-face GP appointment with the GP surgery where he was registered. The GP surgery was located in Canary Wharf near to the office. This was a 15-minute appointment scheduled to take place at 5.30pm the following day. He forwarded the email confirmation to Mr Rienacker, saying "I'll be leaving early today (around 5.15pm) as I got an appointment with GP regarding my knee". Given the wording of his forwarding email together with the timing and location of the medical appointment, Mr Rienacker assumed that Mr Moune Nkeng planned to attend the office. He emailed in the following terms at 10:47 the following morning:

> "Hi Henry-Serge,
> You are back in office today?
> Then let's have a quick catch up at 11:45 or 12:00 before the pipeline.
> No problem if you leave early today"

83. This email is alleged to be an act of racial harassment **[HSMN issue 1/12.2].** In wording his email in this way, Mr Rienacker was not insisting that Mr Moune Nkeng attend the office. Rather he was suggesting that if Mr Moune Nkeng was going to be in the office, then they should have a quick catch up.

84. Mr Moune Nkeng responded "Yes I'm in the office today". It is unclear whether Mr Moune Nkeng actually attended the office that day and if so, at what point. In cross-

examination, he eventually said he did go into the office and felt obliged to do so in the light of Mr Rienacker's email, but "I did not last long"**.**

85. On **28 September 2015**, Mr Moune Nkeng informed Mr Rienacker that he would be working from home all that day and had been booked for an appointment to discuss surgery at 7.30pm at London Bridge Hospital. Mr Rienacker's response was "Thanks for info and good luck!".

86. During this period, Mr Moune Nkeng continued to work, taking time off when required for medical appointments. It is unclear to what extent Mr Moune Nkeng attended the office during October 2015. If he did so, as he alleges was the case from **7 October 2015**, he did so willingly and not out of fear for his job and career prospects**.**

87. On **30 October 2015**, Mr Moune Nkeng updated the Bank about his ongoing rehabilitation and treatment. He told them that he had a surgery date of **16 December 2015**, with an earlier pre-surgery appointment on **9 December 2015**. Before the surgery he needed to do cycling, running and other moves to recover his full mobility, which he planned to discuss with Mr Rienacker. His email mentioned that he had made huge progress, although would need crutches for up to six weeks post operation and a knee brace for up to 3 months. In a follow up email to Mr Rienacker also on 30 October 2015, he asked to have seven days sick leave from **16 December to 24 December** to recover following the operation **[C/551].**

88. On **26 November 2015** Mr Kim circulated his list ranking the performances of those in the traded models IVU team. Of the five Validators who were at Assistant Vice President Grade, Mr Moune Nkeng was rated in third place. He was graded 'Good' for the 'What' and 'Good' for the 'How' and 'Good' overall. This was the same grade that Mr Rienacker had achieved in relation to his own performance. Ms Karpowicz's performance was noted to be 'Very Strong' for the 'What' and 'Strong' for the 'How' and was considered to be the highest performer. Ms Li was graded 'Very Strong' for the 'What' and 'Strong' for the 'How', with an overall rating of 'Very Strong'. Two Validators were ranked below Mr Moune Nkeng – Mr Bi and Mr Michaelangelo Nucera. Both were rated 'Needs Improvement' for the 'What'. Neither were of Black African ethnicity.

89. When Mr Moune Nkeng's performance was being assessed for his 2015 appraisal, his functional line manager was Mr Dickson. This meant that Mr Dickson was responsible for conducting the appraisal process, albeit based on feedback from Mr Rienacker and others who had worked directly with him. It was therefore appropriate and necessary for Mr Rienacker to share feedback and comments with Mr Dickson in advance of an appraisal meeting held in **December 2015 or January 2016**. Mr Moune Nkeng had alleged that Mr Rienacker's sharing of his feedback with Mr Dickson was an act of racial harassment. This allegation was withdrawn by Mr Moune Nkeng midway through his oral evidence **[HSMN issue 1/12.3].**

90. On **21 December 2015**, Mr Moune Nkeng emailed an update following his recent surgery. He described the operation as "huge successful". He said he had underestimated the severity of his knee given the information he had at the time. He said that he hoped he would be back in January, ending his email "Wish you the best festive period". Mr Rienacker in his response wished him a speedy recovery and hoped the surgery had now solved all the issues. He urged Mr Moune Nkeng to make sure he had a good rest and to be careful. He added: "After your sick leave, pls work from home as long as you need" **[390]**.

91. Mr Moune Nkeng was on sick leave until **6 January 2016**. Mr Rienacker recommended that he worked from home "for a while" after the end of the sick leave to avoid any danger to his knee.

92. On **5 January 2016**, Mr Bi volunteered to help on the MF FiDEs validation work. This was a validation on which Mr Moune Nkeng had been working. In response, Mr Rienacker reassigned the "multi asset FiDE's validation" to Mr Bi for the time being. This transfer of work is said to be a further act of racial harassment **[HSMN issue 1/12.4]**. Mr Bi had previously been engaged on this project in the past. In his email to Mr Bi on **5 January 2016**, he noted that Mr Moune Nkeng "can work on the new scripts when he is back". Whilst he did not check this with Mr Moune Nkeng first, it was his role as Director to allocate work to Validators who had the capacity to do it.

93. On **14 January 2016**, Mr Rienacker emailed Mr Moune Nkeng hoping that the knee was recovering well. He added "As I mentioned earlier you can continue working from home as you need. So, I have set up a dial-in for our next catch up" **[C/641]**.

94. In his 2015 performance review, administered by Mr Dickson but based on the assessment of Mr Rienacker, comments were recorded by Mr Moune Nkeng and by Mr Dickson. Mr Moune Nkeng wrote that "I'm still in the need to improve my soft skills, communication and writing skills". He said that "I'm willing to explore more equity pricing models". He did not indicate an interest in exploring other types of validation models. Mr Dickson noted various positives in his performance. It was noted he had made further progress in improving his analytical and testing skills and the quality of his write ups, evidenced by the increasing quality of his reviews. Specific reference was made to his attitude since his knee injury: "He shows commitment even in challenging circumstances".

95. Mr Dickson recorded three areas as areas where development was required. These were "continue to improve technical, analytical and testing skills in preparation for future more complicated reviews"; "continue to improve understanding of MV review principles"; and "continue to improve communication skills".

96. On **11 February 2016**, Mr Rienacker sent a follow up email. The email noted "it is probably not good for you if you are out of office for too long time. Would it be possible for you to come to the office at least one day a week for regular catch ups with Ade or me? You could choose a time outside the rush hours so it is more convenient for you to travel" **[409]**. Mr Moune Nkeng alleges that Mr Rienacker was thereby forcing him to work from the office at least one day a week, and that this was an act of direct race discrimination or racial harassment **[HSMN issue 1/9.01] [HSMN issue 1/12.4.1].** Mr Rienacker's email was a suggestion rather than an instruction. Whether Mr Moune Nkeng took up the suggestion depended on whether, in Mr Moune Nkeng's opinion, it was medically possible for him to attend the office for a regular catch up one day a week.

97. Mr Moune Nkeng responded "it will be difficult (at least for the first 3-4 weeks) but I can try every Friday from 11am to 4pm (in order to avoid rush time coming in/out). From Friday 19th." He was thereby agreeing to try to attend on a weekly basis, starting in a week's time. In reply, Mr Rienacker wrote "Maybe it is best if you ask your doctor/physiotherapist again whether they have any objections. If commuting is still unsafe for your knee, we can continue meeting via telephone call for the time being, of course". Mr Moune Nkeng followed up on **15 February 2016** by mentioning a discussion with his physiotherapist earlier that day. The physiotherapist was stating that there was a strong objection to him commuting to work as any bad moves could derail his knee recovery and trigger another surgery. He said he had asked his physiotherapist for a report, which he would forward. That email prompted this response from Mr Rienacker **[408]**:

> "Ok, thanks for the information. In this case it is better you continue working from home full-time and dial in to meetings as necessary.
>
> Hope you'll get better soon."

98. The Tribunal finds that Mr Rienacker's email of **11 February 2016** was sent in order to ensure that Mr Moune Nkeng was not isolated from the rest of the team. It did not force him to work from the office for at least one day a week. He had been told on **14 January 2016** that he could continue to work from home for as long as needed, and this was repeated in Mr Rienacker's response on **15 February 2016**.

99. On **17 February 2016**, Mr Moune Nkeng provided Mr Rienacker with a report from his physiotherapist, as previously promised **[415]**. He had not asked to be referred to Occupational Health by this point. Such a referral had not been suggested by either Mr Rienacker or by Mr Kim. Both were content to receive medical updates from Mr Moune Nkeng and his treating specialists. Mr Moune Nkeng was content for his physiotherapist to provide this information to the Bank. Mr Rienacker responded "Thanks for the information. As discussed, you should work from home as long as you need. Wish you a speedy recovery!". In a further email Mr Rienacker went on to

suggest that the physiotherapist should offer home visits so that he did not have the pain and expense of having to travel for treatment.

100. In an internal email exchange on **17 and 18 February 2016** between Mr Kim and HR (referred to as 'ER Direct'), which was forwarded to Mr Rienacker, Mr Kim noted that Mr Moune Nkeng was going to need to be at home for several months whilst undergoing treatment and recovery. Mr Kim said he was totally fine with this and just wanted to check whether there were any issues with this approach from an HR point of view. ER Direct suggested that Mr Moune Nkeng needed to complete a formal flexible working request if he was going to be working from home for more than 3 months. Mr Kim decided that he would not ask Mr Moune Nkeng to fill out such a flexible work application form as the medical condition did not require a permanent change to his terms and conditions **[417].** Mr Moune Nkeng alleges that Mr Kim and Mr Rienacker did an act of racial harassment in failing to make him aware of the Bank's Flexible Working Policy and process **[HSMN issue 1/12.6]**.

101. Mr Kim's stance enabled Mr Moune Nkeng to retain all the benefits of his original terms and conditions whilst, for the time being, continuing to work from home. From Mr Moune Nkeng's point of view, there was no downside to this arrangement continuing. There was nothing preventing Mr Moune Nkeng from submitting a flexible working request to change his working location to working from home on a permanent basis. He would have had access to the policy on the staff intranet.

102. On **16 May 2016**, Mr Moune Nkeng reminded Mr Rienacker that he needed minor surgery, which would take place the following Wednesday at London Bridge Hospital. He said he should be out of hospital the following day. Mr Rienacker replied "Hope everything will go well & you recover quickly" **[425]**. Two days later, on **18 May 2016**, his treating consultant wrote a letter to the Bank summarising the treatment and post-operative course of recovery. His letter asked that Mr Moune Nkeng be released from all work and travel commitments between **18 May 2016 and 3 June 2016**.

103. Mr Moune Nkeng emailed Mr Rienacker on **31 May 2016** telling him that he would be able to work again on **Monday 6 June**, albeit from home. From **Wednesday 15 June 2016** he planned to come to the office every Wednesday and Friday. Mr Rienacker responded within the hour noting that Mr Moune Nkeng's paid sick leave continued until **3 June 2016**. He asked Mr Moune Nkeng to let him know when he was able to work from home again. Mr Rienacker added that once his knee had sufficiently recovered, he should consider coming into the office "at least one time a week (out of rush hours), so you don't lose touch with the office and the team". His email ended "Of course, if in doubt, please ask your doctor or physiotherapist". This is alleged to be an act of direct race discrimination or racial harassment, in that Mr Moune Nkeng says he was being forced to work from the office at least one day per week **[HSMN issues 1/9.02 and 1/12.6.1]**. This email from Mr Rienacker did not force Mr Moune Nkeng to work from the office at least one day a week. It merely

made a suggestion about the frequency of his attendance in the office once his knee had sufficiently recovered.

104. Mr Moune Nkeng alleges that on **6 June 2016** Mr Kim and Mr Rienacker required him to return to work in the office full time without any adjustments being implemented. This is said to be a further act of racial harassment **[HSMN issue 1/12.7]**. Such an allegation is inconsistent with the contemporaneous documents. These do not suggest that Mr Moune Nkeng was being asked to work in the office from **6 June 2016**, still less that he was expected to do so on a full-time basis. Mr Rienacker was allowing him to work from home until such point as his knee had sufficiently recovered to permit visits to the office. At that point, he said that Mr Moune Nkeng should aim to come to the office once a week. Mr Moune Nkeng's allegation is factually incorrect.

105. Around the **middle of 2016**, Mr Moune Nkeng started a company with Mr Samnick. Both are listed as directors of the company at Companies House. The Tribunal heard no evidence as to the activities of the company or its potential relevance to the facts of these cases. It shows that Mr Moune Nkeng and Mr Samnick were sufficiently friendly to have started this business venture together; and given their roles in this company they would have had some basic understanding of the difference between the corporate grade of 'Director' and the particular statutory responsibilities of company directors.

106. In **November 2016**, Mr Moune Nkeng informed Mr Rienacker that he needed surgery on his left knee on **8 December 2016**, which he hoped would be his last surgery. Mr Rienacker told him he could work from home full-time as long as needed **[450]**. He had no issue with Mr Moune Nkeng taking the two days' sick leave he had requested following the operation. Mr Moune Nkeng subsequently sent the Bank a letter from his treating consultant dated **12 December 2016** requesting that he be released from all work and travel commitments between **8 December** and **23 December 2016**.

107. On **16 December 2016**, Mr Rienacker emailed him to say "see you back in the New year … we may have a catch-up via phone if you like" **[457]**. It was clear from that email that, for the time being, Mr Moune Nkeng could continue working from home once his period of sick leave had ended. The Tribunal rejects the factual contention contained in a further allegation of racial harassment, namely that on 28 December 2016 he was required by Mr Kim and by Mr Rienacker to return to work in the office full-time without any adjustments being implemented by either of them **[HSMN issue 1/12.8]**.

108. The Tribunal rejects Mr Moune Nkeng's assertion in his witness statement that he began working in the office 2-3 times a week from **28 December 2016**. On that day, he replied to Mr Rienacker's email of **16 December 2016**, saying "Ok see you back

in the New Year. Wish you festive times ahead". He would not have sent such an email if he was already working in the office on a regular basis.

109. By **10 February 2017**, Mr Moune Nkeng had started to come to the office for four days each week. It is unclear when he started attending the office following his December surgery and the regularity of his attendance. He said that he expected to be off his crutches within the next few weeks **[481].**

110. One of the performance objectives that the 2015 appraisal had set Mr Moune Nkeng for the coming year (2016) was noted to be "projects outside of equities". The measure of success would be to "perform model validations in other asset classes or in market/counterparty credit risk space" (eg UTR and VaR validations), as business need arises".

111. In his self-review as part of his 2016 appraisal, Mr Moune Nkeng made the following comment about the impact of his right knee injury: "I showed a great character following my right knee injury, then surgery then recovery. I was able to continue to deliver my projects from home thanks to a great support from my managers" **[464]**. He did not indicate that he needed any input or advice from Occupational Health about his working arrangements. At no subsequent point did he ask to be referred to Occupational Health so any recommendations could be made about additional potential reasonable adjustments. Although he has now placed the failure to refer him to Occupational Health at the heart of his written Closing Submissions, this was not a point he identified at the time or even included as a specific complaint in his extensive List of Issues.

112. The overall assessment of his performance was based on comments made by Mr Rienacker, as his line manager. These included "looking forward, Henry-Serge should focus on extending his model validation knowledge and skills and developing a broader understanding of models and their use (including end-to-end governance) in order to be able to contribute to more complex validations and approvals. He should also continue working on communication skills and assertiveness and should keep improving quality and structure of his documentation" **[464]**. In a similar vein, the comments from Mr Rienacker noted that:

> "Henry-Serge's validation skills and experience is very much focused on standard equity FPF payouts, while his general understanding of pricing models (with all their technical intricacies and limitations) is still somewhat limited. As a result, he has not been involved as much as other team members in IHC/CCAR related validations (quantitative as well as end to end) over the year.
> Both knowledge and skills can come from exposure to more complex validation projects, but there needs to be also more initiative from his side to prepare the ground."

113. Mr Moune Nkeng had supportive feedback from Yervand Nersisyan who had worked with him on the Monte Carlo streamlined LTA process. Mr Nersisyan referred to Mr Moune Nkeng's high quality work, careful choice of representative trades and good planning enabling deadlines to always be met. He also referred to his diligence, his ability to grasp new concepts and his focus on efficient working. No other stakeholder commented on Mr Moune Nkeng's work.

114. In relation to the rating given to performance during 2016 and subsequently, the Bank moved to a three rated system – 'Outstanding', 'Strong' and 'Improvement Needed'. Ratings were still given for both the 'What' and the 'How'. Mr Moune Nkeng was given a rating of 'Improvement Needed' for his objectives (the 'What') and 'Strong' for his approach to the Barclays values (the 'How') **[467]**. He complains that this was an act of direct race discrimination and of racial harassment **[HSMN issues 1/9.1; 1/12.9]**.

115. Where employees have been given a rating of 'Improvement Needed', the general expectation at the Bank is that they will be put on a PIP. Mr Kim decided that it would not be appropriate to do that in Mr Moune Nkeng's case, as he explained in an email to HR sent on **29 June 2017**. He wrote that the several knee injury surgeries were "thought to be probably the reason for his underperformance (a drop in energy/enthusiasm and therefore productivity)" **[534]**. The Tribunal finds that the rating Mr Moune Nkeng received was the appropriate rating for both the 'What' and the 'How'. The standard of his performance did not merit a rating of 'Strong' for the 'What'. Given the mitigating feature of his ongoing symptoms and need for treatment, this was reflected in the decision not to automatically place him on a PIP, which is what would otherwise have happened.

116. In **March 2017**, Mr Abanda Bella joined the IVU and was assigned to Mr Rienacker's team. He was at Vice President corporate grade. He and Mr Moune Nkeng worked together on several projects thereafter. When Mr Abanda Bella, Mr Samnick and Mr Moune Nkeng were in the office together, they would often speak to each other in French, including on work issues. This is confirmed by the inclusion in the bundle of various emails between the Claimants in French, dealing with work matters. Whilst other nationalities would, at times, also speak to their compatriots in their native language, this tended to be during breaks. There were two other French speakers who worked in the same area of the Bank's operations. These were Mr Maouche and Mr Lefort. On occasions, they would also speak with the three Claimants in French.

117. On **30 May 2017**, Mr Moune Nkeng emailed Mr Rienacker to inform him that he would be having further surgery in three weeks' time **[521]**. This was to remove screws in his right knee. He was calculating that he would be on sick leave for between one and two weeks from **21 June 2017**. Mr Rienacker acknowledged his email, thanking him for providing this update. He said: "I hope your knee is then fully healed so you can leave this episode behind you".

118. Mr Moune Nkeng alleges that on his return from sick leave on around 10 July 2017 he was required to attend the office on a full-time basis without any reasonable adjustments, and that this was a further act of racial harassment **[HSMN issue 1/12.10]**. There is no evidence that Mr Moune Nkeng was required to attend the office for any period of the working week before he was able and willing to do so. Given how flexible Mr Kim and Mr Rienacker had been following previous surgeries, imposing such a requirement from July 2017 would be inconsistent with the supportive and flexible stance they had showed towards him since the original injury. The Tribunal finds that they did not require him to attend the office on a full-time basis without any reasonable adjustments.

119. In **June 2017**, Ms Karpowicz was promoted from Assistant Vice President to Vice President. She had successfully completed a series of interviews for the role of Vice President, in addition to relying on her track record over previous years. The Tribunal accepts that she had performed to a high standard over the two previous performance years. In the calendar year 2015, she had been rated as the top performing Assistant Vice President. The comments on her appraisal for that year noted that she had had "a good varied and productive year, scaling a steep learning curve in a new asset-class (FX) as well as working and delivering on many different projects" **[9693]**. Her overall rating for 2016 had been 'Very Strong'. One of the feedback providers noted that she had paid attention to detail and was "even able to discover bugs within our qa library that was previously undetected". This shows that she was challenging the work of the model developers in a supportive way.

120. In relation to her performance for 2016 **[9698]**, it was noted on Ms Karpowicz's appraisal that she had had a productive year, being involved in various projects. Over the last few months, she had taken the lead and ownership of several IHC/CCAR projects, working largely independently in theory review and testing. Mr Kim commented "As usual, Marta has shown consistent day-to-day positive attitude, behaviour and diligence, dealing with issues, peers and management in a transparent, professional, polite and positive manner". These comments are significantly more positive than the comments on Mr Moune Nkeng's performance in relation to the same performance year. In the three-rating system introduced in 2016, she was assessed as 'Strong/Strong' against both the 'What' and the 'How'.

121. In the same promotion round, announced in the summer of 2017, Mr Bi was also not promoted from Assistant Vice President to Vice President. Mr Moune Nkeng argues that the failure to include him in, or inform him of the promotion process, whilst Ms Karpowicz was promoted was an act of direct race discrimination **[HSMN issue 1/9.2].** The Tribunal accepts that there was an unwritten promotion process that applied to internal candidates, although no vacancies were advertised. If the candidates were identified as potentially suitable, they were asked to attend an interview after the Bank had obtained feedback from stakeholders as to their potential

for promotion. The primary criterion for promotion was consistent delivery of high-quality validations within the required timescale.

122. Following Ms Karpowicz's promotion, on **14 June 2017**, Mr Kim circulated to his direct reports his summary of the criteria for promotion from Assistant Vice President to Vice President "just in case you're asked by your avps". He concluded his email by saying that "it's not supposed to be a formula for promotion, there's no such thing" **[530]**. At the time, there was no formal policy listing the promotion criteria for promotion from Assistant Vice President to Vice President. That was first introduced later.

123. On **8 September 2017**, Mr Moune Nkeng and Mr Rienacker held a meeting, in which Mr Rienacker is accused of committing an act of direct race discrimination or harassment related to race **[HSMN issues 1/9.2.1 and 1/12.10.1]**. It is alleged that Mr Rienacker questioned Mr Moune Nkeng's motivation for seeking promotion and enrolling in the IRM certificate programme. This is a new allegation, introduced by amendment, which was not included in Mr Moune Nkeng's original claim.

124. There were no notes taken during this meeting. What was said during the meeting can be gleaned from the subsequent email correspondence. Following the meeting, Mr Moune Nkeng sent Mr Rienacker a lengthy email which he described as the minutes of the meeting. This was not something he had previously done in relation to meetings of this kind. The email noted that the next logical step of his career was to become Vice President. He asked for Mr Rienacker's support so he could complete an International Certificate in Financial Services Risk Management.

125. Mr Rienacker's response on **11 September 2017 [566]** started "As I said". He was referring at this point to what he had said in the meeting on 8 September 2017. "As I said, I am fine with you completing an International Certificate in Financial Services Risk Management". He wrote that Mr Moune Nkeng had given "a good motivation in our meeting and I think you have a general idea of what you want to achieve from this course and how it helps you in your development". He also noted that he had challenged Mr Moune Nkeng's motivation. He added:

> "[It] was meant as a constructive challenge, and I hope I did not come across as overly critical (otherwise, please accept my apologies)"

126. So far as career progression more generally, he suggested that this discussion should be continued another day – he suggested this take place after the end of September, "when we have delivered the first batch of CCAR BAU validations and I can find more time to think about it (at the moment, the review work and communication is almost 24/7 for me)."

127. In that **11 September 2017** email, Mr Rienacker was not questioning Mr Moune Nkeng's motivation for completing the Certificate, nor did he disregard having any further conversation about Mr Moune Nkeng's career progression – contrary to what Mr Moune Nkeng argues and characterises as an act of direct race discrimination or racial harassment **[HSMN issues 1/9.2.2 and 1/12.10.2]**. As Mr Rienacker said in the email, he had been satisfied by the answers that Mr Moune Nkeng had given in the meeting of 8 September 2017 about his reasons for enrolling on the course. He did not disregard having any further conversation about Mr Moune Nkeng's career progression. Rather he said that they should continue the more general discussion about career progression another day. This discussion was then rescheduled to take place at the end of October 2017.

128. The Bank subsequently approved Mr Moune Nkeng's enrolment on this certificate, at a cost to the Bank of £1795.

129. There was a further meeting between Mr Rienacker and Mr Moune Nkeng during the week commencing **30 October 2017** to discuss career progression. During this meeting, Mr Rienacker discussed the key criteria which applied to promotion decisions for those seeking promotion from Assistant Vice President to Vice President. In advance of the meeting, Mr Rienacker emailed himself a note of the points he wanted to communicate to Mr Moune Nkeng during this meeting.

130. On **2 November 2017** Ms Rachel Feuer sent an email to all those in the MRM team **[655]**. It stated that Mr Canabarro had provided guidance and context at yesterday's CCAR & Tier 1 Model Status Update meeting, adding "He explained that the current administration's drive towards deregulation will lead to less stringent enforcement of SR 11-7, allowing IVU to focus on material issues". Mr Moune Nkeng refers to this and other documents that speak of "ensuring SR 11-7 compliance" to argue that he believed that SR 11-7 was a legal obligation imposed on the Bank.

131. When Mr Moune Nkeng's 2017 performance was assessed for his 2017 appraisal on or around **31 January 2018**, he was given a rating of 'Strong' for the 'What' and 'Strong' for the 'How'. Mr Moune Nkeng takes issue with some of the comments from Mr Rienacker which were included in his 2017 appraisal, which are alleged to be acts of direct race discrimination or racial harassment **[HSMN issues 1/9.3 and 1/12.11]**.

132. Overall, the comments were positive, both in relation to his performance against his objectives, and in relation to his adoption of the five Barclays values. They are consistent with his 'Strong' ratings for both the 'What' and the 'How'. In particular, Mr Rienacker noted that he had "significantly increased his technical/analytical skills, versatility, ability to resolve issues, and review & challenge skills (applied in Equity Swap and LSV reviews)." It also noted that he had coped well with the challenges to IU in relation to the change of model governance and built good working relationships with QA in his validation projects". He was noted to be "diligent, helpful, cooperative

and eager to learn and shows consistent professional attitude and behaviour". The Tribunal accepts that in 2017 his work had expanded beyond standard equity FPF validations and he was now working in broader areas **[787]**.

133. The areas which he was asked to work on were "communication skills, quality and style of write ups, and further develop his understanding of pricing models and their issues". The Tribunal has no reason to doubt that these areas reflected the aspects of Mr Moune Nkeng's role that Mr Rienacker genuinely considered were areas where there could be further improvement. Mr Moune Nkeng has not established that this constructive criticism was unjustified. We do not consider that these development areas were included because English was not Mr Moune Nkeng's first language. This comment was consistent with comments which had been made in previous appraisals which regarded improvements in communication skills as work in progress. It is also consistent with similar comments made in the feedback provided to Mr Harrison. He did not share Mr Moune Nkeng's ethnicity.

134. For some of 2017, Mr Moune Nkeng had been working with Mr Abanda Bella. In an email from Mr Abanda Bella at the end of August 2018, Mr Abanda Bella had noted that Mr Moune Nkeng had "effectively ironed out a lack of polish that could sometimes appear in his documentation writing style in the past". The clear implication is that Mr Abanda Bella, who shares Mr Moune Nkeng's ethnicity, was also critical of Mr Moune Nkeng's writing style during 2017. We reject the suggestion that Mr Rienacker's development points were directed at, or had anything to do with, English not being Mr Moune Nkeng's first language. It was about the level of detail and concision in Mr Moune Nkeng's validation reports. It is consistent with the development areas he had identified in previous annual appraisals.

135. The 2017 appraisal noted that he would have the opportunity to work in various validations and also across asset classes, which would stretch his abilities further. This reflected the fact that he had largely been working on equity payout projects in the past and reinforced that it was appropriate to encourage him to "further develop his understanding of pricing models and their issues". In his 2018 appraisal, a year later, Mr Rienacker noted that during 2018 he had "significantly improved his document writing style and model validation skills/knowledge going beyond payouts". It added he had gained further experience by working on Local Volatility, Equity Swap and Asian Option validations **[1338]**.

136. Following his 2017 appraisal, Mr Moune Nkeng received an increase in his base salary from £57,550 to £63,550 and was awarded a bonus of £8000. The basis for the increase in his base salary was to align the base salaries of those working at Assistant Vice President level.

137. On **19 January 2018**, Mr Canabarro emailed Mr Kim's team ahead of a scheduled meeting with that team on 25 January 2018. He told them that he wanted to make

the IVU more efficient and more effective. He invited them to write down their ideas in advance of the meeting. Mr Abanda Bella accepted this invitation, setting out in an email response three issues and his proposed solutions. He said that the team of directors did not share Mr Canabarro's vision of how model validations should be performed. He accused them of repeatedly rubbishing Mr Canabarro's approach in front of more junior members. He accused the team of suffering from an acute case of nepotism. He said that his solutions had already been repeatedly put forward from within the team, to little effect so far. He said that without a mechanism to enforce accountability, the above suggestions would carry on being disregarded. Despite these serious criticisms, he did not suggest at any point in this email that any part of the reason for the issues he was raising was his race or the race of other members of the team. His email was sent only to Mr Canabarro.

138. Mr Canabarro forwarded this email to Mr Kim, with the following text: "I received this from Christian today. He raises issues that seem serious, if they are true. I would like you to assess these issues and let's discuss tomorrow. I will speak with other people in the group in the future too."

139. Mr Kim responded the same day, **24 January 2018** in two emails. The focus of the emails was Mr Kim's concerns about Mr Abanda Bella's conduct. The Tribunal deals with these emails when setting out its findings of fact in relation to Mr Abanda Bella's claim. However, at the end of the email, Mr Kim said, speaking of Mr Abanda Bella and Mr Samnick:

> "There are two others in that clique. Another commonality is French language. I can give you more information tomorrow" **[745]**

140. The Tribunal finds that Mr Moune Nkeng was one of the two others who were thought to be within that clique. The other person accepted by Mr Moune Nkeng to be referred to within this group of four, was another Validator, who was neither Black nor from Cameroon. This was probably Mr Said El Ghazouni, who was a French speaker of North African origin.

141. On **30 August 2018**, Mr Moune Nkeng attended a Culture Focus Group meeting. This was a meeting where colleagues at the same grade, in Mr Moune Nkeng's case those who were Assistant Vice Presidents, could express any views, whether positive or negative about the culture within the MRM team. The meeting was open to all Assistant Vice Presidents in Mr Kim's validation team.

142. It was conducted by Mr Adrian Vitcu, who was at Mr Kim's level. Mr Kim conducted an equivalent meeting for those under Mr Vitcu's line management. Mr Kim was not present at the meeting to which Mr Moune Nkeng had been invited, nor was Mr Rienacker in attendance. Those participating had been told this was a confidential meeting so as to encourage more open discussion. Any individual issues discussed

or views disclosed in the meeting would not be repeated outside of the meeting and would not be attributed to a particular colleague. The Tribunal accepts that this is what happened in relation to the meeting conducted by Mr Vitcu. Mrs Faye Richardson, HR Business Partner for Risk, also attended the meeting to facilitate discussion. She did not take any notes. Her role was to provide feedback to managers on any general trends which emerged from the discussion where views were supported by several team members rather than to register or respond to complaints about specific issues.

143. In advance of the meeting, Mr Moune Nkeng discussed with Mr Abanda Bella the points he should be making. Mr Abanda Bella gave him some guidance as to what to include **[1024]**. He said "You need to have a written list on a piece of paper and have one example for each item. But do not give the examples if you are not prompted. And do not provide or say anything "vague" or "general" about the team. Just your item and that's it. Need to be strict on this". He then provided seven headings for points Mr Moune Nkeng might make.

144. Mr Moune Nkeng prepared some typed notes in advance of the meeting, which adopted some of the points suggested by Mr Abanda Bella. He then sent that to Mr Abanda Bella for his review. Mr Abanda Bella commented on his draft:

> "Careful, you need to watch out for typos given that the document is being read by HR"

145. The document identified four areas where he had concerns. At the meeting, Mr Moune Nkeng alleges that he made a protected disclosure **[HSMN issue 1/3.1]** and did a protected act **[HSMN issue 1/6.1]**. He read from this single piece of paper during the course of the meeting. One of his significant concerns was that there was a toxic working environment which had resulted in three colleagues leaving the team. None of the four headings alleged discrimination or claimed either directly or indirectly that he was blowing the whistle on wrongdoing. The Tribunal does not accept he made allegations of discrimination or specifically raised public interest disclosures that went beyond what he had prepared on paper. It does not accept that he raised issues about harassment within the MRM team or a lack of support for developing talent, nor did he refer to any breach of FED SR 11-7 guidelines or of the Equality Act 2010. He did not hand his piece of paper to Mrs Richardson. Had he done so, the piece of paper is likely to have been the subject of further email correspondence. It was not.

146. We do not find that Mrs Richardson referred the specific details of Mr Moune Nkeng's concerns to others within the organisation. Specifically, she did not ask Mr Rienacker to investigate the points Mr Moune Nkeng was raising. It is only with the benefit of hindsight, when asked about the contents of this piece of paper in cross-examination, that she accepted she ought to have considered investigating the allegation that

there was a toxic working environment which had caused three colleagues to leave. Mr Moune Nkeng did not mention any of the four points to Mr Rienacker as his line manager. As a result, Mr Rienacker was not aware of those specific concerns when he conducted an informal appraisal with Mr Moune Nkeng about a week later. Nor did Mr Kim or Mr Rood or Ms Li become aware of what was raised by Mr Moune Nkeng during this meeting.

147. At the **end of August 2018**, Mr Rienacker prepared to conduct his mid-year performance assessment with Mr Moune Nkeng. In order to do this, he sought feedback from Mr Abanda Bella, who had worked with him extensively in recent months. Mr Abanda Bella emailed Mr Rienacker with a glowing assessment of Mr Moune Nkeng's performance. This stated that Mr Moune Nkeng had no further areas of improvement to make in his Assistant Vice President role.

148. Mr Rienacker responded on **5 September 2018**, agreeing with many of Mr Abanda Bella's points. He noted that there were still occasional instances of lack of critical review of Mr Moune Nkeng's results/documentation, which he considered were avoidable **[1129]**. This was his genuine view of Mr Moune Nkeng's overall performance given his observations of the standard of his work. Unlike Mr Abanda Bella, he had been Mr Moune Nkeng's line manager throughout the year and had been the Lead Validator on all of his validations. Mr Moune Nkeng alleges that in disagreeing with Mr Abanda Bella, Mr Rienacker was subjecting him to victimisation **[HSMN issue 1/8.1];** direct race discrimination **[HSMN issue 1/9.4]**; and harassment related to race **[HSMN issue 1/12.12]**.

149. This prompted further comments from Mr Abanda Bella defending Mr Moune Nkeng against any criticism from Mr Rienacker. In relation to a particular error, he said this could not be held against Mr Moune Nkeng. He referred to how he had produced additional tests around the density issue "to make it easier to understand for you and Jeong". This implied that Mr Rienacker and Mr Kim had not been able to understand this issue without further explanation. It amounted to a criticism by Mr Abanda Bella of his line manager and his line manager's line manager. When Mr Rienacker responded to these additional remarks from Mr Abanda Bella, Mr Abanda Bella again provided further comments. That elicited the following from Mr Rienacker: "Let's relax and discuss next week …. My overall feedback for Henry Serge is positive, and I think my critique on the analysis will be helpful – if the aim is for him to work at the next level and take more responsibility in validations. If this is too early for him, we need to reconsider our outlook ("looking forward") and give him more time".

150. Mr Rienacker had met with Mr Moune Nkeng for the mid-year review meeting around **31 August 2018**. He followed up with an email on **5 September 2018** in which he split his assessment into two sections – "what went well", and "areas you should work on". In the "what went well" section he noted that there had been a significant improvement in document writing style and model validation skills and knowledge;

that Mr Moune Nkeng was professional, diligent, efficient and a good team player; that he had developed good working relationships with Quantitative Analysts; and that Mr Rienacker had seen many examples of effective review and challenge. Mr Rienacker also congratulated Mr Moune Nkeng on successfully completing the Institute of Risk Management Certificate. The "areas you should work on" were occasional instances of lack of critical review of results and documentation; and further increasing his understanding and developing a broader view of pricing models and model governance. Going forwards, Mr Rienacker said he would give Mr Moune Nkeng even more opportunities to work on other pricing models and with a variety of other senior Validators, also across asset classes, including risk models. In order to achieve this, there would be less reliance on him as the only FPF payout Validator.

151. Mr Moune Nkeng objected to this feedback. In further email exchanges, he set out his perspective in relation to Mr Rienacker's comments under both sections. His main point was that he was not being given a fair chance to further develop his broader view of pricing models and model governance. He requested a model validation project where he would be the main Validator. He said it would be "discriminatory if I had to accept less workload than what I can manage on the payouts if I do not also get validations on which I am the main Validator". Read in the context of the email exchange as a whole, the phrase "it would be discriminatory" was reasonably interpreted by Mr Rienacker as equivalent to saying: "it would be unfair". It was not a reference to prohibited conduct based on a characteristic protected by the Equality Act 2010, still less was it an allegation of race discrimination. The Tribunal notes he was not alleging that there had been any such discrimination in the past. This is not alleged to be a protected act.

152. Mr Rienacker responded to Mr Moune Nkeng's views. Whilst he felt it had been good experience for Mr Moune Nkeng to work under Mr Abanda Bella's supervision, he appreciated that Mr Moune Nkeng would like to work as sole Validator. He held a follow up meeting with Mr Moune Nkeng on **7 September 2018**. He told him he was trying to emphasise the progress he had made whilst also giving him suggestions to improve things further. He said that Mr Moune Nkeng should start performing entire equity model validations independently under a Lead Validator, as well as take opportunities for him to perform validations in other asset classes or for other model types.

153. Mr Moune Nkeng forwarded his email exchanges with Mr Rienacker to Mr Abanda Bella and Mr Samnick on **12 September 2018**. The rationale for doing so was not clear from the limited wording in his covering email **[1097].**

154. Consistent with his discussions at the mid-year appraisal that Mr Moune Nkeng should broaden his validation experience, on **24 September 2018** Mr Rienacker emailed Mr Moune Nkeng to suggest he review an XVA simulation method. He would be working with Mr Maouche. He explained what he was asking him to do as follows:

> "The goal is to provide feedback to the QA doc, follow up with them on the testing, do supplementary testing, and contribute to the XVA simulation models IVU doc writing up the equity part (methodology, testing)."

155. Mr Moune Nkeng turned down this opportunity. He said he was doing so in order to have a chance of being the main Validator on one of the coming equity projects. He suggested that Ms Li and Mr Abanda Bella would be more than able to work on this validation. Even though Mr Rienacker assured him that there would still be opportunities to work on a full end to end equity pricing model validation in the near future, Mr Moune Nkeng continued to refuse to assist with this validation. Mr Rienacker's behaviour was not an attempt to remove Mr Moune Nkeng from the equity space, but an attempt to broaden his experience as had been recently discussed with him in the mid-year review.

156. Mr Abanda Bella put himself and Mr Samnick forward for this particular work, suggesting that Mr Samnick should be the main contributor. He himself would contribute more towards the end of the validation. He commented "easily done, efficient and it solves all the issues with no drawback whatsoever for anyone" **[1189]**. Mr Abanda Bella did not line manage Mr Samnick. This was Mr Rood's role. Mr Abanda Bella had copied Mr Rood and Mr Samnick into his email. It was inappropriate for Mr Abanda Bella to suggest that Mr Samnick should be given this work in this way. He did not have the full picture of the workload already allocated across the team and the potential future demands. It was not his role to allocate work to others.

157. Mr Rienacker responded to Mr Abanda Bella's email in a respectful reply. He said that the equities simulation method was only a small part of the XVA Simulation Model. It did not need the involvement of two Validators. He did email Mr Kim commenting that Mr Maouche regarded Mr Abanda Bella as "playing the boss" and that he found his behaviour quite disturbing and unprofessional.

158. Given Mr Moune Nkeng's reluctance to engage in this work, Mr Rienacker did not press the point. He did not require Mr Moune Nkeng to assist Mr Maouche on the XVA Simulation validation.

159. Mr Moune Nkeng alleges that requiring him to undertake this work under Mr Maouche's supervision, without discussing it with him in advance was victimisation for doing a protected act in the Culture Focus Group meeting **[HSMN issue 1/8.2]**; an act of race discrimination **[HSMN issue 1/9.5]**; and harassment related to race **[HSMN issue 1/12.13]**. The Tribunal does not accept that this is factually accurate. Mr Rienacker was explaining to Mr Moune Nkeng over email why he was proposing that he undertake this work. When Mr Moune Nkeng refused to carry out this work, Mr Rienacker accepted his refusal. He did not require him to carry out this work.

160. This was a missed opportunity for Mr Moune Nkeng. Had he taken this opportunity it would have broadened his experience and so made him a stronger candidate for promotion. Other Validators in Mr Rienacker's sub-team had agreed to work outside their principal asset class, including working on risk models.

161. On **8 October 2018**, Mr Rienacker emailed his team, noting that self-reviews as part of the annual appraisal process needed to be completed by 28 October. This was a standard part of the appraisal process. He encouraged them to ask for colleague feedback, writing that there should be at least three external stakeholders. He asked for team members to send him the names by the end of 9 October 2018. He sent a further email specifically to Mr Moune Nkeng on **9 October 2018** asking him for the names of colleague feedback providers once he was back from his holidays. Mr Moune Nkeng forwarded this to Mr Abanda Bella and to Mr Samnick with the message "Il est serieux dans son way …" **[1203]**.

162. Mr Moune Nkeng alleges that this request was a detriment, which amounts to direct race discrimination **[HSMN issue 1/9.6]**; victimisation **[HSMN issue 1/8.3]** and harassment related to race **[HSMN issue 1/12.14]**. The same request was made to all team members. Mr Chen made the same request of the members of his team, which did not include any of the Claimants in these proceedings. Mr Abanda Bella objected to the need for this, saying it was not required by the policy. Mr Rienacker clarified that "the purpose for colleague feedback is for the line manager to see feedback from a spread of potential feedback providers and from various situations". Mr Rienacker offered to discuss if Mr Abanda Bella had any concerns **[1218]**. The requirement for feedback from three external stakeholders was a general requirement within each of Mr Kim's teams, unrelated to the race of team members or to any concerns they may have raised in the past.

163. On **9 January 2019**, Mr Rienacker asked Mr Moune Nkeng to start working with Mr Rood on the review of the IHR VaR model "on the short/medium term". Mr Rienacker told him that this was Tier 1 work and on the CCAR list, therefore it was the highest priority. The email was also sent to Mr Abanda Bella who was asked to cover for equities Asian, quanto/compo/basket ("Q/C/B") and Equity Swap. Mr Abanda Bella said he was not able to cover this, given the timelines involved. He suggested that Mr Samnick help Mr Rood with the IHR VaR model validation saying, given its high priority, "someone with high skill and experience in that area is probably a much better fit" **[1269]**. At the time, Mr Samnick was already involved in two high profile models. Mr Rood resisted the suggestion that Mr Samnick should take on a third project, although was willing to consider him helping Mr Moune Nkeng. Reasonably, Mr Rienacker told Mr Rood that it was not for Mr Abanda Bella to decide whether Mr Moune Nkeng worked on IHC VaR.

164. In the event, Mr Moune Nkeng and Mr Rienacker jointly decided that the IHC VaR project was too big/high profile for Mr Moune Nkeng at that moment as he did not have any experience at all in risk models. Mr Rienacker told him that "he should take future chances to extend his knowledge about other classes or model types, rather than restricting himself to equity models" **[1279]**. The Tribunal finds that he did so because he wanted Mr Moune Nkeng to gain wider experience.

165. Mr Moune Nkeng alleges that Mr Rienacker assigned him to an important Tier 1 validation outside his area of expertise in order to set him up to fail and that this was because he had previously done a protected act **[HSMN issue 1/8.4]** or because of his race **[HSMN issue 1/9.7]**.

166. Around the **end of January 2019**, Mr Rienacker was due to hold his 1-2-1 appraisal conversation for 2018 with Mr Moune Nkeng. It was postponed at short notice, given that Mr Samnick had turned up to his own 2018 appraisal meeting with Mr Abanda Bella. The postponement is alleged to be an act of victimisation **[HSMN issue 1/8.4.1]**, direct race discrimination **[HSMN issue 1/9.7.1]** and racial harassment **[HSMN issue 1/12.14.1].** The Tribunal finds it was reasonable for the Bank to assume that Mr Abanda Bella might try to turn up to Mr Moune Nkeng's meeting as well.

167. On **12 February 2019**, Mr Moune Nkeng had his re-arranged 2018 appraisal meeting with Mr Rienacker. He attended alone. He was awarded a rating of 'Strong' for both the 'What' and the 'How'. In advance of the appraisal meeting, Mr Moune Nkeng was expected to complete his self-appraisal, showing how he had performed against his objectives for the year. One of those objectives was described as "Perform validation in other asset classes/for other types and in collaboration with other team members". Mr Moune Nkeng did not give any examples of completed validations under this heading. Rather his comment was "N/A". In his general comments, Mr Moune Nkeng did not make any reference to performing validations outside of the equity area with which he was familiar.

168. Mr Rienacker made several positive comments on Mr Moune Nkeng's form. He said that Mr Moune Nkeng had significantly improved his document writing style and model validation skills/knowledge, going beyond payouts. He noted Mr Moune Nkeng had successfully completed the IRM Certificate in Financial Service Risk Management. However, he noted a few development areas. In particular he said that Mr Moune Nkeng should continue pushing himself and his boundaries, actively seeking new challenges to increase versatility and independence and to gain new work experience. These included "taking opportunities to work outside of his asset class or on different model types (eg XVA, risk models, finance models); collaborating with other peers or senior Validators, and taking the lead in the validation of an equity pricing model (non-payout)". Mr Moune Nkeng alleges that these were negative comments prompted by a protected act at the Culture Focus

Group Meeting **[HSMN issue 1/8.5]**; and also acts of direct race discrimination **[HSMN issue 1/9.8]**; and racial harassment **[HSMN issue 1/12.15]**. Mr Rienacker's comments reflected his genuine assessment of the positives and negatives about Mr Moune Nkeng's performance during 2018, as he had communicated to Mr Moune Nkeng at the time as the year progressed. The Tribunal does not accept, as Mr Moune Nkeng alleges, that his line manager's comments were manufactured or constructed to fit with the previously decided overall year end rating.

169. On **15 February 2019**, the Claimant met with Mr Kim to be told the bonus he would be awarded for his previous year's performance, and his annual pay rise. He was awarded a bonus of £5,000 and a pay rise which took his base salary and territorial allowance to a combined figure of £63,550. The bonus was lower than the £8,000 bonus he had received the previous year. The reduction in his bonus from the previous year is alleged to be an act of victimisation **[HSMN issue 1/8.6]** and of direct race discrimination **[HSMN issue 1/9.9]**.

170. The bonus in the previous year had been higher because one member of the team had departed, and their bonus had been redistributed between other team members including Mr Moune Nkeng. This had increased his bonus by £2,000 **[676]**. It is not surprising that Mr Moune Nkeng received only a modest bonus for 2018. He was the lowest rated Assistant Vice President (out of 4), although when the performance rankings were published (in September 2018) it was recognised that his performance had improved **[9709]**.

171. The combined increase in Mr Moune Nkeng's total financial package was an increase of 4.57% in early 2019, compared to the package he had been receiving during the previous year. The Tribunal accepts the evidence of Mr Kim that this is only marginally below the average increase in the total financial package awarded to his team, namely an average increase of 4.6%. The increase in his total remuneration was therefore in line with increases within the team as a whole even if the absolute size of his bonus was lower.

172. On **19 March 2019**, there was an urgent request for the IVU team to prioritise a particular review, namely in relation to an aspect of the LTA/PTA Pipeline **[1438]**. At the time there were other high priority deadlines to be completed within the team. This was the point in the year when the IVU needed to sign off on Tier 1 CCAR validations. Mr Rienacker replied to say that "if there are unresolved issues, this might need to wait until Henry-Serge [Moune Nkeng] and Christian [Abanda Bella] are back from holidays". Both had gone on holiday at the same time, in order to use up their remaining annual leave before the end of the financial year. The requested review related to a validation on which both Mr Abanda Bella and Mr Moune Nkeng had already been carrying out the validation work. Further chasing emails were sent through on **25 March 2019**. Mr Rienacker told the stakeholder that under normal circumstances he would do the peer review and make any changes himself. But

because his entire team was working 24/7 on the finalisation of CCAR validations, he said he thought that approval of that particular validation would have to wait until the week commencing 1 April 2019 when the Validator (Mr Moune Nkeng) and Peer Reviewer (Mr Abanda Bella) were back.

173. The validation was completed on **1 April 2019** in stressful circumstances. Mr Rienacker sent extensive comments on the existing draft to Mr Moune Nkeng and Mr Abanda Bella at 12:43am very early that morning. Mr Moune Nkeng responded with his feedback at 2:41pm, and his check on the QA results a minute later. In an email at 3.15pm Mr Rienacker wanted to know whether this could be finished today "or whether there are any roadblocks". There was then a flurry of further emails between Mr Rienacker, Mr Moune Nkeng and Mr Abanda Bella, as well as further chasing emails from the stakeholder. Mr Abanda Bella sent his peer reviewed draft at 7:18pm to Mr Rienacker. Within 15 minutes, Mr Rienacker had reviewed the draft, noting "still some oddities in the conclusions". He said that he would try to finish the validation on that basis. Mr Rienacker emailed the model owner and developer at 12:17am with his validation report, notifying them that this had been signed off by IVU.

174. Mr Rienacker then proceeded to draft an email to Mr Abanda Bella and Mr Moune Nkeng, giving "some honest feedback". He sent this email at 1.05am, within an hour of finalising the validation.

175. In the email, he said that "even though the payoff is signed off now, I do not think we left the best impression with the desk, QA and MCO … we delivered the validation late (literally at the last moment), and right until the end we were not able to give a clear indication to the desk or the pipeline whether we will be able to sign off and how much work is left". He added:

> "Two things to mention in particular:
> - There was a lack of quality in the validation write up: many copy & paste errors, inconsistencies, lack of structure, typos and stylistic errors etc – clearly below the standard of work in our IVU team. This made the peer and senior review of this standard FPF trade type quite difficult given the tough timescale.
> - Validator and peer reviewer were working from home. Most of the day the payout was with the peer reviewer, who could not be reached at all and was not able to give any update.
>
> This is not acceptable. I think we need to improve quality standards for these "routine validations" again in the future."

176. This email is said to have been written by Mr Rienacker as an act of victimisation because of the allegation of discrimination Mr Moune Nkeng alleges he made during the Culture Focus Group Meeting **[HSMN issue 1/8.7]**; direct race discrimination **[HSMN issue 1/9.10]** and racial harassment **[HSMN issue 1/12.16]**.

177. Mr Abanda Bella sent a detailed response, inserting his comments into Mr Rienacker's email **[1431]**. He was very defensive in all aspects of his comments. He did not accept any blame for what had transpired. He said he had delivered the best that was achievable given other commitments and the short timeline involved. He added "To expect more is not just unreasonable and unrealistic but also akin to harassment, which is a serious criminal offence". In a section which he chose to underline, he accused Mr Rienacker of a "blatant disregard for the short timescale and context of conflicting priorities under which those write-ups were produced". He said that Mr Rienacker did not come up with a contingency plan whilst they were on vacation which indicated "a serious oversight fault on your part".

178. Mr Moune Nkeng had the SPARX programme on his computer. On **24 April 2019**, at Mr Rienacker's suggestion, Ms Li emailed asking for Mr Moune Nkeng's help to run some tests using this programme for a FiDEs payout validation **[9523]**. She asked if this could be done within the next nine days. Ms Li did not have the SPARX programme on her computer and it would have taken too long to get IT support to have installed it for her. She ended her email asking "Can you let me know if this plan is practical? If not, we can adjust it". Ms Li did not copy in Mr Abanda Bella. There was no reason for her to do so, as he was not Mr Moune Nkeng's line manager. Ms Li's request is alleged to be victimisation for doing a protected act **[HSMN issue 8.8];** direct race discrimination **[HSMN issue 9.11]**; and racial harassment **[HSMN issue 12.17].**

179. In his response, which he copied to Mr Abanda Bella, Mr Moune Nkeng offered to give her "some guidance about your implementation tests" but declined to help in the way Ms Li had requested, as he and Mr Abanda Bella needed to be 100% focused on a Quanto/Compo project. Given Mr Moune Nkeng's response, Ms Li replied "Let's leave it for now". She proposed using the old testing results in the report. She added that if this was insufficient then "we will have to come to you for running additional test cases and at least output some numbers". Mr Abanda Bella, who had been copied into this email, sent a reply saying that he believed that reusing the same test results from an old document for a report going to the Fed might be a breach of "our policy" **[9521]**. In a further response to Mr Abanda Bella and Mr Moune Nkeng copied to Mr Rienacker, Ms Li said "then please re-run those results for me whenever you can find time". She followed this up with a subsequent email at 18:35 on **24 April 2019** sent just to Mr Moune Nkeng (copying in Mr Rienacker) asking a series of specific questions **[1619]**.

180. In asking for Mr Moune Nkeng's help in this way, Ms Li was trying to complete the validation report as efficiently as possible.

181. Mr Moune Nkeng forwarded Ms Li's email at 18:35 on **24 April 2019** to Mr Abanda Bella. This prompted the following brusque email from Mr Abanda Bella to Ms Li, which he copied to Mr Rienacker:

> "Hi Huayi
> Could you please stop sending requests to Henry-Serge behind my back that distract him from making the planned gains on the Q/C/B project?
> This is extremely disruptive.
> … If you struggle with your project and require recurrent help, the right thing would be for you to come to me first, so that I could weight your need against our requirements and priorities. How are we supposed to plan and stay on track if you don't follow this protocol?
> I am not against providing help, so long as it is asked openly and not provided against the flow of our priorities and available resources, which appear to be the case right now.
> I hope you understand.
> Many thanks,
> Christian"

182. This was an entirely inappropriate tone for Mr Abanda Bella to adopt towards one of his peers. He was not her line manager, nor was he Mr Moune Nkeng's. It was not his role to weigh her needs against the tasks already allocated to Mr Moune Nkeng. This was the role of his line manager (Mr Rienacker) to discuss with her line manager, Mr Harrison.

183. Rather than respond by pointing this out in his response, Mr Rienacker adopted a respectful and courteous approach. He said he should have clarified the position for all participants, that he was okay for Mr Moune Nkeng to be running tests for the FiDEs payout project **[1690]**.

184. Mr Abanda Bella did not accept this clarification from his line manager. Instead, he chose to insert his own comments disputing Mr Rienacker's decision:

> "On top of the additional back and forth and immediate loss of man hours on Q/C/B, you are asking [Henry-Serge] to get his machine to switch between 2 QA setups even though we [know] that this could well mess up his setup for both tasks" **[1690]**

185. In further email correspondence with Mr Abanda Bella, around the **end of April 2019**, Mr Rienacker emphasised that it was his decision whether Mr Moune Nkeng would run tests on SPARX. He started this email with a further courteous remark "Christian: I appreciate your concern about progress in the Q/C/B project" **[1700]**.

186. Mr Moune Nkeng alleges that he was deliberately excluded from communications and decisions about the Asian Option Validation Project during the period from **9 –**

17 June 2019. He alleges that this was victimisation **[HSMN issue 1/8.9];** direct race discrimination **[HSMN issue 1/9.12]** and racial harassment **[HSMN issue 1/12.18]**. This was a project on which Mr Abanda Bella had been working with Mr Rienacker, assisted to some extent by Mr Moune Nkeng. Weaknesses were identified in the draft validation report by Mr Kim and these weaknesses were fed back to Mr Abanda Bella by Mr Rienacker. Mr Moune Nkeng was copied into that email. Mr Abanda Bella reacted to these comments, challenging Mr Rienacker to follow up himself with QA. On **11 June 2019**, Mr Rienacker emailed Mr Abanda Bella, again copying in Mr Moune Nkeng, saying "As I have not got a comprehensive reply from your side, I have decided to follow up myself with QA. I will let you know the outcome." He then engaged with QA and did not copy in either Mr Abanda Bella or Mr Moune Nkeng. When he had received answers from QA he then replied with further questions on **16 June 2019**, copying in Mr Abanda Bella and Mr Moune Nkeng. The fact that Mr Rienacker chose to copy both Mr Abanda Bell and Mr Moune Nkeng into the answers he received from QA and his further questions shows that he was not seeking to exclude either of them from discussions about this particular project.

187. From **21 June 2019 to 8 July 2019**, Mr Abanda Bella was off work on sick leave. At the time, he was working on three projects - Asian Option, Equity Swap and Q/C/B. Mr Rienacker convened a meeting on **16 July 2019** to discuss the respective priorities of these and other projects **[2063]**. At that point, the top priorities were Asian Option and Equity Swap. He decided that Ms Li would start working on Equity Swap and Mr Moune Nkeng would have a handover meeting with her to achieve this. Mr Abanda Bella would continue working on Asian Option and both he and Mr Moune Nkeng would work on Q/C/B. There was a meeting with the Quantitative Analysts about all three projects on **19 July** and then an internal discussion on **22 July**. The result of those further discussions was set out in an email from Mr Rienacker on **23 July 2019** at 12:32. Asian Option and Q/C/B were now top priorities. Mr Rienacker noted that there was still significant work to do on both validations and it was not feasible for one Validator to effectively work on both projects at the same time. It was decided that Mr Abanda Bella would concentrate on Asian Option and Ms Li would work on Q/C/B. Mr Moune Nkeng would support on all validations but focus on Q/C/B **[2082]**. The email said "Huayi … pls hand over any work during last week to Christian".

188. The result of this was that Ms Li was taken off Equity Swap, on which she had been working during the previous week. Given the work she had already done on Equity Swap, that afternoon Ms Li emailed Mr Rienacker, copying in Mr Moune Nkeng and Mr Abanda Bella with her feedback on the Equity Swap modelling. She said that she had "planned to send this to Gregoire today but the equity project plan is changed. So I didn't send. Please let me know if you still want me to send it" **[9443]**. Gregoire was based in the Model Control Office. Mr Rienacker replied asking Mr Abanda Bella

if he wanted to change anything. He added "Otherwise I suggest we send out to Gregoire today, as he might need some time to look at it" **[9442]**. Ms Li sent a further email the same day, **24 July 2019**, again to Mr Rienacker, Mr Abanda Bella and Mr Moune Nkeng containing "assumptions and limitations" **[9441]**. Mr Rienacker replied: "Or shall we just send out the questions on the convexity adjustments for now [i.e. Ms Li's first email], and leave the new questions on A&L [her second email] for later when the Equity Swap validation will be picked up again?".

189. Mr Abanda Bella replied just before 2pm saying that he was not comfortable with sending any of Ms Li's content "without a deep review of the current status and a strategic plan for questioning" **[9441]**.

190. Later that afternoon, Ms Li sent out her feedback and queries to Gregoire, on the convexity adjustment points only (i.e. the points made in her first email) **[2194]**. She copied in both Mr Abanda Bella and Mr Moune Nkeng. Mr Abanda Bella replied to Mr Rienacker and Ms Li, copying in Mr Moune Nkeng: "I thought that Equity Swap had been assigned to me and Henry-Serge … what is the meaning of this?".

191. Mr Moune Nkeng alleges that Ms Li's decision to send her feedback onto Gregoire was an act of victimisation because of an allegation of discrimination he had made during the Culture Focus Group meeting **[HSMN issue 1/8.10]** and was also an act of racial harassment **[HSMN issue 1/12.19]**. In cross-examination, Mr Moune Nkeng conceded he did not know whether Ms Li knew about his involvement in that meeting or about what he had said. The explanation given by Ms Li for sending the feedback as she did was so that the questions she had already formulated for the Model Control Officer and Quantitative Analyst could be answered in order to speed up the process. The Tribunal accepts that explanation as the entire reason for Ms Li's decision. Mr Moune Nkeng had not pointed to any particular evidential feature indicating that his race had anything to do with the decision.

192. On **29 July 2019**, Mr Abanda Bella went off on long term sick leave. He has not returned to work since then.

193. On **31 July 2019**, Mr Moune Nkeng submitted a written report to the Whistleblowing Team, raising a concern **[2234]**. He described his concern as the mistreatment of Mr Abanda Bella by Mr Rienacker and Ms Li, although he also named Mr Kim, Mr Rood, Mr Chen and Mr Harrison as involved in this behaviour. He said that the general nature of the treatment was "ethical and behavioural issues, bully, harassment and retaliation for raising up material issues".

194. He listed four features of this mistreatment:

- "Excluded from the Quanto/Compo/Basket project

- Excluded from team meetings [on Tuesday 23rd July 2019] where his projects were discussed (Equity Swap project)
- Openly disrespected in team emails (emails related to his equity swap project)
- Disrespected in conference calls with key stakeholders (QA, IVU and MCO)."

195. He alleged that this mistreatment had occurred because Mr Abanda Bella "had raised key high material concerns in the validation of the following validation projects". He then listed four Q/C/B projects; Equity Swap and Asian Option. So far as the Equity Swap project was concerned, he said that this was because Mr Abanda Bella wanted to review its list of issues in detail before sending it to the Model Control Office team members. In what was recorded in this document, he did not allege that the mistreatment had occurred because of any previous protected act that he had made. Nor did he allege that the mistreatment occurred due to Mr Abanda Bella's race or in relation to any other protected characteristics. Nor did he refer at any point to Mr Abanda Bella's health. This disclosure to the Whistleblowing Team is alleged to be Mr Moune Nkeng's second protected disclosure **[HSMN issue 1/3.2]** and is also said to have been a protected act **[HSMN issue 1/6.2]**.

196. The Whistleblowing Team asked Mr Moune Nkeng for further details of the concerns that Mr Abanda Bella was raising namely "what did he find to be wrong, what policy/process/control was the issue in contravention of, what did he raise, with whom, when and how, what was their response and were there any witnesses or any emails/supporting documents you can provide" **[2236]**. Despite subsequent chasing emails, the only clarification provided by Mr Moune Nkeng in answer to these questions was to give further details about the sequence of emails relating to Ms Li sending her email to Gregoire with her questions about convexity adjustments as set out above. He did not provide any further details about the other three features.

197. In the List of Issues, Mr Moune Nkeng identifies this alleged disclosure as disclosing information which in his reasonable belief identified a breach of the legal obligations in the Equality Act 2010 or of the whistleblowing detriment provisions in the Employment Rights Act 1996 or of the Health and Safety at Work Act 1974; or a danger to health and safety.

198. Because this issue had been raised with the Whistleblowing Team, it was treated in confidence. The managers in the IVU unit would not have known about this disclosure based on how it would have been dealt with by those in the Whistleblowing Team. Mr Moune Nkeng did not tell these managers that he had raised a concern with the Whistleblowing Team.

199. Around **October 2019**, Mr Moune Nkeng contacted the IT team because he was unable to access previous emails. There are screenshots recording communications

with the IT team **[C/2935ff].** These screenshots do not record exactly what was said to those in the IT team about this issue. An entry on **[C/2942]** notes "I still cannot find my emails between early 2016 and sept 2018. Could you please help? thanks". Mr Moune Nkeng says he made the same point to Mr Rienacker. Mr Rienacker remembers him having problems accessing his email archive, but not the particular words used.

200. This is said to be a protected disclosure that the emails had disappeared in breach of the Sarbanes Oxley Act **[HSMN issue 1/3.3].** Mr Moune Nkeng has provided no evidence as to the contents of this legislation, on which his witness statement is silent. He accepted in cross-examination that he did not mention this Act when raising the issue. The obvious inference from his message to IT is that he believed that the emails were capable of being retrieved with help from those with IT expertise. This does not imply he believed the emails had been deleted, whether deliberately or inadvertently.

201. On **17 October 2019**, Mr Rienacker met with Mr Moune Nkeng. He asked him to get involved in some validations in the traded risk space. Mr Moune Nkeng told Mr Rienacker that he was not interested in this. He told Mr Rienacker that he only wanted to focus on equity validations given the current high workload on equities space. Later that day, Mr Rienacker emailed other managers in the Model Validation team saying "I told Henry-Serge we need him to do annual validations of equity CCR models. He repeatedly said he was "not interested" in doing this" **[2687]**. He said that he would have a catch up with Mr Moune Nkeng again tomorrow morning. He suspected that this might be "another trap" from Mr Abanda Bella – "finding another one who will complain". He added that "it would be unfair against other team members to make repeatedly exceptions for Henry-Serge".

202. By this stage, Mr Samnick was on long-term sick leave. That reduced the level of resourcing available to Mr Rood to carry out risk validations. There was therefore a business need to find resources from elsewhere to cover this work. It was in accordance with the outcome of Mr Moune Nkeng's previous appraisal for him to extend his experience by becoming involved in risk validations.

203. Mr Kim responded to Mr Rienacker's email. He set out the points that Mr Rienacker should make to Mr Moune Nkeng to explain why this was an appropriate request to make of him. He ended his email "Unfortunately, you might need to seek advice from ER Direct afterwards", depending on how his planned meeting with Mr Moune Nkeng went. He finished "I don't think it would be seen as reasonable for [Mr Moune Nkeng] to raise any complaint/grievance based on this. But of course, it is his right to do as he sees fit". In a subsequent email he added that "nobody can force anyone to do anything they simply refuse to do, obviously. The usual main consequence is appropriate reflection in their appraisal".

204. Mr Moune Nkeng alleges that Mr Rienacker insisted he should work on the traded risk space under Mr Rood's supervision, thereby disregarding his career aspirations. This is alleged to be an act of victimisation **[HSMN issue 1/8.11];** direct race discrimination **[HSMN issue 1/9.13];** racial harassment **[HSMN issue 1/12.20];** and conduct in which Mr Kim instructed, caused or induced Mr Rienacker and Mr Rood to require him to carry out this work **[HSMN issue 1/16.1]**. It is also said that this was setting him up to fail so he would be removed from the Equity space **[HSMN issue 1/17.1]**.

205. On **18 October 2019**, Mr Rienacker emailed the team saying: "as already discussed with some of you, there are quite a few Annual Validations for traded risk models, which we need to spread out across the team". He explained why this was regarded as top priority **[2691]**. The email then allocated traded risk models to other members of the team. This email was then forwarded to Mr Moune Nkeng on the same day, in which Mr Rienacker said: "It would be really a great help if you could cover the Equities CCR annual review, to ensure our team does not become the (negative) outlier within IVU". He added "As already mentioned, it is also a great learning experience, broadening your versatility/model horizon and your interaction with seniors" **[2690]**

206. In a further email to Mr Moune Nkeng **[2693]**, Mr Rienacker acknowledged the two points that Mr Moune Nkeng was making – namely that he did not feel confident to be doing traded risk validations and that he was concerned about his existing workload. He pointed out that the CCR equity model validations were especially important, and that most of Mr Moune Nkeng's existing workload was either nearly finalised or lower priority. He ended his email "If you want, we can discuss traded risk annual validations and how to fit them in. Otherwise, I will discuss with Ron/Bill [Chen], to see whether we can find other team members to cover these".

207. In an email on **21 October 2019**, Mr Moune Nkeng reiterated that he was not interested and did not want to work on any traded risk models. Mr Rienacker replied acknowledging that this was his final decision. He suggested a catch-up meeting, which took place on **23 October 2019**.

208. At that meeting on **23 October 2019**, Mr Rienacker did not repeat his request that Mr Moune Nkeng work on the CCR equity model annual review project. Rather he encouraged Mr Moune Nkeng to keep an open mind to working on trade risk allocations in the future as this would be good for his career development. This is confirmed by the follow up email sent the following day. In that email he said this **[4123]**:

    - "Declining a validation in a certain area because you are "not interested" is problematic, because this means someone else would need to pick up the work you were not interested in. However, given reasonable concerns (eg lack

of experience, competing priorities) is perfectly valid, as it will allow a rational discussion and finding the best solution

- Work in other asset classes and for other model types is important for you. It is a great learning experience and will broaden your horizon/increase your versatility, and it is a great opportunity to add value."

209. The Tribunal does not accept Mr Moune Nkeng's factual allegation that he was placed under pressure by Mr Rienacker to work on traded risk space validations under Mr Rood's supervision. This is alleged to be protected disclosure detriment **[HSMN issue 1/5.2]** and victimisation **[HSMN issue 1/8.13]**. Mr Rienacker was willing to accept that Mr Moune Nkeng did not need to carry out this work. Furthermore, there was no instruction or inducement from Mr Kim to Mr Rienacker to force Mr Moune Nkeng to carry out this work under Mr Rood's supervision.

210. The Tribunal does not find that at any point during the meeting Mr Rienacker commented: "We will deal with you later, Henry!" as Mr Moune Nkeng alleges was said by way of victimisation **[HSMN issue 1/8.13].** This phrase does not feature in the minutes of this meeting that Mr Moune Nkeng prepared **[4123-25]** or in his subsequent grievance on 21 June 2020.

211. The previous day, **22 October 2019**, Mr Moune Nkeng emailed Mrs Richardson **[4127]**. She was the HR Business Partner for the IVU. His email was headed "Policy about project allocation" and was in the following terms:

> "Hi Faye,
> I hope this email finds you well.
> Sorry for my delayed reaction as I'm under extremely and unusual heavy workload of my equity validations.
> My manager Gotz Rienacker has put, what I feel is, excessive pressure on me to work for Ron Rood on traded risk models but I would rather not do so (and I don't want), given my key expertise on Equities models and my current workload on the equity models with tight deadlines**.**
> Is there any policy from the bank about it? If yes, would it be possible to set up a meeting with you in order to get clarity on project allocation policy?
> Many thanks,
> Henry-Serge"

212. This email is said to be a protected act **[HSMN issue 1/6.3]** in that Mr Moune Nkeng was complaining about "mistreatment" contrary to the Equality Act 2010. In this email there is no reference to either mistreatment or harassment. Nor is there any reference to the Equality Act 2010. In oral evidence, when questioned about this, Mr Moune Nkeng said that "excessive pressure is harassment". The email was not copied to Mr Kim, Mr Rood or Mr Rienacker. Mr Moune Nkeng accepted that he did not tell them about this email.

213. Mr Moune Nkeng alleges that Ms Richardson failed to treat this email as a formal grievance and the reason for this was the previous protected disclosures he had made **[HSMN issue 1/5.1]**. He also alleges that this failure to treat this as a grievance was victimisation because of previous protected acts **[HSMN issue 1/8.12]**; and that this amounted to Ms Richardson aiding Mr Kim by failing to address the concerns raised about mistreatment **[HSMN issue 1/18.1]**.

214. The Tribunal finds that this email was not intended to be a grievance, nor was it reasonable to regard it as such. It was a query about whether there was a formal policy at the Bank concerning project allocation.

215. Ms Richardson responded the following day. She did not refer to any formal policy concerning work allocation. Instead, she suggested that Mr Moune Nkeng had a discussion with his line manager around the expectations of his role and responsibilities. If this would be difficult, he could escalate matters by raising them with Mr Kim. She hoped that he would find an informal resolution but also highlighted that there was a grievance policy to support him if he was not successful in resolving matters informally. She attached the grievance policy, adding that a grievance could be submitted to either herself or to Mr Kim. She also mentioned the availability of Employee Support, a confidential counselling and healthcare information service **[1/4127]**.

216. Despite her reference to the potential for him to raise an informal or a formal grievance about this issue, Mr Moune Nkeng did not do so. His first formal grievance was lodged much later, in June 2020.

217. On **7 November 2019**, Mr Kim sent his managers the team ranking email based on their performance during 2019. Mr Moune Nkeng was placed at position ten of the twelve members of Mr Kim's team **[2984]**. Below him were Mr Abanda Bella and Mr Samnick. In terms of those in Mr Rienacker's team, the top placed team member was a Chinese national (Ms Li), followed by a North African French speaker (Mr Maouche).

218. Mrs Richardson sent Mr Kim an email on **12 November 2019** in which she asked whether Mr Moune Nkeng was on a PIP. She added that she was just curious considering the rating distribution. Mr Kim replied "no, he's not on a PIP and expected to be rated 'Strong' on both". He added "It's just that he's at the bottom end of the ten who are going to be rated 'Strong' on both, and I will reflect this in his variable".

219. Mr Moune Nkeng had an appraisal meeting on **31 January 2020** to discuss his performance during 2019. He alleges that the way he was treated during this meeting was detriment for protected disclosures **[HSMN issue 1/5.4];** victimisation **[HSMN issue 1/8.15];** direct race discrimination **[HSMN issue 1/9.14];** direct race

discrimination **[HSMN issue 1/12.21].** It is also alleged that Mr Kim instructed Mr Rienacker to make aggressive comments during Mr Moune Nkeng's appraisal meeting and to make contradictory comments about his work on documentation and his testing skills **[HSMN issue 1/16.2]**, and that Mr Rienacker made unfounded negative comments about Mr Moune Nkeng's performance **[HSMN issue 1/17.2]**. It is also alleged that Mr Rienacker and Mr Rood knowingly helped Mr Kim to harass Mr Moune Nkeng in commenting "we are going to deal with you later anyway" and insisting that he work under Mr Rood's supervision on risk traded models **[HSMN issue 1/18.2]**.

220. The Tribunal rejects the contention that aggressive comments were made by Mr Rienacker during the appraisal meeting, or that his attitude towards Mr Moune Nkeng was anything other than professional. He did not make unfounded negative comments. Mr Rienacker was not told to behave in a particular way by Mr Kim or by Mr Rood.

221. In his comments under the heading "What went well?", Mr Rienacker praised Mr Moune Nkeng's attitude and performance in relation to equity models and equity payoff validations, noting he had further established good working relationships with stakeholders and had been providing effective review and challenge. This reflected stakeholder feedback. Under the heading "Development Areas", he identified two particular points. These were attention to detail with his document writing and testing skills and further extending his understanding of pricing models. He added "As last year, I recommend Henry-Serge to actively seek new challenges to increase his versatility and independence and to gain new working experience. He gave three examples. These were "taking opportunities to work outside of his asset class or on different model types (eg XVA, risk models, finance models); collaborating with other peers or senior Validators; or taking the lead/ownership in the end-to-end validation of equity pricing models (non-payout)" **[3902/3]**. These were constructive comments made to encourage him to broaden his experience and so make him a stronger candidate for promotion.

222. He did not say "we are going to deal with you later anyway" as Mr Moune Nkeng alleges. There is no contemporaneous documentary support for such a contention. This was not a comment that was made in either of his formal grievances lodged in June and July 2020. The comments made on the appraisal form about work on documentation and testing skills were not contradictory. Mr Rienacker did not specifically insist that he should work on risk traded models under Mr Rood's supervision, although as already stated, he did encourage him to broaden his experience more generally. As a result, the Tribunal rejects the factual premises on which **HSMN issues 1/5.4; 1/8.15; 1/9.14; 1/12.21** are based.

223. The Bank's practice was to identify some development areas even for those employees who were graded 'Outstanding'. This was the case for Mr Maouche in

relation to his 2019 appraisal **[9687]**, and also for Ms Li **[9684]**. Both were graded 'Outstanding' for the 'What'.

224. Mr Moune Nkeng alleges Mr Rienacker ostracised him by excluding him from communications between himself, Ms Li and the stakeholders about the Equity Swap validation during the period from 23 October 2019 and 23 February 2020. This is alleged to be protected disclosure detriment **[HSMN issue 1/5.3]** and victimisation **[HSMN issue 1/8.14]**.

225. Mr Moune Nkeng was the Validator on the Equity Swap validation. Ms Li was the Peer Reviewer. Mr Rienacker was the Lead Validator. In late 2019 this validation was significantly advanced and at one point it was hoped that this validation model could be finalised by the end of November 2019. In his role as Lead Validator, Mr Rienacker took the lead in liaising with the Model Control Office (MCO) and QA to seek answers to particular questions about testing, assumptions and limitations. It was not unusual for Lead Validators to take the initiative in discussions with MCO and QA in this way. He emailed Gregoire Thiercelin in the MCO on **27 November 2019 [10191]**. It was also addressed to Ms Li (as Peer Reviewer). Mr Moune Nkeng was copied into this email, as was Mr Harrison and Riyaz Saly. When he responded, Mr Thiercelin removed all of those who had been copied to mr Rienacker's email, replying only to Mr Rienacker and Ms Li. This email chain then continued between those three individuals discussing various technical matters. Mr Rienacker reinvolved Mr Harrison and Marica Knezevic in copy on **3 February 2020 [10188].** Others were added to the distribution list in subsequent emails and Mr Rienacker reinvolved Mr Moune Nkeng in an email on **23 February 2020 [10182]**. At that point he would have had full visibility of the entire email chain since his last involvement. It is unclear why Mr Thiercelin dropped Mr Moune Nkeng (and others) in November 2019 and why he (and others) were not added back by Mr Rienacker in subsequent emails. Mr Moune Nkeng was eventually added back into the circulation list on 23 February 2020 **[10182]**. In an email sent by Mr Rienacker just to Mr Moune Nkeng around twenty minutes later, he sent him his comments and edits on the Equity Swap validation document. He finished the email "let's go through the test section (item 2) if necessary, to see which contents is relevant, work on the overall story to be presented and resolve the missing parts/details".

226. On **27 April 2020 [5267]**, Mr Rienacker emailed Mr Moune Nkeng saying that Mr Rood had asked him if Mr Moune Nkeng would be available for a T23 risk model project, named "Equities Swap UTR". He had asked for Mr Moune Nkeng in particular because it was related to Equity Swap and was therefore known territory. The deadline for the work was the end of June. He considered that Mr Moune Nkeng should have the capacity to take on this work, given that his current project was as good as finished.

227. Mr Moune Nkeng did not reply to Mr Rienacker about this until **7 May 2020**. Although his email was relatively lengthy, the gist was that he was too busy on existing projects to do the work. He also said that he was not interested to work in an area (risk models) on which he had no experience and no interest. He underlined the following comment for emphasis "I'm reiterating my stance on risk models projects" **[5266]**.

228. Mr Rienacker replied later that evening **[5265]**, saying that all team members were involved in validation of risk models, on top of their pricing Tier 2 or Tier 3 projects, given that the workload needed to be shared across the team, regardless of interest. He reiterated the importance of Mr Moune Nkeng broadening his experience. He disputed Mr Moune Nkeng's characterisation of his current workload saying that the particular projects mentioned by Mr Moune Nkeng had been assigned to other Validators. He also sent him the current project allocation list so he could see that traded risk projects had been fairly allocated across the team. This named him as Validator on Equities Swap UTR. He said he would discuss this again with Mr Moune Nkeng in their next catch-up. Mr Moune Nkeng argues that the decision to name him as Validator on Equities Swap UTR despite him having "reasonably declined to take on this additional task" was protected disclosure detriment **[HSMN Issue 1/5.6].**

229. The Tribunal rejects Mr Moune Nkeng's factual allegation that he was placed under further pressure to work on traded Risk models validation or that Mr Rienacker insisted he did so. He was encouraged to do so, given that this work was being performed by all other team members and it was felt it should be fairly allocated across the team. This factual allegation is alleged to be protected disclosure detriment **[HSMN issue 1/5.5]**; victimisation **[HSMN issue 1/8.17]**; direct race discrimination **[HSMN issue 1/9.15]** and harassment related to race **[HSMN issue 1/12.22].**

230. On **11 May 2020**, Mr Rienacker met with the Claimant. The meeting lasted over two hours and was spent discussing a variety of projects. Towards the end of the meeting there was a short discussion about traded risk models. Mr Rienacker repeated that the team needed to ensure that all projects were completed in accordance with their priorities. He said that it was not possible for projects only to be accepted according to the personal preferences of team members. Mr Rienacker said he had to consider business need and the preferences of other team members. He reiterated that it was important for Mr Moune Nkeng to gain experience of validations in other asset classes, saying that "there is no such thing as an equity-only or rates-only IVU Validator". It was in this context that he said he could not guarantee that Mr Moune Nkeng would work exclusively on equity projects in the future. This was not a verbal threat but a statement of fact. He pointed out that the IVU was different from other teams such as QA where team members were often very specialist **[5356/7]**. The Tribunal rejects Mr Moune's Nkeng's factual allegation – alleged to be an act of direct race discrimination – that he was placed under undue pressure to carry out risk

traded validation work and was threatened with the removal or reduction of his work on equity projects **[HSMN issue 1/9.16]**.

231. On **14 May 2020**, Mr Rienacker emailed Mr Moune Nkeng to say that another Validator had the capacity to carry out the Equity Swap UTR validation. As a result, Mr Moune Nkeng could concentrate on the equity deliverables for the first half of 2019 **[5355]**. At that point, Mr Rienacker stopped asking him if he would assist with traded risk models. It is not correct, as Mr Moune Nkeng argues, that he was placed under pressure on this date to take on the task of traded risk model validation or threatened that he might be excluded from any equity work he had been assigned. This is alleged to be protected disclosure detriment **[HSMN issue 1/5.7]** and victimisation **[HSMN issue 1/8.19; 1/8.20]**.

232. Back on **4 May 2020**, Mr Moune Nkeng had contacted the IT support team to complain that he was unable to access previous emails **[HSMN issue 1/3.4]**. In his witness statement, Mr Moune Nkeng says "I again disclosed in writing to Barclays IT department that my work emails between February 2016 and July 2018 had disappeared" (at paragraph 526). There is no document recording the wording used by the Claimant in raising this issue with IT support. There is an email response [**4961]** asking him to provide additional information. The Tribunal infers from this response that Mr Moune Nkeng's communication had not been specific about the missing emails. Mr Moune Nkeng does not allege, and the Tribunal does not find, that there was any reference in the communication to breach of any legal obligation. He does not allege, and the Tribunal does not find, that his communication suggested That there was a wider IT problem affecting other employees apart from himself.

233. He contacted Vishal in the IT team on **25 July 2020** in which he identified he had lost emails between **11 November 2015** and **7 December 2015**; and between **2 February 2016** and **26 July 2018.** This communication is alleged to be a protected disclosure **[HSMN issue 1/3.7]**. He asked: "Are there any remedies to recover my lost emails?". He did not allege that this issue amounted to a breach of any legal obligation. Specifically, he did not disclose any information about the manner in which they had disappeared and nor did he refer to the Sarbanes Oxley Act.

234. Back on 13 November 2019, Mr Moune Nkeng and Ms Li had been assigned to different aspects of the LSV MC validation **[2831/2832]**. The deadline for the validation to be completed was subsequently established to be 30 June 2020, but by the **end of May 2020** there had been a lack of progress, and the validation was far from complete. At the beginning of **June 2020**, Mr Rienacker asked Ms Li to peer review the draft validation document for the next phase of the LSV MC project as he did not have time to look into all the technical details himself. He then copied Ms Li into emails from him to Mr Moune Nkeng and the model developer. Mr Moune Nkeng raised no objection to Ms Li being copied in at that point.

235. By **4 June 2020**, in his role as Lead Validator, Mr Rienacker reviewed some of the test results which to him seemed odd. These had been set out on a testing sheet that Mr Moune Nkeng had been sent on 26 May 2020. Mr Moune Nkeng had had problems setting up the test spreadsheet. He was getting a "#Value everywhere" **[5576]**.

236. By **9 June 2020**, Mr Moune Nkeng was still having problems accessing the spreadsheet. As a result, Mr Rienacker asked Ms Li to see if she could run the spreadsheet and to confirm whether the results were correct. Effectively he was delegating his Lead Validator responsibilities to her; or appointing her as a peer reviewer. When Ms Li reran the tests, she found major issues in QA's testing. This was an aspect that Mr Moune Nkeng had been working on for around six months. She found it strange that either he had not noticed the error or if he had, he had not raised it with the model developer. She was concerned that there may not be sufficient time remaining to resolve the issue before the impending deadline.

237. On **9 June 2020**, Mr Rienacker informed Mr Moune Nkeng that Ms Li had been able to run the spreadsheet, although "[the spreadsheet] did not seem able to produce the correct prices at the moment" **[5545]**. In an email at 6:09pm that evening, Ms Li explained to the model owner the issues she was experiencing. This email was copied to Mr Moune Nkeng so he was aware of what Ms Li was raising.

238. Mr Moune Nkeng's wide-ranging criticism of this email in these proceedings – protected disclosure detriment, victimisation, race discrimination, racial harassment; instructing, causing or inducing basic contraventions; aiding contraventions **[HSMN issues 1/5.9; 1/8.21; 1/9.17; 1/12.23; 1/16.4; 1/18.4]** – is that Ms Li sent the email without discussing it with him in advance when he had been assigned as the sole Validator. He also says that Mr Kim instructed caused or induced Mr Rienacker and Ms Li to send emails on this issue; and that Mr Rienacker and Ms Li knowingly helped Mr Kim to harass Mr Moune Nkeng in how he responded to the sending of the email. Whilst Ms Li could have chosen to share her proposed email to the model owner with Mr Moune Nkeng in advance of sending it, there was no need for her to do so. Had she done so then this is likely to have delayed progress. Time was of the essence, given the deadline at the end of June. As to Mr Kim's involvement, there is no evidence that Mr Kim was instructing, causing or inducing Mr Rienacker or Ms Li to engage with this issue in the way that they did.

239. On **10 June 2020**, Mr Moune Nkeng emailed Mr Rienacker to complain about recent events in relation to the LSV MC inception validation **[5926]**. Specifically, he complained he was confused about the actions of Ms Li, who he had copied into that email. He complained that she was peer reviewing his draft, started running a spreadsheet test, and took over his email interaction about testing with one of his stakeholders, without even letting QA have time to come to him on his first set of

questions which he had apparently raised with them on 9 June 2020 **[5926]**. This email is alleged to be a protected act **[HSMN issue 1/6.4**]. However, it does not allege any breach of the Equality Act 2010, nor is there any reference to any protected characteristic, or use of the words "harassment" or "discrimination". He was asking Mr Rienacker to clear up his confusion as to Ms Li's role.

240. On **11 June 2020**, Mr Rienacker responded **[5925]**. He started his email in a conciliatory tone, apologising if there had been any confusion. He stated that Mr Moune Nkeng remained the Validator on this particular project. The reason he had asked Ms Li to peer review the validation is that he had not had the time to look into these technical details himself given all the other current validations. He reassured him that he (Mr Moune Nkeng) was the Validator and had ownership of the validation. He said that it might make sense to involve two people (i.e. both Mr Moune Nkeng and Ms Li) in the testing, given the end of June deadline. However, this was something that needed further discussion to ensure that the input of each person was co-ordinated. The Tribunal notes there is evidence that several validations had deadlines of the end of June **[5924]**. This would inevitably have required careful planning and coordination between IVU team members so that this deadline could be met.

241. In his witness statement, Mr Moune Nkeng criticises Mr Rienacker for failing to indicate in his response to him that Ms Li had done anything wrong (at paragraph 549). The Tribunal does not accept that Ms Li had done something wrong. Rather, she was carrying out an instruction from Mr Rienacker in circumstances where Mr Moune Nkeng had been experiencing technical difficulties in accessing the spreadsheet and the deadline was fast approaching. Mr Kim was not involved in these email exchanges nor ought he to have engaged in these discussions. The factual allegation that Mr Rienacker and Ms Li knowingly helped Mr Kim to harass Mr Moune Nkeng by failing to indicate that Ms Li had done anything wrong is rejected **[HSMN issue 1/18.4].**

242. On **12 June 2020** at 12:08am, Mr Moune Nkeng sent a further response to Mr Rienacker **[5756]**. Again, he copied this to Ms Li. In that email he made six points. These included that he felt he had been ostracised and that it was disrespectful and inappropriate for Ms Li to send the email without asking him first. He felt that this undermined his credibility in front of the project stakeholders. Given the first three points, he considered that Mr Rienacker's real intention was to give the impression of him being the main Validator without that being the case in reality. He said that "suggests bad faith on your part". He said he considered the whole episode extremely distressing. He asked that further exchanges should be carried out in written form so as to avoid further confusion. This email is said to be a protected act **[HSMN issue 1/6.5]**. Whilst the email refers to him being ostracised and feeling humiliated and disrespected, it does not make any reference to the Equality Act 2010, nor does it

refer to any protected characteristics or use the words “harassment”, “discrimination” or “victimisation”. The reference to “reasonable adjustment” in relation to point 6 is not an allegation of disability discrimination.

243. Ms Li emailed Mr Moune Nkeng at 12:58am on **12 June 2020** in response **[5756]**. She said she was “very sorry for this making you feel uncomfortable”. She said that she had been instructed by Mr Rienacker to help him check the spreadsheet. She apologised for contacting the QA with questions, accepting that this may have been inappropriate as this could affect his communication with QA. She also emailed Mr Rienacker. In that email she said that Mr Moune Nkeng had addressed the issue in such a formal way that it made her feel worried. She told him she would not be sending any emails to QA. She concluded her email by saying that “I prefer to be less involved in this complicated situation” **[5785]**.

244. Mr Rienacker asked Ms Li not to follow up with the model owner unless she had spoken to Mr Moune Nkeng first **[5814]**.

245. Mr Rienacker responded to Mr Moune Nkeng’s email at 2:59 that afternoon **[5924]**. He said that his priority was the wellbeing of his team members, especially in this difficult time of lockdown. He expressed his sadness about Mr Moune Nkeng feeling unwelcome, rejected or unfairly treated in any way. He asked that they use their catch up to have an open discussion because he needed to understand more fully Mr Moune Nkeng’s underlying concerns and how to address them. He ended the email by saying “we need to work together as a team”. For whatever reason, Mr Moune Nkeng did not quote this email in full in his witness statement, including these remarks quoted in this paragraph of our Findings of Fact. In cross-examination, Mr Moune Nkeng accepted that, when read in full, Mr Rienacker’s email was a supportive email.

246. Before responding, Mr Rienacker had consulted ER Direct for advice as to how to deal with this issue being raised by Mr Moune Nkeng **[6955]**. He took this step having checked first with Mr Kim if it was appropriate to involve ER Direct. He was concerned that Mr Moune Nkeng’s dissatisfaction over the extent of Ms Li’s involvement was potentially risking the project not being completed by the end of June deadline. In his email to Mr Kim, Mr Rienacker added “I am afraid it is going the way of CAB [Mr Abanda Bella] and LS [Mr Samnick] now. Maybe HS has even discussed his reply with CAB”.

247. The Tribunal finds that “going the way of [Mr Abanda Bella] and [Mr Samnick]” was a reference to a concern that Mr Moune Nkeng was about to lodge a detailed grievance, as the other two Claimants had done in October and November 2019. Mr Rienacker had been involved in responding to those grievances as part of Mr Easdon’s grievance investigation. The grievance outcome in Mr Samnick’s case had been delivered on **11 May 2020**, and Mr Abanda Bella’s grievance investigation was

still in progress at this point. It was not a reference to Tribunal litigation. By this stage, neither had yet lodged ET claims.

248. It is clear from Mr Rienacker's email he was struggling to work with Mr Moune Nkeng:

> "It is difficult for me to work with someone who does not show any real engagement or respect, especially if other team members work 24/7 (under corona conditions, e.g. caring for children, home schooling) to meet the end of June deadline." **[5625]**

249. Mr Kim in his response had included the following:

> "Depending on your discussion with ER Direct, you should let HS know:
> 1) His progress on this project has been slower than expected, and therefore you have assigned Huayi to help where she can
> 2) He is part of a team, he should be grateful that colleagues are willing to help, he should not hesitate to ask you for help (if you haven't already)"

250. Mr Rienacker's email to Mr Kim reveals his frustration at what he considered to be poor quality work from Mr Moune Nkeng. ER Direct advised Mr Rienacker to try to resolve this informally.

251. During the 1-2-1 meeting later that day, Mr Rienacker asked Mr Moune Nkeng if he wanted to talk about his concerns. Mr Moune Nkeng told him he did not want to do so, at that point, although he said he was fine to discuss it after the end of June 2020 when the validation deadlines would have passed. This conversation was covertly recorded by Mr Moune Nkeng **[C/5925]**. In his follow up email, Mr Rienacker said that Mr Moune Nkeng should not hesitate to ask for any help or support in the testing or write up. He said he would wait for him to ask. Mr Moune Nkeng replied maintaining his position that these issues should be dealt with in writing. Mr Rienacker said that "it is standard procedure to deal with such matters in an informal meeting", although he suggested that a third person could be present in the meeting if this was Mr Moune Nkeng's wish.

252. On **12 June 2020** in a further email to Mr Kim **[5860]**, Mr Rienacker forwarded Mr Moune Nkeng's email of the same date and Ms Li's reply. Mr Rienacker said that he did not know if he could handle this. This was a reference to the effect that the fractured relationships within the team were having on his mental health. By that point he had been receiving psychotherapy for the previous nine months. His email continued: "It does also not seem [Mr Moune Nkeng] is interested in further working with me. And I feel very sorry for Huayi".

253. Mr Kim responded **[5860]** "pls do ask [ER] for advice if you havent already. You cant control how HS feels and you cant control how he acts. It's also possible that there are other factors in HS's life which are making him more than usually sensitive. All

you can do is act reasonably, which is what you have always done. Same for Huayi". He then followed up with more thoughts, set out in a numbered list running from 1 to 10. The fifth point was "In general nobody needs his permission to talk to [QA] about anything". These were thoughts and queries to get a better understanding of the root cause of the issue. He was not making assumptions, but instead was raising queries.

254. There were further emails between Mr Kim and Mr Rienacker over the next couple of days. Mr Rienacker said that the long-term perspective was not clear to him: Given Mr Moune Nkeng's complaint, he felt hampered in giving him a fair assessment at mid-year and end-year. His concern was that any constructive criticism would not be seen in the positive way intended. He said that the ideal solution would be a change of line manager, but this may be difficult to achieve. Mr Kim's stance in these email exchanges was to provide line management support to Mr Rienacker. He was not telling Mr Rienacker he should only have verbal discussions with Mr Moune Nkeng. In this correspondence, Mr Kim was being sensitive to the possibility that there were events going on in Mr Moune Nkeng's life which were making him unusually sensitive. He was trying to understand how Mr Moune Nkeng could be helped.

255. On **12 June 2020**, Mr Rienacker contacted ER Direct seeking their guidance on how to resolve Mr Moune Nkeng's grievance informally **[6956]**. In his email on **14 June 2020**, Mr Rienacker told Mr Kim that "I think I need to log this incident [i.e. about Mr Moune Nkeng making unfair allegations against Huayi] in a separate ER Direct (conduct) case, pointing out the precise reasons why this is a concern" **[5859]**.

256. Mr Moune Nkeng alleges that both Mr Kim and Mr Rienacker failed to address the concerns he was raising about Ms Li's conduct in sending emails to the Model Control Officer about the LSV/MC testing plan. This is said to be detriment for making protected disclosures **[HSMN issue 1/5.10];** victimisation for doing a protected act **[HSMN issue 1/8.22];** direct race discrimination **[HSMN issue 1/9.18]** and harassment related to race **[HSMN issue 1/12.23].** To the contrary, Mr Rienacker went to significant lengths to engage with his concerns, both in emails and in the 1-2-1 meeting. He had tried to explain why Ms Li communicated with the model owner in the way that she did, given the technical difficulties that Mr Moune Nkeng was experiencing. Mr Kim had behaved appropriately, which was to provide line manager support to one of his direct reports (Mr Rienacker) in his dealings with Mr Moune Nkeng, as one of Mr Rienacker's direct reports. Mr Moune Nkeng had not raised his concerns directly with Mr Kim. It was not necessary or appropriate for Mr Kim to intervene directly as if he had been Mr Moune Nkeng's line manager.

257. Mr Moune Nkeng says that Mr Kim instructed, caused or induced Mr Rienacker and Ms Li to racially discriminate against him or racially harass him, by not addressing properly or at all the concerns he had raised about Ms Li's conduct in sending emails to the Model Control Office about the LSV MC testing plan **[HSMN issue 1/16.5]**.

The Tribunal rejects this characterisation of Mr Kim's involvement, given the factual findings detailed above.

258. Mr Moune Nkeng also alleges that Mr Rienacker and Ms Li knowingly helped Mr Kim racially harass him by continuing to have verbal discussions with Mr Moune Nkeng about his complaint about Ms Li, rather than in writing as he had requested **[HSMN issue 1/18.5].** This was not the case. Mr Kim did not have any verbal discussions with Mr Moune Nkeng on this topic. The emails from Mr Kim to Mr Rienacker show him acting as a supportive line manager to Mr Rienacker. It was Mr Rienacker's decision to seek advice from ER Direct, albeit that this course of action was endorsed by Mr Kim. He did not otherwise tell Mr Rienacker how to treat Mr Moune Nkeng or advocate any discrimination or retaliation by him.

259. **On 14 June 2020**, Mr Moune Nkeng alleges that Mr Rienacker decided to open a disciplinary case against him on various grounds (witness statement paragraph 562). One of the grounds is said to be the appropriateness of the tone and content of Mr Moune Nkeng's complaints against Ms Li and against himself. Mr Rienacker had raised his concerns about Mr Moune Nkeng's conduct when he spoke to ER Direct on **12 June 2020**. He had been advised by ER Direct that if these concerns continued, he should call ER Direct and open a conduct case. In fact, at no point thereafter did Mr Rienacker open an ER conduct case. Had this been done it would have been recorded on the ER Case Record. A reference to a "disciplinary hearing" in an email from Ms Gonzalez to Christine Meakin on 30 September 2020 **[7109]** is clearly a typographical error, which should instead have referred to a "grievance hearing". By this point, Mr Moune Nkeng had lodged two grievances and Ms Meakin had been appointed to hear those grievances. The email attached a grievance scoping document and the content of the email spoke of this document as "intended to help clarify the points of the grievance".

260. On **21 June 2020 [6785]** Mr Moune Nkeng submitted his first formal grievance to Ms Claire Fordham, who was the Global Head of HR for the Risk Group. The grievance letter was 57 paragraphs and 14 pages long. It raised grievances against Mrs Richardson and Mr Rienacker.

261. This grievance letter accused Mrs Richardson of failing to treat his email of 22 October 2019 **[2735]** as a formal grievance and an assertion of a statutory right. She was also accused of acting in a manner which failed to observe the implied term of mutual trust and confidence. He said he was blowing the whistle under the Employment Rights Act 1996. His explanation for this assertion was that he reasonably believed that her failure to take action in response to his complaint about his excessive pressure endangered the health, safety and welfare of persons at work. He said he believed this disclosure was in the public interest.

262. His grievance against Mr Rienacker related to the excessive pressure Mr Moune Nkeng experienced as a result of the workload he was expected to achieve. He alleged that Mr Rienacker's motivation for asking him to do validations in the traded risk space was because of his race and amounted to racial harassment. He did not specify the timespan for this excessive pressure, other than to identify repeated requests from Mr Rienacker in October 2019 that he complete a traded risk validation. He also identified detriments suffered as a result of race discrimination as "career progression; injury to health and injury to feelings". The detailed letter contained extensive references to case law.

263. No specific complaint was made about the conduct of Ms Li.

264. The Respondents admit that this 21 June 2020 grievance letter was a protected act **[HSMN issue 1/6.6]**. Mr Moune Nkeng also alleges it amounts to a protected disclosure **[HSMN issue 1/3.5]** as he had alleged at paragraphs 19 to 22 of the document. In these paragraphs he said he had a reasonable belief that "the omission (whether deliberate or inadvertent) by Faye Richardson (amongst other officers within the HR Department) to act upon `written complaints' received from employees' at work for their own health, safety and welfare at work, endangers the health, safety and welfare of persons at work, which I reasonably believe is a contravention of the HSAWA 1974".

265. He argued (at paragraph 22) that the complaint about Mrs Richardson was in the public interest "by reason that employees and workers of Barclays have a right to know, that when raising complaints and concerns for their own health and safety at work, that the HR officer, advisors and representatives whom receive their concerns and complaints, have not received (and are not receiving) sufficient support, guidance and training to articulate when a person is -

    (i) Invoking the grievance procedures;
    (ii) Complying with the ACAS Code;
    (iii) Raising concerns for their own health, safety and welfare at work;
    (iv) Asserting a statutory right in accordance with s.44 ERA 1996."

266. The Respondents dispute that the grievance was a protected disclosure.

267. On **22 June 2020** Mr Jeremy Haworth forwarded the grievance letter to the Raising Concerns team because it contained reference to whistleblowing **[6187]**. This was so that they could triage whether it raised genuine public interest whistleblowing issues that needed to be considered by the Whistleblowing Team. Mr Moune Nkeng was informed by the Raising Concerns team that they would be considering the status of his written complaint.

268. On **13 July 2020**, Ms Kate Henry from the Raising Concerns team told Mr Moune Nkeng that his grievance had been referred to the Bank's Employee Relations team

[6781]. This prompted Mr Moune Nkeng to complain to Ms Henry about this decision, in an email on **15 July 2020**. He maintained that his earlier grievance should be treated as a whistleblowing disclosure **[6783]**. He asked a series of questions. This further correspondence is alleged to be a further protected disclosure **[HSMN issue 1/3.6]** and a protected act **[HSMN issue 1/6.7]**. Mr Moune Nkeng argues that, despite appearances, the process was not a confidential process. He argues that Mrs Richardson in HR would learn about the content of grievances and whistleblowing concerns through a 'Stand Up' discussion with members of the Raising Concerns team; that she would then share those concerns with Mr Kim; and he would discuss them with his direct reports (including Mr Rienacker) at weekly team meetings. He has not referred to any documents or other direct evidence to support this speculation. The Tribunal rejects this contention. Whether complaints raised by Mr Moune Nkeng were regarded as grievances or whistleblowing concerns, they were confidential to direct participants in those processes.

269. On **29 July 2020** Mr Moune Nkeng submitted his second formal grievance, again to Ms Fordham **[6894]**. It was copied to Ms Armata, Mr Kim, Mr Rienacker, Ms Li and Randi Blum. This grievance itemised particular complaints about the alleged conduct of Ms Li on **24 July 2019** and **9 June 2020** in communicating with key stakeholders without asking his permission or communicating with him; and about Mr Rienacker's response when he complained about this. He also complained about work allocation decisions made by Mr Rienacker on 30 October 2019, 13 November 2019 and 20 November 2019; and feedback provided by Mr Rienacker on Mr Moune Nkeng's IVU testing plan in May 2020. He alleged that this was less favourable treatment by both of them because of his race because he shared the same race as Mr Abanda Bella, and was also racial harassment. He also alleged that he had been victimised for raising race discrimination complaints in his earlier email of 10 June 2020. This is alleged to be a protected disclosure **[HSMN issue 1/3.8]** and a protected act **[HSMN issue 1/6.8].** The Respondents deny it was a protected disclosure although accept it was a protected act. In cross-examination, Mr Moune Nkeng accepted that there was no explicit reference in this document to health and safety.

270. Ms Li commented on this email in a subsequent email exchange with Mr Kim and Mr Rienacker. She said the criticisms hurt her feelings greatly. She said that the "tone in the grievance is shockingly severe and threatening" **[6894]**. Mr Kim replied that in his opinion, the tone was deliberate: "when there is little substance, the tone is used to overcompensate/misdirect". In a further email, Mr Kim said that "we cannot stop anyone from making allegations, even non-sensical allegations. The bank must take all allegations seriously and investigate each". He added that the investigation is conducted by trained people and will reach a conclusion on whether non-sensical. The process was the protection that Ms Li said she was looking for in her earlier email. In a further email Ms Li wrote "However their trick is to set up a set of their own

rules in their mind, benchmark your behaviour against their own rules and then exaggerate the issue" **[6892]**.

271. Back on **27 March 2020**, Mr Moune Nkeng's name had been added as the named Validator on two validation reports for the European Options and Forward Curve Models for IHC/CCAR 2020 (GMD 2216; GMD 1720) **[9824] [9881]**. On **20 August 2020**, Mr Moune Nkeng queried this issue with Mr Rienacker, saying he had not worked on these reports **[9773]**. In response, Mr Rienacker explained the reason why Mr Moune Nkeng's name had been added. He said that in March 2020, Mr Moune Nkeng had made editorial updates to each of the validation documents **[9775]**, as Mr Moune Nkeng admitted in cross-examination.

272. This was discussed further in a catch-up meeting on **25 August 2020 [7058/9]**. Mr Rienacker said that the editorial update had resulted in a separate approval and Mr Moune Nkeng was the only author of the change. Mr Moune Nkeng was responsible for those changes, but not for any changes related to previous approvals. The Tribunal finds that adding Mr Moune Nkeng's name given his previous involvement was standard practice for version control purposes.

273. He alleges that including his name as the Validator was setting him up to fail, as and when errors later surfaced. Mr Moune Nkeng alleges that including his name on these validation reports was direct race discrimination **[HSMN issue 1/9.19; issues 2/5.1; issue 2/24.1]** and racial harassment **[HSMN issue 1/12.25]**; as well as a detriment for making protected disclosures **[HSMN issue 1/5.11]** and for doing a protected act **[HSMN issue 1/8.23]**. He argues this was done to treat him as a scapegoat; to stigmatise, sully and traduce his professional reputation and damage his career prospects. He argues that the documents were filled with errors. This was not a point he raised when he made editorial changes in **March 2020**, when he first raised the issue of the correct person to be named as Validator in emails in **August 2020**, or in the catch-up meeting with Mr Rienacker on **25 August 2020 [7058/9]**. Nor does he identify the errors in his witness statement, beyond making a passing reference to an email he received from a US based Validator **[C/7165]**. The significance of this email has not been explored in evidence. The Tribunal is not persuaded that there were any significant errors in the validation report. Nor does it find Mr Moune Nkeng's name was added as Validator in order to set him up to fail. Where there had been an editorial update to a previous validation report, it was standard practice for the name of the Validator who had made the update to be substituted as the Validator of the report. Mr Moune Nkeng was not being treated any differently in being named as Validator on the report.

274. On **14 August 2020**, Mr Moune Nkeng presented his first Tribunal claim. In the List of Issues, he does not rely on the Tribunal claim itself as an additional protected act for the purposes of his victimisation claim. Rather he relies on the protected acts

asserted in the first claim (at paragraphs 6.2 to 6.8 of the List of Issues in the first claim). Had he been relying on the claim itself, this would have been listed as a separate act. The position is confirmed by his summary of his different claims in paragraph 5 of the Amended Particulars of Claim [366]. There he said he was relying on Sections 27(2)(c) and (d) EqA 2010. He did not refer to Section 27(2)(a) : "bringing proceedings under this Act".

275. Mr Moune Nkeng's email of **15 July 2020** was referred to Ms Sonya Bonniface. She wrote a full response to Mr Moune Nkeng on **11 September 2020** to explain why the 21 June 2020 grievance had been referred back to Employee Relations by the Raising Concerns team **[7103]**. She assured him that his concerns would be investigated as a grievance, under the Bank's normal grievance investigation processes. She explained the distinction between grievances and whistleblowing investigations. She said that if evidence were to be discovered during the course of the grievance investigation that met the Bank's assessment of a whistleblowing matter, then it could be re-triaged or referred to a different team.

276. Mr Moune Nkeng replied to that letter a week later, on **18 September 2020 [7089]**. This was a lengthy document containing multiple references to case law. He itemised numbered objections to Ms Bonniface's email. He referred to the document as a "further qualifying disclosure" (paragraph 27); and as a grievance against Ms Bonniface for 'detrimental treatment' in accordance with certain sections of the Employment Rights Act 1996. These sections provide a right not to suffer detriment for making protected disclosures. The reply was sent just to Ms Bonniface. It was not sent to Mr Rienacker, Ms Li or Mr Kim. The reply was marked private and confidential. Mr Moune Nkeng did not disclose its contents to Mr Rienacker, Ms Li or Mr Kim. This reply is alleged to be a protected act, and this is admitted by the Respondents **[HSMN issue 2/1.2]**. There is no live complaint that this document, despite its language, was a protected disclosure.

277. On **24 September 2020**, Ms Gonzalez emailed Mr Moune Nkeng to introduce herself as the HR Advisor assigned to support the grievance process **[7403]**. She said that Christine Meakin, Head of BUK Change & Execution Control had been appointed to investigate his concerns. She proposed an interim line manager change to support him during the grievance process. The proposal was that Mr Bill Chen would become his line manager whilst the grievance was being investigated. The Tribunal finds that this suggestion of a change in line manager originated from Ms Gonzalez and was endorsed by Mr Kim, although this is not stated in the email itself.

278. Ms Gonzalez said that Mr Moune Nkeng would work on projects with Mr Chen, which would give him the opportunity to get exposure to a different asset class. She reassured him that the expectations of the level of performance he would provide would reflect that he had not worked in this asset class area before. She gave him

the option of declining this change of line manager and continuing to be line managed by Mr Rienacker.

279. There then followed further email correspondence between Mr Moune Nkeng and Ms Gonzalez. Mr Moune Nkeng raised a series of questions. These included questions about the implications of working with Mr Chen on an interim basis; and a suggestion that Mr Rienacker should move asset class to enable him to continue working on equity validations under a different line manager. Ms Gonzalez answered each of these questions in turn in an email dated **23 November 2020**. She stated that there would be no change in his job specification. She said:

> "Although you currently focus on the Equity asset class, the role profile is broad in scope and covers work across asset classes (see above).
>
> Your key accountabilities remain the same, notwithstanding the shift in asset class. The proposal does not prompt any change to the terms and conditions of employment."

280. Working on the types of projects carried out by Mr Chen's team was consistent with the broad wording of the Summary of Key Terms that applied to Mr Moune Nkeng's employment. That wording was wide enough to encompass allocation to any of the sub-teams within the IVU. Mr Moune Nkeng alleges that this suggestion was a detriment because of a protected act **[HSMN issue 2/3.5]** and was racial harassment **[HSMN issue 2/8].**

281. Ms Gonzalez confirmed that the grievance could be progressed and concluded entirely in writing as Mr Moune Nkeng had requested. Her email also said she was moving roles and was handing over responsibility for administering the grievance process to her colleague, Ms Melanie Phillips.

282. On or around **12 November 2020**, Mr Moune Nkeng was invited by Mr Rienacker to attend weekly meetings by way of an electronic diary invitation. In relation to "when", the invitation said "occurs every Monday effective 11 May 2020 until 25 August 2020 from 11:00 to 12:00" **[7379]**. Mr Moune Nkeng alleges that this was victimisation **[HSMN issue 2/3.2]** and direct race discrimination **[HSMN issue 2/5.2]**, because the invite purported that there had been appointments between the two of them between 11 May 2020 and 25 August 2020**.** He declined the invitation saying that "there is no records of having those weekly meetings during that period (11.05.20 to 25.08.20)". The Tribunal finds that this was a quirk of the Outlook diary system to auto-amend the attendees at previous meetings when changes were made to those invited for regular ongoing meetings.

283. In his response on **15 November 2020**, Mr Rienacker apologised, saying "this was due to an Outlook quirk when I moved our Monday weekly back to Friday (effective from 13 November 2020". He gave the following explanation:

> "What has probably happened: I have ended the Monday series and set up a new series for Friday starting from Friday 13 Nov. But Outlook tried to match the past series again (i.e. discard all manual changes), so it has sent you also an invite for the past Monday series"

284. On **19 November 2020**, Mr Kim emailed his team with the subject "Congratulations to Huayi and Nadir" **[7388]**. Recipients of the email, as fellow team members, included each of the three Claimants. In this email, Mr Kim passed on the news that both had been promoted to Director. He explained the basis for their promotion in this way:

> "Huayi and Nadir were put forward for promotion earlier in this extraordinary year on the basis of their consistent high performance over many years, their demonstrated ability to work across asset-classes, model types, and for different leads, for solving problems and resolving issues, and ultimately delivering high quality work to schedule in the right way adding value to the team and to Barclays.
>
> This track record of performance resulted in management team confidence that this level is their normal level, a level that they can maintain going forward and build upon.
>
> In addition, external to our team, they each received support from Model Development and Model Ownership areas as well as other parts of MRM.
>
> Obviously another important requirement, which is out of any candidate's control, was that we were granted a team structure to accommodate these roles at the next level"

285. This decision to promote Ms Li and Mr Maouche and not include Mr Moune Nkeng in the promotion process or promote him is alleged to be an act of protected disclosure detriment **[HSMN issue 2/3.3]**; direct race discrimination **[HSMN issue 2/5.3]** and race related harassment **[HSMN issue 2/8]**.

286. The Tribunal accept that the reasons given by Mr Kim in this contemporaneous email were the genuine reasons why these two individuals had been promoted from Vice President to Director. The assessment of their consistently high performance set out in this email is consistent with what had been reported on their annual appraisals. They had been "put forward for promotion" based on this high performance. There was no open application process in which applications could be made by any employee. Mr Moune Nkeng was not put forward for promotion as he did not have

the same strong performance or the breadth of experience of validating other asset classes that was expected of promotion candidates.

287. Mr Moune Nkeng complains that he was not informed of or included in the promotion process. This is factually correct. However, this was a different promotion process. Mr Moune Nkeng was an Assistant Vice President. If he was to be promoted, it would be to Vice President, rather than to Director. No other Vice Presidents or Assistant Vice Presidents working under Mr Kim's line management were included in the promotion process that year. This included the other Assistant Vice President assigned to equity work, Stella Hadjipetri, who is White European. The Bank's standard practice was that those not being considered for promotion were not informed of this.

288. On **27 November 2020,** Mr Rienacker told Mr Moune Nkeng that following her promotion, Ms Li would become his line manager with effect from 1 December 2020 **[7419]**. He was also told that Mr Arnav Prakash would be joining Ms Li's team to focus on the Equity asset class. Mr Prakash was currently working for Mr Bill Chen. According to Mr Moune Nkeng's own minutes of this meeting, he did not raise any concerns about the changes at this meeting. The changes are now alleged to be victimisation for doing a protected act **[HSMN issue 2/3.4]** and racial harassment **[HSMN 2/8].**

289. On **30 November 2020**, Mr Moune Nkeng replied to Ms Gonzalez and Ms Phillips confirming he did not wish to temporarily move to Mr Chen's team **[7417].** He explained his reasons for rejecting the proposal. These included that he thought the move would have a detrimental impact on his work performance and career – "this will be at odds against my career aspirations to become expert in the Equity asset Class". He also said that he was concerned about the lack of impartiality from the interim manager Mr Bill Chen when managing Black colleagues. He also alleged that the decision to overlook a Black employee for promotion was "just another evidence of the bias and lack of support for black colleagues". He said that the decision to work with Mr Bill Chen could lead to ongoing discrimination. He expressed concern that there may be a lack of impartiality from Mr Chen in setting his objectives, assisting him with his career progression, and giving him opportunities for promotion. This email is alleged to be a protected act **[HSMN issue 2/1.3].**

290. On **1 December 2020**, Mr Kim sent his team a further update, setting out the asset classes for which those at Director level would have responsibility **[7456]**. Mr Rienacker would lead on FX, Security Products and Security Derivatives. Mr Chen would lead on Rates, Inflation and Muni. Ms Li would lead on Equities and Commodities. Mr Maouche would lead on XVA and Credit. The email noted that Mr Rienacker and Mr Chen had carried an extra load over the past couple of years. This was because two Directors had left and not been replaced. This meant that their responsibilities had had to be assumed by the remaining Directors. The effect of

these promotions was that that the IVU reverted to the same number of Directors that had been in position two years earlier.

291. In his letter sent by email on **30 November 2020**, Mr Moune Nkeng had made the following comment about the new line management arrangements:

> "My current line manager Gotz Rienacker informed me on 27 November 2020 that moving forward, I will definitely report to Huayi Li as my new line manager even though I raised multiple grievances against her (please refer to my 29.07.20 grievance letter). This demonstrates bad faith … if you are concerned about my well-being, wouldn't it be preferable to move the accused, Gotz Rienacker and Huayi Li"

292. In her response to Mr Moune Nkeng's email of 30 November 2020, dated **4 December 2020 [7517]**, Ms Phillips noted that Mr Moune Nkeng did not want to move to another asset class. She commented: "In the circumstances, as Huayi Li is the manager of the equities team, one option is to remain within her reporting line. However, we could explore other reporting lines, with other members of the team, if this would be of interest? I would welcome any other suggestions you may have in relation to your line management". The wording of this email is alleged to be detriment for making protected acts **[HSMN issue 2/3.10**] and racial harassment **[HSMN issue 2/8]**. The Tribunal finds that the wording of this email was entirely innocuous. It recorded the present structure of the equities team, in which Mr Moune Nkeng was based. It invited his suggestions on alternative reporting lines.

293. From **1 December 2020** Mr Moune Nkeng was line managed by Ms Li. She had been allocated lead responsibility for Equities Validations. There was therefore no need for Mr Moune Nkeng to work alongside Mr Chen whilst the grievances were being investigated. Mr Rienacker was being moved to lead on different asset classes on a permanent basis as part of the reorganisation.

294. Ms Li would be the Lead Validator on equities validations in the future. This was an area in which Ms Li had been working under Mr Rienacker before her promotion, and therefore one where she had experience to take the lead on this class of assets. Mr Moune Nkeng would be working in her sub-team alongside Ms Hadjipetri (who had previously focused on equity validations) and Mr Prakash, who would assume an equivalent focus. He had previously been working in Mr Chen's sub-team on different asset classes.

295. Due to an administrative error, Mr Moune Nkeng had been omitted from those in the payroll system recorded as being part of Mr Kim's team. He had instead been linked to Mr Vitcu's team. This was spotted by Mr Kim at the end of November 2020 and was quickly rectified. This change from the non-traded cost centre to the traded IVU

cost centre is alleged to be direct race discrimination and race related harassment **[HSMN issue 2/5.3.1 & 2/8]**.

296. From **1 December 2020** there was a handover period. During this period, Mr Rienacker continued to have some involvement in model validations on which he had been working before the changes in responsibilities. As a result, on **2 December 2020**, Mr Rienacker sent an updated invitation for weekly meetings, naming Mr Moune Nkeng, Mr Rienacker and Ms Li as the participants **[7474]**. Because this was an update to the series of meetings starting on 13 November 2020, the updated invite backdated to 13 November 2020. The system incorrectly suggested that there had been meetings between Mr Rienacker, Ms Li and Mr Moune Nkeng on 13, 20 and 27 November 2020. For the system to suggest that there had previously been such three-way meetings is said to be victimisation **[HSMN issue 2/3.7]** direct race discrimination **[HSMN issue 2/5.4]** and racial harassment **[HSMN issue 2/8]**.

297. This prompted a further complaint from Mr Moune Nkeng and a further explanation of the quirk in the Outlook system from Mr Rienacker **[7457]**. By way of explanation for both him and Ms Li being present, in a further email on **2 December 2020** Mr Rienacker said "there is some transition period where I and Huayi plan to have the catch-up with you". The circumstances in which Mr Rienacker remained involved in matters on which Mr Moune Nkeng was working is said to be victimisation **[HSMN issue 2/3.8]** an act of direct race discrimination **[HSMN issue 2/5.5]** and racial harassment **[HSMN issue 2/8]**. The Tribunal rejects the factual allegation that Mr Rienacker and Ms Li had been liaising about him without keeping him in the loop. There is no evidence of this. Both Mr Rienacker and Ms Li were transparent with him about the reason why both would stay involved during the transition period.

298. In addition to Mr Kim's approval of the consequences of the organisational changes, Mr Moune Nkeng alleges that Ms Armata and Ms Fordham endorsed the decision for him to report to Ms Li; and this was a detriment for making protected acts **[HSMN issue 2/3.6]** and also racial harassment **[HSMN issue 2/8]**. In the Tribunal's experience, it would not be normal for those with the seniority of Ms Armata and Ms Fordham to be involved in operational decisions about the sub-team to which an Assistant Vice President would be allocated, or about the particular asset class that would be covered by a Director. There is no evidence they were involved, and the Tribunal finds that they had no involvement in this decision.

299. On **2 December 2020**, Mr Moune Nkeng alleges that Ms Li did not communicate or enquire appropriately with him to familiarise herself with his projects or in relation to separating him from Mr Rienacker. This is alleged to be victimisation **[HSMN issue 2/3.9]** direct race discrimination **[HSMN issue 2/5.6]** and racial harassment **[HSMN issue 2/8]**. The Tribunal does not accept this criticism. Mr Moune Nkeng had been sent emails inviting him to weekly catch-up meetings so that Ms Li could get to know his projects and get to know him as his line manager. Mr Moune Nkeng had declined

these. She also emailed him on **9 December 2020** seeking an update on his current projects. She copied Mr Rienacker into this email **[9454]**. Mr Moune Nkeng alleges this decision to copy him into her emails was an act of victimisation **[HSMN issue 2/3.12]** and racial harassment **[HSMN issue 2/8]**. Ms Li sent this email as the wording explained, so that she could report on progress during the payoff prioritisation meeting that afternoon. It was copied to Mr Rienacker because at this point there was an ongoing transition as she gradually took over his responsibilities for equity validations.

300. On **18 December 2020**, Ms Li emailed Mr Moune Nkeng **[7507]** in the following terms:

> "As today we are supposed to have our catch up with [Mr Rienacker] when you feel okay to logon, can you please send me an update of the projects of your side, the projects you are on ETA and the current progress (any questions/issues)? Currently I also joined in Arnav & Bill's catch up and Stella & Gotz's catch up in the transition period to get familiar with their work and also for them to continue the current projects with previous managers.
>
> I am away for holiday until Jan 8. Can you please continue the normal catch-up with Gotz to provide the updates when I am away? Gotz is the lead Validators of current projects and also help manage the equity asset class when I am away and in the transition period".

301. This is further confirmation that Ms Li was attempting, in her role as his line manager, to find out about his progress on his projects.

302. Mr Moune Nkeng was on sick leave from **2 to 4 December 2020**. He had a further two days of sickness absence on **7 and 8 December 2020**.

303. On **5 December 2020**, Mr Rienacker emailed Mr Moune Nkeng to tell him he had made changes to the validation documents on equity validations. These had now been submitted to Mr Kim for approver review. The email ended "Still tbd [i.e. to be done]: update of challenge refs and approval dates in all three docs" **[7459].** Ms Li was copied into this email. Mr Moune Nkeng alleges that in this email, Mr Rienacker was demonstrating he was still the Claimant's line manager because he was instructing him to perform a task – and that this was an act of victimisation **[HSMN issue 2/3.11**] and racial harassment **[2/8]**. This email was part of the transition process envisaged as Mr Rienacker handed over his equity validation responsibilities to Ms Li. It did not demonstrate that he was still Mr Moune Nkeng's line manager.

304. When Mr Moune Nkeng responded on **14 December 2020 [7517]** to Ms Phillips' email of 4 December 2020, Mr Moune Nkeng asked Ms Phillips to provide the different range of options as to other reporting lines she had considered. He did not name any potential line managers himself in this response.

305. On **14 December 2020**, it is alleged that Mr Rienacker cancelled a weekly invite entitled "Henry-Serge + Huayi" and then sent another invite called "Weekly Henry-Serge" with Ms Li as a guest. This is alleged to be an act of victimisation **[HSMN issue 2/3.13]**. The Tribunal has not seen any evidence that this change of description was applied to the recurring meeting. Even if this did take place as Mr Moune Nkeng alleges, we do not find that this amounted to any detriment for him. It was a change in the description given to a meeting, nothing more.

306. On **16 December 2020**, Mr Moune Nkeng alleges that Mr Rienacker sought to allocate additional work to him with a very short deadline of one and a half days and without any discussion. His email, which he copied to Ms Li, referred to two payout reviews which were due on 25 December 2020 and in mid-January 2021 **[7499]**. The email also said: "we would need to see complete drafts at least a week before the deadlines". As Mr Moune Nkeng accepted in cross-examination, these two payout reviews were existing tasks already allocated to him. Therefore, this was not additional work. This email is alleged to be an act of victimisation **[HSMN issue 2/3.14]**.

307. The Tribunal finds that the final deadlines for these projects referred to in the email were the original deadlines of which Mr Moune Nkeng ought to have been previously aware. The effect of requiring a "complete draft at least a week before the deadlines" was that he had about a day and a half to submit his draft validation of the first of the two projects. The deadline for the second was around 8 January 2021.

308. Mr Rienacker's email went on to ask: "Please let me know if you are able to take on additional workload". The potential additional workload was described as editorial updates of inception validations for CCAR relevant pricing models, which it was anticipated would take around two hours for each. These were due at the end of that week, at least in draft form.

309. Mr Rienacker ended the email "You may want to concentrate on the payouts, which have the highest priority, as we have already agreed on deadlines with the business, whereas the editorial updates can be distributed to other team members. Pls let me know."

310. Mr Moune Nkeng did not reply. As a result, Ms Li emailed the following day saying that as he had not responded "considering that you could be busy for the deadlines with the business, Gotz has distributed the combined IVU +AMV docs work" **[7498]**. She reiterated the deadlines for the two payoff reviews referred to in Mr Rienacker's email.

311. On **17 December 2020**, Mr Rienacker emailed the team provisionally reallocating work to team members, including Ms Li and Arnav Prakash. No work was reallocated

to Mr Moune Nkeng, although he was copied into this email. Mr Rienacker ended his email "Please let me know of any bandwidth problems so I can redistribute" **[7500]** Given this wording, team members were given the opportunity to comment on these proposals. Mr Moune Nkeng chose not to do so. Mr Moune Nkeng alleges that this email showed Mr Rienacker had redistributed his existing workload to Ms Li and Mr Prakash, just one day after allocating the same workload to Mr Moune Nkeng. This is said to be an act of victimisation **[HSMN issue 2/3.15],** an act of direct race discrimination **[HSMN issue 2/5.7]** and an act of racial harassment **[HSMN issue 2/8]**. The email concerned additional work not already allocated to him. There was no redistribution of his existing workload. Therefore, this allegation is factually incorrect.

312. On **17 December 2020**, Mr Moune Nkeng submitted a formal grievance **[7501-7506]**. The grievance was addressed to Ms Fordham. It was copied to Ms Armata, Mr Kim, Mr Rienacker, Ms Li and Ms Gonzalez. The grievance was expressed to be against each of those individuals, as well as Ms Fordham. This was essentially a complaint about his reporting line. He also complained about the ongoing involvement of Mr Rienacker in relation to his current work, and the extent of his workload. He contended he was being set up to fail so that he could be subject to performance management. He alleged this treatment was direct race discrimination, harassment, and victimisation. This grievance is alleged to be a protected act **[HSMN issue 2/1.4]**. The Respondents accept this was a protected act.

313. Ms Li commented on this grievance in an email on the same day sent to Mr Kim and copied to Mr Rienacker: "The issue is that we cannot proceed with any work in that way … everything is under normal communication, through normal working procedure and respect his opinion and timeline" **[7511]**. She was saying that his proposed way of working was unworkable. Mr Kim commented: "We should work normally and apply standard management procedure as usual. No more and no less" **[10275]**.

314. On **18 December 2020**, Ms Phillips replied to Mr Moune Nkeng's email of 14 December 2020 **[7516]**. With regard to his reporting line, she said she had considered other Directors in the wider MRM team (including Mr Bill Chen), as well as Ms Li, the current Head of the Equities Asset class. As he did not want to move to another asset class, which she described as because "you consider that a move may have a detrimental impact on your performance and career", she said she could potentially explore a reporting line for him into another colleague within the Equities Asset class team. She asked whether this was something he would like them to consider. She also asked him to provide any other suggestions in relation to the reporting line. She said that the concerns raised in the formal grievance of 17 December 2020 had been referred to the Raising Concerns team for their review. This email is alleged to be an act of victimisation **[HSMN issue 2/3.16]** and racial

harassment **[HSMN issue 2/8],** in that it was argued that Ms Phillips was misleadingly saying that Mr Moune Nkeng did not want to be moved to a different asset class.

315. Mr Moune Nkeng argues that Ms Phillips was misrepresenting his position. He was not refusing any move to a suitable position/supervision. Rather he had objected to being line managed by Mr Bill Chen for the specific reasons he had given in his email of 30 November 2020. The Tribunal finds that Ms Phillips' position as expressed in her email was a reasonable one. Mr Moune Nkeng's reasoning for rejecting the proposed move to Mr Chen's team was of wider application - he said he would be "starting from scratch"; would "be labelled as very junior"; and he "reasonably believe that the move may have a detrimental impact on my work performance and career. This will be at odds against my careers aspirations to become expert in the Equity asset Class."

316. On **22 December 2020**, Mr Moune Nkeng emailed Ms Fordham in which she referred to Ms Phillips' email of 18 December 2020. He said that Ms Phillips' email was factually inaccurate. He said that he had declined to work under Mr Bill Chen, rather than refusing any move to another position **[7537]**. This email is said to be a protected act **[HSMN issue 2/1.5]**. The email did not include any allegations of discrimination or victimisation. It did not make any reference to the Equality Act 2010.

317. On **7 January 2021**, Ms Fordham acknowledged Mr Moune Nkeng's email dated 22 December to say that Ms Phillips would be responding to the points he was making as soon as possible. Ms Phillips provided that response on **8 January 2021 [7581]**. She clarified that there would be a period of transition when both Mr Rienacker and Ms Li might attend meetings with him to ensure a smooth handover; and that Mr Rienacker may cover for Ms Li when the latter was on leave. She repeated her invitation for him to make suggestions in relation to line management arrangements. The contents of this email are alleged to be victimisation **[HSMN issue 2/3.18]** and racial harassment **[HSMN issue 2/8]**.

318. At no point did Mr Moune Nkeng suggest any other person who should be given the responsibility of being his line manager.

319. During **December 2020**, Mr Moune Nkeng was in email contact with Vishal Sawant, who was part of the team providing IT services to the Bank from Pune in India. This was to discuss his problems in accessing emails. The team in India suggested a telephone discussion, but Mr Moune Nkeng insisted that communications should be over email. In the course of an email sent on **22 December 2020**, Mr Sawant wrote the following "If there are specific emails missing, then it is possible that those might have been deleted inadvertently by you" **[C/7930]** This is alleged to be an act of victimisation **[HSMN issue 2/3.17]**. Mr Sawant was speculating about one possible explanation for Mr Moune Nkeng's inability to access the emails. There is no

evidence that Mr Sawant was aware of any of Mr Moune Nkeng's alleged protected acts at the time he sent his email. When this was put to Mr Moune Nkeng in cross-examination, he accepted he did not have any hard evidence of this. The Tribunal finds that he was not aware of any previous protected acts. Therefore, the wording of his email cannot have been triggered by those protected acts.

320. On **27 December 2020**, Mr Moune Nkeng lodged a grievance against Mr Sawant which was sent by email to Ms Fordham and others **[7543]**. This is alleged to be and is accepted as a protected act **[HSMN issue 2/1.6]** as it made allegations of race related harassment. In that grievance, Mr Moune Nkeng did not accuse Mr Sawant of victimisation because of previous protected acts.

321. On **11 January 2021**, Ms Li emailed Mr Moune Nkeng saying that she had reset the weekly catch-up meeting from that week. She asked him to send updates of ongoing projects, updated testing results or IVU drafts (if any) or any questions/issues he wanted to discuss before each meeting. She said that Mr Rienacker would continue to dial in to this meeting until he thought it was unnecessary to do so **[7665].** This email is alleged to be an act of victimisation, as it was confirming that Mr Rienacker and Ms Li would remain in Mr Moune Nkeng's reporting line **[HSMN issue 2/3.19]**. The Tribunal finds that this email was a 'business as usual' email, reflective of the ongoing handover period for equities asset class work where Mr Rienacker had been the Lead Validator.

322. On **14 January 2021**, Mr Moune Nkeng responded to Ms Li saying that he was not happy having a Webex meeting with "only both of you". He requested as a "first reasonable adjustment" that any meeting involving "solely you, Gotz and myself" should have an itemised agenda and should be undertaken in written form. He asked her to let him know if she had any issues with this suggestion. Ms Li responded agreeing to discuss matters in writing rather than in a face-to-face meeting **[7665]**.

323. On **14 January 2021** Mr Rienacker emailed to say that he and Ms Li would be conducting the end of year review meeting **[7650]**. The wording of his email made it clear that the same approach was being adopted in relation to all those within the Equities team. This was being done because for the majority of the performance year he had been Mr Moune Nkeng's line manager. He ended his email asking Mr Moune Nkeng to let him know if he had any questions. Because Mr Moune Nkeng had made it clear that he would not attend any face-to-face meetings, this annual appraisal was dealt with in writing. In the event, he received a rating of Strong both for the 'What' and for the 'How'. Mr Moune Nkeng alleges that the involvement of both Mr Rienacker and Ms Li in his annual appraisal for 2020 was an act of victimisation **[HSMN issue 2/3.20]** and of racial harassment **[HSMN issue 2/8]**.

324. On **14 January 2021**, Mr Moune Nkeng emailed Ms Fordham submitting a further grievance letter. He asked to be separated from Mr Rienacker and from Ms Li, and

that any further contact with Mr Rienacker should be only in written form. He requested that his annual appraisal should be conducted by an independent manager and he have the opportunity to explore any Front Office vacancies. He said that he was asserting a statutory right in relation to the points he was making. It is accepted that this letter made allegations of discrimination and was therefore a protected act **[HSMN issue 2/1.7] [7670]**.

325. On **23 January 2021**, Mr Moune Nkeng presented his second claim to the Tribunal.

326. On **26 January 2021**, Mr Moune Nkeng lodged a further grievance **[7693]** in which he complained about the correspondence from Christine Meakin asking him to clarify his grievances **[7694]**. He said that these letters had been revised by the in-house legal team and by HR. He added that the matters within his document also constituted protected disclosures.

327. Aside from a single paragraph in Mr Moune Nkeng's witness statement (paragraph 731), there was no evidence specifically given during the hearing (whether by evidence in chief or during cross examination) as to the outcome of Mr Moune Nkeng's grievances. Ms Meakin issued a grievance outcome letter on **15 July 2021**. This is included in the documentation before the hearing **[8472]**. However, no complaint is made in these proceedings about the grievance outcome. Ms Meakin was not called to give evidence. No questions were asked of the Respondents' witnesses about the outcome. In these circumstances, as the Tribunal was not taken to this document, it is not appropriate for the Tribunal to make any factual findings about the contents of the grievance outcome. Without proper consideration of the contents of the grievance and the grievance outcome, it is not appropriate for the Tribunal to comment on the reasonableness of the time it took to provide that outcome.

FINDINGS OF FACT – LOUIS SAMNICK

328. Mr Samnick started his employment with the Bank on **4 October 2010**. He was originally employed at the corporate grade of Vice President. He reported to Mr Gillen in the Portfolio Analytics Group. This was a model development role in which he was working as a Quantitative Analyst ("QA"). This reflected his previous experience elsewhere, which had also been spent as a QA, focusing on market risk.

329. When Mr Samnick started in his employment, his base pay was £60,000 and his fixed compensation was £10,000 making total fixed compensation of £70,000. At the **start of 2011**, he received a bonus of £2,500 for the three months' work he had undertaken at the end of 2010. This was equivalent to a £10,000 bonus for a full year, or annual compensation of £80,000.

330. No 2010 appraisal was carried out at the start of 2011, because Mr Samnick had only been at the Bank for three months during 2010.

331. On **24 March 2011**, Mr Samnick and some of his colleagues transferred to the IVU. At the time, the Portfolio Analytics Group was being disbanded and Mr Samnick was at risk of redundancy. Mr Gillen also transferred to the IVU and remained his line manager. In cross-examination, Mr Samnick said that he decided to move to the IVU because "he kind of liked Patrick Gillen as a manager" (transcript 24.4.23, page 62). Verifying models developed by QAs was not a role he had previously performed. He did not have previous experience of validation report writing.

332. In **early 2012**, Mr Gillen carried out Mr Samnick's 2011 performance review **[152]**. He assessed Mr Samnick against the performance objectives he had been set in his previous role, when he had still been in the Portfolio Analytics Group. Mr Gillen's comments included noting that Mr Samnick had made tangible improvements in key areas of his performance over the last six months. He was better at meeting hard deadlines, and his validation reports were more in line with the standards that were expected. He had demonstrated more proactiveness in shaping validation and testing plans and hunting down the tools and the data needed to execute those plans. He was encouraged to continue to pay particular attention to his validation report writing work. Mr Samnick was adjudged to have fully met expectations **[158]**. It is implicit in these comments that there had previously been problems in these areas, but his performance had since improved.

333. Mr Gillen also carried out Mr Samnick's mid-year review in 2012 **[3751]**. He summarised his assessment in the following terms:

> "Louis-Philippe has broadly achieved his business objectives for this year, including establishing the annual review framework for counterparty credit models. He has started to chair these meetings independently and is providing some very useful mentoring to a junior member of the team. Overall, Louis-Philippe is clearly heading in the right direction in terms of addressing areas identified for development. However, I feel he has further to go to fully live up to the expectations for a VP, in terms of being able to handle issues and stakeholders independently, framing discussions, taking care with documentation and presentation, and making the case for pursuing new issues and solutions that he has identified." **[3756]**

334. In terms of Mr Samnick's development objectives, he was to take 2-3 courses offered through the HR training portal, and at least one of these should cover "soft skills" **[3751]**. Under the heading "communication" his business objectives identified the need to "continue to implement improvements in communication at all levels". Mr Gillen's assessment was that this was "in progress, behind" **[3752**].

335. Two of his three individual objectives were identified as areas of concern **[3751]**. These were "assisting to shape and establish annual model review process for CCR models"; and "fully align output of validations (eg in terms of written reports) to standards set by senior managers of validation teams in Credit Risk and Market Risk". He was given a specific example of a validation report whose style and content he should replicate **[3751]**.

336. One of his development objectives was identified as an area of concern. This was that he should interact more with other members of GFRM and QA in order to be in a strong position to solicit in-depth 360 feedback from personnel outside the immediate team at the end of the first half of 2012. Of the nine competencies, five were identified as development areas, including communication; teamwork; and management and leadership. The latter referred to Mr Samnick's management of Ms Imen Khadraoui, which was a responsibility he had been allocated around July 2012 **[3/12-13]**. She had complained that Mr Samnick was overly authoritarian, and this was impacting on her work. She also complained that he was not generous with his time in helping her out with technical support unless it directly benefited him. Contrary to Mr Samnick's assertion, the Tribunal does not accept that there has been any redaction by the Respondents of comments made by Mr Samnick against his objective of 'management and leadership'.

337. Mr Gillen noted there were positives and negatives in relation to Mr Samnick's performance. In terms of the minuses, he said Mr Samnick "needs to be more assertive, manner sometimes feels apologetic (despite usually getting to right result) doesn't exude enough confidence along the way; sometimes gets hung up on immaterial or technical points rather than viewing methodology holistically". Mr Gillen's overall rating of Mr Samnick at that 2012 mid-year appraisal stage was "Meets some but not all expectations" **[3756]**.

338. Mr Samnick contends that **around July 2012**, he made a protected disclosure at a Credit Risk Measurement Committee meeting (CRMC) **[LS issue 2.1]**. This is an alteration to Mr Samnick's case introduced in March 2023 (i.e. a month before the start of the Final Hearing) amending his original allegation on this point, which was that this protected disclosure was made in late 2012/early 2013 at a Trading Book Model Committee meeting. The alleged protected disclosure is that Mr Samnick disclosed to all attendees at this meeting that the Basel 3 Backtesting – Representative Portfolio Model was structurally flawed due to its circular nature. His case is that the model masked CCR models deficiencies, thus allowing the Bank to artificially reduce the CCR RWA and portray a healthy capitalisation above the minimum regulatory Tier 1 capital ratio requirement. This assertion is not supported by the minutes of the meeting, or by any other contemporaneous documents.

339. Mr Samnick says he believed at the time of the alleged disclosure that the Representative Portfolio Model breached the BIPRU regulation 13.6.67 (7) and (8)

and Article 294.1(h) and (i) of EU Regulation 575/2013. The former concerns the requirement for static historical back-testing on representative counterparty portfolios. It also sets out what a bank should do if the results of that back-testing indicate that the model method is not sufficiently accurate. The latter was only enacted in 2013, the year after this alleged meeting.

340. The July 2012 CRMC meeting took place on 9 July 2012. The Tribunal finds that Mr Samnick was not present at the CRMC meeting on 9 July 2012. Furthermore, given that this project was not on the agenda for this meeting, the Tribunal concludes that it was not discussed at that month's meeting. Had it been discussed, it would have been recorded in the minutes given the potential significance of the alleged comments.

341. Mr Samnick was present at the CRMC meeting on 28 August 2012 **[3/19]**, although his manager, Mr Gillen, was not in attendance. At this meeting, Mr Graham McNeil-Watson made a presentation on the Basel III Counterparty Credit Risk Backtesting Methodology. The minutes record that Mr Samnick warned against blindly trusting the algorithm. They also record that following further discussion about the methodology, the Committee had no conceptual issues with the current approach. The Committee gave its approval that QA should proceed with its work and return with more testing results and a sign off from the business owner before final approval could be given **[3/20]**. The Tribunal does not accept that what was recorded as Mr Samnick "warned against blindly trusting the algorithm" amounted to Mr Samnick identifying that the model was structurally flawed due to its circular nature. Had he said this, it is likely it would have been recorded in equivalent terms in the minutes.

342. The first version of this model report was created on **2 August 2013 [10229]**. The final validation report was completed in **August 2015**. The final version included the point about circularity raised by Mr Samnick. As such, the first version was very much work in progress during 2012. As at 2012, the Bank's approach to this particular model did not breach any regulatory or legal requirements. Given that the model was at an early stage of development, all Validators would have known it would be subject to significant further review and additional changes would be made. As a result, they would have known it was highly likely that the final version would comply with all relevant legal requirements.

343. Mr Gillen left the Bank's employment in **October 2012**.

344. On **30 October 2012**, Mr Kim set out his "forced rankings" for those in his team. Out of the 16 established members of staff, Mr Samnick was ranked in 13th place, in the bottom four team members **[169]**. Mr Harrison was ranked in fourth place. Mr Kim said that the top four and the bottom four team members were clear cut. The three individuals that were ranked below Mr Samnick were not Black, nor were they of Cameroonian or African origin. One was French, although according to Mr Samnick

with some African origin; one was German; and one was Tunisian. One of the team members, Mr Ade Odumboni, was of Black African ethnicity and was ranked at position seven, in the top half of the rankings.

345. Mr Kim conducted Mr Samnick's end of year appraisal for year end 2012 at the **start of 2013**. His assessment of his performance during 2012 reflected where Mr Samnick had been positioned in the forced rankings. His overall assessment was that he 'met some expectations'. That was the same rating as he had received at the mid-year point, when the assessment had been carried out by Mr Gillen. The performance summary recognised various areas of strength, noting that he continued to improve his communication skills, adapting his style according to the audience and situation. He was told to continue to improve his communication skills, adapting his style according to audience and situation, and continue to improve his management style. He was asked to focus on "bringing ccr modelval more inline with mktrisk modelval, both annual reviews and documentation generally" **[3750]**.

346. The comments made in this assessment about Mr Samnick's communication skills were similar to the comments made by Mr Kim in his equivalent assessment of Mr Harrison. Of Mr Harrison, he wrote this: "As in the MY 2012 review, I would recommend Duncan to continue working on the balance between clarity and level of detail in his write-ups and communication (depending on audience)" **[179]**. Like Mr Samnick, Mr Harrison was also given development objectives for the coming year. He was subsequently promoted to Director in December 2014.

347. On **24 July 2013**, the Trading Book Methodologies Committee met **[C/389]**. Mr Samnick and Mr McNeil-Watson were amongst a large number of attendees. An action point allocated to Mr Samnick after the meeting was to "conduct validation of the methodology to construct representative portfolios and the Copula Bootstrapping methodology for measuring backtesting exceptions" **[C/391]**.

348. Mr Samnick alleges that on **24 July 2013** Mr McNeil-Watson deliberately failed to provide him with the required information for this model validation, and that this was detriment for making a protected disclosure **[LS issue 4.1]** and an act of direct race discrimination **[LS issue 7.1].** The Tribunal rejects the factual contention that he was deliberately denied the required information. The Tribunal accepts the evidence of Mr McNeil-Watson which is consistent with the document. The model documentation that Mr Samnick was being asked to validate was produced on 16 August 2013 **[10228**]. The validation of this model was then put on hold until February 2014. On **19 February 2014** there was a catch-up meeting to discuss this project. In his 2014 end of year appraisal, Mr Samnick recorded the following about the Gaussian Copula Bootstrapping: "The beginning of the tests were delayed as it took some time for QA to deliver the testable implementation" **[234]**. He did not allege that this was a deliberate delay or that this was in retaliation for making a protected disclosure or influenced by his race.

349. Mr Kim carried out Mr Samnick's **mid-year 2013** performance review. At that review, one of his business objectives was to "participate in the relevant forums (models subvalcomm, risk methodologies) to provide the challenge around methodologies and the process around methodology approvals". He was also asked to ensure that the regulatory implications of bank-wide initiatives e.g. Basel 3 etc were adequately supported and evaluated for regulatory requirements **[3767]**. These objectives were fundamental to the role of Validator which was to provide constructive challenge to particular models. He was carrying out this aspect of his role when sending emails with his views on models that he now characterises as protected disclosures. Whilst this does not prevent them in law from being protected disclosures, it does provide important context for why he was sending these communications.

350. Mr Kim's balanced feedback recognised what had gone well, whilst encouraging him to improve initiative and ownership and work independently, particularly on pricing models. One specific development objective was that he should continue to improve his communication skills and style, tailoring them to his intended audience **[3771]**. At the end of the document, under the heading "Employee Acknowledgement", Mr Samnick wrote: "After my one to one meeting, I acknowledge and agree with the appreciations/comments made". At this point, Mr Kim assessed him as "Fully Meeting Expectations". This was an improvement from the year end 2012.

351. At around the same time, Mr Kim carried out Mr Harrison's mid-year 2013 appraisal. His comments on Mr Harrison's performance were significantly more positive than the comments given to Mr Samnick. He noted that Mr Harrison "consistently delivers high-quality, comprehensive modelval reviews and manages FX asset class BAU independently. He is also a good communicator and has represented FX modelval well in meetings on working-group level and above (e.g. FX models subvalcom).". His performance was assessed as "Above Expectations" which was a higher ranking than Mr Samnick. Both Mr Samnick and Mr Harrison had similar objectives for the next period **[3760 and 198]**.

352. At his year-end review for 2013, Mr Samnick recognised that "this year was very challenging as we were understaffed and I had 10 annual reviews and 4 validations to complete". He said that he had managed to complete the ten annual reviews and three out of the four validations **[3763]**. He did not allege he had been denied any request for assistance, or that he had been treated with racial hostility. He was again assessed as "Fully Meets Expectations" **[3764].**

353. In **early 2014**, and based on his performance for 2013, Mr Samnick was awarded a £20,000 bonus and an 8% salary increase. The overall effect was a significant increase in his total remuneration from the previous year.

354. On **23 May 2014**, Mr Samnick emailed Mr McNeil-Watson and Mr Imran Siddiqui **[249]** with the subject line "Representative portfolio validation"**.** Mr McNeil-Watson and Mr Siddiqui were model developers. Although some parts of this email have been redacted, the salient parts remain. Mr Samnick wrote that he had compared "the MtM and sensitivities (real v representative portfolios)" of three counterparties. He continued: "As you can see below, the results show some big differences. Can you have a look?". This is alleged to be a protected disclosure disclosing information tending to show the Bank had failed, was failing or is likely to fail to comply with BIRPRU 13.6.67 or EU Regulation 575/2013 **[LS issue 2.2].** The email makes no reference to these provisions.

355. In around **August 2014**, Mr Albrecht took over as Mr Samnick's line manager. He took over from Mr Protopapas, leaving a vacancy in the securitised derivatives team where he had been before.

356. On **12 September 2014**, Mr Samnick sent a further email to various model owners and developers with the subject line "Representative portfolio validation" **[240]**. It was copied to Mr Albrecht, who therefore knew of its existence. This email noted that he had run a more granular analysis. He added "Even though some discrepancies are found for FX and inflation, the most material gaps are found in GBP IR. My guess is that the gaps come from the initial risk representation when filtering the representative trades, which does not seem to give an accurate representation of the GBP IR risks of [redacted] portfolio". This is alleged to be a protected disclosure, disclosing information tending to show the Bank had failed, was failing or is likely to fail to comply with BIRPRU 13.6.67 or EU Regulation 575/2013 **[LS issue 2.3]**. This email makes no reference to these provisions, nor does it suggest there was any breach of any legal obligation. As already stated, it was Mr Samnick's role to analyse and question the proposed models and this is what he was doing in his email. He was raising an observation about test results using a more granular analysis.

357. The Bank's CCR Backtesting Methodology Representative Portfolios, dated 16 August 2013, stated (at page 5): "The guidance from the Basel Committee on portfolio level backtesting says that what "constitutes a representative portfolio will vary from firm to firm and, at present, there is no established methodology for determining representative portfolios"" **[10232]**. The guidance continued that "the rationale for its choice and the definition of a representative counterparty portfolio must be defined and justified in each bank's backtesting policy". Given this, it was for the Bank to adopt its own model as it considered it appropriate.

358. At these points, in **May** and **September 2014**, the representative portfolio model was not live. It was not finally approved until **August 2015** and became operational thereafter.

359. Mr Samnick alleges that in **October 2014**, Mr Albrecht supported the CCR QA team in putting the burden of proving the appropriateness of a particular model onto him, rather than on the CCR QA team as he considers should have been the case. He says that this was done because he had made the first three alleged protected disclosures **[LS issue 4.2]** and also that it was an act of direct race discrimination **[LS issue 7.2].**

360. Mr Albrecht's view was that the QA team had adopted the correct stance when assessing whether the representative portfolio accurately replicated the risk profile. They were comparing the entire distributions of the risk factors. This is sometimes referred to as the "goodness-of-fit" measure. In Mr Albrecht's view, this was more robust and less susceptible to outlier effects. Mr Samnick took a contrary view. Mr Albrecht asked Mr Samnick to carry out a worked example to explain his alternative approach, and to discuss it with the model developers. He was open to persuasion if Mr Samnick's example indicated his approach was preferable. These were entirely standard discussions attempting to resolve differences between the model validation team and the model developers. We do not consider that Mr Albrecht's instruction to Mr Samnick can be characterised as detrimental treatment. It was part of the normal method of working within the validation team in the discussions with the QA team, in which various views would be debated until either a consensus was reached or there was "an agreement to disagree". Mr Albrecht was not putting any burden on Mr Samnick to prove his approach was correct.

361. On **6 November 2014**, Mr Kim circulated his preliminary assessment of the individual performance ratings of those in his team at Assistant Vice President or Vice President level. Mr Harrison was ranked first (a White man), Ms Li second (a woman of Chinese ethnicity) and Ms Karpowicz third (a White woman). All were assessed as 'Very Strong'. Other team members were rated 'Strong' but ranked in descending order of performance. Mr Samnick was ranked in eighth place (out of ten) **[9717]**. Immediately above him, in seventh position, was Mr Odumboni, who is also of Black African ethnicity. Below him was a man of Chinese ethnicity and Mr Moune Nkeng (a man of Black African origin). As Mr Samnick accepted in cross-examination, Mr Kim's team comprised people of all different nationalities.

362. At the **end of 2014** or the **start of 2015**, Mr Albrecht carried out Mr Samnick's year-end 2014 review. In his comments, he noted that Mr Samnick had good technical skills, was versatile and had a good work ethic. In terms of the areas for development, Mr Albrecht asked him to focus on his communication style, in particular when speaking on committees. He noted that at times he jumped to conclusions too quickly and needed to work on his write up style and fluency. He noted that his write up style and fluency was not commensurate with what he would expect from a senior Vice President. Mr Albrecht's comments were consistent with comments from stakeholders. Despite that negative assessment, he awarded Mr Samnick an overall

rating of 'Strong' **[3778]**. This was the third rating out of six possible assessment ratings.

363. In his direct race discrimination claim, Mr Samnick seeks to compare the way his performance was assessed with the equivalent assessment received by Mr Harrison. Mr Harrison had been assessed by Mr Rienacker. He was given an overall rating of 'Very Strong' **[214]**. The comments made by Mr Rienacker and by other stakeholders for Mr Harrison reflected stronger performance than that of Mr Samnick. In particular, the comments note that Mr Harrison had significantly stepped up his responsibilities in the last six months. He had taken over operational responsibilities for two new asset classes and started training and developing a second direct report. He was described as a role model to other team members. He had managed the FX asset class BAU independently and had built a stronger working relationship with the FX QAs.

364. At around the time of this end of year appraisal, Mr Harrison was promoted from Vice President to Director. He was allocated a role heading up the FX credit and securitised directives pricing model team. Mr Harrison had been consistently rated higher than Mr Samnick. Mr Harrison is likely to have been interviewed for the role. However, the role was not advertised. There was no application form to complete or shortlisting exercise before interview. None of the other team members were informed about a promotion opportunity or included in the process. This included Ms Li, who had also been rated as 'Very Strong'. As the strongest performer recorded by Mr Kim in his forced rankings on 6 November 2014, Mr Harrison was in pole position to secure the vacant role. By contrast, Mr Samnick's track record was inconsistent and significantly weaker.

365. Mr Samnick alleges that the failure to inform him about the promotions process to Director, to include him in this process, and to promote him to Director at the end of December 2014 was a detriment for making protected disclosures **[LS issue 4.3]** and an act of direct race discrimination **[LS issue 7.3]**.

366. Mr Albrecht carried out Mr Samnick's mid-year 2015 appraisal on **13 July 2015**. His documented assessment was that the first half of the year had gone reasonably well with some areas of concern. In terms of what went well, he wrote that Mr Samnick "seeks to apply the highest standards of controls and risk management practices" and had "demonstrated prudence, sound judgment and appropriate and timely escalations in the management of all types of risk". He gave examples of both of these positive comments **[292]**.

367. In terms of what Mr Albrecht described as "areas of concern", he noted that "the quality and consistency of write-ups was below the expectation based on a VP grade"; and Mr Samnick needed to show "still more care in terms of presentation style". He said that Mr Samnick needed to "build better relationships with members

of QA and overcome his, to some extent, fundamental distrust, more actively seek out alternative perspectives and put our shared interests ahead of any individual or team". He also recorded there had been "difficulties delivering write ups with a level of detail and clarity expected from a senior team member" **[289]**. Similar comments were made in a section titled "Objective Comments" when describing his performance against the following objective: "ensure quality, consistency and timeliness of write ups". These comments were consistent with feedback from previous line managers about his writing style in earlier appraisals, which Mr Samnick does not complain about in these proceedings. Mr Samnick argues that Mr Albrecht's negative comments about his behaviours and writing skills were made because of previous protected disclosures **[LS issue 4.5]**.

368. The meeting to review his mid-year performance was interrupted before it was completed. Mr Samnick asked Mr Albrecht to provide him with specifics for development areas and guidance on how those areas could be improved. That was discussed at their next 1-2-1 meeting. Mr Samnick was told to look at Mr Harrison's reports for good examples of the required standards. Mr Samnick commented "for the second quarter of 2015 now that I have a clear example of the writing standards to reach and that I can identify the gaps to be closed, I will make all the necessary efforts to bring my writings to the required level" **[293]**. He did not suggest that Mr Albrecht's assessment of his performance was unjustified or had anything to do with his race or with any previous protected disclosures. The Tribunal finds that Mr Albrecht's comments were justified by Mr Samnick's performance.

369. Mr Samnick now argues that in July 2015 Mr Albrecht failed to inform him of his expectations for written work in advance of the mid-year performance review, and that this was direct race discrimination **[LS issue 7.4]**. He argues that Mr Harrison was an actual comparator and that Mr Harrison had received a copy of the Bank's "writing standards" to assist him to improve. This is not a complaint that Mr Samnick was making at the time. He had been a Validator since 2011. In that time, he had had many opportunities to develop his written work in response to amendments made by the Lead Validator for each of his validations. They would have changed his initial draft so that the validation report was expressed in sufficiently clear and concise terms. He ought to have learnt from these specific comments so that future validation reports were expressed more effectively and did not feature the same weaknesses. He had also been consistently told to improve the clarity of his communications in his mid-year and end of year reviews and given the opportunity to ask for guidance on this. The Tribunal therefore does not consider there is any merit in Mr Samnick's criticism. This was not a detriment and therefore cannot be the basis for a finding of race discrimination. In any event, Mr Harrison was not given any "writing standards" document to assist him with his written work.

370. Mr Albrecht left the Bank in **October 2015**. In **November 2015**, Mr Kim circulated his assessment of the 2015 rankings for those in his team **[9749]**. The ten Vice Presidents were ranked in performance order. Mr Samnick was ranked in eighth place out of ten. The highest performing Vice President was Mr Bill Chen, followed by Ms Li. Mr Samnick was one of six Vice Presidents who were rated 'Good' for the 'What', 'Good' for the 'How', and 'Good' overall. In fifth place was Mr Odumboni, of Black African origin. He had the same performance rating. Below Mr Samnick was a a man of Asian origin and a woman of either Romanian or Iranian origin[1].

371. Mr Albrecht's role as the Head of the Traded Risk sub-team within the IVU was advertised both internally and externally. Mr Rood was an external candidate and was successful in his application. Mr Samnick had the same opportunity as Mr Rood and other candidates to apply for this role. He would have known that the Bank was conducting a recruitment exercise to find Mr Abrecht's successor.

372. Mr Rood was appointed to the role. He was already working for another organisation at Director level. He had been working on counterparty and market risk model validation since 2008. He therefore had more experience than Mr Samnick. Mr Samnick did not apply for the vacancy. He did not raise any concern at the time about not being promoted into the vacant role of Head of Traded Risk Models. He did not complain about this in any of his formal grievances.

373. Mr Samnick alleges that Mr Kim's failure to inform him about the opportunity to apply for the Director level role of Head of Traded Risk Model Validation; include him in the promotions process; and promote him to Director were all acts of protected disclosure detriment **[LS issue 4.6]**. He also alleges that Mr Kim did not give him the opportunity to apply for the role, even though Mr Samnick had more experience than Mr Rood, and that this was an act of direct race discrimination **[LS issue 7.5]**.

374. On **9 December 2015**, there was a team Christmas lunch for members of Mr Kim's team. By this point, Mr Rood had been offered and had accepted the role of Head of Traded Risk Model Validation. He was not due to start until 1 February 2016. Despite this, Mr Rood attended the team lunch in order to get to know his new colleagues. Mr Samnick alleges that Mr Rood snubbed him at this lunch and did not talk to him, even though he was sitting directly opposite Mr Rood. This is said to be an act of racial harassment **[LS issue 21.2]**. The Tribunal is unpersuaded by Mr Samnick's evidence as to how Mr Rood behaved at the team lunch. He sought to embellish in cross-examination what he had previously said in his witness statement, adding a new detail in his evidence that Mr Kim had specifically instructed Mr Rood not to communicate with Mr Samnick during the lunch because of his previous protected disclosures. In the List of Issues, Mr Samnick does not allege that Mr Rood's

[1] The transcript (25.4.23 page72) records her nationality as Romanian. In commenting on a draft of this Judgment, Mr Samnick says that this was a transcription error and her nationality was Iranian.

behaviour at the lunch was detriment for making protected disclosures. Nor does he allege in the List of Issues, that Mr Kim instructed Mr Rood to snub him. Mr Samnick did not make any written complaint about Mr Rood's conduct at this lunch either at the time or at any point subsequently until these proceedings were issued.

375. Because of Mr Albrecht's departure and because Mr Rood was not yet in post, Mr Kim carried out Mr Samnick's end of year appraisal for 2015. He awarded the Claimant a rating of 'Good' for the year. That was a reduction on his year-end rating of 'Strong' for 2014, and a reduction in his performance at the 2015 mid-year stage. It was the fourth best out of six possible ratings allocated to all staff. The appraisal document records that during 2015, Mr Samnick had been selected to be part of the challenger group as part of the Annual SIF/CRO attestation process. In his comments, Mr Kim noted that Mr Samnick remained the go-to person for counterparty exposure models and had also taken opportunities to get involved in market risk models. He noted that Mr Samnick should push himself to focus on continuing to develop areas identified in previous appraisals - "1) quality of drafts in terms of detail and clarity; 2) taking a more collegial team approach with stakeholders; 3) improving self-awareness by taking a more self-critical bias" **[325]**.

376. At around this point in time, Mr Dickson conducted an equivalent review with Mr Chen **[306]**. He was rated 'Very Strong', and the comments of Mr Dickson and others were to the effect that his performance had been excellent. However, a development area was to "continue to improve write ups". This development area was of a similar level of generality to the equivalent development area identified for Mr Samnick.

377. Mr Rood arrived for his first day in his new role on **1 February 2016**. Mr Samnick alleges that although Mr Rood had lunch with some colleagues on his first day, he did not invite Mr Samnick to have lunch with him, even though Mr Samnick was his only team member. Mr Samnick argues this was because of Mr Samnick's previous protected disclosures **[LS issue 4.8]**. The Tribunal does not find Mr Samnick's allegation to be plausible, and it is rejected. The likelihood is that current team members would have invited the new recruit, Mr Rood, to have lunch with them in the canteen, as was the custom. Mr Rood would not have been issuing invitations to specific employees to join him for lunch on his first day in the office. In any event, the Tribunal does not find that Mr Rood would have known about any of Mr Samnick's previous alleged protected disclosures by lunchtime on his first day in post. There would be no reason for this to have been raised with him at that stage.

378. Mr Samnick also argues that he was excluded from all meetings and committees which he used to attend previously and that this was because of his previous protected disclosures **[LS issue 4.8]**. In his witness statement, Mr Samnick says that these meetings were TBMC meetings and forums relating to counterparty credit risk models or market risk models. This allegation is extremely vague. Mr Rood did not

attend any of these meetings either. The Tribunal does not have sufficient detail of the dates or the remits of particular committee meetings to be able to properly evaluate whether Mr Samnick was not present at a specific meeting and whether his absence calls for a suitable explanation. Furthermore, there is no evidential basis potentially linking the scope of the meetings Mr Samnick was permitted to attend with previous alleged protected disclosures.

379. On around **21 June 2016**, the Risk Model team was due to meet with Mr Eduardo Canabarro. Mr Samnick emailed Mr Rood and Mr Kim on **20 June 2016** to say that he had not been invited to this meeting **[434]**. In a jokey response, Mr Kim said "yep the risk model team is important to Eduardo, possibly more important at the moment than the pricing model teams!". He said that the Directors would be agreeing the running order and then letting everyone know the correct slot, "same as last time". It was clear from this wording that all attendees, including Mr Samnick, would receive an electronic invitation to this meeting when the running order had been fixed and therefore when their likely time slot was apparent. Mr Rood followed up with "Don't worry Louis, I will drag you along tomorrow ;-)". The Tribunal does not agree with Mr Samnick's characterisation of this email as aggressive. As the symbols typed at the end of his email demonstrated, Mr Rood intended his email as a light-hearted reassurance that Mr Samnick would be included. Despite the way in which **LS issue 4.9** is drafted, Mr Samnick accepted in cross-examination that he was invited to this meeting and attended the meeting.

380. Mr Samnick alleges that during the period from **2 May 2016 to 14 June 2016**, he was allocated only two small projects, whereas Mr Rood allocated himself three projects. He says that this indicates that Mr Rood had no plan to have him in the team for the long term. This is said to be an act of direct race discrimination **[LS issue 7.6]**. Mr Samnick accepted in cross-examination that project allocation was dependent on availability of resource across the IVU as well as on priority. According to Mr Rood's contemporaneous spreadsheets, around May 2016 Mr Samnick was currently assigned to three projects - Eagle IMM, inflation linked bond and interest rate evolution validations. The Tribunal has no reason to doubt the evidence from the Respondents' witnesses that these were substantial projects, which between them would have taken a considerable amount of time. There is no contemporaneous evidence of Mr Samnick complaining he had insufficient work. Nor does he record this point in his comments entered as part of his 2016 annual appraisal.

381. On **11 August 2016**, Mr Canabarro emailed Mr Kim and his Directors within the IVU, including Mr Rood. Mr Canabarro was reporting on a meeting he had had that day with the Prudential Regulatory Authority (the PRA). The PRA told him that the IVU had been ineffective in identifying model deficiencies. Two examples were given – the VaR model and Eagle. Both were validations on which Mr Samnick had been working **[476]**. Mr Canabarro signalled with the wording of his email - "Time to act

…" - that he expected action from the IVU and he would get involved himself to ensure that deficiencies were identified. He ended his email "To recover our credibility we will need to show we can do the above" **[9638]**. This email illustrated that more would be expected of Validators such as Mr Samnick going forwards.

382. In **November 2016**, Mr Kim circulated the forced ranking assessment of VPs and AVPs for 2016 **[9720]**. This ranked Mr Samnick in fifth place out of eleven, within the top half. He was ranked one position behind Ms Li, and two ahead of Ms Karpowicz, who was an AVP at that point. Mr Samnick was now ranked ahead of Mr Prakash, who had been above him in 2015. In first position was Mr Bill Chen. We accept that these forced rankings were Mr Kim's genuine assessment of the performance of his team, having consulted with his Directors, including Mr Rood. We do not accept Mr Samnick's assertion that the ordering was random.

383. Mr Samnick's appraisal for the year end 2016 was carried out by Mr Rood on **1 February 2017 [469] [474/5]**. Mr Rood's assessment was that Mr Samnick was a "capable quant", but his report writing should be improved. He listed two specific respects in which improvements were expected. These criticised the thoroughness of his analysis and the rigour of his explanations **[477]**. These criticisms were consistent with the higher standards expected by Mr Canabarro. Notwithstanding these criticisms, Mr Samnick was awarded a 'Strong' rating for his 2016 performance. Starting with the performance year 2016, there were now only three ratings – 'Outstanding', 'Strong' and 'Improvement Needed'. This rating therefore placed Mr Samnick in the middle category. This was the same rating given to around 80% of Validators.

384. In his appraisal for the equivalent period, Mr Chen was rated as 'Outstanding' for the 'What'. He was described as a role model who had been day-to-day managing several team members on their projects **[337]**.

385. By this point, Mr Samnick had not raised any written complaints about Mr Rood, who had been line managing him for around a year. The Tribunal does not find that Mr Samnick made any clear verbal complaints to either HR or to management about Mr Rood's conduct at any point.

386. In **April 2017**, Mr Rood asked Mr Samnick to work on the FX option pricing model validation. In an email on **18 April 2017**, Mr Rood asked him to have a good read and flag any challenges. He listed his own initial comments **[C/1150]**. Although Mr Samnick criticises Mr Rood's attitude in this email, the Tribunal finds it was entirely appropriate. Mr Samnick's initial assessment on **24 April 2017** was that "the model documentations are not up to standards" **[528]**.

387. From the end of **April 2017** until the middle of May, Mr Samnick was absent from work on two weeks' planned paternity leave **[529]**. At the time, the IVU specialists on

FX and Derivatives were Ms Karpowicz and Mr Harrison. Because of an impending deadline for the FX option pricing model validation, which was needed before an IT release in mid-June 2017, around the middle of May 2017, a decision was made to move the FX option pricing model validation to them. This decision is said to be an act of harassment related to race **[LS issue 21.3A].**

388. Mr Samnick alleges that the removal of the CCR FX Option Pricing Model validation left him with 'nothing to do'. The Tribunal rejects this. There is no contemporaneous documentary evidence indicating that he was not fully employed.

389. The Tribunal does not accept that Mr Samnick raised any verbal concern on **22 June 2017** to Mr Aman Bhandal, a member of the Raising Concerns team, regarding the sabotage of the Comprehensive Capital Analysis Review ("CCAR") exam preparation by London directors in the Traded Risk IVU team, specifically by Mr Kim, Mr Rood, Mr Harrison and Mr Rienacker **[LS issue 2.4]**. There is no record of such a conversation. There is no reference to such a conversation in any of the contemporaneous documents.

390. In the summer of 2017, Mr Samnick and Mr Maouche were assigned to work on the CDS index options project **[9530]**. This was a project that was due to be submitted to the regulators on **21 August 2017 [627]**. As a result, it was high priority. The model developer chased Mr Samnick for his comments. Mr Samnick replied with his assessment of the main limitations and conditions at 10:28 on **Friday 4 August 2017**. It was met with a blunt response from the model developer: "I can't accept any of these. Let's talk later. Thanks" **[9530]**. Mr Rood emailed Mr Samnick with his observations **[9524]**. In particular, he said this about the inclusion of a no-arbitrage check:

> "Let's hear what they have to say specifically on M1 but I'd suggest we do not insist as it is highly unlikely that simulated market scenarios will in general satisfy no-arbitrage. We are simulating in the real world not in the risk neutral world. In risk modelling we are making the broad assumption that the future will repeat history and in this way we infer that forecasts are arbitrage free. This does not preclude arbitrage strategies to be possible in simulated scenarios - there always will be."

391. Mr Rood was attempting to explain to Mr Samnick why the model developer was dissatisfied with Mr Samnick's comments. Mr Aneesh Venkatraman was copied into this email.

392. At that point, Mr Samnick chose to forward the email chain containing Mr Rood's comments to Mr Abanda Bella and Mr Moune Nkeng, with the subject line "voyez vous meme" and the comment "Voila alors …". Mr Abanda Bella's reaction was "Wow …" **[9529]**. This shows that Mr Samnick was discussing details about his work

situation with Mr Abanda Bella and Mr Moune Nkeng, even though there was no business need for either of them to see these details.

393. Mr Samnick replied to Mr Rood, adding Mr Maouche as a further copy, setting out his own views **[9524]**. He said that two of the points he was raising (labelled D1 and D2) about this model "were not showstoppers". In regard to M1 he said:

> "Point M1 is one of the limitations of the feeder model inception validation and they have themselves identified it as a limitation in the model doc. one of the main reasons provided for the change is that currently the relationship between volatility points is not taken into account, though the basic checks for sound relationship between volatility surface points is the absence of arbitrage opportunity (calendar spread, butterfly spread). Furthermore, the risk manager should make sure that we are not exposed arbitrage opportunity."

394. Mr Samnick then forwarded to both Mr Abanda Bella and Mr Moune Nkeng this aspect of the comments he was making to Mr Rood [**9529]**.

395. Mr Samnick started a two-week period of annual leave on the next working day, **Monday 7 August 2017**. He remained on annual leave until **Friday 18 August 2017 [5340]**. On his return, he was assigned to the eRisk/SRA migration project **[spreadsheet 9 line 24]**. This same project is also referred to as the new VaR methodology proposal for non-linear equity single stocks products. That was a project on which he was still working in October 2017 **[600]**. He was also assigned to work on the PFE fallback model on **21 August 2017**, although because the model documentation was not up to standard it was sent back to the model owner for further work.

396. Mr Samnick first raised a concern with the Raising Concerns hotline on **Tuesday 22 August 2017 [554]**. This was a complaint raised by Mr Samnick to Mr Bhandal about Mr Rood, in which he alleged Mr Rood was complacent to risk models and was not following correct procedures **[547/8]**. The concern raised did not allege deliberate sabotage of the CCAR exam preparation process. It was anonymised and passed to Mr Luke Saxton in the Whistleblowing Team.

397. This was around two weeks after Mr Abanda Bella had also first raised a whistleblowing concern **[3294]**. As Mr Samnick accepted in cross-examination, he did not tell Mr Rood or Mr Kim about any phone call to the Whistleblowing Team. Neither Mr Rood or Mr Kim would have been told by the Whistleblowing Team or by the Raising Concerns team that Mr Samnick had contacted them. Fundamental to their ethos and procedures is that any concerns are raised confidentially; and that confidentiality is strictly respected throughout the process.

398. In **August 2017**, the IVU was asked to carry out the validation of model documentation on the IHC VaR model. At that point, a decision was made that this project should be assigned to Mr Venkatraman. He, like Mr Samnick, was a Vice President in the traded risk sub-team. It was considered that he had the capacity to carry out this particular task. This particular model was not something on which Mr Samnick had already been working, apart from some initial feedback at a preparatory stage he had provided in March 2017. The Tribunal rejects Mr Samnick's allegation that this had been removed from him during his paternity leave in May 2017 and this removal constituted an act of racial harassment **[LS issue 21.3B].**

399. On **4 September 2017**, Mr Samnick was appointed Validator on GMD3244 – CCR Fallback: Sensitivity Based (3D Stress) **[8404]**

400. Mr Samnick alleges that on **5 September 2017** he was asked to take on the eRisk SRA Migration project (also referred to as the 'new VaR Methodology proposal for non-linear equity single stock products'), which had previously been allocated to George Mavros, and that some of Mr Samnick's existing work was allocated to Mr Mavros. This is said to be an act of direct race discrimination **[LS issue 7.7].** This factual allegation is incorrect. Mr Samnick had been working on eRisk/SRA Migration since **18 August 2017**. Mr Mavros was only assigned the market risk stress testing validation on **3 October 2017**, and the review started on **15 October 2017 [spreadsheet 9]**. This was because he had capacity to do this work at the time. This allocation of tasks was based on business need and the capacity of Validators to meet that need. Mr Samnick did not raise any concerns about project allocation until after his mid-year 2017 review on 11 October 2017.

401. On **1 October 2017**, Mr Samick was mapped onto a nine-box talent map as an "Inconsistent Performer" **[9563]**. This was the second lowest out of nine potential categories, with the lowest being "Under Performer" and the highest being "Ready Talent".

402. On **3 October 2017** (not 2 October 2017 as Mr Samnick alleges), there was a meeting to discuss progress on the IHR VaR model validation, which is referred to in an email the previous day **[9662]**. Those attending the meeting included Mr Venkatraman, Ms Flavia Giammarino and Mr Georgios Mavros. Mr Samnick was not invited. This was not, as Mr Samnick alleges, a "secret" meeting to which all team members but Mr Samnick were invited. Those invited had specific responsibilities in relation to this validation. Mr Kim was not involved in these meetings. At the time, Mr Samnick had no input into the IHC VaR project. He complains that this failure to involve him was direct race discrimination **[LS issue 7.8]**; harassment related to race **[LS issue 21.4]** and this was conduct by Mr Kim in which he instructed, caused, or induced Mr Rood to contravene the provisions of the Equality Act 2010 **[LS issue 23.1]**. This was a conference call with multiple teams including QA, senior management within the intermediate holding company (IHC) and with Oliver Wyman

consultants. Mr Samnick did not complain about his exclusion at the time to either Mr Rood or Mr Kim.

403. On **11 October 2017**, Mr Rood met with Mr Samnick for his mid-year 2017 appraisal. His comments about Mr Samnick's performance in this meeting are said to be whistleblowing detriment **[LS issue 4.13]** and direct race discrimination **[LS issue 7.9]**. Mr Rood told Mr Samnick that the quality of his reports continued to be in need of improvement. By way of example, he mentioned the CDS index options review report. He said that there were topics which were not brought to a concrete review conclusion to support an overall approval decision; and there were some areas which were insufficiently researched and developed. He said that this feedback ought not to have been new to Mr Samnick because specific feedback on these lines had been included in an earlier draft version of the report. He added that a number of feedback points were not taken on board when preparing subsequent updates, as was clear from the version submitted on Friday 4 August just before a two-week period of annual leave. During the course of the meeting, Mr Rood's feedback on Mr Samnick's performance was detailed and specific. The views he was expressing were consistent with his feedback at the year-end review for 2016, and consistent with what previous managers had commented on in previous appraisals. It is clear that Mr Samnick had not been taking on board the feedback his line managers had previously been providing. Mr Samnick did not ask Mr Rood to send him on a training course in better writing. Rather Mr Rood sought to provide constructive suggestions as to how his writing style could be improved.

404. On **17 October 2017**, Mr Samnick had a meeting with a member of the Whistleblowing Team **[724]** to discuss the matter he had raised by telephone on **22 August 2017**. The meeting was not recorded. Although there was a note taker present throughout the meeting, notes of what was discussed have not been disclosed. The level of detail recorded in any contemporaneous notes is not clear.

405. On **18 October 2017**, Mr Samnick emailed Mr Rood **[598]**. He was responding to a request for an update on the timeline for the eRisk SRA Migration project **[600]**. He said that the documentation was not up to the expected model documentation standards. He said that the points he was making in the email should have already been reflected in the documentation before the IVU review started. He also said that several updates were still outstanding, which he then proceeded to list in his email, given a proposed change in the specific risk method. At this point the VaR methodology had not been finally approved. The model was still in the developmental phase. Mr Samnick argues that his email of **18 October 2017** was a protected disclosure, disclosing the inadequacy of the new Value at Risk (VaR) methodology proposal to compute non-linear equity single stocks products and the lack of justification for the consequent considerable VaR reduction **[LS issue 2.5].** He says this was disclosing information tending to show that the Bank had failed, was failing

or would be likely to fail to comply with PRA/FAC BIRPU 7.10 Regulation and 'Market Risk Rules'.

406. The email makes no reference to BIRPU 7.10. Nor does it reference a breach of any regulatory requirement. In any event, the email was only sent to Mr Rood and there is no evidence that it was communicated to others.

407. Mr Samnick argues that on **2 November 2017**, he was sidelined because Mr Rood allocated validations in the high profile IHC CCAR exam project to all team members apart from him; and then later reallocated Mr Samnick's own validation activity to Ms Giammarino. He argues that this was detriment because he had previously made protected disclosures **[LS issue 4.14]**. On that date, Mr Rood emailed his team drawing their attention to an update from Ms Feuer following a discussion the previous day at a Model Status Update meeting **[654]**. Ms Feuer was a Vice President in the MRM Team. This was guidance from Mr Canabarro that Validators should focus on first order issues given that there was likely to be less stringent enforcement of SR 11-7. Mr Rood's comment was that "this guidance would apply to most of the models we are currently working on". He then listed four models and provided the name of a team member against each of the models. Two of the three projects had already been allocated to the person named in the email – in the case of the IHC VaR this had been assigned to Mr Venkatraman in August 2017; and the Market Risk stress testing project had been assigned to George Mavros on 3 October 2017.

408. That prompted a reaction from Mr Samnick, who asked Mr Rood by email why no CCAR projects had been assigned to him. He described himself as "by far the most experienced member of the team" and said he would have expected to have been leading the review. Mr Rood's response on **8 November 2017** was that Mr Samnick was currently working "on the eRisk/SRA migration which was important enough on itself". The Tribunal accepts that the eRisk/SRA migration project directly impacted on the VaR model and (as Mr Samnick accepted in cross-examination) was a deliverable for the US regulator requiring notification to the US Federal Reserve in order to go live.

409. Mr Rood ended his email by saying that Mr Samnick's work on the eRisk/SRA Migration project and the availability of other team members explained the latest project allocation. The Tribunal accepts this explanation accurately recorded the reason for project allocation and why he had not been allocated CCAR projects.

410. On **6 November 2017**, Mr Rood sent Mr Samnick an email with what he described as "high-level comments" on Mr Samnick's second draft review of the Equities migration from eRisk onto SRA **[9412]**. Mr Rood said he appreciated that a number of things may change over the coming days/weeks. When sending his second draft,

Mr Samnick had commented that the model validation status was incomplete. He added "IVU cannot reach a robust conclusion of approval/rejection based on the information provided to date" **[9413]**.

411. Mr Samnick did not respond to Mr Rood's email. He did, though, forward it to Mr Larkin in the Whistleblowing Team on the same day, **6 November 2017 [9412]**. His comment was that this was "another example where ron is asking me to change style of the template documentation, in total contradiction with our standards/policy requirement of consistency across our documentation". Just over 10 minutes later he forwarded a further email from Mr Rood to Mr Larkin.

412. Four weeks after the mid-year review meeting, Mr Samnick emailed Mr Rood on **7 November 2017 [628-630]**. His lengthy email contained what he described as the minutes of the review meeting on 11 October 2017. He also included his commentary on these minutes in bold type. Mr Samnick's case is that this email contained a protected disclosure about the Credit Default Swap final validation report **[LS issue 2.6]**. The wording he relies upon is as follows:

> "In addition, the final document that you submitted without asking us if we were ok with the content, was stripped of 3/4 of the issues we raised and kept just one of those issues. Even though we communicated our concerns to you about the functional form analysis you demanded, Nadir and I added it to the document at your request, and this was despite the fact that Nadir (who has extensive experience on credit derivative), myself and the risk manager (in a meeting) did not believe the analysis provided any added value to the review."

413. This was a complaint that Mr Rood as Lead Validator had edited the final version of the validation report on which he had been working without checking with him first. It was expressed in very general terms. It made no reference to the legal obligations he now alleges he believed the Bank were failing to comply with – namely Article 369 of EU Regulation 575/2013 or SR11-7 of the Fed/OCC guidelines.

414. Mr Samnick had help drafting the minutes and his comments **[603]** from someone who was not present at the mid-year review meeting. Whoever was helping him suggested changes and additions to his original text. Mr Samnick's evidence was that this help was provided by his wife. We do not accept Mr Samnick's evidence on this point. The final version was drafted to incorporate additional information addressing the points that someone had raised in their comments added in bold and square brackets. That person clearly had knowledge of the Bank's procedures and of individuals within the IVU team to express their comments in the way that they did.

415. On **13 November 2017**, Mr Samnick completed and submitted his self-review for the 2017 appraisal process **[632]**. He alleges that this also was a protected disclosure concerning the inappropriate removal of three quarters of the issues raised in respect

of the CDS final validation **[LS issue 2.7]**. That was a review that had been completed in August 2017, three months earlier. Mr Samnick wrote:

> "However, it was quite a struggle to convince Ron of the appropriateness/importance of these conditions. Ron submitted the final document, stripped of 3/4 of the conditions, to the PRA without me being able to review/agree its content, despite the fact that I demonstrated that those issues were of importance".

416. Mr Samnick made no reference to Article 369 or to SR11-7.

417. This written self-assessment is also alleged to be a protected act **[LS issue 5.1] [632].** Mr Samnick accepted that there was no express reference in this self-assessment document to discrimination or to the Equality Act 2010 or even to a toxic work environment. He says that allegations of discrimination should be implied from the language he did use and the fact it was obvious he was Black. At one point he wrote:

> "my objectives were achieved in an exceptionally suffocating environment, as I received unfair treatment from my manager, which is at odd with the purpose of the Barclays Way (Helping people achieve their ambitions – in the right way) and Barclays values. This suffocating environment was setup through Ron's constant unjustified, inadequate, inaccurate and biased feedback of my work and through constant exclusion (since my return from paternity leave) from high profile projects to the benefit of substantially less experienced new members of the team and junior members of pricing IVU. In particular, all high profile projects requiring my level of seniority, meetings, calls, presentations are systematically assigned to a less experienced new joiner in the team" **[645]**

418. On **14 November 2017**, Mr Rood emailed Mr Rienacker **[651]**. In his email he said he noticed that Mr Samnick was having lengthy and quite frequent conversations with Mr Moune Nkeng and Mr Abanda Bella. He asked Mr Rienacker what the other two were working on, assuming that the focus of their conversations might be about other work projects.

419. Mr Rood sent the self-assessment document to Mr Kim, who took advice from HR. Mr Kim said he was assuming that Mr Samnick was misrepresenting the events behind the accusations or criticisms and that he (Mr Samnick) did not raise these allegations or criticisms at the time during the year **[652]**.

420. Prompted by the tone and content of Mr Samnick's comments in his self-appraisal, Mr Kim decided to arrange a 1-2-1 meeting with him. This was held on **17 November 2017**. Mr Samnick's case is that he made a verbal complaint about discrimination, harassment and bullying during the course of this meeting **[LS issue 5.2]**. However,

subsequent documents, including his subsequent grievances, and in particular his grievance of **25 October 2019** do not suggest he had verbally complained of discrimination in this meeting. The grievance of 25 October 2019 listed various alleged protected acts. It did not record that any protected act had occurred during the 17 November 2017 meeting. The Tribunal finds that what was said in the 17 November 2017 meeting was consistent with what Mr Samnick had written in his self-assessment a few days earlier. That did not make any allegations of discrimination, but instead spoke of his perception of unfairness in relation to project allocation. Expressing his complaint to Mr Kim in such terms is supported by an email Mr Kim sent to Ms Lisa Farkovits on **30 April 2018 [915]**. Mr Kim wrote that Mr Samnick felt that Mr Rood had not allocated projects "fairly" during 2017, and that Mr Samnick had raised this internally to him "late last year". Had Mr Samnick complained to Mr Kim in the 17 November 2017 meeting that Mr Rood had discriminated against him, such a complaint is likely to have lodged in Mr Kim's memory. He would have referred to it as a complaint of discrimination in his later email in April 2018.

421. In the course of his evidence, Mr Samnick volunteered that he had made a covert recording of this meeting with Mr Kim. This is not something he had previously mentioned. There has been no disclosure of any audio recording, nor any explanation as to why it is no longer available. By way of justification for the absence of the recording, Mr Samnick said that he no longer had the phone on which it had been recorded. He said that this phone had been lost, although he could not remember when that occurred.

422. Given the complaints that Mr Samnick was making about project allocation, Mr Kim spoke to other team members to see if there was any substance to this. None of them expressed any concerns to Mr Kim **[4306].** He reported back to Mr Samnick and Mr Rood that this was the outcome of his investigation. He also set up monthly catch-up meetings in **January**, **February** and **March 2018** with himself, Mr Samnick and Mr Rood to discuss project allocation. He did this in order to promote transparency.

423. Around the **end of November 2017**, Mr Bill Chen was promoted from Vice President to Director. Mr Samnick complains that he was not promoted to Director; nor was he informed or included in the promotion process. He says that this was protected disclosure detriment **[LS issue 4.15]** and direct race discrimination **[LS issue 7.10]**. Given Mr Samnick's inconsistent performance noted by Mr Rood at the mid-year review, it is entirely unsurprising that he was not a candidate for promotion. As recorded in these factual findings, he did not have a track record of consistently performing at a high level. For instance, in 2015, Mr Samnick had been rated 'Good', the fourth of six ratings. The ratings awarded to Mr Chen and the comments made in his appraisals over recent years were notably more positive than those given to Mr Samnick. The other members of Mr Rood's sub-team – Aneesh, Ms Giammarino

and Mr Mavros – were also not promoted in this promotion round. Remarkably, when questioned about this, Mr Samnick repeatedly answered that he did not know whether these direct colleagues were promoted in this promotion round. They were of different ethnicities and racial backgrounds. Ms Giammarino is Italian, Mr Mavros is White Greek and Mr Venkatraman is Asian from India. None of them were Black Africans.

424. Mr Samnick complains that on **8 December 2017**, Mr Toby Larkin in the Whistleblowing Team refused to provide him with a transcript of the alleged protected disclosures which he had made over the telephone and during meetings. This is said to be protected disclosure detriment **[LS issue 4.16]**. Mr Samnick had requested a transcript in an email sent on **27 November 2017 [661]**. In an email sent back to Mr Samnick on **8 December 2017**, Mr Larkin said that "as the whole records are part of a confidential process, they would not be shared with you". The Tribunal accepts this as the explanation for not providing transcripts or notes. Concerns raised with the Whistleblowing Team were regarded as confidential. As part of this confidentiality, it was standard practice not to record the telephone calls or meetings in which disclosures were made. As a result, there was no recording from which a transcript could be prepared. Nor was there any guidance suggesting that whistleblowing investigators should or should not share meeting notes of any discussion with those who had reported concerns. This was the reason why Mr Larkin refused to provide Mr Samnick with a recording of the earlier discussion.

425. Mr Samnick makes a specific complaint about project allocation in **January 2018**. He says that Ms Giammarino was allocated to four projects; Mr Venkatraman to two high profile projects and Mr Mavros was allocated one high profile active project, whilst he was only allocated one "off the record" project. He said this was detriment for making protected disclosures **[LS issue 4.17]** and direct race discrimination **[LS issue 7.11].** According to a spreadsheet dated **2 February 2018 [spreadsheet 9]**, Mr Samnick had been allocated a market risk stress testing validation in December 2018. He was also due to supervise Mr Mavros on an MR interest rate validation project, although that project had not yet started. At that point, he had been provisionally allocated a further three projects. These projects were in the pipeline but had yet to be prioritised. Mr Rood was still waiting for Mr Samnick to produce the final version of the eRisk SRA migration validation.

426. It is not necessary for the Tribunal to reach an accurate assessment of the number of projects allocated to each Validator. Projects differed in terms of their scale and their complexity and the amount of work required at any point in time. As at 2 February 2018, Mr Samnick had two live projects – market risk stress testing and eRisk migration **[10330]**. There is no persuasive evidence in all the documentation indicating that Mr Samnick was not allocated a full workload; or that the particular

tasks he was asked to perform were less significant or lower profile than those allocated to other Validators.

427. On **15 January 2018**, Mr Samnick emailed Mr Patrick Chen. He started his email by wishing him a Happy New Year. He then explained the subject matter of his email "Revised PMA for counterparty risk", which related to the Eagle system. He provided Mr Chen with a "heads-up on counterparty credit risk discussion". He said that the new Post Model Adjustment (PMA) agreed for all CCR limitations was now around $800 million, down from $2 billion previously. The email referred to an attached document **[730]**. This email is alleged to be a protected disclosure **[LS issue 2.8]**.

428. The PMA is an annually agreed figure applied to the model's output in order to compensate for any limitations in the model. It reflects how much capital the Bank must hold in order to ensure it can absorb any losses. If the figure was reducing from $2 billion to $800 million dollars, this reflected a changed assessment of the materiality of the limitations previously identified, consistent with the explanations given in the notes column in the table on **[737]**. In the previous weeks, Mr Rood had probed to sense check the appropriateness of the model and its limitations. Although Mr Samnick had been copied into these emails, he chose not to suggest that the revised PMA was inappropriate – either verbally or in writing. For instance, he was copied into an email from Mr Inmark Sareen on **27 December 2017** suggesting a PMA of £836,000 **[731]**. This had been sent to Mr Rood and also copied to Mr Kim. Mr Samnick did not object to this suggestion at any point in the subsequent emails. We do not accept Mr Samnick's evidence, given for the first time in cross-examination, that he had raised numerous verbal complaints leading up to his email of 15 January 2018; or that in response he was shouted at by Mr Rood and told to stop talking. Had Mr Rood done so, the likelihood is that this would have been referenced in the contemporaneous emails. All Mr Samnick was doing in his email to Mr Patrick Chen was to inform him about the revised PMA. He was not suggesting that the revised PMA was inappropriate in any way, still less that there was any breach of any legal obligation. Furthermore, Mr Samnick's email was only sent to Mr Patrick Chen. There was no evidence that its contents were ever communicated to others.

429. The Tribunal does not accept, as Mr Samnick alleges, that on **25 January 2018** he made a verbal disclosure to Mr Canabarro that there had been sabotage of the CCAR exam preparation by the London Directors in the Traded Risk IVU team, namely Mr Kim, Mr Rood, Mr Harrison and Mr Rienacker **[LS issue 2.9]**. Mr Samnick's case is that this disclosure tended to show a breach of SR 11-7 Fed supervisory guidance and CCAR requirements on MRM. No such contention is recorded in any of the contemporaneous documents around this time. Had such a serious allegation been made to Mr Canabarro, it is likely to have been repeated in an email sent around this time. We accept that Mr Samnick is likely to have had a meeting with Mr Canabarro,

given that Mr Canabarro was asking for the team's thoughts and suggestions on better ways of working [**750**]. The details raised by Mr Samnick are likely to have been along similar lines to the four numbered points made by Mr Samnick in his email of **24 January 2018 [749].** That does not expressly indicate or imply that there had been sabotage of the CCAR exam preparation.

430. As a result of the concerns Mr Samnick was raising about the fairness of project allocation, Mr Kim had agreed to hold monthly catch-up meetings with him to discuss workload transparency. The first of these had been diarised for **25 January 2018**, and took place on that date. It was attended by Mr Samnick on the one hand and Mr Rood and Mr Kim on the other. At this meeting, Mr Kim and Mr Samnick discussed workload allocation. Mr Samnick said he was not 100% satisfied. He did not indicate that his race or any other protected characteristic was part of the reason for decisions about workload allocation. Had he done so, this would have been recorded in Mr Kim's email to HR following the meeting on **26 January 2018 [765]**. In his witness statement, Mr Samnick alleges that both Mr Rood and Mr Kim were red with anger during this meeting and shouted at him. He says that Mr Kim threatened him saying: "If you are not happy, then you can go and complain to HR". The Tribunal does not accept that either Mr Rood or Mr Kim behaved in this way during this meeting. Had they done so, then Mr Samnick would have mentioned this when messaging his colleague Ms Giammarino the day after the meeting. The instant messages for **26 January 2018** are recorded in the bundle. Although Mr Samnick referred to this meeting, he did not suggest that either Mr Kim or Mr Rood were angry and had shouted at him. Mr Samnick did not complain about their conduct in this meeting when he met with Mrs Richardson, the HR Business Partner, on **6 February 2018**.

431. When he was being cross examined, Mr Samnick volunteered that he and Mr Kim had had a further conversation, which he had not documented previously and which he had not referred to in his witness statement. This conversation apparently took place in the Printer Room. He said, and repeated when challenged about it, that Mr Kim told him "You don't really understand. You don't really know what is happening to you." This was not a conversation that Mr Samnick raised with Mr Kim in the questions he was himself asking in cross-examination. We do not accept that such a conversation took place.

432. On **31 January 2018**, Mr Samnick emailed Ms Gabrielle Roberts in HR with the subject line "Catch-Up" [789]. The email read as follows:

> "Hi Gabrielle,
>
> Is it possible to have a catch-up with you?
> I want to raise a formal discrimination/unfair treatment complaint against my manager Ron Rood.

Regards,

Louis"

433. This email is alleged to be a protected act **[LS issue 5.3]**.

434. In her response, Ms Roberts indicated that she was about to go on maternity leave. She copied in Ms Richardson, who would meet with Mr Samnick. A meeting was arranged with Ms Richardson for **6 February 2018**. At the meeting, Mr Samnick said he was dissatisfied with how work was apportioned between team members, and that he did not feel he was allocated a fair distribution of the technical workload. He said he considered there was a relationship breakdown with his manager, Mr Rood. He did not expressly state that any discrimination in work allocation was because of his race or any other protected characteristic. He indicated that he was considering submitting a formal grievance. Ms Richardson gave him advice on how to do this. Following the meeting and Mr Samnick's email of the same date **[790]**, Ms Richardson sent a further email explaining how to make a formal grievance **[790]**. These email exchanges indicate that Mr Samnick knew by February 2018 if not earlier how to raise a grievance. He was not raising a grievance in the email of 31 January 2018. Only Mrs Richardson would have known of the contents of the email of **31 January 2018**.

435. Also on **31 January 2018**, Mr Samnick emailed Mr Chen to express an interest in being involved in "Large Framework" projects **[C/1422]**. This was him expressing an interest in spending some of his existing time on this area of work, rather than transferring to the Large Model Frameworks (LMF) team under Mr Patrick Chen. In his response, Mr Patrick Chen indicated that Mr Samnick's interest had been noted.

436. Around this time, the Bank was aware that Mr Laurent Lefort, Mr Prakash and Mr Abanda Bella had already expressed an interest in being involved in this work and was discussing the extent to which they could be released from their existing duties to participate **[798]**. Mr Abanda Bella shared the same ethnicity as Mr Samnick. Mr Lefort was a French speaker like Mr Samnick and was of Black African Caribbean origin.

437. This work opportunity had not been mentioned in the team meeting for those working in Mr Rood's Traded Risk Models team. As a result, it had also not been drawn to the attention of Ms Giammarino, George and Mr Venkatraman, who were of different ethnicities to Mr Samnick.

438. On **9 February 2018**, an email discussion took place between Mr Patrick Chen and Mr Kim about who could be released to assist with this work and to what extent. Mr Chen informed Mr Kim that Mr Samnick had a strong interest in working on Large Model Framework projects **[798**]. Mr Kim responded that the traded risk team was

too busy in the first half of 2018 for him to be involved in this work. This explains why the opportunity to be involved in large model frameworks work was not mentioned in the team meeting.

439. Mr Samnick was not informed on **9 February 2018** that he could not be released to get involved in the Large Framework projects because of his team's existing workload. Such a rejection at that point is inconsistent with Mr Samnick's further expression of an interest in being involved in this work to Mr Patrick Chen ten days later **[C/1461]**. Mr Patrick Chen replied that he would discuss Mr Samnick's interest with Mr Canabarro. We reject Mr Samnick's evidence that he told Mr Patrick Chen on **9 February 2018** he was being prevented from moving to the Large Model Framework team and that this may be referrable to his race or to previous protected disclosures. We therefore do not find that he did this alleged protected act **[LS issue 5.4]**.

440. On **21 February 2018,** Mr Samnick received an email from Ms Henry in the Global Compliance Whistleblowing Team **[808]**. She informed him that the whistleblowing issue he had raised had been independently investigated. The investigation had found no evidence of inappropriate conduct or failings in the process of model validations. The Tribunal accepts that interviews had taken place as part of the investigation with Pierre Micottis, Ms Feuer and Mr Canabarro. Mr Samnick complains that he had not been asked to provide any further information **[LS issue 4.19]**. The Whistleblowing Team had held a meeting with Mr Samnick on 17 October 2017 at which he had had a full opportunity to provide further information to substantiate the concern he initially raised with the whistleblowing hotline on **22 August 2017.** In addition, Mr Samnick had sent further information by email on **11 October 2017 [9410]**, on **20 October 2017 [597]**, three times on **6 November 2017 [9412] [615] [9415]** and again on **3 January 2018 [693]**.

441. On **8 March 2018**, Mr Samnick emailed Mr Patrick Chen **[832].** He forwarded an email from Mr Jack Rapley in Market Risk titled "Impact Analysis of Equity SRA on-boarding." In that email Mr Rapley said he would be sending DVaR later that day. This was indeed provided later that day, in which he said "DVaR only as this is the Fed requirement" **[834]**. His earlier email had explained that SVaR was not in scope for US regulators and so he did not have it to hand to send. Mr Samnick did not respond taking issue with Mr Rapley's statements. The Tribunal finds that this was because he knew that SVaR was not required for regulatory purposes.

442. In his forwarding email, Mr Samnick commented "Market Risk is reluctant to provide the agreed VaR impact analysis for IHC, in particular Stressed VaR, which drives IHC Market Risk regulatory calculation". Mr Samnick contends that this was a protected disclosure, namely a disclosure that the Bank was failing to comply with its legal obligations under BIRPU Regulation 7.10 and the Market Risk Rules of FED/OCC **[LS issue 2.10]**.

443. In **late April 2018**, Mr Kim decided to reallocate the IRC project on which Mr Samnick had been working since **January 2018** to Ms Karpowicz and Mr Harrison. The reallocation of the project is alleged to be protected disclosure detriment **[LS issue 4.20]** and an act of direct race discrimination **[LS issue 7.12]**. Although FX was their primary area, they both had relevant expertise for working on this project. They had the necessary knowledge and experience to work on both market risk models (as was IRC) and counterparty risk models. The IRC project was high priority and needed to be validated and approved for use by **June 2018**. This decision was taken because there had been no recent responses to Mr Rood's requests for updates on the CDS spread simulation planning validation. For instance, there had been no reply to Mr Rood's email of **13 March 2018**. This was chasing a response to documents "agreed last week" **[846]**. Mr Samnick had been working with Mr Abanda Bella on that project since earlier in **March 2018**. That project was also a high priority project with a deadline of **June 2018**. Mr Kim reallocated the work in order to ensure that both deadlines were met.

444. On **11 March 2018**, Mr Samnick applied for the vacancy heading up the Large Model Framework Team. The position was at Director level. This would involve a promotion, given that Mr Samnick was at Vice President level. There were two internal candidates and six external candidates. Mr Daniel Mayenberger, an external candidate, was successful in being appointed to the role. Mr Samnick was not interviewed. The decision to overlook Mr Samnick is alleged to be protected disclosure detriment **[LS issue 4.21];** victimisation **[LS issue 6.3]** and direct race discrimination **[LS issue 7.13]**. As recorded in an email as part of a subsequent investigation by the Whistleblowing and Investigations Team, the hiring manager (Mr Patrick Chen) wanted a "pretty seasoned Director for the role" so Vice Presidents were not considered **[8913]**. The Tribunal accepts that this was the approach taken to this recruitment exercise. As a result, both Mr Samnick and any other Vice Presidents that applied were not interviewed. Mr Richard Johnson, a White colleague, who is alleged to be an actual comparator, did not apply for the role **[8917-8]**.

445. On **22 May 2018**, Mr Rood emailed Mr Samnick in the following terms: "Would you have any issues with Flavia starting to take a look at the representative portfolio methodology? Flavia is waiting for document re-submissions and has some dead time to start looking at another project" **[C/1633]**. Mr Samnick's response was that he would rather review it himself "once the [Tier 1] model was over". He said that there were many Tier 1 models where Ms Giammarino could help. It is clear from Mr Samnick's answer that he did not have the capacity to start working immediately on the representative portfolio methodology. In **May 2018** he was still working on the CDS spread simulation with Mr Abanda Bella; and also on the BAU market risk stress testing validation where twelve individual stress tests were expected at the start of

June 2018 [C/1639]. The reallocation of the representative portfolio validation to Ms Giammarino is alleged to be protected disclosure detriment **[LS issue 4.22]** and direct race discrimination **[LS issue 7.14]**. It was entirely due to Ms Giammarino's availability and to Mr Samnick's lack of availability.

446. On **25 July 2018**, Mr Rood contacted ER Direct to discuss Mr Samnick's performance. He noted that there were three main areas of concern. Firstly, Mr Samnick struggled to accept feedback from Mr Rood and from other stakeholders, including senior managers. The second was a concern about his report writing skills, given that the report needed to be read by financial regulators. The third was the timeliness and transparency of communications to stakeholders inside and outside the team **[954]**. ER Direct advised Mr Rood on his options. These included putting in place an Action Plan or a PIP.

447. On **27 July 2018**, Mr Rood held the informal mid-year review meeting with Mr Samnick. He discussed his three areas of concern. As recorded in the notes of Mr Rood's subsequent discussion with ER Direct on **30 July 2018**, the discussion at the meeting on **27 July 2018** became quite heated **[955]**. Mr Samnick told Mr Rood that his promotion was long overdue. He accused Mr Rood of being biased and discriminating against him. Mr Samnick does not allege that he made a protected act during this meeting.

448. ER Direct's guidance on **30 July 2018** was that it was Mr Rood's decision on whether to implement a PIP. He was encouraged to draft any PIP with Mr Samnick "to get his buy in"; but if this was not possible, Mr Rood should draft it himself. The advice made clear that Mr Samnick was not currently subject to formal capability action but that may follow if he failed the proposed plan.

449. On **28 August 2018**, on his return from vacation, Mr Rood had a further discussion with ER Direct about progressing a PIP. The notes record he was keen to progress a PIP **[961]**.

450. On **4 September 2018**, Mr Kim emailed his Directors with the proposed forced rankings for his team **[9709]**. Mr Samnick was the lowest placed Vice President, in twelfth place (out of 12). Mr Kim noted that Mr Samnick's performance had declined. He went on to add that unlike the corresponding ranking for Assistant Vice Presidents, being bottom ranked amongst the Vice President population did "mean much" **[9709]**. He added: "Overall, other than [Mr Samnick], I don't think the ranking matters so much …"

451. On the same date, **4 September 2018**, Mr Samnick asked Ms Richardson (with a copy to Mr Rood) to approve his application to undertake the Institute of Risk Management certificate training **[3540]**. Two days later, Mr Rood asked Ms Richardson for the eligibility criteria for this course. Ms Richardson checked with

Sophie Heard in Client Experience **[1083]**. Ms Heard confirmed it was necessary to check that the employee requesting approval for such a course was not about to be made redundant and was not subject to an ER Case. Mr Kim left it to Mr Rood to decide whether to approve Mr Samnick's participation in this training **[1105]**.

452. Mr Rood met with Mr Samnick at 2.30pm on **14 September 2018**. He confirmed he would not approve Mr Samnick's request for IRM certificate training unless he agreed to a PIP, which he felt ought to be his focus **[1111]**. This comment by Mr Rood is alleged to be protected disclosure detriment **[LS issue 4.23];** victimisation **[LS issue 6.4];** and direct race discrimination **[LS issue 7.15].** Mr Rood told Mr Samnick he would be seeking advice from HR on how to facilitate a PIP. Mr Samnick's position was that his performance did not need improvement. Mr Rood told him that if significant improvement could not be demonstrated before the year end, his performance rating would most likely be set at "requiring improvement". This is a reference to the lowest of the three ratings, 'Needs Improvement'. Mr Samnick said that he would be escalating matters and issuing a grievance. For the first time, Mr Samnick expressly accused Mr Rood during this meeting of racial bias. He does not rely on this allegation in these proceedings as a protected act.

453. The same day, Mr Samnick sent through his "minutes" of the meeting **[2098]**. These included the comment that he believed that Mr Rood had a vendetta against him. Nowhere in this email did Mr Samnick make any reference to previous protected disclosures or protected acts. On **17 September 2018**, Mr Rood emailed Mr Samnick summarising the outcome of the meeting. This email is said to be an act of protected disclosure detriment **[LS issue 4.24]** and a further act of victimisation, in refusing to allow him to enrol on the IRM certificate programme **[LS issue 6.5]**.

454. Mr Samnick forwarded Mr Rood's email to Mr Moune Nkeng and Mr Abanda Bella with the phrase "fyi". He also chose to forward this email to Mr Kim on **18 September 2018** with the subject line "Serious breach of Barclays policy" **[1141]**. He wrote that "the below was a serious breach of Barclays policy" in relation to the IRM Certificate course. Adding it "effectively amounts to blackmail and retaliation". He asked for a meeting to discuss this with Mr Kim, saying it was urgent as the deadline for enrolment was the end of the week. Mr Kim responded: "Sure Louis pls do let me know when you're free to discuss, thx Jeong". The two met the following day. Mr Kim explained to Mr Samnick that there was a formal HR process for addressing disputes with appraisals which he should use. Contrary to Mr Samnick's evidence, Mr Kim did not threaten Mr Samnick with potential disciplinary action based on his conduct during this meeting.

455. On **20 September 2018**, Mr Samnick emailed Mr Rood disagreeing with the development areas identified in the meeting. He said that the claims were "vindictively engineered and not factually based". He added that he did not accept the need for participation in an improvement plan **[2097]**. In his witness statement,

he characterises this email as a grievance which the Respondents did not investigate (paragraph 218.4). The Tribunal does not accept that this email was a grievance. It was not described as a grievance. Mr Samnick knew at that point how to raise a grievance, having been provided with the grievance policy by Mrs Richardson in **February 2018**.

456. Also on **20 September 2018**, Mr Rood confirmed to Mr Samnick that he had opened a capability case with ER Direct **[1178].** This is alleged to be an act of victimisation **[LS issue 6.6]**. He said that his current expectation was that the end of year rating would be 'Improvement Needed'. He attached various materials provided by ER Direct, including a PIP template and an Action Plan template. He asked Mr Samnick to complete the templates himself, to ensure that he bought into the PIP. He said that if he did not receive anything before the end of next week, he would draft a PIP himself.

457. On the same day, **20 September 2018**, Mr Samnick emailed Mr Patrick Chen to complain about Mr Rood's refusal to enroll him on the IRM training **[1176].** He said that this was "blatant retaliation for speaking out about his continuous bullying and harassment against me and for my adherence to Mr Canabarro's strategic plan and reluctance to partake in his active disruption of Eduardo's MRM strategic plan". He did not allege it was retaliation because he had previously made protected disclosures. Mr Samnick characterises this email as raising a grievance. The email does not refer to itself as a grievance. Nor does it indicate that he would be raising a grievance, or otherwise invoke any of the Bank's formal processes. Four days later, he emailed himself the wording of a proposed email he intended to send to Ms Fordham. This email included the words "I am raising a formal grievance against … Ron Rood for harassment bullying and discrimination … with the full support of his manager Jeong Kim" **[1192]**. It is clear from the contrasting wording of this draft email that he was not intending to raise a grievance in his email of **20 September 2018**. In fact, Mr Samnick did not submit a formal grievance until **14 October 2019**, over a year later.

458. At around the same time that Mr Samnick was told his application to undergo the IRM training would be refused, Mr Abanda Bella's equivalent application was granted. Mr Moune Nkeng had been granted approval to do the IRM training the previous year. Both shared Mr Samnick's racial origins.

459. Mr Samnick refused to engage in the PIP process. He refused to attend the first meeting set up to discuss the PIP process, scheduled to take place on **2 October 2018**.

460. In **October 2018**, Mr Patrick Chen and Mr Kim had been discussing with Mr Canabarro the possibility of moving Mr Samnick to the Large Model Frameworks team, given the evident breakdown in the working relationship between Mr Samnick

and Mr Rood **[1225]**. Mr Samnick was asked if he might be interested in transferring to the Large Model Frameworks team. No final transfer decision was made and no role was formally promised to Mr Samnick. The London team head, Mr Mayenberger, was reluctant to allow Mr Samnick to join his team without an interview. He emailed Mr Patrick Chen setting out his concerns in an email dated **22 October 2018**. In that email, he said that "because of the high-profile work of the LMF team any performance issues will have significant consequences" **[1224]**. Mr Patrick Chen responded to say: "certainly we will go through the interview process to see if he's a good fit". Because of the potential opportunity for Mr Samnick to transfer to the Large Model Frameworks team, the proposal that he should be subject to a PIP was paused. Mr Samnick alleges that requiring him to attend an interview was detriment for previously making protected disclosures **[LS issue 4.27]** and victimisation for doing a protected act **[LS issue 6.7]**.

461. Mr Samnick's interviews were subsequently booked for **20 November 2018**. It was envisaged he would have five half hour interviews with different members of the team addressing different topics. The final interview would be with Mr Mayenberger himself **[1245]**. Three of the interviewers recommended Mr Samnick for appointment, albeit not strongly. Two interviewers, Mr Dilip Singh and Mr Mayenberger did not recommend him for appointment. Mr Mayenberger considered that Mr Samnick had issues with interpersonal skills and lacked fundamental technical knowledge **[10087]**. Mr Singh also considered that Mr Samnick had issues with interpersonal skills. He felt that Mr Samnick "appeared arrogant" and "couldn't explain the business impact of [his] findings on models validated". The interview records noted the questions asked and each panel member's evaluation of the answers given.

462. The Tribunal does not accept that any decision had been taken at this point that Mr Samnick should be made redundant, despite what is recorded as an answer given by Mr Singh in an interview record: "As an organisation, we were planning to let him go or make him redundant because of his performance" **[8944]**. The Tribunal accepts, as he sought to clarify in a second interview with the Whistleblowing Team, that Mr Singh was speculating as to Mr Samnick's future if he was not engaged by the Large Model Framework Team. He did not have any inside information as to the Bank's intentions for Mr Samnick's future employment. The Tribunal considers that each of the interviewers did their best to evaluate Mr Samnick's potential performance in the team. We do not accept Mr Samnick's evidence, given for the first time in cross-examination, that his existing team members were talking to each other all the time in an agitated manner at the point when his transfer was under consideration. He does not provide any information as to what was being discussed. It does not follow that such discussions were about Mr Samnick. The reason why Mr Samnick was not given a role in the Large Model Framework team was because he was not considered a sufficiently strong candidate at interview. In any event, neither

Mr Mayenberger or his colleagues had any knowledge of the alleged protected disclosures **[LS issue 4.27]**

463. In late 2018 Mr Samnick submitted his 2018 Performance Self-Assessment. In commenting on the 'How' he made various positive comments about his performance before adding: "However, this was achieved in an exceptionally toxic and suffocating environment, as I have been subject to continuous bullying, harassment and discrimination by my manager" **[1349]**. He did not explain the allegation of 'discrimination' further. In particular, he did not identify the protected characteristic on which he was relying to make this allegation. He argues that this was a protected act, in that it was implicit he was alleging race discrimination, as he was the only Black African member of Mr Rood's team **[LS issue 5.5].** Also, in the team at the time were Mr Venkatraman, Ms Giammarino and Mr Mavros. Their nationalities were Indian, Italian and Greek.

464. Mr Samnick complains that on **9 January 2019**, he was not assigned the task of reviewing the IHC VaR model, despite being the only individual with the requisite experience to do so. Mr Abanda Bella had suggested that Mr Samnick should assist with this work **[1278]**. This is said to be an act of protected disclosure detriment **[LS issue 4.28]**; victimisation for carrying out protected acts **[LS issue 6.8]** and direct race discrimination **[LS issue 7.16]**. He criticises Mr Kim, Mr Rood and Mr Rienacker for this. Given his seniority, Mr Kim was not ordinarily involved in project allocation. In cross-examination, Mr Samnick accepted that Mr Lefort had sufficient experience to carry out this task, albeit he did not have market risk experience. At the time, Mr Samnick was working on two projects – the Market Risk Stress Test, which he had been assigned in **December 2018**, and the GMS Stress Loss add-ons, which was a CCAR model **[1277]**. In this contemporaneous email, Mr Rood was saying that it would not be appropriate to allocate Mr Samnick a third project, given that he was already working on two high priority projects. Mr Rienacker expressed a similar view in his email response the following day **[1276/7]**. Mr Rienacker was not aware of any of the previous alleged protected disclosures.

465. On **29 January 2019**, Mr Rood conducted Mr Samnick's performance appraisal for 2018. This was a scheduled meeting. Mr Samnick attended the appraisal meeting with Mr Abanda Bella, who he insisted should be present throughout the meeting. No advance warning had been given that Mr Abanda Bella would attending. Mr Rood was unwilling to proceed with Mr Samnick's appraisal meeting if a colleague was present. He decided that the meeting should be rescheduled. He subsequently took advice from ER Direct. The meeting was rescheduled for **31 January 2019.**

466. At the rescheduled meeting on **31 January 2019**, Mr Rood told Mr Samnick that his performance rating for 2018 was 'Strong' for the 'How' but 'Improvement Needed' for the 'What'. This grading is alleged to be an act of protected disclosure detriment **[LS**

issue 4.29]. Although Mr Rood listed the main positives, he also identified four development areas **[1350]**. These were the same broad areas that had previously been discussed. These included the timeliness and management of deliverables. This was because he had submitted his draft report on the CDS spread simulation on **28 June 2018**, only one or two days before the final approval deadline as recorded in the Tribunal's findings of fact for Mr Abanda Bella. It also included a lack of transparency of expectations and progress with team management and stakeholders outside the team. Again, this related to the CDS spread simulation. The Tribunal accepts that there is persuasive documentary evidence supporting the need for Mr Samnick to improve his performance in each of these development areas. The sole reason for the Needs Improvement rating was his inadequate performance, as foreshadowed by the earlier decision to put him on a PIP. There had been no improvement in his performance level since then.

467. After the meeting had ended, Mr Samnick decided to insert a comment on the standard template form which recorded his 2018 appraisal **[1350]**. This was worded as follows:

> "It is obvious, from the unclear nature of Ron's development areas, that this appraisal conversation was just a flow of fabrications. I have spent end of year conversation meeting listening to Ron blatantly lies about my performance, without providing evidences or specifics about his claims. This is further illustrated by the randomness of the ratings, as they are not in line with Ron's comments. Indeed as per Ron comments, development areas refers to the 'How', yet Ron has provided a "strong" rating in the 'How'. Similarly, Ron's comments on the positives refers to the 'What', yet Ron has provided "Improvement Needed" rating in the 'What'.
>
> The overall performance appraisal provided by Ron is a blatant retaliation against me for daring to speak out about his relentless bullying, harassment and discrimination against me, at complete odds with the Barclays way.
>
> It should be noted that my request to have a witness at the end of year meeting, and subsequent requests to record the meeting (for minutes purposes) were refused by Ron".

468. This would not have been seen by Mr Rood or Mr Kim given it was entered on the system after the end of the appraisal process. Entering the comment would not have triggered an alert to Rood or to Kim. Mr Samnick did not tell Mr Rood or Mr Kim that he had entered a comment.

469. In **mid-February 2019**, Mr Kim met with Mr Samnick to explain his decision as to the level of bonus and as to the rate of his basic pay for the next financial year. Mr Samnick was told that his basic pay would increase from £95,500 to £96,500. His bonus would be £2,500. This was significantly lower than the bonus for the previous

year, which was £9,500. The change in the amount of the bonus explains why his total compensation decreased by around 5%. Mr Samnick alleges that this reduction of 5% in his total compensation amounts to protected disclosure detriment **[LS issue 4.30]**. Data prepared by the Bank for its internal investigation shows that the level of Mr Samnick's bonus in 2016 and 2017 was substantially higher. Even in relation to the lower 2018 bonus of £2,500, he received the same bonus as another Vice President. So far as the pay increase is concerned for 2019, it was consistent with the pay increase given to the other two Vice Presidents, who had been rated 'Strong' for both the 'What' and the 'How' i.e. stronger than Mr Samnick.

470. In **early February 2019**, it was decided to reactivate the proposed PIP that had been put on hold whilst Mr Samnick was applying for a role in the Large Model Frameworks team. Mr Rood sought further advice about this from ER Direct on **5 February 2019 [970].** In **February** and **March 2019**, there were further discussions between Mr Canabarro, Mr Rienacker and Mr Rood confirming that the PIP process would be executed through ER Direct **[1364]**. A draft PIP was discussed with ER Direct in **mid-March 2019**. Mr Rood arranged a meeting with Mr Samnick on **29 March 2019** to discuss the draft PIP. This was declined by Mr Samnick. A second attempt was made to rearrange this meeting for **9 April 2019**. Mr Samnick refused this further meeting, commenting he had already explained his reasons for disagreeing with Mr Rood's assessment of his work. He asked Mr Rood to stop sending him invitations to PIP meetings, saying "your insistence in sending this to me, despite my disagreement, is just another form of your persistent harassment against me since you joined the Barclays IVU team" **[1569]**.

471. In response, on **23 April 2019** Mr Rood noted Mr Samnick was making a serious allegation. He asked him if he wanted to raise a grievance. He enclosed a copy of the bullying and harassment policy. He said that any grievance would need to be raised to Mr Kim **[1568]**. Mr Samnick chose to forward this to Mr Abanda Bella and to Mr Moune Nkeng with the phrase "fyi". He did not respond to Mr Rood.

472. In the meantime, Mr Samnick had met with Mr Kim on **12 April 2019**. Following that meeting, Mr Kim sent Mr Samnick an email **[1560]**. The email attached a section from the capability policy, describing the PIP and the rationale for such action. The email added "It's a good way to resolve performance issues informally without resorting to a formal stage. If you continue to refuse to engage with Ron then it could be interpreted as a conduct issue". The email also attached both the grievance policy and the bullying and harassment policy, saying that if he had an issue with his appraisal then he should raise it for resolution in accordance with the grievance policy.

473. The advice that Mr Kim gave to Mr Samnick in that email reflected the advice he had been given by ER Direct earlier that day. The Tribunal does not accept, as Mr Samnick alleges, that this was victimisation **[LS issue 6.9]**, direct race discrimination

[LS issue 7.17] and racial harassment **[LS issue 21.6]**, or that this email amounted to a threat of a "conduct issue" if he continued not to engage with Mr Rood. Mr Kim was giving him a reasonable warning that there may be disciplinary consequences if he refused to engage with a direct instruction from his line manager. This reflected the advice he had received from ER Direct.

474. Mr Samnick relies on the ER Direct record of the advice given to Mr Kim on **12 April 2019** to argue that a disciplinary file had already been opened on him by that point. He points to what is recorded as the Reason, namely "P&P: Conduct". Seen in the context of all the ER Direct records on that date, the Bank was currently engaged in a PIP process, rather than a current conduct process. A conduct process was a possibility in the future if Mr Samnick refused to engage in the PIP process. The document on **[9190]** has not been redacted (as Mr Samnick argues). Rather one section of the document was never fully completed.

475. On **29 April 2019** ER Direct advised Mr Rood to implement the PIP, hold review meetings without him and email him the records of the review meetings **[980]**.

476. On **1 May 2019**, Mr Rood emailed Mr Samnick noting he had refused to engage with the PIP to date **[1658]**. He wrote that he had re-baselined the start and end dates, "starting tomorrow". He said he would schedule weekly meetings to review Mr Samnick's progress and any support Mr Samnick felt might be beneficial. Mr Samnick forwarded this email to Mr Abanda Bella and Mr Moune Nkeng with the comment "It will never stop …. This is clearly a retaliation for my previous complaints".

477. Mr Samnick's reaction was to contact the Ethics Point hotline, which he did on **7 May 2019 [C/2443]**. He complained about the behaviour of Mr Rienacker and of Mr Rood, which he described as involving "persistent patterns of harassment, bullying discrimination and retaliation" and "matter not taken seriously: no investigation". Under the section "Details", the only information detailed concerned how he had been treated. Although, he said he believed that Mr Kim and Mrs Richardson were "actively encouraging the rampant harassment culture of the team"; and added that "other area of the London IVU team are infected with the harassment culture … Gotz Rienacker team members have informed me that they are facing similar situations", he did not provide any details about those situations. His communication with the Ethics Point hotline is alleged to be a protected disclosure **[LS issue 2.11]** and also a protected act **[LS issue 5.6]**. He did not suggest that the alleged harassment, bullying, discrimination, retaliation or harassment was because of race or disability or any other particular protected characteristic. Nor did he say that retaliation took the form of victimisation because he had complained of treatment contrary to the Equality Act 2010 or of detrimental treatment because of whistleblowing activity. Mr Samnick accepted in cross-examination that he had not told Mr Kim, Mr Rood or Mr Rienacker about this communication to the Ethics Point hotline.

478. On **14 May 2019**, and in the absence of a face-to-face meeting between Mr Rood and Mr Samnick, Mr Rood emailed Mr Samnick with a summary of the feedback on his performance to date. This was specifically stated to be with reference to objectives 2-4 of the PIP **[2864]**. He noted that there were still issues with the timeliness and adequacy of Mr Samnick's responses to his requests.

479. Further PIP review meetings were set up to take place on **24 May** and **7 June 2019**. On both occasions, Mr Samnick refused to attend the meeting. During the same period, Mr Samnick chose to ignore Mr Rood's requests for an update on his existing workload. Mr Rood had emailed on **16 May 2019** asking about this. Two weeks later, on **31 May 2019,** he chased again for a response as he had not received any reply **[2055]**. Again, this email went unanswered as did a further email chaser on **17 June 2019 [2054]**.

480. Mr Samnick finally responded when there was a further chasing email on **15 July**. On Tuesday **16 July 2019** he said he would let Mr Rood know about the ETA for the validation report by end of that week **[2054].** In the absence of any response by mid-afternoon on Friday **19 July 2019**, Mr Rood chased a further time for an update, stating "Please note that we need sufficient time for internal peer review of the report (1 week)".

481. On **22 July 2019**, Mr Samnick asked if the deadline could be pushed to the end of **November 2019**, saying he was not comfortable with the **31 July 2019** timeline, given the high materiality and complexity of the model **[2266]**. Mr Rood questioned the basis for such an extension **[2264]** to which Mr Samnick replied, starting his email with the sentence "Your questions/comments below are only an illustration of your complete disregard for our policies and standards". In his response on **26 July 2019 [2262]**, Mr Rood noted "you are not being very helpful in bringing this project to a close in a reasonable and efficient way". He added:

> "I believe I have asked you to work on the delivery of this review at the start of April and I haven't been made aware of any major blockers to date. I am therefore struggling to understand why lifting this up to current model documentation and IVU reporting standards is estimated to require 7-8 months of time."

482. On **29 July 2019**, Mr Samnick started a period of two weeks sickness absence with "stress at work" **[2227]**. Mr Rood took advice from ER Direct, in which he said that Mr Samnick did not have any underlying health conditions **[6340]**. This accorded with his understanding of Mr Samnick's health. Mr Samnick had not previously raised any health issues. On **30 July 2019**, Mr Rood emailed Mr Samnick to say that given his

current sick leave and the need to complete the validation in a timely fashion, the project had been reallocated **[2262]**.

483. In the meantime, on **17 June 2019**, Mr Rood took advice from ER Direct about Mr Samnick's continued refusal to cooperate with the PIP process. The advice was that "if the plan fails we will proceed to a formal capability" **[991]**. Further advice was sought from ER Direct on **3 July 2019**. Mr Rood confirmed his feeling that the PIP had already failed as he had had no interaction from Mr Samnick throughout the process. He was advised to carry out a final review of the PIP before deciding whether it was fair and appropriate to end the PIP early. If the PIP had failed, then an independent Disciplinary Capability & Grievance (DC&G) accredited manager should be appointed **[995]**. On **8 July 2019**, Mr Bastianic was added as the hearing manager **[999].**

484. Mr Rood set up a meeting with Mr Samnick for **19 July 2019** to discuss his feedback on the PIP and the next steps **[2032]**. Mr Samnick did not attend that meeting. As a result, on **19 July 2019**, Mr Rood emailed his summary of the PIP feedback **[2033] [2029]**. He said that the requirements of the PIP had not been met. He said he had decided to move to the formal stage of the capability procedure. That would be chaired by Marco Bastianic. Mr Samnick alleges that this decision was taken because he had previously made protected disclosures **[LS issue 4.32]** and because he had done a protected act **[LS issue 6.11]** and because of his race **[LS issue 7.18]**.

485. There is no evidence that Mr Bastianic had previously had any involvement in any performance or other employment issues involving Mr Samnick. He was however familiar with Mr Samnick's area of work. We do not find that the references to him in the ER Direct case records reflect his personal involvement on the date of the documents. Rather they reflected the Respondents' ER Direct case record system, which auto populated particular fields with the email addresses of the currently assigned manager.

486. Mr Samnick did not reply to this email. He did not object to the appointment of Mr Bastianic.

487. In the meantime, there had been developments in relation to the bullying and harassment complaint that Mr Samnick had made to the Ethics Point Line on 7 May 2019. On **2 July 2019**, Mr Samnick received an email from Ms Julia Brown, Employee Relations Case Manager. Ms Brown said that Mr Samnick's harassment and bullying concerns had been forwarded to her by the Raising Concerns team. She said that it would be appropriate for Mr Samnick to raise the matter as a grievance, but this was his decision **[1892]**. She attached a copy of the grievance procedure. The implication was that it would not be investigated as a whistleblowing complaint. Mr Samnick alleges Ms Brown had disclosed Mr Samnick's identity to HR or

management but there is no evidence to support that contention and it is rejected. The decision not to investigate the particular concerns as whistleblowing complaints is alleged to be detriment for making a protected disclosure **[LS issue 4.31]**. He also alleges that the refusal to automatically treat the concern he raised with the Ethics Point Line on 7 May 2019 as a grievance was an act of victimisation **[LS issue 6.10]**.

488. There was a subsequent exchange of emails and a conversation on **16 July [2750**]. During that conversation, Mr Samnick indicated that he wanted to pursue a formal grievance about his managers' behaviour. In an email later that day, he said he expected to submit his grievance by the end of that week or by early the following week. In fact, he did not submit a grievance until **October 2019.**

489. Mr Samnick claims that **on 4 July 2019** he made a protected disclosure **[LS issue 2.12]**. The disclosure is said to be that there had been a deliberate failure by Mr Rood to disclose the updated validation document for the Multi Factor Interest Rate Simulation Model to the Audit Team for an audit being carried out in **July 2018**, which had ended in **December 2018**. This disclosure is said to be a failure to comply with the Bank's model risk policies and standards and with Mr Rood's fiduciary duties as a company director.

490. In fact, the concern was actually raised in a telephone call made by Mr Samnick on **2 July 2019 [4436]**. The Tribunal has not been shown any email dated **4 July 2019** in which Mr Samnick made this disclosure. The concern raised was that Mr Rood had provided an earlier (outdated) version of the model validation report to the internal audit team. The concern raised verbally was acknowledged by the Whistleblowing Team **[1893]** and was investigated under the name "Project Moss" **[4435]**. The conclusion of the investigation was that the concerns raised had not been substantiated. Mr Rood had presented the correct Model Document to Internal Audit in 2018, namely version 0.7 (**January 2017**) which was the approved version at the time. Version 0.8 was not created until **July 2019**, and so did not exist at the point of audit.

491. In an email exchange with Julia Brown, Employee Relations Case Manager, on **15 July 2019**, Ms Brown asked Mr Samnick to write a formal letter to trigger the grievance process. She said it needed to set out his concerns clearly, stating what they are, date, time and witnesses **[2018]**. This reflected the Bank's approach to grievances of general application. Merely making a criticism in an email was insufficient to trigger the grievance process.

492. On **29 July 2019**, Mr Samnick started a period of sickness absence for stress at work, which lasted for two weeks **[2227]**. As a result, Mr Rood contacted ER Direct for advice, and in particular to ask whether he could make an Occupational Health referral. He did not know of any underlying health condition. He took the view that this period of sickness absence was a reaction to the commencement of the formal

capability process. He was advised that an Occupational Health referral would be beneficial.

493. Mr Rood emailed Mr Samnick on **29 and 30 July 2019 [2272]**. On **2 August 2019**, Mr Rood telephoned Mr Samnick intending to make him aware of an Occupational Health referral, as Mr Samnick did not seem to have read or responded to recent emails. After Mr Rood introduced himself, Mr Samnick chose to hang up before Mr Rood could explain the purpose of his call **[2272]**. He repeatedly refused to agree to an Occupational Health appointment until the middle of October 2019 **[2658]**. As a result, during August, September and the first half of October 2019, the Bank was unable to investigate how best to help Mr Samnick's stress reaction.

494. The Bank's Occupational Health Guidelines state that "if there is any doubt over an employee's health, managers should contact ER Direct, who will seek advice from OH". One example of a case that "could be referred to OH" is where "an employee is undergoing disciplinary/capability proceedings but is signed off sick prior to the meeting" **[1/1505]**.

495. The Bank's Ill Health Policy states:

> "It is a requirement for employees to cooperate with the Ill Health Policy and Sick Pay Provisions which include ... attending appropriate medical appointments and referrals in the interest of rehabilitation or support. Failure to provide proper notification and to co-operate with the Ill Health Policy and provisions may result in an absence being unauthorised which could result in disciplinary action and/or sick pay not being payable" **[1/1188]**

496. The same Policy also stated that employees must assist Barclays in protecting their wellbeing and helping them to return to work by keeping in touch with their line manager. Under the heading "Long Term Sickness", the Policy includes the following:

> "When an employee is absent for 28 calendar days or where the Line Manager is aware that the absence is likely to last longer than four weeks, the Line Manager, whilst remaining accountable for managing the employee's absence, must seek expert advice from ER Direct and OH."

497. In a blue box on the page dealing with Ill Health Procedure, the Policy stated the following:

> "It is expected that employees will work with OH to ensure that Barclays has the best possible information on which to make decisions about the employee's health, return to work arrangements (such as adjustments) and/or continued employment. Employees must ensure that they take all reasonable steps to aid their return to work and follow medical advice including taking appropriate medical treatment and/or medication."

498. Mr Samnick had taken two weeks' sick leave starting on **29 July 2019**. He then took holiday from **12 August to 2 September 2019**. On **3 September 2019**, Mr Samnick returned to work, albeit working remotely. Mr Rood arranged a return-to-work meeting with him, but Mr Samnick refused to attend. On **4 September 2019**, Mr Samnick called in sick again. He obtained a sick note on that date for stress and chest pain, signing him off for a further two weeks **[2542]**. That sickness absence then continued until Mr Samnick resigned and his employment terminated.

499. On **5 September 2019**, Mr Rood emailed Mr Samnick. He expressed concern about Mr Samnick's health, again encouraging him to agree to an Occupational Health referral and explaining why this would be helpful before adding: "you will be in breach of contract if you do not engage with Occupational Health". He offered an independent manager to manage this short-term sickness absence "as you do not seem to be willing to engage with me" **[2549]**. He asked Mr Samnick to respond. This email is alleged to be discrimination arising from disability **[LS issue 10.1]**; and harassment related to disability **[LS issue 15.1]**.

500. In writing to Mr Samnick in this way, Mr Rood was following the advice he had been given by ER Direct. This was that he should inform him he would be in breach of his contract if he did not engage with Occupational Health "on this second attempt as he was off with Stress". ER Direct had also suggested offering him the option of an independent manager to manage his sickness absence **[9226]**.

501. On **6 September 2019**, Mr Samnick forwarded this email to Mr Abanda Bella and to Mr Moune Nkeng **[2546]**. The Tribunal rejects Mr Samnick's evidence that he did not see Mr Rood's email of 5 September 2019 until early 2020. He had sufficiently engaged with its contents that he considered it appropriate to forward it to the other Claimants. He may well have re-read the email in early 2020 (when he now says he first saw it) as part of the process of investigating the grievance he had issued in October 2019.

502. By **9 September 2019** there had been no response, so he sent a chasing email. His email asked if Mr Samnick had had the chance to review his email of 5 September 2019 and he attached the ill health policy **[2549]**. He sought advice from ER Direct on **11 September 2019 [9229]**. He was advised to try to make contact with Mr Samnick. If there was no contact by 13 September, he was advised to send a further letter by email and by post asking him to get in touch. Mr Rood sent a further email on **12 September 2019**. The email stated he would be happy to have an informal catch-up. By way of alternative, it repeated the earlier offer to Mr Samnick of appointing an independent person to liaise with him during his sick leave **[2558]**.

503. On **13 September 2019**, he emailed and posted a letter requesting Mr Samnick to contact him on or before **18 September 2019**. This letter apparently did not arrive until **19 September 2019.** The letter is said to be discrimination arising from disability

[LS issue 10.2] and disability related harassment **[LS issue 15.2]**. The letter **[2561]** warned him that continued failure to provide proper notification and to co-operate with Barclay's Ill Health Policy could result in disciplinary action or withdrawal of his sick pay. Before it was sent, a draft of the letter was sent to ER Direct for their review **[9231]**.

504. Mr Samnick chose not to respond. As a result, ER Direct encouraged him to send a further communication to Mr Samnick **[9245]**, which was sent by email on **25 September 2019**. This is the communication which was received on **28 September 2019**. The letter asked him to contact Mr Rood no later than **1 October 2019**. It warned him that "if you do not contact me by 1 October 2019 and I fail to hear from you, your Company Sick Pay will be suspended and I will have no choice but to commence formal action under the Barclays disciplinary procedure" **[2606]**. Before sending this letter, he had sought advice from ER Direct, who had reviewed the letter in draft. This letter is also alleged to be an act of discrimination arising from disability **[LS issue 10.2]** and of harassment relating to disability **[LS issue 15.2]**.

505. Having received no response from Mr Samnick, Mr Rood sent a further letter on **2 October 2019 [2610]**. This set a further deadline for responding of **7 October 2019**. It added "if you do not contact me by [7] October 2019 and I fail to hear from you, I will commence formal action under the Barclays disciplinary procedure".

506. In the meantime, on **23 September 2019**, Mr Samnick had sent an email. Fit Notes aside (and an email advising of holiday dates), this was the only substantive communication received from Mr Samnick in the period from **29 July** to **10 October 2019**. This email was not sent to Mr Rood or to Mr Kim. Instead, the email was sent to Employee Relations BI, in a different part of the Bank **[2609]**. This requested that he be separated from "my line manager and liaise directly with HR or ER during my sick leave" as a reasonable adjustment. It is accepted that this email is a protected act **[LS issue 5.7]**. Because the email was sent to an Employee Relations email address in a different area of the Bank, it was not seen by relevant employees until the start of October **[2626]**. On **2 October 2019**, Mr Samnick was informed that he had sent his email to the wrong team and that it had been forwarded to the correct team **[2609].**

507. The letter did not come to Mr Kim's attention until around **7 October 2019 [2626]**. Mr Kim suggested that Mr Rood should take advice from ER Direct on whether separation from the line manager was possible. ER Direct's advice was that an independent manager should be appointed to manage Mr Samnick's sickness absence. Given that Mr Samnick had re-engaged with his manager, it was decided that sick pay should continue **[9253]**. An independent manager would ideally be someone that had been working with Mr Samnick other than Mr Rood **[9255]**.

508. Given Mr Samnick's failure to agree to any Occupational Health assessment, the Bank's only knowledge about the state of his health was information provided on his Fit Notes. The earliest of these was in **July 2019**. It did not have prior knowledge of any underlying health conditions. As Mr Samnick agreed in evidence, he had not told the Bank that he was experiencing symptoms of anxiety.

509. On **9 October 2019**, Mr Rood confirmed to ER Direct that Mr Kim would take over managing Mr Samnick's sickness absence case **[9264]**. On the same day, Mr Kim emailed Mr Samnick notifying him that he would now be managing his sickness absence **[2634]**. In this email, and in an identically worded letter sent on **10 October 2019 [C/2955]** and received on **11 October 2019**, he asked Mr Samnick to confirm he was willing to engage with Occupational Health, and subsequently to attend a welfare meeting with him. He set a deadline for responding of **14 October 2019**. He warned that failure to engage by that date would result in suspension of company sick pay and potentially the start of a disciplinary process. This letter had been drafted with specialist input from ER Direct. This letter is alleged to be an act of victimisation **[LS issue 6.12]** and discrimination arising from disability **[LS issue 10.4].**

510. Mr Samnick argues that this was a threat of disciplinary action and withdrawal of pay and this amounted to a provision, criterion or practice (PCP), which he refers to as the "Disciplinary Threat PCP" as part of his reasonable adjustments allegations **[LS issue 14.3].**

511. It was only on **14 October 2019** that Mr Samnick consented to an Occupational Health referral. He did so within a detailed letter in which he lodged a formal grievance. In so consenting, he was reacting to the deadline of **14 October 2019** imposed by Mr Kim for him to agree to an Occupational Health referral. At the same time, he provided Mr Kim with a letter dated **17 September 2019** from his GP referring him for counselling **[2655]**. The GP letter noted that Mr Samnick was suffering from physical symptoms of chest pain as well as anxiety which was thought to be related to a stressful situation at work. It added:

> "He finds visiting the area in which he works provokes symptoms of anxiety as does talking to work colleagues about projects in the office".

512. This was implying he was not presently sufficiently fit to attend any meetings, including any supportive welfare meetings, although it did not say so in such terms.

513. Mr Samnick's formal grievance **[2654; 2656-8]** is admitted as a protected act **[LS issue 5.8]**. It said that he had been diagnosed with stress at work, which he described as synonymous with anxiety and depression. He said his anxiety had been significantly influenced "by the threats of disciplinary action and withdrawing my pay" **[2657]**. This was the first time he had made this point. He characterised his health condition as a disability of which the Bank had constructive knowledge. He alleged

that correspondence from the Bank amounted to harassment and discrimination arising from disability and asked for reasonable adjustments. The grievance asked that the Bank desist from sending him any further threatening letters. It did not preclude Mr Samnick from being sent regular work correspondence or anything to do with his sickness absence or grievance. The grievance letter made no complaint about race discrimination.

514. Later on **14 October 2019**, Mr Kim sought advice from ER Direct in relation to Mr Samnick's situation, noting that Mr Samnick was now consenting to an Occupational Health referral **[9270]**. He had drafted a letter inviting him to a welfare meeting at Churchill Place, which was approved by ER Direct **[9275]**. The letter was sent to Mr Samnick on **15 October 2019**, proposing a meeting on 21 October 2019 **[2659].** The letter ended by saying "please do contact me if there is anything you wish to discuss before we meet". It was open to Mr Samnick to ask for this meeting to be in another location if he would have found it stressful to return to the Bank's Head Office at Churchill Place. He had not done so. This letter is alleged to be an act of discrimination arising from disability **[LS issue 10.5].** Mr Samnick also alleges this letter amounted to an "Absence Meeting PCP", namely a requirement that the Bank was insisting on a meeting at Head Office to discuss his sickness absence. He says that this requirement placed him at a substantial disadvantage and gave rise to a duty to make reasonable adjustments **[LS issue 14.4]**.

515. Rather than engage in any discussion or communication about the format or the location of the grievance meeting, Mr Samnick chose to lodge a second formal grievance on **17 October 2019 [2675].** In that grievance, Mr Samnick focused on the impact that his work was having on his physical and mental health, which he considered to be a disability. He asked for various reasonable adjustments to be made in relation to the proposed welfare meeting scheduled to take place on **21 October 2019**. These were listed on the fourth page and numbered nine in total. Some of these were mutually inconsistent, such as suggesting that the process be dealt with in writing, or at a neutral location, or at his house. He asserted that the motivation and intent behind sending him the **15 October 2019** letter was both to harass him and to discriminate against him because of something arising in consequence of his health condition. He also described it as a malicious act to wilfully victimise him for having done a protected act in raising grievances. The grievance letter said that when he received the **15 October 2019** letter "my wife had to help me bring my breathing under control to stave off a panic attack" **[2676]**. He said that he would not be attending the meeting on **21 October 2019**. He also alleged (at paragraph 14) that he was making a protected disclosure about the discriminatory impact of the treatment he had received as a disabled person. He also alleged he was asserting a statutory right (paragraph 20).

516. Although the focus of his grievance was on how he himself had been treated, he alleged the disclosure was in the public interest. He said the failure to separate him from Mr Kim whilst he was on sickness absence "puts me and puts persons whom share my protected characteristics at a substantial disadvantage in comparison to non-disabled persons". He said that the failure to identify and implement reasonable adjustments "is more widespread and does not just pertain just to me but other employees too". He did not name or otherwise identify these employees.

517. The second grievance made several specific references to sections of the Equality Act 2010. It also referred to caselaw. It did not make any reference to race discrimination. Although it referred to whistleblowing, the **17 October 2019** letter was not sent to the Whistleblowing Team. Rather it was sent to Mr Kim, to Mr Kim's line manager Ms Armata and to Ms Fordham, the Global Head of HR.

518. Mr Samnick's second grievance is admitted as a protected act **[LS issue 5.9].** Mr Samnick also alleges this is a protected disclosure **[LS issue 2.13]**, which is disputed by the Respondents.

519. Mr Samnick makes several different legal complaints about what he alleges was the refusal of the Bank and of Mr Kim to grant his request to be removed from any line management by Mr Kim and Mr Rood. He dates this detriment to **17 October 2019**. He alleges this was detriment for making protected disclosures **[LS issue 4.33]**; detriment for doing protected acts **[LS issue 6.13];** direct race discrimination **[LS issue 7.19]** and was discrimination arising from disability **[LS issue 10.6].** He also alleges that this was a "Line Management PCP" requiring him to continue to be line managed by Mr Kim and Mr Rood, which placed him at a substantial disadvantage and imposed a duty to make reasonable adjustments **[LS issue 14.5]**.

520. However, nowhere in the grievance letter dated **14 October 2019** did Mr Samnick ask to be removed from Mr Kim's line management. He had previously asked, in his email of **23 September 2019**, to be "separated from my line manager and liaise directly with HR and ER Direct". It was arguably implicit in this request that he did not want Mr Kim to remain involved, although he had not made this clear as he ought to have done if requesting a fundamental change such as a change of line management. However, this was not how the letter was understood by Mr Kim. Mr Samnick did not explain why he could not be managed by his existing line management.

521. Although Mr Kim consulted ER Direct on **17 October 2019**, this was to update them on recent developments and to seek their advice **[9277]**. No advice was given on **17 October 2019** and no decisions made in relation to Mr Samnick. Mr Kim discussed the position with ER Direct on **21 October 2019 [9280].** In the light of Mr Samnick's grievance criticising Mr Kim, it was agreed that an alternative manager apart from Mr

Kim would be appointed to manage Mr Samnick's sickness absence. This would be a manager who was not named in the grievance.

522. The same day, **21 October 2019**, Mr Bill Chen emailed Mr Samnick acknowledging receipt of his grievance dated **17 October 2019 [2725]**. He said that a grievance hearing would need to be arranged, which would be heard by an independent manager. He enclosed a copy of the grievance policy and drew his attention to Employee Support, the confidential counselling and healthcare information service. He ended his email "if you have any specific needs at the meeting, or if you have any other questions, please contact me as soon as possible".

523. Mr Samnick's response, the following day, **22 October 2019**, was to lodge a third formal grievance against Mr Bill Chen for victimisation and whistleblowing detriment **[2742-2744]**. The basis for his grievance was that Mr Chen had twice characterised the 17 October 2019 grievance as raising allegations. In the light of the caselaw he quoted in the grievance, he considered that this wilfully sought to trivialise qualifying disclosures of facts and information. He referred to specific statutory provisions of the Equality Act 2010 and to a further legal authority.

524. On **25 October 2019**, Mr Samnick issued his fourth grievance. This alleged to be protected disclosure **[LS issue 2.14]** and a protected act **[LS issue 5.10**]. The latter is admitted by the Respondents. The covering email was sent to Ms Armata, Mrs Richardson, Whistleblowing Concerns and Ms Fordham **[2844]**. It was described as a Formal Grievance. It said that it was invoking the grievance procedure **[2867]**. As with the two previous grievances, it referred to specific statutory provisions and to caselaw. It also referred to the statutory guidance in the ECHR Code of Practice on Employment. It listed 13 different types of complaint (in paragraph 9). All concerned the way he himself had been treated, rather than the treatment of a wider group of individuals. His complaints were brought against two individuals (Mr Kim and Mr Rood) and against the HR Department. He did not name those he blamed within the HR Department. The letter spanned twenty-six pages and 123 paragraphs. The focus of this lengthy grievance was allegations of race discrimination. He said (at paragraph 6) that he thought that both himself and Mr Abanda Bella had suffered race discrimination but "reasonably believed that the race discrimination was more widespread than just the persons named in the letter". However, there was no factual specificity in relation to the treatment of Mr Abanda Bella or other individuals.

525. On **28 October 2019**, the Raising Concerns team emailed Mr Samnick to say that his email of **25 October 2019** entitled 'Formal Grievance' had been escalated to the Raising Concerns team for review **[2933]**. On **1 November 2019**, Mr Samnick received an email from Mr Lawrence Gibson in the Raising Concerns team **[2933]**. He said that the correspondence dated **25 October 2019** had been assessed. It had been determined that the issues contained in that document would be most

appropriately reviewed by Employee Relations, rather than by the Whistleblowing Team. This decision is argued to be detriment for making protected disclosures **[LS issue 4.34]**.

526. On **28 October 2019** there was a conference call to discuss the proposed next steps in relation to Mr Samnick's grievances. It was attended by Mr Kim, Mrs Richardson and three others. A decision was made that a grievance manager should be appointed.

527. On **1 November 2019**, Mr Haworth noted that Mr Samnick had consented to a referral to Occupational Health. He attached an employee information sheet, adding that before they could make the referral, Mr Samnick needed to provide his preferred telephone/mobile contact number and email address.

528. Around this time, Mr Abanda Bella was assisting Mr Samnick with his grievances as is clear from an email Mr Abanda Bella sent to Mr Haworth on **4 November 2019 [2944].**

529. Because Mr Samnick had raised a grievance against Mr Bill Chen, **on 5 November 2019**, Mr Haworth emailed Mr Samnick to notify him that Mr Patel, Head of Group Model Database (Risk) had been identified as an appropriate Welfare Contact **[2955]**. Mr Haworth said he would be asking Mr Patel to drop Mr Samnick an email to introduce himself. Mr Patel was formally assigned to the case on **18 November 2019 [9287]**. On **19 November 2019**, Mr Patel emailed Mr Samnick at his personal email address to introduce himself. There was no answer from Mr Samnick. Mr Patel did not follow up with any further attempt to contact Mr Samnick until almost a year later, on **5 October 2020,** noting Mr Samnick's 10-year anniversary as an employee of the Bank. That was acknowledged by Mr Samnick on **27 October 2020**.

530. On **18 November 2019**, Mr Haworth emailed to confirm that Mr Easdon had been appointed as the grievance manager **[3360]**. Mr Samnick was invited to attend a formal grievance meeting at the Bank's head office on **3 December 2019**. The email ended:

> "If you have any specific needs at the meeting, or if you have any other questions, please contact me as soon as possible on 02071168144. Alternatively, you can call HR Operations on 0800 1456013 if you have any general questions about the procedure."

531. Mr Samnick complains that this email failed to ask him what adjustments he needed to get to, from and/or during the grievance meeting, which he alleges was an act of victimisation because of previous protected acts **[LS issue 6.14];** and discrimination arising from disability **[LS issue 10.7].** He also argues that the requirements set out

in the letter amounted to a Grievance Meeting PCP, which placed him at a substantial disadvantage and led to a duty to make reasonable adjustments **[LS issue 14.6]**.

532. The email told him that he could be accompanied by a trade union representative or another Barclays employee, and included the following sentence:

> "If you have any specific needs at the meeting, or if you have any other questions, please contact me as soon as possible on [telephone number provided]" **[3361]**

533. The letter also reminded him of the availability of Employee Support, a confidential counselling and healthcare information service.

534. On **20 November 2019**, Mr Haworth chased Mr Samnick for a response to the Occupational Health referral **[3400]**. The following day, **21 November 2019**, Mr Samnick provided the required contact information for the Occupational Health referral **[3399]**. In his response, Mr Haworth notified Mr Samnick that Occupational Health would be in touch shortly to book a telephone appointment. He identified the seven areas on which Occupational Health had been asked to provide an opinion.

535. On **20 November 2019**, Mr Samnick submitted his fifth formal grievance **[3385]; [3386-3396]**. This was addressed to Mr Haworth. It was not addressed to the Whistleblowing Team. It criticised the decision not to treat his grievance dated **25 October 2019** as a raising a whistleblowing concern and so refusing to investigate this under the whistleblowing policy. It criticised the choice of Mr Easdon as grievance officer. The essence of his concern about Mr Easdon was that he was a qualified lawyer and the Head of Litigation. This meant that the Bank was not observing "equality of arms". It also criticised the alleged failure to make reasonable adjustments in relation to considering his grievance, and specifically the invitation to attend a grievance meeting at the Bank's offices. The fifth grievance also was said to be a further protected disclosure.

536. The letter of **20 November 2019** asked for the grievance to be conducted in written form, as a reasonable adjustment (paragraph 54 **[3396]**). This email is alleged to be a protected disclosure **[LS issue 2.15]** (which is disputed) and a protected act **[LS issue 5.11]** (which is accepted). The only reference to the public interest is at paragraphs 50 and 51. In addition to the risk to his own health and safety, he said there was a risk of harm to other employees and motorists if he attended a face-to-face meeting at 1 Churchill Place. He said he was blowing the whistle to ensure that the needs of disabled employees are not ridden roughshod over "which is exactly how I feel" **[3395].**

537. On **21 November 2019**, Mr Haworth informed Mr Samnick he had submitted the request to Occupational Health and identified the areas on which they had been

asked to provide their opinion. These included any recommended adjustments both in relation to a return to work and in relation to the management of the grievance process **[3399]**.

538. On **30 November 2019**, Occupational Health prepared their report following a telephone assessment on **29 November 2019 [3433]**. This was received by Mr Haworth on **10 December 2019 (JH witness statement 43)**. The report noted he had consulted his GP with symptoms of chest pain before **July 2019**. At the time these were thought to be indigestion. It went on to say "The root cause of his chest pain is now considered to be stress and anxiety". It noted he had become so unwell during his holiday in August that he had collapsed and lost consciousness. The report referred to him currently feeling unable to enter the building at 1 Churchill Place "as this increases his symptoms". It recorded that attending any meeting in person or over the telephone would very likely exacerbate and trigger a panic attack and therefore he had requested, as a reasonable adjustment, to undertake the grievance procedures via written form. It noted he was not sleeping or eating well and was neglecting his personal care. The advice was:

> "this employee is currently medically unfit for work and this is likely to be the case until his grievance has been heard and an outcome delivered. Following the outcome, even if this is favourable, a period of absence is anticipated whilst his symptoms stabilise" **[3435]**.

539. On **2 December 2019**, Mr Gibson from the Raising Concerns team confirmed that the fifth grievance of **20 November 2019** had been sent to the Raising Concerns team to review **[1332]**. Three days later, on **5 December 2019**, Mr Gibson emailed again saying that they had determined that the matters raised would more appropriately be reviewed by Employee Relations. This is alleged to be an act of protected disclosure detriment **[LS issue 4.35]**. By way of explanation, Mr Gibson said that "whistleblowing generally investigates concerns raised which fall into the wider public interest" **[1335]**. He said that "the grievance process will ensure you receive a detailed response to the issues you raise, and in respect of which you will also have a right of appeal" **[1332]**. By contrast, where there is a whistleblowing investigation, the person reporting the whistleblowing concern is simply told of the basic outcome decision with no further detail. For example, he noted that Mr Samnick had only received the basic outcome of the Project Moss whistleblowing investigation, without any further details.

540. On **6 December 2019**, Ms Ruth Surendran in HR emailed Mr Samnick **[3456]**. She was responding to the contents of Mr Samnick's letter dated **20 November 2019**, the fifth formal grievance. She said that given the points raised in his email and the concerns raised about Mr Haworth, Mr Haworth had thought it appropriate to pass his letter onto her, in her capacity as Head of the Conduct Management Team. She noted Mr Samnick's request that the grievance be conducted in writing and said that

they would proceed on this basis if this was his preference. However, if he wanted to meet at any stage, the Bank would be happy to consider specific adjustments for him to attend a grievance meeting. This was a matter on which Mr Haworth had asked Occupational Health for their advice.

541. Ms Surendran wrote that the Bank would not agree to hear a grievance in relation either to Mr Easdon's appointment or in relation to allegations about his failure to make reasonable adjustments in the proposed grievance meeting. So far as Mr Easdon's appointment was concerned, Ms Surendran noted that he was an accredited Hearing Manager with appropriate seniority who had had no previous involvement. His status as a lawyer did not disqualify him, given that he did not specialise in employment law and would be acting in his capacity as a Hearing Manager. So far as reasonable adjustments were concerned, she noted that Mr Haworth had asked in his letter of **18 November 2019** if Mr Samnick had any specific needs for the forthcoming meeting. She said she did not "agree that the Bank would not consider appropriate adjustments if [Mr Samnick] felt [them] to be appropriate". However, if he still considered that Mr Haworth had failed to act appropriately in relation to the scheduled meeting with Mr Easdon on **3 December 2019**, then a separate grievance meeting or written process could be arranged. This would be carved out from the separate grievance procedure being conducted by Mr Easdon. It was for Mr Samnick to indicate whether he wanted to pursue that process further – if they did not hear from Mr Samnick "we do not intend to pursue the matter".

542. Mr Samnick argues that Ms Surendran's refusal to treat his complaint about the appointment of Mr Easdon as a grievance or pursue his complaint about the failure to make reasonable adjustments to the format of the proposed grievance meeting as a grievance was detriment for doing a protected act **[LS issue 6.15].**

543. The Tribunal finds that Mr Easdon was an appropriate person to be hearing Mr Samnick's grievance. He satisfied each of the three requirements for a Grievance Manager set out in the Grievance Policy. He was Corporate Grade BA4 or above, he had not been involved in any of the issues that had led to the grievance and following revalidation, he had received appropriate training in managing a grievance procedure.

544. Ms Surendran said that the Bank would not agree to hear a grievance in relation to Mr Haworth's appointment or in respect of allegations about his failure to make reasonable adjustments to the proposed grievance hearing. In relation to a potential grievance against Mr Haworth, she said:

> "Whilst it appears that Mr Haworth's approach is aligned to Barclay's procedures, if you still believe that this is not the case, we can arrange a separate grievance meeting to hear why you think his actions were

> inappropriate. This matter will be carved out from the other grievances which he will continue to support" **[3457]**

545. During the course of his grievance investigation, Mr Easdon made enquiries of Mr Haworth, who provided answers to written questions.

546. On **21 January 2020**, Mr Samnick was interviewed a second time by Occupational Health, so that a second Occupational Health report could be prepared. Dated the same date, it was addressed to Mr Haworth **[4592]** and arrived on **27 January 2020**. The advice was that he continued to be unfit for work and was continuing with his counselling sessions. Mr Samnick thought that the process of addressing his concerns was likely to be lengthy. A further appointment was made for eight weeks' time. The report noted that he was likely to continue to be unfit for his duties whilst his workplace concerns were being investigated. Following resolution, he would be likely to require further time to regain confidence and resilience prior to returning to the working environment. In answer to the question, "Is the impairment long term?" the answer was:

> "If work related issue are not resolved and symptoms continue, this may well endure for more than 12 months, but although the perceived harassment has been ongoing since 2016, he has been in work, able to perform daily activities until July this year when his sickness absence commenced."

547. On **21 January 2020 [3693]**, Mr Samnick was sent a letter from HR Operations about his entitlement to sick pay. This letter stated that his sick pay would be reducing to nil with effect from **30 January 2020** because he would have exhausted his entitlement to full sick pay. He was actually entitled to two further weeks' sick pay after **30 January 2020**. The letter stated that the period of sickness absence had started on **12 August 2019**. In fact, for the following period until **2 September 2019**, Mr Samnick had been on annual leave, rather than on sick leave. The result of the error as to the calculation of holiday dates was that Mr Samnick's sick pay stopped on **30 January 2020**, earlier than it should have done. This error is said to be an act of protected disclosure detriment **[LS issue 4.36];** victimisation **[LS issue 6.16];** direct race discrimination **[LS issue 7.20]**; and discrimination arising from disability **[LS issue 10.8].** He also alleges that the error in relation to sick pay was a provision, criterion or practice which he labels the "Sick Pay PCP", causing him substantial disadvantage by suffering financial hardship, and so engaging the duty to make reasonable adjustments **[LS issue 14.7].**

548. The best explanation for how this error occurred appears from Note 82 of the ER Direct logs **[9267]**. For whatever reason, Mr Rood had closed Mr Samnick's absence on the My HR Portal. This was noted on **10 October 2019**, at the point when Mr Kim was managing his sickness absence. As a result, Mr Kim was asked to log the absence as Open Ended. He did so from 12 August, thinking incorrectly, that Mr

Samnick had been absent on sick leave during the whole period. As a result, it failed to register that Mr Samnick was on holiday from **12 August 2019** to **2 September 2019**.

549. On **3 February 2020**, Mr Samnick emailed the ER team to query the date on which his entitlement to sick pay ended **[3945]**. He said that he still had 7 days of untaken holidays and would like to be paid for it in February. The following day, he sent a further email to 'MRM Adm Mgmt' **[3956]** complaining about the error in his sick pay. He alleges that this email amounted to a protected act **[LS issue 5.12]**. There was no reference in the wording of this email to the Equality Act 2010 or to any acts of discrimination.

550. On **6 February 2020**, Mr Haworth emailed HR Services, identifying the need to amend the sick pay start date, given that it had meant that the occupational sick pay had concluded prematurely **[3969]**. Later that day**, 6 February 2020**, he emailed Mr Samnick in the following terms **[4077]**:

> "Having reviewed the matter with the business, I can confirm that I have instructed HR Operations to amend the start date of your long-term sickness absence to 4 September 2019, and which accordingly should be reflected in the February payroll due to be paid to you on 21 February 2020. I believe that the Gross Salary reflected in your January payslip will have been impacted by the cessation of OSP, but I would anticipate that once these changes are implemented, this will be corrected."

551. The result was that Mr Samnick received his full contractual entitlement to sick pay.

552. On **17 January 2020** managers were sent an email. This told them that all line managers had until **31 January 2020** to complete and submit manager reviews for their teams in the Performance Learning and Talent (PLT) system. The email added "As with rating completion there is a regulatory requirement attached to this stage with each business area required to meet at least 90% completion (i.e. manager review submission) by the 31 January deadline". **[3883].**

553. On **28 January 2020**, Mr Kim emailed Amit Srivastava, who was monitoring the completion of appraisals, in the following terms **[3882]**:

> "Hi Amit,
> Pls note that Louis' and Christian's end-of-year appraisals cannot be completed.
> I have a query outstanding with HR on whether their downward appraisals should even be entered into the system given that they haven't entered their self-appraisals and given that there's no chance of having any 1 -to -1's with their managers.
> Thx,
> Jeong"

554. A day earlier, Mr Kim had emailed Mr Haworth to check what Mr Rood and Mr Rienacker should do about Mr Samnick's and Mr Abanda Bella's appraisals, given their absences on long-term sick leave. This was the outstanding query referred to in his email of **28 January 2020 [3981]**. At the time, the Bank's policies did not specify what was to be done in this situation. Guidance was only issued at a later stage in **Autumn 2021**. Updated guidance from 2022 has been included in the bundle **[1/1856].**

555. Mr Samnick had previously been sent two reminders by email to complete his self-appraisal, on **1 and on 25 October 2019 [9458; 9460]**. These were automated emails which would have been sent to all employees at around this time. These were sent to his work email address. This was an email address from which he was sending several emails in **October 2019**, despite being on sick leave. Despite receiving these reminders, Mr Samnick never completed a self-appraisal. He was aware that he could complete a self-appraisal offline.

556. On **30 January 2020** Mr Rood and Mr Kim were in an email exchange querying what to do about Mr Samnick's appraisal. Mr Kim's advice **[3980]** to Mr Rood, in the absence of a response from Mr Haworth, was that he should keep a draft of his appraisal but not upload it to the system.

557. Given the deadline of **31 January 2020**, the Tribunal finds that Mr Samnick's assessment from Mr Rood as his line manager as part of the appraisal had been completed by **31 January 2020**.

558. On **5 February 2020**, Mr Kim had a call with Mr Haworth to discuss this issue. Mr Haworth was apparently fine with not uploading the assessment but did want to see the managers' appraisals of both Mr Samnick and Mr Abanda Bella **[3980]**. Mr Haworth said he planned to write to Mr Samnick asking whether he wanted to know his appraisal and pay round outcomes and, if so, how he wanted the information communicated. This he did on **6 February 2020 [4077]**. He indicated that pay round decisions would be notified on **13 February 2020** and asked how and from whom he wanted to receive this information. At that point, there was no purpose in asking Mr Samnick for his self-assessment, because the appraisal had already been finalised.

559. On **20 February 2020**, Mr Samnick replied. He said he was not too well, so it took him time to reply. He said: "with regards to the 2019 Performance Ratings, related PD commentary, and the communication of compensation decisions", he would prefer that he heard this from ER and that he received the information by email **[4076]**. He did not suggest he wanted an appraisal meeting or the opportunity for a self-review. He did not raise any concern that he had had no input into the appraisal. He would not have welcomed a 1-2-1 meeting with either Mr Kim or Mr Rood, as he had asked to be separated from them. In cross-examination, he accepted that no-

one else knew his work from the first half of 2019 sufficiently well in order to carry out his appraisal. In any event, he would not have been fit enough for any meeting, given what he told Occupational Health in **November 2019**.

560. On **24 February 2020**, Mr Haworth sent Mr Samnick an email, confirming his ratings and his compensation and attaching Mr Rood's commentary **[4701].** This is alleged to be detriment for making protected disclosures **[LS issue 4.37];** victimisation **[LS issue 6.17];** and discrimination arising from disability **[LS issue 10.9].** He also alleges that there was a "Performance Review PCP" that his 2019 end-of-year performance review would be carried out without his input, which placed him at a substantial disadvantage and led to a duty to make reasonable adjustments **[LS issue 14.8].**

561. On **25 March 2020**, Mr Samnick was sent a letter in relation to his claim under the Barclays Income Protection Scheme. It attached a copy of a letter from Unum dated **25 February 2020** addressed to the Bank's Healthcare Team confirming that they had declined Mr Samnick's claim. He was told that there were two options if he was unhappy with the decision – either appeal the outcome or raise a complaint **[4371]**.

562. On **2 April 2020**, the Whistleblowing Team finalised their investigation report into the allegations that Mr Samnick was raising, which they had coded "Project Moss" **[4435]**. As was customary, they did not share this report with Mr Samnick.

563. On **14 April 2020**, Mr Samnick emailed Mr Haworth **[4568]**. This was his sixth grievance letter. It was 16 pages long and listed eight separate complaints, referred to as 'grievances'. In it, he said he was making a protected disclosure. He complained about the process for challenging the decision to refuse his application under the Barclays Income Protection Scheme. Specifically, he complained about the Bank's requirement that any appeal to Unum based on new medical evidence should be submitted through the Bank's HR Operations team. He said that this breached his right to privacy under Article 8 of the ECHR in that it required him to share medical evidence with the Bank; and the Bank's receipt of medical evidence would amount to a breach of the General Data Protection Regulations (GDPR) requirements that he freely provide his consent for this sensitive personal information to be shared with the Bank. He alleged that this requirement was discrimination arising from disability as well as indirect disability discrimination. He also alleged that both receiving correspondence in relation to his income protection claim by post rather than by email and informing his line manager of the outcome were failures to make reasonable adjustments. Finally, he complained about the month-long delay in the Bank notifying him of Unum's decision to reject his income protection claim. The grievance letter is admitted as a protected act **[LS issue 5.13]** but is disputed as a protected disclosure **[LS issue 2.16].**

564. On **20 April 2020**, Mr Samnick emailed a further grievance, his seventh grievance **[4688]**. Again, this was a lengthy document, spanning 42 paragraphs and twelve pages. It was said to raise complaints against Mr Haworth, Mrs Richardson, Mr Rood, Mr Kim, Ms Fordham, Ms Surendran, Mr Easdon and Ms Armata. Its focus was on Mr Rood's comments as part of his 2019 appraisal, which had been entered without his self-appraisal or obtain feedback from colleagues; and on the resulting failure to make any change to his base salary and the decision to award a nil bonus. The grievance document included several references to statutory provisions and to caselaw. It alleged that Mr Rood's criticisms of his performance amounted to direct race discrimination and discrimination arising from disability as well as victimisation and protected disclosure detriment. He also complained of indirect discrimination and a failure to make reasonable adjustments.

565. At the end of the grievance, he said that "the extensive, repeated and wilful failures on the Bank's part are now leaving me with no choice but to start considering more serious legal options" **[4700]**. This was a reference to considering bringing legal proceedings. He had been considering bringing legal proceedings for some time, since back in December 2019. In his grievance dated 23 December 2019, he had referred to asking the Tribunal for a 25% uplift due to the failure by Barclays to follow the ACAS Code **[6608]**, and to naming Mr Easdon as an additional named Respondent (paragraph 13). Indeed, on **30 November 2019**, in a letter to Mr Haworth, PPP Healthcare noted that he was seeking legal counsel **[3434]**. Mr Samnick accepted that by October/November 2019 he was aware both of the process of advancing tribunal claims to rely on employment rights and of the time limits for doing so.

566. The Respondents admit the grievance is a protected act **[LS issue 5.14]** but dispute it amounts to a protected disclosure **[LS issue 2.17].**

567. On **11 May 2020** Mr Easdon published his grievance outcome letter in a 23-page letter **[5328]**. Before doing so he had interviewed Mr Rood and Mr Kim, who had both provided answers to lengthy questionnaires. He had also sought written information from Mr Haworth. He produced a second outcome letter in relation to the grievance against Mr Haworth **[5307-9]**. He rejected both grievances. At the beginning of the longer outcome, he explained that it was not appropriate to consider and respond to the various points of law and caselaw that Mr Samnick had referenced. He gave two reasons – firstly that he did not consider it was within the grievance process and secondly, he was not a specialist employment lawyer. In his conclusions he said that he had not seen any evidence that Mr Samnick had been discriminated against by reference to race or disability or had been bullied, harassed, victimised or subjected to detrimental treatment **[5349].** He rejected all of Mr Samnick's factual complaints. This outcome and the process that had been followed to reach the outcome is alleged

to be an act of victimisation **[LS issue 6.18].** No aspect of Mr Easdon's investigation has been highlighted as inappropriate or inadequate.

568. Mr Samnick complains that Mr Easdon's outcome did not deal with a number of complaints he had raised in his grievance letters. This failure is alleged to be protected disclosure detriment **[LS issue 4.39].** He lists several aspects of his grievance in paragraph 185 of his Particulars of Claim **[1/459]**. These were all areas where he had raised legal complaints of contraventions of the Employment Rights Act 1996 or the Equality Act 2010 or a failure to follow the ACAS Code. Because these were legal issues not factual issues, it was not necessary or appropriate for Mr Easdon to decide them as part of an internal grievance investigation.

569. On **11 May 2020**, Mr Samnick contacted ACAS to initiate the Early Conciliation procedure in relation to a potential claim against the Bank.

570. On **22 May 2020**, Mr Samnick appealed the grievance outcome on the basis that the grievance investigation had been defective and constituted victimisation. The Respondents admits that this was a protected act **[LS issue 5.15]**.

571. On **25 June 2020**, Mr Samnick presented his ET1 Claim Form. He resigned his employment by letter dated **23 February 2021**. The circumstances of this resignation are not for determination in these proceedings.

572. Mr Samnick accepted in cross-examination that he had suspected that his race was at least part of the reason for unfavourable treatment from when Mr Canabarro started in his role as Head of MRM. This would have been around 2016.

573. Mr Samnick alleges that his health problems stemmed from 2016 when he struggled to take minutes and he started experiencing chest pain in 2018. He said that he first sought medical help for mental health issues in **July 2019**. He has not disclosed any medical records from his own GP apart from the letter from Rood Lane health practice in **September 2019** referring him to a psychologist. He had apparently been able to attend work throughout his employment until he started sick leave in **July 2019**. Given the lack of contemporaneous evidence as to his health symptoms during his employment, the Tribunal is unable to make any positive findings that he was medically unwell until the point at which his sick leave started.

FACTUAL FINDINGS–- MR ABANDA BELLA

574. Prior to working for the Bank, Mr Abanda Bella had been employed in a similar role as Vice President at Deutsche Bank for around a year. Before that, he had worked at Bank of America Merrill Lynch. This followed earlier work as a Validator at British

Petroleum, Commerzbank and Dresdner Kleinwort after he had completed his studies.

575. In **November 2016**, he was interviewed for a Vice President grade role in the Bank's Independent Valuation Unit (IVU). His interviewers were Mr Harrison, Mr Rienacker and Mr Bill Chen. The interview tested his competencies against several criteria, including specified behavioural indicators. Those included supporting an environment that encouraged effective loss/risk event escalation. During the interview he gave an example of building a successful relationship in a challenging situation. He stated that where there was a disagreement on a particular issue, he would usually first talk to the other person and ask about their point of view before putting the issue in an email **[9643]**.

576. Following the interview, he was strongly recommended for recruitment. On **9 December 2016**, he was offered employment at the Bank **[491]**. In the issues raised in these proceedings, Mr Abanda Bella accuses two of his interviewers, Mr Rienacker and Mr Bill Chen, of bias against and racial prejudice towards people of Black African origins. Mr Harrison is accused of deliberately attempting to significantly delay the validation of CCAR pricing models **[573]**.

577. Mr Abanda Bella was employed as a Vice President, Pricing Model Validation "or such other role as the Company reasonably decides from time to time" **[492]**. He had a Benefit Allowance as part of his financial package. He used part of this to join the medical insurance and income protection insurance schemes. At Clause 17 of his employment contract **[511]**, he agreed that the Bank was entitled at any time and without prior notice to assign him to carry out such projects and duties commensurate with his abilities.

578. He started work on **Monday 13 March 2017**. Two days after his start date, he emailed the Risk Level 6 Security Access email address. He said he was based on Level 5. He asked to be granted access to the Risk area on L6. He did not explain why he needed access. He ended his email "Please let me know if this is OK" **[483]**. Lisa Radley sent a response. She said that she was afraid that this was not possible. She added "The secure area of Level 6 is restricted access as we are private side due to having access to material non-public information, whereas your team is public side so access is therefore not allowed". She presumed that his request referred to stationery storage and made suggestions as to how he might access suitable stationery. Mr Abanda Bella's response was worded as follows:

> "You presumed incorrectly and obviously, I sent you this email because I had already spoken to members of my team".

579. Mr Abanda Bella seeks to explain his email by reference to what he had been told by other members of his team about the extent to which access was permitted to Level

6. Regardless of this explanation, it was obviously a rude and insensitive way to phrase an email to any colleague. Mr Abanda Bella's wording led Ms Radley to speak to her manager, Chin Pindoria. Ms Pindoria emailed Mr Kim the same day. She did so as she understood that Mr Abanda Bella reported to him. In her email she wrote "Christian was extremely rude when one of my team tried to explain [the restricted access to Level 6]". In his response, Mr Kim wrote he would follow up with Mr Abanda Bella **[485]**.

580. Whatever Mr Abanda Bella thought about the processes within the IVU, we do not find that he told Mr Rienacker or Mr Kim in his first few weeks in terms that these processes were abysmal. This is not recorded in any email and was not something he has chosen to include in his lengthy witness statement. It was suggested by Mr Abanda Bella for the first time in cross-examination**.**

581. From **early 2017** onwards, there were ongoing discussions about amending the overarching validation template to create a bespoke template which was fit for purpose for traded model validations [see answer 18 **[6163]**]. This meant that there were frequent changes to the required formats for validations in the first few months of Mr Abanda Bella's employment. There were weekly updates as to the requirements. Some of these changes were subsequently reversed. Mr Kim describes this as a rather chaotic time. Ms Feuer in the Governance Team took the lead in preparing the required template. Whilst there was probably a degree of frustration across the IVU about the extent of the changes, the Tribunal does not find that team members were dismissive about Mr Canabarro. Mr Abanda Bella did not question witnesses about their attitude towards Mr Canabarro. He did not ask them to confirm his view that Mr Canabarro's tweets were racist. We have not been shown any of these tweets and do not find that they were racist in the manner Mr Abanda Bella alleges. This is another new allegation that Mr Abanda Bella makes in his witness statement.

582. On **24 July 2017**, Mr Rienacker emailed his colleagues with a draft version of a pricing model IVU template **[9708]**. This, he said, had been "inspired" by Ms Feuer's standard IVU template. He said that this version should be used for the time being, although he expected further fine tuning. Mr Abanda Bella did not discuss any concerns about the template with Mr Rienacker or Mr Kim. Rather he reported to Ms Feuer that Mr Kim's team was not using the standard template that had apparently been agreed by all. She said she was surprised "because Jeong was involved with the discussions around the revised template" and had forwarded the draft template to her. This prompted Ms Feuer to email her then boss, Ms Farkovits **[9723]**. In her email she said that there were two options going forwards – to make further modifications to the standard template or to have separate traded risk and pricing templates. The entire email chain was forwarded to Mr Kim on **18 August 2017** on

his return from annual leave. In a further email he sent Ms Feuer an updated version of the template and explained the extent to which this version differed from the standard version. Following further discussions between Mr Kim and Ms Feuer at a meeting on **21 August 2017**, agreement was reached as to the desirable approach for pricing models.

583. In acting in the way he did, Mr Abanda Bella was seeking to undermine Mr Rienacker's credibility with his colleagues in order to advance his own career.

584. In the meantime, without waiting to see what would result from ongoing discussions, Mr Abanda Bella had contacted the Whistleblowing Team on **8 August 2017 [3294]** to report a whistleblowing concern. The concern was that there had been disregard of an instruction to follow an SR 11-7 based template for validation documents. He criticised Mr Rienacker, Mr Rood and Mr Harrison, as well as Mr Kim. He said that the incident had occurred since 24 July 2017, the date of Mr Rienacker's email. He was assured that his identity would remain confidential.

585. This disclosure to the Whistleblowing Team is argued to be a protected disclosure. He argues that his disclosure tended to show that the Bank was failing to comply with its legal obligations in relation to SR 11-7 and Directors' duties under Sections 172 and 174 of the Companies Act 2006 **[CAB issue 1/1.1]**. In his report to the Whistleblowing Team, he did not explicitly state that there had been breach of any laws or regulatory requirements or guidance.

586. SR 11-7 does not mandate any specific template be used. It is expressed to be Guidance from the Board of Governors at the US Federal Reserve, which should be applied as appropriate **[C/287]**. It sets out the general principles that should apply to the modelling of risks so far as financial institutions operating within the US are concerned. The five-page long covering letter includes the following statement about Governance:

> "Strong governance also includes documentation of model development and validation that is sufficiently detailed to allow parties unfamiliar with a model to understand how the model operates, as well as its limitations and key assumptions" **[C/289]**

587. The section headed "Governance, Policies and Controls" does not require that there should be a standard template for all model validation **[C/281]**. Rather it requires Banks to "establish standards for the extent of validation that should be performed before models are put into production" **[C/283]**. So far as documentation is concerned, SR 11-7 says that "documentation of model development and validation should be sufficiently detailed so that parties unfamiliar with a model can understand how the model operates, its limitations and its key assumptions" **[C/286]**. In the conclusion section, SR 11-7 states that "details of model risk management practices

may vary from bank to bank, as practical application of this guidance should be commensurate with a bank's risk exposures, its business activities and the extent and complexity of its model use" **[C/287]**.

588. Mr Abanda Bella did not inform any of his managers that he had made this report to the Whistleblowing Team.

589. On **28 July 2017** and **4 August 2017**, Mr Rienacker had emailed Mr Abanda Bella with guidance on the approach to the LSV model change in the light of ongoing changes to required documentation **[9726] [9738]**. He did so, in answer to specific queries raised by Mr Abanda Bella.

590. On **5 September 2017**, Mr Abanda Bella sent Mr Rienacker the latest draft of the LSV model change validation. Mr Moune Nkeng had been assisting him on this particular project. In his email, he said "Henry-Serge could have produced a more detailed document but for efficiency's sake, we first need to know the extent to which the model change document will have to follow the latest IVU template". Mr Moune Nkeng was copied into this email **[572]**. Mr Rienacker responded with his feedback having reviewed the draft. He ended: "Adaptation to the latest template can be done at a later stage (essentially, change in some standard wordings, table formats and deletion of the "Compliance" section)". That email was sent to both Mr Abanda Bella and to Mr Moune Nkeng. He followed up with a further email sent just to Mr Abanda Bella. He had misunderstood Mr Abanda Bella's comment about Mr Moune Nkeng as a criticism. As a result, he asked the following question:

> "Also any issues with H-S work? (as you criticized him and put him on c/c; you could have alternatively said "this draft is a rough cut and we will add more detail once we know the overall direction is clear)" **[571]**

591. In his response, on **7 September 2017**, Mr Abanda Bella said "I did not criticise Henry-Serge, quite the opposite. You seem to have inferred something that grammatically was not there given the exact words I used, as there was no negative connotation in my formulation". He went on to refer to his and Mr Moune Nkeng's time being wasted "until we had clarity on exactly what template was going to be chosen". He said that "with a clear and up to date template, your latest round of comments would likely have been largely superfluous: the guidance on what goes where and in what form would have been clearly written down and distributed" **[571]**. This is said to be a protected disclosure **[issue 1/1.2].** The email made no express or implied reference to any legal obligations. It was essentially a complaint that there was insufficient clarity in the guidance as to the template to be used for the LSV model change validation. It did not reference any intermediate or final deadlines which applied to this validation or suggest that this were at risk of being missed. The Tribunal accepts Mr Rienacker's evidence that the LSV model change validation had nothing to do with CCAR or any other regulatory matters. When this point was point

to him in cross-examination, Mr Abanda Bella said "I don't remember exactly but I – I don't think so" (transcript, 2 May 2023, page 128, line 24).

592. Mr Abanda Bella's email prompted Mr Rienacker to reply he did not see Mr Abanda Bella's point in "excessively criticizing here". He added: "may I ask you for a minimum amount of respect and tolerance in your email communications, in-line with Barclays' values. Otherwise it will make communication more difficult and work less productive. I am open for constructive critique but will not follow further any email trail which I think does not follow this standard of communication" **[570]**. This email is said to be detriment for previously making protected disclosures **[CAB issue 1/3.1].**

593. Rather than accept Mr Rienacker's rebuke, less than three hours later, Mr Abanda Bella sent a lengthy reply in which he took issue with Mr Rienacker's use of the word "criticizing". He complained about the lack of guidance as to the format to use for validation reports. He went on to make further criticisms of Mr Rienacker. He said that he had "asked for guidance 3 times, but that appears not to have been enough to get to you but … when I expressed that need with more alarm, you judged it to be intolerant and disrespectful". He then proceeded to lecture Mr Rienacker about his mistaken assumption that he had criticised Mr Moune Nkeng:

> "Certainly I would not say that someone is "criticizing" someone else without double-checking first what the intent was, as this is a very serious thing to say. Much better to start by giving the benefit of the doubt, thinking about the context of the exchange, accounting for potential cultural differences, one's own potential biases and seeking clarification **before** coming to any conclusion, considering the nature of the perceived slight, as per our Barclays values but also in line with effective teamwork guidelines within a diverse environment. There's bound to be misunderstanding along the way, but i''s how we deal with those matters" **[569/570]**. [emphasis in original]

594. He ended his email with "sincere apologies" if Mr Rienacker had felt hurt by his words. Mr Rienacker finished this particular email exchange on **12 September 2017** with a short email in which he said "sorry, reading the original email again I realised that I got completely the wrong end of the stick. Can we pls in future have such discussions face-to-face instead of writing long emails?" **[569]** This email is also alleged to be protected disclosure detriment **[CAB issue 1/3.1]**.

595. Around this time, Mr Abanda Bella mentioned this email exchange to Mr Moune Nkeng. He told him he "wondered about the bias that Mr Rienacker had over [him]" (see **HSMN witness statement paragraph 249**).

596. In his witness statement, Mr Abanda Bella comments that the way Mr Rienacker was treating him in this email exchange amounted to Mr Rienacker labelling him aggressive, disrespectful and intolerant in line with "the aggressive Black man

stereotype". Despite this comment, Mr Rienacker's emails in this email exchange are not included in the Lists of Issues as acts of direct race discrimination or harassment. This is the first of several instances where Mr Abanda Bella has used his witness statement to make further allegations not already in his very extensive list of issues.

597. On **15 September 2017**, Mr Abanda Bella contacted the Raising Concerns Hotline **[586]**. Mr Abanda Bella did not email his concerns on 18 September 2017 as is asserted to be a protected disclosure in the List of Issues **[CAB issue 1/1.3]**. He reported that managers were not following the correct procedure for the validation of pricing templates and there were deliberate delays caused by managers in validating the CCAR pricing models. He said that there was "no urgency on the team to deliver on deadlines even when there is enough resource on the team to meet their targets and deadlines". This was the extent of the information provided on that occasion. As the record notes "The WB was unable to relay his concerns fully and answer the questions raised by GCWT" **[586]**.

598. As a result, further information was requested on **18 September 2017 [577]** and provided by email on **21 September 2017 [573].** This email is alleged to be a protected disclosure **[CAB issue 1/1.4]** and a protected act **[CAB issue 1/4.1]**. He criticised Mr Rienacker, Mr Harrison, Mr Kim and potentially others. At the heart of his concern was a delay in the production of a clear template for the validation report. He said that this significantly delayed the validation of the first wave of CCAR pricing models originally due to be validated by the end of August.

599. In answer to the question "Who and what is impacted by missed deadlines and in what way?", he answered:

> "The Bank's reputation, if the final deadline is missed or if the quality of the final submission is so adversely affected that the regulators assess the submission as poor … playing catch up on the CCAR models results in other less important validations being delayed, with financial consequences for the affected trading desks … there are also impacts on performance ratings, obviously. The senior members of the team are affected in that they will appear incompetent in front of their managers and/or the board" **[573/4]**

600. It is clear from this that he did not believe that Mr Kim, Mr Rood or Mr Rienacker were company directors under Part 10 of the Companies Act, in that he referred to more senior managers and those sitting on the Board. He did not state in terms that there would be any failure to comply with the Bank's legal obligations in general nor make any reference to SR 11-7.

601. On **4 October 2017**, Mr Abanda Bella had his mid-year meeting with Mr Rienacker **[591]** to discuss his objectives. It did not take place on **5 October 2017** as Mr Abanda Bella argues in the list of issues.

602. Although no notes were taken during the meeting, Mr Abanda Bella did prepare minutes after the meeting, which he sent in two parts, on **4 and 5 October 2017 [591]**. In summary these noted, in the first part, that Mr Abanda Bella was critical of the performance of Mr Rienacker's team. He identified in a non-exhaustive list three specific problems namely (a) missed deadlines, (b) sub-standard relationships with stakeholders and (c) sub-optimal processes. He suggested as his only solution, his own promotion to Director.

603. In the meeting, Mr Rienacker raised the wording of Mr Abanda Bella's email the previous day, **3 October 2017**, to stakeholders involved in the Equity Swap model **[9627]**, including three at Director level. Mr Rienacker told Mr Abanda Bella that the way the email had been worded was "aggressive". The email had listed several blunt criticisms about the model. He ended the email "I have added these issues in our challenge log for this validation for the time being. Given current deadlines, I would suggest that QA produce a materiality study covering each the convexities mentioned here and then that study could be used to motivate potential mitigation (reserves, scope adjustments, etc)". He was effectively suggesting additional work for the QA team to undertake given the points he had raised. He had not discussed his email in draft with Mr Rienacker before sending it.

604. In the meeting, he did not describe Mr Abanda Bella as aggressive as Mr Abanda Bella alleges was protected disclosure detriment **[CAB issue 1/3.2]** and an act of victimisation **[issue 1/6.1]**. As Mr Abanda Bella himself indicated in his second part of the minutes of the meeting, Mr Rienacker referred to his email as "aggressive". At the end of the meeting, it was agreed that they would continue their discussions at a further meeting to discuss Mr Abanda Bella's wish for promotion.

605. On **5 October 2017**, Mr Rienacker forwarded to Mr Kim the first and second part of Mr Abanda Bella's minutes and asked if he could discuss this "sometime today". The two did discuss promotion criteria at a meeting that day. Mr Kim summarised his advice in an email to Mr Rienacker on **6 October 2017 [593]** which was copied to the other Directors in his team, namely Mr Harrison, Mr Rood and Mr Bill Chen.

606. On **8 October 2017 [9651]**, Mr Abanda Bella sent a detailed email to the Raising Concerns team. It was worded as follows:

> "In relation to concern REF01350, I suspect that in addition to the methods already mentioned in trying to engineer missed deadlines, something else has been used for the same purpose at least since I joined the team in March. I suspect projects within equity IVU have been misallocated on purpose, with some colleagues given just a single project to work on, whilst other colleagues were given several projects to work on. This was done notwithstanding experience or the amount of work needed on the project themselves at any

> given time. Inevitably not spreading projects evenly across the team, on top of being discriminatory, eventually increases the overall time to delivery of our projects and creates a false impression that the team lacks resources, which I suspect was the plan all along. I wished I could have spotted this earlier but there are no team meetings in my team, which made ascertaining that this was happening tricky.

607. The reference to "discriminatory" in its context is not a reference to discrimination under the Equality Act 2010. It is consistent with the sense in which Mr Samnick used the phrase, namely unequal distribution of work. Significantly, this communication is not alleged to be a protected act. This email was not forward to Mr Kim, Mr Rood or Mr Rienacker. Nor did Mr Abanda Bella speak about it when talking to them. As a result, it was not within their knowledge.

608. The planned further meeting between Mr Abanda Bella and Mr Rienacker took place on **19 October 2017**. The focus was on the criteria for promotion, although they also discussed specifics on current projects. Mr Abanda Bella alleges that Mr Rienacker informed him that no formal promotion process was in place and that it was Mr Kim who decided who got promoted. This is said to be a detriment for making protected disclosures **[CAB issue 1/3.3]**. He says that as a result, he believed he was being overlooked for promotion. In addition, he says that the information conveyed to him at this meeting was an act of direct race discrimination **[CAB issue 11.1].** He compares his treatment with that of Mr Maouche and Ms Li. There is no evidence that Mr Rienacker held equivalent meetings with Mr Maouche and Ms Li to discuss the criteria for promotion, or that Mr Rienacker responded more favourably to them than to Mr Abanda Bella when discussing promotion criteria.

609. Following this meeting, on **25 October 2017** Mr Abanda Bella emailed Mr Rienacker with what he described as minutes of the meeting.

610. Certain passages in this email are disputed by the Bank as an accurate record of what was said in the meeting. Two were highlighted by Mr Rienacker in his response on the same day, **25 October 2017**, by yellow highlighting. These were:

> "You stressed that Jeong has a "knack" of just knowing straight away who has it in them to be a director.
>
> - You listed a set of requirements for AVP to be considered for VP, but you recognized that you never told any of our AVP about those requirements."

611. Mr Rienacker said that Mr Abanda Bella's notes reflected some misunderstandings and he aimed to provide clarification **[612]**. The Tribunal prefers the version of the meeting set out in Mr Rienacker's response on these disputed points. As recorded in Mr Rienacker's email he had told Mr Abanda Bella in the meeting that the number

one criteria for progressing in the team was the consistent delivery of validations on time and according to high quality standards over a long period of time. He also mentioned experience across asset classes or across model types and the ability to work with other team members.

612. It is inherently unlikely that Mr Rienacker would have said that "Mr Kim had a knack of just knowing straight away who had it in them to be a director". He was providing Mr Abanda Bella with detailed promotion criteria having received this information in an email from Mr Kim himself only days earlier. It would completely contradict Mr Kim's email for Mr Rienacker to speak as Mr Abanda Bella alleges. Furthermore, the Tribunal does not accept that the criteria listed by Mr Rienacker concerned promotion from AVP to Vice President. Rather they concerned the focus of Mr Abanda Bella's desire to be promoted from Vice President to Director as expressed in the meeting on **4 October 2017**.

613. The email from Mr Abanda Bella of **25 October 2017** also contained the following criticism, which is alleged to be a protected disclosure **[CAB issue 1/1.5]** and a protected act **[CAB issue 1/5.2]**:

> "I would like to refer you to our Barclays values: promoting respect, diversity and performance in the workplace. As I said during the meeting, I believe our values are not reflected in the above mechanisms: an explicit set of criteria should be laid out and these should be applied consistently and fairly across the team."

614. There was an extended email correspondence between the two of them about promotion criteria and the extent to which it was widely known in the team. Mr Rienacker said that if Mr Abanda Bella had suggestions as to promotion criteria from his experience at previous banks, he (Mr Rienacker) would be very interested to hear them **[607]**. Mr Abanda Bella did not make any suggestions. Mr Rienacker forwarded the email chain to Mr Kim commenting that it showed "other examples of very harsh and unfair communication from Christian" **[606]**. Mr Rienacker added, with a degree of self-reflection, that he needed to find more time to invest in developing his direct reports.

615. The Tribunal rejects Mr Abanda Bella's contention that he met with Mr Kim at some point in the "second half of 2017" where they discussed the state of Mr Abanda Bella's working relationship with Mr Rienacker [**CAB witness statement paragraph 60 [WB/27]**]. Mr Kim did not state, as Mr Abanda Bella alleges, that Mr Rienacker had issues with him, nor did Mr Abanda Bella tell Mr Kim that there had been instances when Mr Rienacker had tried to "bullshit" him and had been found out. There is no reference to such a meeting in the documents and Mr Kim has no recollection of such a meeting. Such an allegation features in Mr Abanda Bella's case

for the first time in his witness statement. It is not referred to in the Particulars of Claim or in any earlier grievance.

616. Had Mr Abanda Bella spoken of Mr Rienacker as he now alleges, this is likely to have stood out in Mr Kim's memory. The fact that Mr Abanda Bella believes he spoke about Mr Rienacker to Mr Kim in this way is revealing both about his lack of respect for Mr Rienacker and about his willingness to speak out to others about colleagues he did not value.

617. On **2 November 2017**, Ms Feuer updated everyone in the MRM Team on guidance given by Mr Canabarro at a Tier 1 Model Status Update meeting. Mr Canabarro had explained that the current US administration's drive towards deregulation would lead to less stringent enforcement of SR 11-7, allowing IVU to focus on material issues **[655]**. She also commented that she had slightly revised the IVU template and the Validation Procedures.

618. Mr Kim met with Mr Abanda Bella in **mid-November 2017** to discuss the promotion criteria. What he told Mr Abanda Bella was consistent with what he had written to Mr Rienacker in his email of **6 October 2017**.

619. At the **end of 2017**, Mr Abanda Bella's 2017year end appraisal was compiled, in advance of a one-to-one appraisal meeting in **January 2018**. Mr Rienacker rated Mr Abanda Bella as 'Strong' for the 'What' and 'Strong' for the 'How'. On his self-assessment, Mr Abanda Bella said he had proved he had the skills to be an outstanding communicator **[3168]**. He took credit for the high performance of the team – "I have pushed my team towards a high-performance culture where everyone feels empowered to be successful and where potential conflicts are avoided and/or resolved thanks to a strong focus on transparency, inclusiveness and mutual respect".

620. Mr Rienacker's written comments about Mr Abanda Bella's performance were positive. He noted that Mr Abanda Bella had built a good working relationship with the Model Control Office by providing support and constructive critique and challenge. He praised him for being very knowledgeable and technically excellent. He said that "only slight point of critique is that Christian's communication style can be sometimes overly strong or argumentative" **[3169]**. Mr Abanda Bella argues that this criticism, coupled with the lack of any examples, amounted to protected disclosure detriment **[CAB issue 1/3.4]** and direct race discrimination **[CAB issue 1/11.2]**. In relation to the latter issue, Mr Abanda Bella contrasts the comments made about his communication style with comments made about Ms Li **[CAB issue 1/11.2].**

621. Ms Li's 2017 performance review was conducted by Mr Harrison, not by Mr Rienacker. So far as her conduct towards her colleagues was concerned, Mr

Harrison noted that Ms Li "shows consistent professional attitude and behaviour along the five Barclays values, in dealing with issues, colleagues and management. She collaborates with and gives support to other team members and provides challenge to model developers in an appropriate way to achieve transparency on models and model issues" **[9665].**

622. Mr Rienacker met with Mr Abanda Bella on **26 January 2018** to discuss Mr Abanda Bella's 2017 year end appraisal. When Mr Abanda Bella asked Mr Rienacker for examples of his overly strong or argumentative communication style, the example given was his email correspondence about Chinese walls in his first week of employment with the Bank. However, Mr Abanda Bella ought to have been aware from Mr Rienacker's responses to some of his subsequent emails, as the Tribunal has recorded above, that the way in which these had been drafted was "overly strong". The extent of the criticism during the appraisal was limited to it being a "slight point of critique".

623. The previous day, **25 January 2018**, Mr Abanda Bella had met with Mr Canabarro. This meeting had been instigated by Mr Canabarro. On **19 January 2018**, Mr Canabarro had emailed Mr Kim's team asking them to share their thoughts with him "on how we can do what we do better, prioritize better, avoid being distracted by the noise of the second order issues". On **24 January 2018**, Mr Abanda Bella emailed him with his written suggestions **[755]**. He identified three issues and then proposed various solutions. The issues he identified were highly critical of other team members, and specifically the Directors within the team. He accused them of "openly and repeatedly rubbishing your approach in front of more junior team members"; and of "suffering from an acute case of nepotism". The latter he explained as "key projects, useful advice and ultimately recognition are and have been selectively shepherded towards a small proportion of the team, irrespective of actual ability and experience". He said that this was having a very toxic impact on the motivation of many junior team members, which had led one person to resign and more were likely to follow. His third issue – which he described as the most serious issue – was that "our team of directors is simply unwilling or unable to prioritize first order issues on the ground". This he explained as "operational guidelines and templates from the governance team are unscrupulously bent or ignored"; and that "validation drafts are still being sent back and forth over inconsequential details". He added that full U turns were routinely performed at the last-minute following Mr Kim's review of the documents. His suggested solutions were to "prioritize first-order issues and generally uphold the guidelines from the governance team"; and "allocate resources in line with ability/experience and promote teamwork within and across teams" **[755]**. This email is alleged to be a protected act **[CAB issue 1/4.3]**.

624. Mr Canabarro forwarded this email to Mr Kim saying that the issues seemed to be serious if they were true. He asked Mr Kim to assess these issues and to speak to him the following day. He said he would be speaking to others.

625. The Tribunal finds that Mr Abanda Bella's email replicates what he told Mr Canabarro when they met on **25 January 2018**. Contrary to the assertion in Mr Abanda Bella's witness statement (paragraph 81), he did not complain to Mr Canabarro about his tweets or suggest that they were regarded by Mr Harrison as racist. Nor did he say that Mr Kim had told him that neither Mr Canabarro nor Mr Chen had any clue about what they were doing; or of Mr Rienacker saying that Ms Feuer lacked intelligence. This evidence appears for the first time in Mr Abanda Bella's witness statement and is not corroborated by any documents.

626. On **20 February 2018**, Mr Abanda Bella emailed Mr Rood offering to help with CCR-related projects **[821]**. Mr Rood subsequently decided he was fine resource wise **[814]** but asked Mr Abanda Bella on **27 February 2018** if he would alternatively be interested in looking at a risk factor simulation model **[820]**. This was the CDS spread simulation model. It was agreed that Mr Abanda Bella would work on this project alongside Mr Samnick. Mr Rood had two face-to-face meetings with Mr Abanda Bella and Mr Samnick at the start of the project. He also provided further guidance by email on **12 March 2018**, which enclosed a four-page long memo **[9634]** outlining what he believed were the key points that needed to be reviewed in further detail and which required further clarification **[847-8]**. His email was expressed in the following terms:

> "Hi Christian,
> We are using the validation time line guidance and phasing issued by Patrick Chen initially for CCAR purposes – see tab in the traded risk work stack I have circulated last week. Based on this a validation consists of the following steps:
>
> 1. Initial documentation assessment [completed]
> 2. Identification of key concerns/issues [2-3 weeks]
> 3. Review work and production of draft validation [2-8 weeks]
> 4. Preparation of final report.
>
> This provides a general and high-level skeleton for a validation plan. Last week you mentioned you could do this in a lesser amount of time. Please provide details, taking into account what we think the key challenges are.
>
> We are now 2 weeks into phase 2 and we urgently need a list of key challenges we will need to investigate in more detail as part of phase 3 to assess if follow up action needs to be instigated. As discussed, we would also need a list of questions for clarification.
>
> I have enclosed a short memo outlining what I believe the key points are we would need to review in further detail; it also includes a number of points I think we should clarify. Please review to see if you agree.

> Once we have clarified what data they use and how hazard rate time series are constructed we need to collect time series data to be used as a basis of our own analysis.
>
> Templates serve to present review results in a consistent fashion across projects/teams. We will need templates when we start to produce the write up in the course of phase 3.
>
> Let's discuss tomorrow.
>
> Ron"

627. Rather than agree to what the Lead Validator was proposing, Mr Abanda Bella responded in a confrontational and arrogant manner, as follows **[847]**:

> "What you describe below is not satisfactory. To paraphrase Eduardo: 'The plan sucks!'. We have a much better, faster plan:
>
> The high-level guidance from Patrick is generic and should be used a worst-case scenario. Instead, here is what Louis and I will use:
>
> 1. This week: we have already identified all the key issues (there are none), so we will start the review work on all the nitty gritty and start writing the report, starting with the sections for which we already have all the available data.
> 2. Next 2 weeks: resolve all pending minor issues and almost finish validation report
> 3. Subsequent 1-2 week: Finishing touches on the report and on the validation, pending availability due to other project
>
> Overall target around 8-15 April.
>
> Louis and I will operate on a 50% basis on all aspect of the validation.
>
> As you can see, we are already in a position when we can start writing the report. Any delay in getting a definitive template is now holding us back.
>
> Louis and I reviewed the points you attached your previous email and ascertained that all of them are either.
> - Solved part of the feeder model
> - Solved once one reads the front office documents at a deep level
> - Minor questions marks to be solved as part of the routine validation review"

628. On **13 March 2018**, Mr Rood had a catch-up meeting with Mr Abanda Bella and Mr Samnick. Mr Rood did not behave in the rude and intimidatory way alleged by Mr Abanda Bella in his witness statement. Mr Rood was asking them to provide him with a list of the key concerns around the model and a plan of work, including a division of labour. He confirmed this in a follow up email sent that evening, together with further guidance as to the approach he was expecting **[846]**. These were reasonable

requests. The guidance was entirely appropriate, given Mr Rood's role as Lead Validator. The email was a reasonable summary of the key points discussed at the meeting.

629. The Tribunal does not accept that Mr Rood subjected Mr Abanda Bella to excessive micro-management as Mr Abanda Bella alleges, which he says amounted to direct race discrimination **[CAB issue 1/11.3]**. This was Mr Abanda Bella's first project with Mr Rood and was in an area where he did not normally work. Although the four-page long memo was detailed in terms of the issues it raised, the Tribunal finds that this level of detailed management was appropriate and was Mr Rood's normal level of management oversight. Mr Samnick does not complain about an inappropriate level of management in relation to this project.

630. Back on **9 March 2018**, Mr Rienacker had emailed the stakeholders in relation to the LV MC validation **[852]**, in response to an email from Tien Do with an updated version of the documentation. This was a validation on which he was the Lead Validator, although Mr Abanda Bella had day-to-day responsibility for the validation as the Vice President assigned to this project as Validator. Mr Rienacker had several questions about the input parameters. He copied Mr Abanda Bella into his email.

631. This prompted an email response from Mr Abanda Bella to Mr Rienacker **[852]**. Although he started by thanking Mr Rienacker for helping, he added "It was probably not a good move to add the questions about the input parameters as it likely gives the impression of poor internal communication in our team, given that, as discussed in our 1-2-1, Henry-Serge and I are already looking into it, and actively engaging with our stakeholders about it". He continued "Probably not an issue this time but I do''t want to be left to manage the awkwardness with our stakeholders with little to defend you or the team".

632. In his response, Mr Rienacker apologised if similar questions had already been raised and said that he did not want to interfere further. He asked Mr Abanda Bella to put him on c/c on all his email communications to QA/MCO on this model and EQ Swap. This previous failure to copy him into correspondence with stakeholders is the most likely explanation for why questions had been repeated and why, as Mr Abanda Bella's email indicated, it might appear that there was poor internal communication. This was a reasonable request from Mr Rienacker, given he was Mr Abanda Bella's line manager and the Lead Validator for the particular validation. Rather than accept Mr Rienacker's direction, Mr Abanda Bella chose to respond in a rude and patronising tone. It is appropriate to set the email out in full, with Mr Abanda Bella's original emphasis **[851]**:

> "Hi Gotz,
> If there were questions that you wanted to see addressed, you should have told me in our 1 -to -1 meeting yesterday and then let Henry -Serge and I deal

> with those, as 'executing' this project is **our** responsibility and we were handling it anyway as I indicated to you both by email and in person. However one looks at it, this makes both you and the team look bad (poor communication, poor management, lack of trust in subordinates, inability to effectively delegate...).
> And that's because stakeholders end up having to repeat to you by email information that has already been provided in their documents or communicated to and discussed at length with our team (Henry -Serge and I).
> 'Delegating' responsibility as Eduardo stressed on his meeting from March 7th, is essential to be done by managers in order to enable people 'to grow' and 'get better'.
> We communicate preferably by phone, via B chat and in person, and we will be doing so more and more as it is a lot more efficient than email.
> Rest assured that you are cc'd on every single 'official' email that concerns both projects, subject to courtesy rules.
> Best regards,
> Christian"

633. Mr Rienacker's response was perfectly polite. Mr Abanda Bella sent a further email on **12 March 2018,** continuing to comment on Mr Rienacker's email to the stakeholders. The email was worded as follows (again with Mr Abanda Bella's emphasis) **[858]**:

> "Hi Gotz,
> In the future, if you want to step in, it would be best if you did so by **first** communicating clearly with me what it is that you are unhappy about.
> In this instance, all the questions that you have highlighted were already being looked after. And I told you so face-to-face. But for some reason, you appear to be **confused** about the whole thing.
> I even explained to you why some of the inputs could disappear from the QA doc.
> But your email below clearly shows that you did not process it: "oddly, QA removed some of the inputs from the latest draft".
> So I will repeat once more: many of the 'old inputs' are in fact not exposed to users. Meaning that we don't care about them and that all we need to know is what the 'default' setup is, and in which way this default setup can be modified by the model users. We have the MCO team already looking precisely into it.
> Best regards,
> Christian"

634. The text in bold had been put in bold by Mr Abanda Bella. His explanation for doing this was that "essentially [Mr Rienacker] was ignoring what I had told him, by that point, at least three times". In answer to a question from the Tribunal he accepted that including certain words in bold text when emailing his line manager could be seen as rude.

635. In his response, Mr Rienacker said "please, let's not get into arguments on this, but be pragmatic in view of the timeline". He forwarded the email chain to Mr Kim asking

him to let him know if his request was "not reasonable or rather second-order issues" **[857]**. Mr Kim's response on **13 March 2018** was that "your 3 points look reasonable to me". He added "I see that Christian's comms style (with you at least) hasn't change … I wonder whether Ron will experience the same. Similarly for Duncan and Bill when the opportunities arise. This looks like the best way to find out, give Christian exposure to more managers, and of course more managers exposure to Christian. same for nadir. it should be interesting to contrast and compare later in the year" **[857]**.

636. At a regular management meeting between the heads of various asset classes in **mid-March 2018**, it was proposed that Mr Abanda Bella should work in Mr Harrison's team. This would involve focusing on FX and credit derivatives work, although this was not an area where Mr Abanda Bella had previous particular experience. In order to facilitate this, it was agreed that Mr Maouche would move from Mr Harrison's team to take Mr Abanda Bella's place in Mr Rienacker's team. It had previously been proposed that Mr Maouche would work in the CRT asset class and upcoming XVA inception validations **[801]**. Notwithstanding that, this was a genuine swap. Mr Maouche did not have previous experience working on equities. The Bank's position, which the Tribunal accepts, is that those who have the skills to be a Vice President in model validation are sufficiently competent to work across different asset classes, subject to supervision from the Lead Validator. Mr Abanda Bella had previously told Mr Rienacker that he wanted to work in a different asset class in his objective setting meeting on **4 October 2017**. He had claimed to Mr Rood, in an email on **27 February 2018**, copied to Mr Rienacker, that he could effectively work in any asset class. He then listed the areas in which he had a current preference – "equities, FX, commodities as well as all equities-interest rate hybrids and equities-credit hybrids" **[820]**.

637. On **21 March 2018**, Mr Rienacker met Mr Abanda Bella and discussed the proposed swap with Mr Maouche. This suggestion was consistent with Mr Abanda Bella's job profile and because the IVU encouraged Validators to broaden their experience across asset classes. The Tribunal accepts he did so to see if Mr Harrison could find a way to work better with Mr Abanda Bella than Mr Rienacker had done (**GR witness statement paragraph 111**). During the meeting, Mr Abanda Bella asked Mr Rienacker if he was informing or asking him. When Mr Rienacker said he would have to check, Mr Abanda Bella talked about calling his lawyer to check on the legality of informing him to move to a different asset class. He did not explain why he considered it might be illegal. The Tribunal infers this was based on his understanding of the scope of his role as set out in his employment contract. Mr Rienacker asked Mr Abanda Bella to have a think about the proposed swap. Mr Abanda Bella claims that his reference to the legality of the proposed move was a protected disclosure **[CAB issue 1/1.7].**

638. It is alleged that Mr Rienacker was trying to force him to swap teams with Mr Maouche during the meeting and this constituted protected disclosure detriment **[CAB issue 1/3.5];** victimisation **[CAB issue 1/6.2];** and direct race discrimination **[CAB issue 1/11.4]**. Mr Abanda Bella seeks to compare the way he was treated with the way Mr Maouche was treated. He also seeks to compare himself to Mr Rienacker.

639. The following day, **22 March 2018**, Mr Abanda Bella emailed Mr Patrick Chen to tell him about the proposed swap with Mr Maouche. The email was not copied to Mr Rienacker, Mr Kim or to Mr Rood. There is no evidence that they ever knew of this email. He described the conversation the previous day with Mr Rienacker in the following terms **[869]**:

> "When I asked him to clarify whether it was 'inform' or 'ask' with the former probably being illegal, he backed down and mumbled something about having to talk with [Mr Kim]"

640. Mr Abanda Bella told Mr Patrick Chen the proposed swap was "blatantly disrespectful and against Barclays values and policies", adding "it would not make sense from a technical and workload perspective". He described himself as the "only true 'technical anchor' at the moment and there is currently more to do in Equities". This email is alleged to be a further protected disclosure **[CAB issue 1/1.8].** He also alleges that what he said in the meeting and what he wrote to Mr Patrick Chen amounted to a protected act **[CAB issue 1/4.4]**

641. In an email on **20 March 2018**, Mr Kim and Mr Rienacker asked Mr Abanda Bella to carry out additional tests as part of the Local Vol/MC validation. Mr Abanda Bella considered that further additional testing was unnecessary. He thought that the density test results that were already present were sufficient and were preferable.

642. On **22 March 2018**, in an email to Mr Kim and to Mr Rienacker, copied to Mr Moune Nkeng, Mr Abanda Bella commented **[884]**:

> "I was surprised to see some of the questions below, but my surprise turned to concern when [Mr Rienacker] appeared not to understand the gist of the ideas I am now presenting below yesterday given how fundamental they are when dealing with models like local volatility. Henry-Serge or I may do a technical presentation on the topic later. It would be very detrimental to the technical reputation of our team if anyone, senior or not, appeared not to be on top of such ideas. And as [Eduardo Canabarro] pointed out, reputations take a long time to rebuild"

643. This was Mr Abanda Bella questioning Mr Rienacker's understanding and competence in front of Mr Rienacker's line manager, Mr Kim. He went on to say that

looking at prices across a limited set of strikes was technically flawed when dealing with LV convergence and added that "looking at densities solves the issue" **[884]**.

644. Because the density testing had already been done, there was no gap in the analysis. Neither Mr Kim nor Mr Rienacker were asking for all density test results to be removed from the IVU report. The density test results were included in the validation report before it was finally approved. The Tribunal does not accept that Mr Abanda Bella made any protected disclosure about a gap in the LV model, contrary to what Mr Abanda Bella alleges [**CAB issue 1/1.9]**

645. Following email exchanges on this subject, Mr Abanda Bella and Mr Moune Nkeng met with Mr Rienacker and Mr Kim on **22 March 2018** to discuss Mr Abanda Bella's concerns about the additional testing that they were proposing. As Mr Abanda Bella confirms in his witness statement at paragraphs 128-136, Mr Abanda Bella took it upon himself to teach Mr Kim and Mr Rienacker about the merits of density testing. He challenged Mr Rienacker "to go to the white board available in the meeting room and explain the content of his email, adding this should be easy if he did in fact understand the concept". Mr Abanda Bella then used different coloured markers on the meeting room white board to explain his views.

646. Mr Abanda Bella alleges that later on the same day, **22 March 2018**, Mr Rienacker came over to his desk in the open plan office and spoke to him about the earlier meeting. Mr Moune Nkeng was also present. He alleges that during a discussion about the outcome of the earlier meeting, Mr Rienacker shouted at him. This is alleged to be detriment for making a protected disclosure **[CAB issue 1/3.7]** and victimisation for doing protected acts **[CAB issue 1/6.3]**. He does not identify what was shouted or for how long it lasted. This allegation is not corroborated by any other employee, despite the incident occurring in an open plan office. Mr Moune Nkeng makes no reference to this in his witness statement. The Tribunal does not accept that Mr Rienacker shouted at Mr Abanda Bella at all. Mr Abanda Bella did not complain about Mr Rienacker shouting at him at the time or at any point before issuing these proceedings.

647. There was a further exchange of emails between Mr Rienacker and Mr Abanda Bella during the period from **23 to 28 March 2018**. The two were continuing to disagree about the approach to be taken to the LC MC draft. Mr Abanda Bella provided comments alongside Mr Rienacker's earlier emails. Mr Abanda Bella's comments were unhelpful and uncooperative. For instance, in an email date **27 March 2018**, Mr Abanda Bella twice used the word "nope" to express his disagreement with what Mr Rienacker had written. He told him that Mr Rienacker would have to check with Mr Moune Nkeng on a particular issue (even though it was Mr Abanda Bella who was the Vice President assigned to carry out the validation); and told him that another

point would have to wait until the following day because he would be focusing on a different valuation that afternoon **[881]**.

648. Up until **27 March 2018**, Mr Abanda Bella continued to refuse to carry out the additional testing that Mr Rienacker and Mr Kim had been requesting. On **28 March** at 11:58AM, Mr Rienacker explained why adding a "vanilla convergence" test to the analysis was useful **[891]**. He ended his email by asking "So, please let me know if you/Henry-Serge are able to do the vanilla convergence vs. number of paths tests and investigate the 4bps pricing error issue". His email was also sent to Mr Moune Nkeng. Mr Moune Nkeng responded to Mr Rienacker fifteen minutes later: "I can do that quick, vanilla convergence vs number of paths. ETA 2hrs of work. Re 4bps error investigation: not sure if investigation is needed".

649. Despite this offer from Mr Moune Nkeng, Mr Abanda Bella continued to resist carrying out this test. At 1:19PM he emailed Mr Rienacker and Mr Kim refusing to do the testing, referring to the points he had made in his presentation. He then met again with Mr Kim. In that meeting it was finally agreed that the requested testing would be undertaken, although Mr Abanda Bella continued to resist calling it a convergence test.

650. Despite apparently agreeing to carry out the testing requested, Mr Abanda Bella did not complete all required tests. As a result, Mr Rienacker had to carry out the testing himself as the deadline for submission was approaching.

651. On **13 April 2018**, Mr Rienacker emailed to ask Mr Abanda Bella if he had thought about a rotation to Mr Harrison's team **[912]**. He asked him to speak to Mr Harrison and to let him know his response early next week. This is consistent with Mr Abanda Bella being 'asked' rather than 'instructed' to move teams. Mr Abanda Bella declined to do so in a response on **18 April 2018**, five days later. He replied: "I must decline. Given the recent departures from the team, I would rather not dilute the technical know-how of the team at such a critical time". He did not allege that the suggestion was an act of race discrimination or any other infringement of employment law; or that he was insufficiently qualified to move to Mr Harrison's team. In his oral evidence, he accepted that his relationship with Mr Rienacker was tricky at this time. In none of these email exchanges did Mr Rienacker write denigrating comments about the concerns Mr Abanda Bella had raised, as he alleges was protected disclosure detriment **[CAB issue 1/3.7]** and victimisation **[CAB issue 1/6.3]**.

652. On **26 April 2018**, Mr Abanda Bella had a 1-2-1 meeting with Mr Rienacker. This was a discussion about recent events, including work on the LV MC validation. Whilst no notes were taken of this meeting, there was a subsequent exchange of emails recording what had been discussed. This included an email from Mr Abanda Bella on **10 May 2018 [931]**, as well as an email record prepared by Mr Rienacker on **15 May 2018 [930]**.

653. At the meeting, Mr Rienacker indicated that he wanted the team to work more closely and said he would be more involved himself. He asked for more transparency and asked Mr Abanda Bella not to be difficult. Although he did express some criticisms, he was restrained in his comments because, as he noted in his email note to self on **15 May 2018**, it was difficult to discuss with Mr Abanda Bella because he vehemently fought back even on lost issues **[930]**. The Tribunal does not accept (insofar as it is alleged) that Mr Rienacker shouted at Mr Abanda Bella in this meeting, or that he produced baseless, untimely and unfounded feedback about Mr Abanda Bella's work on the LV MC validation **[CAB issue 1/3.7]**. The criticisms expressed were justified by Mr Abanda Bella's uncooperative and non-collegiate approach to the LV MC validation.

654. On **30 April 2018**, in an email to Ms Farkovits recording current HR topics, Mr Kim noted that Mr Abanda Bella "felt he was superior to his managers Gotz [Rienacker] and Ron [Rood] and wants to be promoted" **[916]**. In a further email the next day, he added the further comment:

> "His cooperation and attitude is an ongoing concern in that his managers find it difficult to work with him and therefore productivity is lower than it could be. In his naïve view of the world, it's for his managers to find a way to work with him rather than the other way around"

655. This comment reflected his genuine view of Mr Abanda Bella. It was a justified view given the way that Mr Abanda Bella had been behaving in his dealings with his line managers.

656. Mr Abanda Bella's email of **10 May 2018** is alleged to be a protected disclosure, namely a disclosure of information that Mr Abanda Bella's reasonable belief tended to show the Bank was failing to comply with legal obligations in his contract of employment **[CAB issue 1/1.9.1]**. Specifically, he alleges he reiterated that an attempt to make him swap teams with Mr Maouche to work under Duncan Harrison was illegal. The relevant wording is as follows:

> "May I suggest that you use this opportunity to provide more live feedback? In addition, it would be beneficial for the entire team to collaboratively make suggestions on work allocation instead of decisions being decided behind closed doors with no clear communication or rationale for how they are arrived at and, in the case of the abortive rotation into Duncan's team, potentially illegal outcomes."

657. Despite Mr Abanda Bella's target of completing the validation during the period from 8-15 April, work on the CDS spread simulation project was still continuing in **June 2018**. It is unclear whether Mr Abanda Bella had provided the list of key concerns

and the plan of work that Mr Rood had been requesting. The Tribunal has not been taken to any emails including or attaching such lists or plans.

658. On **8 June 2018**, there was a further meeting about the CDS spread simulation project. It is clear that there had been substantial slippage on the validation. The cause of that slippage is unclear. The meeting was to discuss progress and how the validation could be completed in the most timely manner. It was attended by Mr Sareen, who was the model owner, as well as Mr Rood, Mr Abanda Bella and Mr Samnick. There is likely to have been some debate at this meeting as to who was responsible for the slippage and how best to get the project to completion. However, the Tribunal does not accept that Mr Sareen subjected Mr Samnick and Mr Abanda Bella to "increasingly hostile, offensive and belittling comments and personal attacks" (**CAB witness statement paragraph 182**) whilst Mr Rood said nothing and refused to defend them. No specific details of what was said at this meeting are recorded in Mr Abanda Bella's witness statement. Mr Abanda Bella's version of events is not supported to any extent by the subsequent meeting minutes **[3/6-7]**, or by any contemporaneous documents. The Tribunal rejects Mr Abanda Bella allegation that Mr Rood failed to put an end to Mr Sareen's abusive behaviour and that this was an act of direct race discrimination **[CAB issue 1/11.5]** or harassment related to race **[CAB issue 1/14.1].**

659. On **26 June 2018**, Mr Rood chased Mr Abanda Bella and Mr Samnick for the final draft validation reports **[941]**. He said he needed the final draft report tomorrow. In his response the same day, Mr Samnick promised he would provide the draft tomorrow. He noted that there were five outstanding points not yet addressed by Mr Sareen. In fact, the validation was not provided by Mr Samnick until 7.32pm on **28 June 2018 [937]**. Because the validation deadline, 30 June 2018, was a Saturday, this left one working day for the validation to be checked by Mr Rood as Lead Validator and signed off by Mr Kim. Mr Rood sent it on to Mr Kim immediately. Half an hour later Mr Kim provided Mr Rood with his initial comments. He said he would wait for Mr Rood to do his first pass. Mr Kim said that "lots of wording and format cleanup required" and "Lots of inconsistencies with existing sim write-ups (format and content)". His initial impression was "it doesn't come across as >3 mths of work …" **[936]**. In his response, Mr Rood said "parts of the model description sections seem to be to an extent copied from the 2014 validation. No issues with that fundamentally, but it confirms my overall impression that the intellectual contributions to this review are somewhat limited" **[4259]**. The Tribunal rejects Mr Abanda Bella's argument that that the language "confirms my overall impression" shows that Mr Rood had a pre-existing racial stereotype of Mr Abanda Bella and Mr Samnick as stupid Black men; or that Mr Kim's reference to "doesn't come across as >3 months of work" reveals a pre-existing racial stereotype of lazy and/or stupid Black men. The language does no more than record dissatisfaction with the quality of this particular validation report.

660. Given that the draft validation had been submitted at the last minute, there was no time for different iterations to be going backwards and forwards between Mr Rood on the one hand and Mr Abanda Bella/Mr Samnick on the other. Mr Kim instructed Mr Rood to "deal with first order issues today pls", rather than focusing on inconsistencies **[4259]**. These would be dealt with over the next couple of weeks. Mr Rood uploaded the finalised report on **29 June 2018** just before 5pm **[4258]**.

661. On **2 July 2018**, Mr Abanda Bella provided his comments on the version of the report that had been uploaded **[944]**. He alleges this was a protected disclosure **[CAB issue 1/1.10]**. His email is worded as follows:

> "Hi Ron/Jeong,
>
> For your information, the version that you uploaded in GMD (attached pdf) is shockingly poor; it
>
> - is littered with blatant inaccuracies (including in the executive summary), typos, references errors (incl. in the TOC) and randomly filled sections (i.e. Challenge Log)
> - bears very little resemblance to the draft Louis and I provided (attached word document) and in several places goes against the results of our investigation
> - is not aligned with our GMD challenge log entries
>
> If the objective is simply to get a report in GMD now as a filler until a proper report is added in 1 or 2 weeks, then it is hard to see how our draft could not have done a better job of it, simply with some additions in the executive summary. More worryingly, the content of many of your edits (including in the executive summary) do not appear to be related to the model we reviewed or to the challenges we raised and logged in GMD throughout the validation.
>
> Finally, given that GMD keeps an audit trail of all the documents that go in, it is hard to understand the reasoning behind directly uploading a document of such questionable quality in GMD, especially given that we still had plenty of time today.
>
> Overall, our perception is that a decent body of validation work appears to have been sorely butchered.
>
> Best regards,
>
> Christian"

662. On **2 July 2018**, Mr Kim emailed Mr Rood to comment on Mr Abanda Bella's email. He said "pls tell him it would be helpful if he could be specific about what's upsetting him emotionally (I don't imagine there are any real showstoppers)". He noted that Mr Abanda Bella's email did not contain any specific examples of his criticisms. He advised him to speak to Validators about the changes that he (Mr Rood) had had to make in the report to "get them on the same page" **[943]**. He noted that in an ideal

world, the Validator should make all the changes to the write up "but this relies on leaving enough time and/or providing good status updates along the way …". In his response, Mr Rood commented as follows:

> "I don't think it will lead to anything if I am going to ask Christian what's upsetting him emotionally. My role is not to be Christian's analyst - but maybe I misunderstand?
>
> I had told Christian and Louis explicitly in writing that I was going make changes to their report directly to prepare the final draft given the limited time available.
>
> My own judgement was that we would not be able to deliver a next and final iteration before Friday COB if I would have given Christian and Louis feedback via the usual route - providing suggestions using tracked changes, having a subsequent discussion to clarify and waiting for the next iteration."

663. Mr Kim clarified his reference to "emotional" in his previous email, which Mr Rood had misunderstood. He said:

> "I mean that his choice of words is both emotional and non-specific (and so not very helpful, possibly saying more about himself/his state of mind than about the report!)
>
> Emotional words: "shockingly" "blatant" "filler" "such questionable quality" "butchered"
>
> Non-specific words: "is littered with" "randomly filled sections" "little resemblance" "several places"
>
> Therefore would be good to find out specifically what issues he thinks he sees (and that seem to be upsetting him).
>
> But it's not so urgent relative to all else to deal with at the moment."

664. These emails between Mr Kim and Mr Rood were not denigrating or belittling, as Mr Abanda Bella complains and alleges were protected disclosure detriments **[CAB issue 2/4.1]** and victimisation **[CAB issue 2/7.2]**. Nor are they indicative of racially stereotyping Mr Abanda Bella in the various ways he contends. This was a reasonable email discussion between two managers about whether and how to respond to Mr Abanda Bella given his emotive and non-specific criticisms. Mr Abanda Bella was not a party to these email exchanges. It was not reasonable for them to assume they might come to his attention.

665. There was no response to Mr Abanda Bella's email from either Mr Kim or Mr Rood. Mr Abanda Bella's alleges that the failure to respond was retaliation for making a protected disclosure **[CAB issue 1/3.8]**; or for making a protected act **[CAB issue**

1/6.4]; or it was race discrimination **[CAB issue 1/11.6]**. The Tribunal finds they had decided not to provide an immediate response given the inflammatory and unprofessional language used by Mr Abanda Bella, and the lack of specific examples of his particular concerns; as well as the pressure of other work. Mr Abanda Bella did not chase for a response.

666. The version of the report that had been uploaded was the subject of an internal quality assurance exercise undertaken a couple of weeks later **[1021]**. The feedback on this validation was largely editorial **[1020]**. The issues were in line with the types of issues identified on other reports being finalised at this point. On **13 July 2018 [1017]**, Mr Rood asked Mr Samnick to take a look at the CDS spread model in the light of the feedback that had been provided. He said **[1018]**:

> "For the CDS model, some of the observations from Maryam / Aneesh are probably the result of my own hacking of the report, which was unavoidably somewhat rushed. Happy to rectify these - let me know. I have enclosed the MS word version of the version underlying the doc that is currently in GMD."

667. Mr Samnick forwarded this email to Mr Abanda Bella, keeping Mr Rood as a recipient of his forwarding email. He commented: "For same page info on the CDS spread simulation model".

668. Before this particular project, Mr Rood and Mr Abanda Bella had not worked together on a particular validation. Mr Rood had not been sent, nor did he know about any of the alleged protected disclosures or alleged protected acts made to Mr Rienacker or to others about work issues in which he was not involved.

669. In **August 2018**, various Culture Focus Group meetings had been convened to provide a forum for employees to raise concerns about the prevailing culture in which they were working. Mr Abanda Bella was due to attend one such Culture Focus Group meeting. As we have already found, he had assisted Mr Moune Nkeng with what to say in his Culture Focus Group meeting, which was for those at Assistant Vice President level.

670. Mr Abanda Bella's case is that he handed a piece of paper containing his concerns to Mrs Richardson at his own Culture Focus Group meeting for Vice Presidents. Mrs Richardson has no recollection of receiving such a piece of paper. Mr Abanda Bella has not retained a copy of the original wording apparently contained on this piece of paper. He has produced a document which was created at a later point. This is the document at **[2525]**, albeit that this version was written towards the end of 2019, at around the time that Mr Abanda Bella was preparing his written grievance. Mr Abanda Bella accepted in cross-examination he did not follow up with Mrs Richardson or with Mr Vitcu, who had chaired the meeting, on what action was being taken in response to his comments. The Tribunal does not accept that Mr Abanda

Bella handed any piece of paper to Mrs Richardson during his Culture Focus Group meeting. Had he done so, this would have been the subject of further discussion and email correspondence. The entire focus of these meetings was to enable colleagues to speak their minds, so that action could be taken if there were particular problems. The absence of any contemporaneous record noting Mr Abanda Bella's concerns indicates that he did not reduce his points to writing at that stage.

671. Given the absence of any contemporaneous documents referring to what Mr Abanda Bella said during his Culture Focus Group meeting, the Tribunal is unable to make any factual findings on this point. In particular we are unable to find that Mr Abanda Bella said what is printed on the document at **[2525]**.

672. On **28 August 2018** at 1:40pm, Mr Abanda Bella sent an email to Mr Rienacker with his comments on a current project. He inserted his comments into an earlier email in which Mr Rienacker had set out his views. He said:

> "We should also be mindful that historically, you Gotz have been a bottleneck for the timely delivery of payout validation for various reasons, and we should seek to minimise the impact from that going forwards.
>
> As a result, given the 1 week delay in receiving your feedback, I suggest that for the purposes of this payout validation, we focus on 1st order issues and issues that can be fixed quickly and sort out the rest for subsequent validations.
>
> Let's discuss at our meeting this afternoon" **[1157]**

673. By way of response to this comment, Mr Rienacker replied "I think each of us (Validator, peer reviewer, senior reviewer) has contributed to the total time for each payout review". He also said that sometimes work on payout validations had to give way to other higher priority work. He said: "So no need for finger-pointing and harsh language (which is usually counterproductive and therefore consciously avoided in our team)".

674. Mr Abanda Bella was unwilling to take this direction from his line manager without continuing to debate the point. He said: "I don't think it is fair and in line with an open-discussion culture (where people are not afraid to speak up) that a constructive, helpful and factual statement about how we can improve our response time on script validations, by anticipating the effect of fluctuations on your workload, should be labelled "harsh" or "finger pointing" **[1155]**. This exchange exemplifies Mr Abanda Bella's tendency to argue with his line manager, even where he was clearly in the wrong. His email of 28 August 2018 and subsequent response was not constructive; and his choice of language was unnecessarily confrontational.

675. On **23 August 2018**, Mr Rienacker had asked for feedback from Mr Abanda Bella on Mr Moune Nkeng's performance. Mr Abanda Bella provided that feedback a week later, on **30 August 2018 [1131]**. His email contained several superlatives to describe Mr Moune Nkeng's performance – "outstanding" (twice); "top-class"; exceptional (twice and in bold). This is the email referred to in our factual findings for Mr Moune Nkeng, noting that he "has effectively ironed out a lack of polish that could sometimes appear in his documentation writing style in the past". He said that he thought that Mr Moune Nkeng was "overdue VP-level projects such as validations with him as the main Validator". He added he thought Mr Moune Nkeng "should be included in all relevant bank-wide programs for promising talent". This email is alleged to be a protected act **[CAB issue 1/4.6].** There was nothing in this email that said that Mr Moune Nkeng was being overlooked for opportunities to assist with his promotion because of his race; or any general criticisms that the promotional process was tainted by racial bias. The wording of this email, coupled with Mr Moune Nkeng's race, did not necessarily imply that the reason why he was overdue these projects was because of his race.

676. Mr Abanda Bella's comments about Mr Moune Nkeng were not stated to be a grievance. As the title of the email indicated, it was "Feedback Henry-Serge". There was nothing in the wording of the email that should have been regarded by Mr Rienacker as Mr Abanda Bella raising a grievance, to be dealt with outside the normal supervision between line manager and direct report. Grievances typically raise complaints about the person making the alleged grievance i.e. Mr Abanda Bella, not about a third party, Mr Moune Nkeng. There was therefore no failure to treat this as a grievance – which is alleged to be protected disclosure detriment **[CAB issue 1/3.10]** and victimisation **[CAB issue 1/6.6]**.

677. On **3 September 2018**, Mr Abanda Bella emailed Mr Kim, copying Mr Moune Nkeng and Mr Rienacker, with the subject line "Inception pricing controls gap" **[1071]**. Mr Abanda Bella started his email "At the moment, we have no control over model pricing at inception". He said he had raised this issue at a meeting with Mr Rienacker, saying that the governance team should be aware of this and ensure that they all understood this "to avoid a potential backlash further down the road". This is said to be a protected disclosure, namely that he reasonably believed he was disclosing information tending to show a breach of SR 11-7; ss 172 & 174 Companies Act 2006; Article 369 **[CAB issue 1/1.12].**

678. In his response, the same day, Mr Kim asked what is "model pricing at inception pls…?". He asked Mr Abanda Bella to clarify the risk he wanted to make the governance team aware of. He said that if the risk was that prices were not appropriate, this was a business decision. There was a further email exchange. Mr Abanda Bella attempted to clarify and Mr Kim attempted to reassure him that this was a known risk. He suggested that Mr Abanda Bella reach out to Mr Marko

Bastianic's team for details on the controls around this risk. He concluded his email saying "If you still feel there's a control gap then pls put together a concrete example that illustrates this gap so that relevant control teams can see where the gap is and what to do about it". Mr Abanda Bella did not subsequently provide a concrete example.

679. Mr Abanda Bella sent a further email to Ms Feuer and to Ms Farkovits on **10 September 2018**. He copied the email to Mr Patrick Chen. The subject line again was "Inception pricing potential gap". This is not relied on as a protected disclosure. Ms Farkovits' response was to clarify that the primary use of models was for risk management. She said that if a trader mis-prices, they are responsible directly. This was the same point that Mr Kim had been making.

680. On **4 September 2018 [9709]**, Mr Kim emailed his Directors with the performance rankings of those in his team. Of those at Vice President level, Mr Abanda Bella was at position 11 out of 12, just ahead of Mr Samnick. He was in fourth and last place out of those line managed by Mr Rienacker. No comments were made against Mr Abanda Bella's name. The email said "Where there's no comment, it means performance relative to last year remained similar".

681. Mr Abanda Bella's mid-year review meeting took place at 11am on **4 September 2018**. In advance of the meeting, Mr Rienacker emailed himself the notes he had prepared to use during the meeting with Mr Abanda Bella, which contained several examples to back up his points **[1068]**. He summarised the points he wanted to make under the headings "What went well?" and "Areas of improvement".

682. Under "What went well?" Mr Rienacker recorded Mr Abanda Bella's supervision and guidance of Mr Moune Nkeng, who he described as being on a steep learning curve; he noted Mr Abanda Bella's contribution to the GMD workflow team; the overall good quality of his validation reports; as well as describing him as "intelligent, experienced/senior" and "often has good judgment".

683. In terms of "Areas for Improvement", he recorded in his email to himself a long list of bullet points, which included:

- "Discuss or raise issues in an unhelpful/unproductive way, e.g. vague/over-generalized or confrontational/emotional rather than specific and polite/professional
- Both comes across as defensive or immature, and absolutely not necessary given level of experience
- Arguing for the sake of arguing"

684. The bullet points referred in places to particular projects, including LV/MC; credit simulation; equity swap, FPF payouts and others. These bullet points reflected what

Mr Rienacker told Mr Abanda Bella in the mid-year review meeting, and the extent to which he illustrated his points by reference to particular examples. He was not confrontational and unhelpful. Mr Abanda Bella alleges that Mr Rienacker's feedback during this meeting was a protected disclosure detriment **[CAB issue 1/3.11]** and an act of direct race discrimination **[CAB issue 1/11.7].**

685. In the face of this constructive criticism about his performance including his style of communication, Mr Abanda Bella walked out of the meeting halfway through before Mr Rienacker had concluded providing Mr Abanda Bella with his feedback.

686. As a result, in an email on **12 September 2018**, Mr Rienacker suggested that their discussion should be continued at another time, whilst summarising the feedback he had already provided. He said that the purpose of the feedback was to enable him to "fully act at a senior level" **[1092]**.

687. Around **18 September 2018**, a meeting was due to take place between certain asset class heads (Mr Rienacker and Mr Bill Chen) and Ms Feuer to discuss the overarching model validation template. No Vice Presidents were invited. Mr Abanda Bella asked to be involved because he was working on an updated payoff template for equities validations. Mr Rienacker responded at 11:38am that the payoff template would essentially be a specialisation of the general pricing IVU template, and that the discussion with Ms Feuer was on a different matter, namely the overarching validation template. He said that Mr Abanda Bella and other team members would be briefed about the general direction and the results of the meeting. In the meantime, "any suggestions from your side are welcome and we can bring them into the discussion. Let's have a chat sometime to discuss concrete proposals" **[1148]**.

688. Mr Rienacker forwarded to Mr Kim, Mr Chen and Mr Rood the email chain culminating in his 11:38am email to Mr Abanda Bella. He started his email FYI before describing the general format of Mr Abanda Bella's communication as follows **[1146]**:

> "1) A proposal/claim, not always well founded, and in most cases made to gain personal influence/advantage
>
> 2) Linking the claim to general principles, e.g. teamwork, collaboration
>
> 3) A hidden (or even non-hidden) threat of what will happen if we do not follow his proposal (other examples: "I speak to Avishek every other day, and it would look bad if ...", "you will feel the heat when ...")
>
> Eg in the particular case, he is not concerned whether other VP-level members are kept in the loop about the template or would want to contribute"

689. In his response to what Mr Rienacker had written to him at 11:38am, Mr Abanda Bella wrote:

> "It would reflect poorly on the team upon chatting with Rachel or anyone from the governance team as we are being encouraged to do, they realized that I hadn't been actively kept in the loop on all matters regarding the overarching template despite the fact that I am currently and actively developing an Equities template for payoffs."

690. Mr Abanda Bella did not make any specific suggestions in advance of the meeting. The failure to invite him to the meeting with Ms Feuer is alleged to be protected disclosure detriment **[CAB issue 1/3.12]**, victimisation **[CAB issue 1/6.7];** and direct race discrimination **[CAB issue 1/11.8]**. The Tribunal finds he was not invited to the meeting because this was not a meeting to which Vice Presidents were invited. The subject matter did not require his attendance. No other Vice Presidents attended this meeting.

691. On **18 September 2018**, Mr Rienacker told Mr Abanda Bella he had asked the Model Control Office (MCO) for a timeline for updated documentation in relation to Equity Swap **[1168]**. This prompted the following reaction from Mr Abanda Bella, having changed the subject line to "communication warning and ccar 2019/annual review" **[1167]**:

> "Hi Gotz,
>
> I have mentioned this before, but given the recent emphasis put by Eduardo on speaking as a single voice, it is probably worth recollecting that it may be better if you could you communicate with me prior to chasing the MCO or other stakeholders on those 2 projects.
>
> I understand that the project team is chasing us but we must also carefully balance that pressure against the risks of being seen as a team with poor internal communication (see also my email about the lead Validators meetings)."

692. This email was copied to Mr Moune Nkeng. In his reply, at 8:49PM on **18 September 2018**, Mr Rienacker explained he had chosen to communicate with the MCO as he thought that the project team needed a quick answer. He stated as a Lead Validator, he was having regular catch-ups with the individuals in the MCO on "all the pricing models in our space".

693. Mr Abanda Bella complains about an email exchange between Mr Kim and Mr Rienacker that took place on **18 September 2018**. He alleges that this exchange included denigrating and belittling comments about him, and that this was done because of his previous protected disclosures **[CAB issue 2/4.2]**, or because of previous protected acts **[CAB issue 2/7]**. By way of context, on 18 September 2018, the very same day as the email exchanges explaining why Mr Abanda Bella would not be attending the asset heads meeting with Ms Feuer to discuss templates, Mr

Abanda Bella had unilaterally communicated with Ms Feuer about an equities FPF payout validation template before consulting Mr Rienacker.

694. At 9.53pm, Mr Rienacker emailed Mr Kim saying **[3/15]**:

> "Some random noise again from Christian: he complains he is not in the loop about our template discussion with Rachel and the EC lead Validators weekly, but it is already on my plan to give updates in the next team mtg. But I found out he has unilaterally communicated with Rachel about an equities FPF payout validation template, to get her guidance before even consulting the lead Validator and line manager. I am a bit speechless."

695. In his response, sent less than 10 minutes later, Mr Kim wrote:

> "We cant control who he talks to. We are at the mercy of those people to be sensible and loop in the manager / realize he is wasting time… based on his style I am confident that this will be the result in most cases.
>
> He is fighting the reality that ultimately he needs his manager's support in order to progress; as we discussed, I'm not sure he is aware/mature enough to even know this.
>
> You have to keep track of examples where he keeps you out of the loop and the associated inefficiency and then feed this back to him at appraisal/catchup time. Either he accepts it or he doesn't, but at least you will have made him aware, again."

696. This email exchange was not copied to Mr Abanda Bella at the time. It was a private email discussion in relation to one of Mr Rienacker's direct reports. He only learned of the contents when these documents were disclosed as part of a data subject access request. The choice of language in this exchange reflected exasperation at Mr Abanda Bella's entrenched stance towards Mr Rienacker as his line manager, and his apparent inability to see that this attitude was counterproductive in his attempts to progress his career. Seen in context of the prior emails, the Tribunal does not accept that these comments were denigrating or belittling.

697. The following day, Mr Rienacker emailed asking Mr Abanda Bella to explain why he had used the title "communication warning" **[1232]**. As with Mr Abanda Bella's email, the email was sent or copied to Mr Moune Nkeng and to Ms Li.

698. This was Mr Abanda Bella's response:

> "Those 2 words concisely encapsulates the flavor of Eduardo's message: Eduardo kindly warned us to speak as a single voice when communicating with the rest of the Bank, for obvious reasons."

699. In further email exchanges on **19 September 2018**, Mr Rienacker thanked him for his explanation but asked him to perhaps use a more appropriate wording next time. Mr Abanda Bella responded by saying "for this feedback to be constructive and in-line with our Barclays guidelines on how to give feedback, could you please provide us with an example of what would have qualified as a 'more appropriate wording'" and asked him to explain "which aspect of my choice of words you did not find appropriate". Mr Rienacker's reply was "something without warning, maybe". He added "I think you are making a big problem about a small issue (you want to be asked first before I as the lead validator ask the MCO team about general status update for the documentation of models I cover)" **[1230]**. Mr Abanda Bella chose to continue the email exchange with the following comment:

> "I do not recall making a problem out of anything: instead I made a helpful suggestion to ensure that we are on the same page before reaching out to other stakeholders, in line with Eduardo guidance. Rather it seems that it is you who have a problem with my choice of words, for as-yet unjustified reasons, and it seems that you do not wish to follow my suggestion, which is your right entirely, because you seem to think that my suggestion seeks to resolve what you perceive to be a small issue, despite EC's message."

700. All of these emails had been copied to Mr Moune Nkeng and to Ms Li, as had Mr Abanda Bella's original email. Mr Rienacker chose not to continue the discussion. He did not respond further.

701. One month later, on **19 October 2018**, Mr Abanda Bella sent Mr Rienacker a further email, merely repeating the comments he had made in the last email in the chain. He did not add any further content or explain why, a month later, he was choosing to reactivate the email exchange. Mr Rienacker responded by taking Mr Abanda Bella's colleagues off copy. He said he did not understand the problem or the urgency of Mr Abanda Bella's language. He said Mr Abanda Bella's position appeared to be that he could approach stakeholders without consulting him, but that Mr Rienacker could not approach stakeholders without Mr Abanda Bella's consent **[1229]**.

702. Again, Mr Abanda Bella felt the need to push back against Mr Rienacker's comments, by inserting further comments into the email chain. These comments were in the form of questions asking Mr Rienacker to be more specific about the points made in his email.

703. On **1 November 2018**, Mr Harrison wrote an email to various individuals, including Mr Abanda Bella titled "Equity Swaps; pending questions". He asked a question querying "why are you guys talking about the dynamics of the bond price in the xyz-fwd measure?" **[1254]**. The question concerned the methodology to be used in connection with the Equity Swap model and validation. On **28 November 2018** at 6:48PM, just before a period of annual leave, Mr Abanda Bella responded. He sent a highly technical response **[1253]**. This included the passage "… which then

introduces fatal flaws/inconsistency in subsequent equations. Unfortunately this also invalidates the current convexity adjustment expression. I can't even treat this as an approximation given how fundamental the violation is".

704. Mr Abanda Bella alleges that his email of 28 November 2018 is a protected disclosure **[CAB issue 1/1.13].** His case is that he reasonably believed the information tended to show a breach of legal obligations under Article 369. The email made no reference to Article 369 or to any other legal obligation. It was a 'business as usual' email in his role as Validator, responding to Mr Harrison's question. It did not indicate that Mr Abanda Bella considered he was disclosing information that he believed was a breach of any legal obligation.

705. The email exchanges on this topic continued into **December 2018 [9608]**; and there were further emails on the same subject in **February 2019 [9613]**. At that point, Mr Bill Chen's position was that this issue had been settled "quite some time ago" as a result of a discussion between another Validator (Arbias Hashiani) and the Model Control Office **[9612]**.

706. On **14 December 2018**, Mr Abanda Bella emailed Mr Kim and Mr Patrick Chen asking to have Lead Validator credentials on various validations. He copied his email to Mr Rienacker and Mr Canabarro. By way of justification, he said that Mr Rienacker (who at that point was the Lead Validator for these validations) was very busy with a slew of important Tier 1 projects. This meant that a senior review of less high priority projects was being seriously delayed. There is no evidence supporting Mr Abanda Bella's contention that Mr Rienacker lacked the capacity to be the Lead Validator on these projects. Mr Kim replied, five minutes later. He said that the effect of Mr Abanda Bella's request, if granted, would be to remove a layer of review. It did not make any sense to by-pass senior review controls just because they are low priority models **[1262]**. A further 25 minutes later, Mr Kim asked for specifics on the points Mr Abanda Bella was making in his email. He asked how resources were not fully focused on the more important projects; and what was "damaging" about the current timescale for completion of Tier 2 work. There was no response from Mr Abanda Bella to these questions. Instead, he forwarded the email chain to Mr Moune Nkeng and Mr Samnick with the content "fyi".

707. Despite this rejection of his Lead Validator request, a month later, on **18 January 2019**, Mr Abanda Bella wrote to Mr Patrick Chen setting out his concern about priorities. He did not copy Mr Rienacker or Mr Kim into this email. He asked to be given Lead Validator status on his projects given the impending deadlines and because Mr Rienacker "has too much on his plate" **[1280]**. Mr Patrick Chen thanked him for his email. He said he would be asking Mr Rienacker, Mr Bill Chen, Mr Rood and "Sara" if they had sufficient resources to meet the very tight deadline for 2019

CCAR. Mr Abanda Bella's attempt to bypass Mr Rienacker was therefore unsuccessful.

708. On **4 January 2019**, Mr Rienacker asked Mr Abanda Bella to discuss various matters in a diarised catch-up meeting. He said: "note that my schedule is extremely tight, so it would be helpful if you could prepare specific answers to the questions below (eg specific payout variants where convexity arises)". In his response, Mr Abanda Bella chose to use the same phraseology: "Please note that my schedule is extremely tight, with a very heavy workload. I believe I have already answered the question above. Those payout variants are explicitly written down in the e2e document. Please let me know if you are unable to understand the e2e document". In a further comment on Mr Rienacker's email, he wrote "See email attached, which was already included in previous exchange. Please take time to read it and thus avoid unnecessary re-inclusion as we are very busy currently" **[2491]**. It was put to him in cross-examination that he was mimicking Mr Rienacker in his responses. By way of explanation, he said he was "becoming completely mentally impaired, experiencing psychosis". He accepted that his response was not a rational response; that the tone was not right and it was unprofessional. He said that this was engineered by Mr Rienacker.

709. This explanation was not an explanation he had given in his witness statement. The explanation was given, he admitted, with hindsight in that neither he nor Mr Rienacker was aware he was suffering from any mental illness at the time. His provocative responses were typical of the way he had been responding to Mr Rienacker's line management for some time. The Tribunal wholly rejects the contention that Mr Abanda Bella's responses were "engineered" by Mr Rienacker.

710. In **January 2019**, Mr Rienacker prepared his feedback on Mr Abanda Bella's performance during 2018. He sent draft wording to be included on the feedback form on **28 January 2019 [1282].** The feedback noted aspects of his role that had gone well – including he could be good at summarising information and writing concise validation documents; he had worked well with Mr Moune NKeng; and "in his validation reviews, he provides strong review and challenge, albeit sometimes out of context with materiality".

711. He noted several areas for improvement and provided examples to support the points he was making. It appears that his proposed wording was amended before making it into the version which was included on Mr Abanda Bella's 2018 performance review form. This removed some of the examples in the original version.

712. In relation to that performance review form, under the heading "Areas for Improvement", Mr Rienacker wrote:

> "There have been several issues in Christian's behaviour to colleagues and team members over the year, which are related to each other and have made

the work unnecessarily difficult/less effective and also prevented him from reaching his full potential both individually and within a team context:

1. Lack of co-operation and insubordination
2. Lack of transparency and not sharing appropriate amount of information timely
3. Raising concerns in an unproductive, emotional, and confrontational style
4. Leaving colleagues feeling manipulated and misrepresented" **[3177]**

713. He awarded Mr Abanda Bella a 'Strong' for the 'What' and an 'Improvement Needed' for the 'How'.

714. Mr Rienacker's 1-2-1 meeting with Mr Abanda Bella took place on **31 January 2019**. It did not take place on 15 February 2019 as stated in the List of Issues. Mr Abanda Bella arrived a few minutes late. Towards the start of the meeting, there was a discussion about Mr Abanda Bella's ambition to be promoted to the position of Director. However, Mr Abanda Bella refused to continue the meeting after about 5 minutes. As a result, Mr Rienacker did not have the chance to discuss the What/How/Additional Comments in detail. In his oral evidence, Mr Abanda Bella explained that he decided to remove himself from the situation because he felt abused during the meeting. However, Mr Abanda Bella's witness statement does not make any mention of Mr Rienacker verbally abusing him, despite this being alleged in Mr Abanda Bella's Claim Form at paragraph 65 of the Particulars of Claim. His witness statement suggests, contrary to his oral evidence, that Mr Rienacker had a pre-made script from which he was not going to deviate. He does not suggest that "verbal abuse" was part of the script.

715. Following this short appraisal meeting, Mr Kim advised Mr Rienacker to notify Employee Relations about how Mr Abanda Bella had behaved in this appraisal meeting.

716. Mr Abanda Bella alleges that he was verbally abused by Mr Rienacker during the appraisal meeting and that Mr Rienacker made unfounded and negative comments in his annual appraisal form, which is said to be protected disclosure detriment **[CAB issue 1/3.13]**. He repeats this contention as victimisation **[CAB issue 1/6.8]** and makes similar allegations of direct race discrimination, including complaining about the negative rating for the 'How' **[CAB issues 1/11.9.1-3]**.

717. The Tribunal finds that Mr Rienacker did not verbally abuse Mr Abanda Bella during the 2018 annual appraisal meeting. Verbal abuse was not Mr Rienacker's management style. Furthermore, Mr Rienacker had carefully prepared for the meeting and had examples to substantiate his criticisms, even if those examples were not set out on the final appraisal form itself. The criticisms recorded on the appraisal form reflected his genuine view of Mr Abanda Bella's conduct (the 'How'), even though he regarded his performance (the 'What') as Strong. Mr Rienacker's

conclusion that his behaviour needed improvement was an entirely reasonable view for him to take.

718. After the appraisal meeting, Mr Abanda Bella chose to add a comment on the end of the online appraisal form **[3178]**. This is what he wrote:

> "Gotz Rienacker blatantly lied when he stated that "[…] he has made no effort to seek or take advice from existing colleagues […]" despite being challenged about it directly by me and even though I explicitly sought such guidance in several Black Professional Network events.
>
> Similarly, he lied in a team meeting when he indicated that none of his direct reports could seek feedback outside IVU. Coupled with his attempt to force me to change team without my consent earlier this year, it is clear that he is using inadequate and inaccurate feedback to try to bully me into not speaking up about his lack of respect and integrity, in clear violations of our Barclays values.
>
> All my numerous feedbacks from my other colleagues this year attest to the high standard of both the 'What' and 'How' aspects of my contributions to the Bank this year."

719. These comments made no reference to whistleblowing or to race discrimination. They did not allege that Mr Rienacker was verbally abusive during the meeting.

720. In notes prepared by Mr Abanda Bella during **August 2019** (i.e. six months later), he stated: "I believe that my poor rating on the 'How' and the bullying and harassment to be retaliatory for speaking up about issues starting from my 2017/2018 year-end assessment" **[2470]**. He did not say that it was retaliatory for doing protected acts, nor did he claim it was an act of direct race discrimination.

721. Mr Abanda Bella complains that Mr Kim and Mr Rienacker failed to treat the commentary he inserted after the appraisal meeting on **[3178]** (as quoted above) as a formal grievance and failed to forward it to HR. He alleges this was a detriment for making a protected disclosure **[CAB issue 2/4.3]** and victimisation for doing a protected act **[2/7.2]**.

722. Mr Abanda Bella did not tell Mr Rienacker he had input further comments into the system after the appraisal meeting. Nor did he ask Mr Rienacker or Mr Kim for a response to those comments. Neither Mr Rienacker nor Mr Kim were aware that Mr Abanda Bella had made these comments. The system does not generate an email to the line manager to inform them that comments had been left. The Tribunal accepts that neither Mr Rienacker nor Mr Kim saw these comments by some other means. The reason that Mr Rienacker and Mr Kim did not treat these additional comments as a grievance or forward them to HR was that they did not know about them. It was not connected with any protected disclosures or protected acts. Mr Abanda Bella did not raise a separate written grievance about this at the time; nor

did he contact the Whistleblowing Team. The Tribunal finds that Mr Abanda Bella knew that Mrs Richardson was the HR Business Partner for the MRM Department. If he had wanted to raise an issue formally with her, he would have been able to do so. His contract of employment listed the key policies including the grievance policy **[518]**. This policy was readily available to all employees on the intranet. Mr Abanda Bella would have known how to raise a grievance had he wanted to take this step.

723. Mr Kim's decisions about Mr Abanda Bella's annual pay increase and bonus were taken in **February 2019**. His decisions are alleged to be protected disclosure detriment **[CAB issue 1/3.14]** victimisation **[CAB issue 1/6.9]** and direct race discrimination **[CAB issues 11.9.4 & 11.9.5]**.

724. Mr Kim had a meeting with Mr Abanda Bella on **21 February 2019** to announce his remuneration decisions. Given the evaluation of Mr Abanda Bella's performance - 11th out of 12 in Mr Kim's team; 'Strong' for the 'What' but 'Improvement Needed' for the 'How' - he received a reduced bonus. Mr Kim's email to Mrs Richardson and Mr Canabarro shortly after the meeting records that Mr Abanda Bella took the news stoically. When he received the news, he was eager to leave the room. He did not wait for an explanation **[3/10]**. The reason for the reduction was because of his ranking and his 'Improvement Needed' rating for the 'How'.

725. There is a factual dispute as to whether Mr Abanda Bella had a meeting with Mr Canabarro on **6 March 2019**, as he alleges. Such a meeting is not referred to in any of the contemporaneous documents. It is not referred to in Mr Abanda Bella's lengthy grievance lodged in November 2019 or in his Particulars of Claim. Mr Abanda Bella's evidence that his health deteriorated following this meeting is not borne out by the medical records. He attended his GP twice around this time – on **6 and 8 March 2019**. On both occasions, he was seeking medical advice for an ear problem. The earliest reference to stress at work is in June 2019, which records "Lots of stress at work > 1 month". The Tribunal rejects Mr Abanda Bella's evidence on this point. He did not have a meeting with Mr Canabarro.

726. On **21 March 2019**, Mr Rienacker contacted ER Direct to discuss the state of his working relationship with Mr Abanda Bella. He provided ER Direct with his perception of Mr Abanda Bella's style of communication. As noted in the ER Direct record his "main reason for opening this case is that [Mr Rienacker] perceives that [Mr Abanda Bella] is actively trying to undermine [him]". The notes record particular examples of Mr Abanda Bella not accepting decisions made by Mr Rienacker as his line manager. Mr Rienacker wanted to get to a position where Mr Abanda Bella accepted his decision as final. The guidance from ER Direct was that Mr Rienacker should list the examples where, in his view, Mr Abanda Bella had sought to undermine him. He should then hold an initial informal fact-finding discussion with Mr Abanda Bella to explore what had happened and why, and then decide on the appropriate next steps

[1394/5]. The guidance made clear that this was an informal meeting and was not an investigation.

727. As requested by ER Direct, Mr Rienacker put together a timeline of the issues he had with Mr Abanda Bella over the last year **[1398]**. He sent this through to ER Direct on **8 April 2019** and sought further advice the following day. He noted that Mr Abanda Bella had recently raised a complaint of "bullying and harassment". He was advised to hold an initial fact-finding discussion with Mr Abanda Bella if he felt comfortable doing so. If, however, he felt that it would only serve to add fuel to the fire to hold a meeting, then he might decide "that an impartial and independent manager may be best placed to progress an investigation into the alleged unprofessional and inappropriate behaviours" **[1400]**. So far as the recent allegation of bullying and harassment was concerned, ER Direct's advice was that Mr Kim (as Mr Rienacker's line manager) should open a new case with ER Direct to ensure that appropriate next steps were taken **[1401]**.

728. Mr Rienacker passed this advice onto Mr Kim in an email at 17:14 on **9 April 2019 [1513]**. He attached his fact-finding report, which featured five initial points (with specific examples) and a timeline including the 11 issues in tabular form he wanted to be considered **[1487]**. It was subsequently expanded, on **24 May 2019**, to include three further issues **[1909]**. The Tribunal finds that these allegations reflected Mr Rienacker's genuine and measured commentary on Mr Abanda Bella's conduct. In relation to each issue, the table featured a column headed "comment/evidence". He populated this column with links to documents evidencing the points he was making. Mr Abanda Bella's alleges that there were "14 spurious disciplinary allegations including 5 headline allegations" which amounted to protected disclosure detriment **[CAB issue 2/4.4]** and victimisation for doing protected acts **[CAB issue 2/7.2].**

729. It took time for Mr Kim and Mr Rienacker to identify an independent manager with the relevant training to conduct an investigation into whether any disciplinary action should be taken. They started by drawing up a short-list of potential candidates based on the criteria of those who had no chance of having interacted with Mr Rienacker or Mr Abanda Bella at any time in the past. Eventually, Dionisis Gonos was identified as an appropriate manager. He needed to renew his accreditation as it had lapsed. By the end of July 2019, this had been done. This was a fact-finding meeting at the outset of a disciplinary process to establish whether there was a sufficient case to answer so as to progress to a formal disciplinary meeting. The process followed in Mr Abanda Bella's case was consistent with the Bank's disciplinary policy.

730. On **1 August 2019**, arrangements were made by ER Direct for Mr Gonos to review the case history and guidance and to discuss how an investigation would be carried out **[1425]**. Because Mr Abanda Bella started a period of long-term sick leave on 29 July 2019, no further action was taken in relation to this proposed investigation. It was not possible to progress the investigation in Mr Abanda Bella's absence.

731. By **19 March 2019**, both Mr Moune Nkeng and Mr Abanda Bella had been assigned as Validator and Peer Reviewer respectively for a particular validation known as fiDEs_divProtected_StrikeRatio_v5. There was pressure for this validation to be completed by the end of March 2019 **[1436/8]**. This incident also arises in relation to allegations made by Mr Moune Nkeng. Relevant factual findings are made here where they relate to Mr Abanda Bella's complaints, even if there is some overlap and repetition of the findings of fact made above in relation to Mr Moune Nkeng's complaints.

732. On **22 March 2019**, Mr Moune Nkeng finished a first draft of the validation. On the same date, the day before his week of annual leave, Mr Abanda Bella emailed Mr Rienacker with an updated version of the validation, following his initial work as peer reviewer **[9433]**. His covering email recorded: "I didn't have time to go into a lot of the details" due to other work commitments. Mr Rienacker responded: "Does this mean that the peer review is not yet finished?". Mr Abanda Bella's brief response was "Indeed, not finished".

733. At the **end of March 2019**, Mr Rienacker was extremely busy finalising the CCAR-related validation documents for submission to the Federal Reserve. Both Mr Abanda Bella and Mr Moune Nkeng were on annual leave in the last week of March 2019. Their first day at work was Monday **1 April 2019**, although both Mr Abanda Bella and Mr Moune Nkeng had chosen to work from home.

734. Mr Rienacker sent a detailed list of comments to Mr Abanda Bella and Mr Moune Nkeng on their validation in an email timed at 12:43AM on **1 April 2019 [9431]**. This would have been in their in-tray when they started work that morning. Mr Moune Nkeng sent a further draft with feedback on Mr Rienacker's comments at 2:41PM. At 3:15PM, Mr Rienacker provided further comments on Mr Moune Nkeng's latest draft. He raised "two important things", the first of which was that "we need to get back to the desk/pipeline soon with an indication whether we will be able to finish today or whether there are any roadblocks". It was clear from his tone and language that finalising this validation was urgent. In that email, which was also sent to Mr Abanda Bella, Mr Rienacker specifically asked him what further matters should be requested from QA and if there were any further roadblocks. At 4:05PM, Mr Rienacker asked for a catch up with Mr Abanda Bella, having made some further comments on the latest draft. He scheduled two Webex meetings with Mr Abanda Bella, both of which Mr Abanda Bella declined. That day, Mr Rienacker was continuing to receive chasing emails from the desk seeking updates **[1433]**. At 6:47PM Mr Rienacker emailed "Christian: I will try to finish this review tonight. Pls send your latest peer-reviewed version <u>now</u>; otherwise I will use the version from Henry-Serge below". Mr Abanda Bella finally engaged two minutes later at 6:49PM. He did not send over his latest version immediately as had been requested. Rather he sent a short email saying "I am amending Henry-Serge version now. Shouldn't be long" **[9427]**. Mr Rienacker's

response was “How much time do you need?”. He also told Mr Abanda Bella what he should be focusing on. Mr Abanda Bella told him in an email at 7:00PM he needed 15-20 mins.

735. In an email at 7:03PM Mr Rienacker said that he would need to get everything ready (and signed off) tonight as he was not in the office the following morning. Mr Abanda Bella sent the peer reviewed version at 7:18PM. His covering email said he “made some modifications (mostly wording) and added a couple of comments”. Mr Rienacker acknowledged receipt just over 10 minutes later, having looked briefly at Mr Abanda Bella’s version. He said that there were still some oddities in the conclusions, but he would try to finish the validation on that basis.

736. It took Mr Rienacker until around 1am to finish his review and amendment of the validation document. Having done so, he emailed Mr Abanda Bella and Mr Moune Nkeng with what he referred to as “honest feedback” **[1431]**. He said he did not think “we left the best impression with the desk, QA and MCO”. He said: “we delivered the validation late (literally at the last minute) and right until the end, were not able to give a clear indication to the desk or the pipeline whether we will be able to sign off and how much work is left”. He said “there was a lack of quality in the validation write-up: many copy & paste errors, inconsistencies, lack of structure, typos and stylistic errors, etc – clearly below the standard of work in our IVU team. This made the peer and senior review of this standard FPF trade type quite difficult given the tough timeline”. He also criticised Mr Moune Nkeng and Mr Abanda Bella for working from home, adding that for most of the day the payout was with the Peer Reviewer (i.e. Mr Abanda Bella), “who could not be reached at all and was not able to give any update”.

737. At 12:28PM the following day, Mr Abanda Bella replied to Mr Rienacker’s email. He inserted his comments into Mr Rienacker’s earlier email. He was unapologetic for what had taken place the previous day. Instead he sought to blame Mr Rienacker. He said that “we” (i.e. himself and Mr Moune Nkeng) had “delivered the best that was achievable given other commitments and the short timeline involved. To expect more is not just unreasonable and unrealistic but also akin to harassment, which is a serious criminal offence.” He did not dispute that there were mistakes in the document, which he blamed on the short timescale. He said that the short timescale “could and should have been avoided through action on your part during the week when Henry-Serge and I were both on vacation”. He justified the lack of quality in the report by saying “I had to stop reviewing it and send it to you or you would have used an earlier version” **[1431]**.

738. Mr Abanda Bella’s comments are said to be a protected disclosure **[CAB issue 1/1.14]**, namely that there were “shortcomings in operating practices”. This is said to be a breach of Article 369 of Regulation 575/2013. In his comments, Mr Abanda Bella

did not disclose information expressing any specific concerns about the quality of the substantive validation, or about the testing or methodology of the payout model. Mr Abanda Bella has not indicated, still less evidenced, any significant breach of a validation requirement in the final report approved by Mr Rienacker.

739. On **3 April 2019**, Mr Abanda Bella forwarded Mr Rienacker's email and his response to Mr Kim. His email was also sent to Mr Rienacker **[1457]**. The title of the email was "Bullying and harassment". The contents of the email were as follows:

> "This is a formal notice of complaint for bullying and harassment on the part of Gotz towards myself.
>
> This pattern type of unfounded, malicious and diffamatory [sic] accusations is unacceptable [and] must stop henceforth.
>
> Christian"

740. This email is alleged to be a protected disclosure **[CAB issue 1/1.15]** and a protected act **[CAB issue 1/4.7]**. The basis of the alleged protected disclosure is said to be that he was disclosing information about breaches of the Equality Act 2010. The email makes no reference to any characteristics protected by the Equality Act 2010.

741. In response, Mr Kim sent Mr Abanda Bella a copy of the Bullying and Harassment policy. This included reference to the potential to complain to either HR or to Employee Relations about any treatment regarded as bullying or harassment. Mr Kim's covering email said that the feedback from Mr Rienacker looked like "constructive/reasonable manager feedback in order to avoid a similar undesirable situation going forwards". He added that as far as he could see, Mr Rienacker had evidence for his feedback. He said that Mr Abanda Bella had made a very serious allegation against his manager "so pls be precise in what way you feel this is bullying and/or harassment" **[1457]**. Mr Abanda Bella did not respond to this email. He did not explain why he chose not to reply.

742. On **10 April 2019**, Mr Kim followed up to check whether Mr Abanda Bella had had the opportunity to read the policy and decide whether to submit a formal complaint **[1745]**. He also offered a meeting to discuss this further. Again, Mr Abanda Bella failed to reply. He forwarded Mr Kim's email to Mr Samnick. Mr Samnick responded in French: "Surtout ne donner aucun details…", which translated broadly means "Above all don't provide any details" **[1533]**. The Tribunal does not accept Mr Abanda Bella's evidence in cross-examination that Mr Samnick was focusing on the details about his own claim, rather than Mr Abanda Bella's claim. Mr Samnick was encouraging Mr Abanda Bella to keep his remarks general.

743. Mr Kim emailed a third time, on **14 May 2019**. He said: "due to the fact that you have not responded to the below, I presume that you do not want to discuss your concerns

in further detail". Mr Abanda Bella again ignored this email. He did not respond, as he does now, that he did not need to raise a grievance as he considered he had already raised a formal complaint.

744. By **April 2019**, Mr Abanda Bella had been working on the Q/C/B methodologies since around November 2018. In early April 2019, QA indicated that they wanted to "reduce the amount of testing to keep their document manageable but without sacrificing feature coverage". This was raised in a discussion between Mr Rienacker and the model developer, Ayman Jedei in QA. Mr Abanda Bella was not part of that discussion. Mr Rienacker asked Ayman Jedei to send out a proposal justifying the changes so that the new approach could be discussed and refined if necessary. He set this out in an email to Mr Abanda Bella and to Mr Moune Nkeng. This email dealt with implementation testing; sensitivity testing; and model choice testing, setting out what Mr Jedei was proposing. Mr Rienacker's initial view was that Mr Jedei's approach made overall sense and helped the QA document become more organised. He concluded his email:

> "The aim is to reach an agreement on the test scope, ideally before I go on holidays, so the validation can continue as [Business As Usual] while I am away." **[1514]**

745. Mr Jedei set out his detailed proposal in a lengthy email dated **10 April 2019** 11:16AM **[1546]**. His aim was to focus on meaningful testing and reduce the overlap between tests. Mr Abanda Bella was copied into this email. Mr Rienacker asked him to review Mr Ayman's email "today" and "let me know any comments". Mr Rienacker set out his provisional views at 11:57AM on the extent of the testing required, providing guidance as to the extent of the testing that would be necessary. Mr Abanda Bella responded with his initial comments at 7:53PM.

746. The following day, at 11:28AM Mr Rienacker added some further thoughts about the proposals. His email said: "I would suggest you reach agreement with QA on the implementation testing first". He also offered Ms Li to help with the testing. Ms Li was a senior Vice President with valuable experience to assist him in this particular task. It is clear from the wording of both emails that Mr Rienacker wanted Mr Abanda Bella to agree, if possible, the extent of the testing required with QA.

747. There was a further email from Mr Abanda Bella at 5:48PM on **11 April 2019 [1544]**. This was worded as follows:

> "There is simply enough time before you go on vacation to thoroughly match Ayman's list with the latest document from Said, especially since Said is going to remove tests from his current document that I didn't know about.
>
> I need more clarity on:

- Which tests you think QA could go ahead on at this point?
- Which sensitivities exactly do you think we should aim for?"

748. In his response at 8:28PM, Mr Rienacker provided further guidance, although did not specifically answer the two questions posed by Mr Abanda Bella. He said it was best to agree on the testing plan section by section **[1543]**; that whilst QA were aiming to slim down their testing to make the document maintainable "we should make sure they don't sacrifice something essential".

749. At the end of his email at 8:28PM on **11 April 2019**, Mr Rienacker concluded "Can you pls sit down with Huayi and make some proposals regarding your question below? Then let me know where you need further input from me" **[1543]**. This confirmed that although Mr Rienacker was about to go off on vacation, he remained willing to help Mr Abanda Bella in whatever way he could. The Tribunal rejects the assertion in Mr Abanda Bella's witness statement (at paragraph 428) that Mr Rienacker had agreed a different testing approach with Mr Jedei; or that he had locked the IVU into a compromised testing approach. Mr Rienacker provided guidance, clarity and support to Mr Abanda Bella in relation to the Q/C/B validation.

750. Mr Abanda Bella responded as follows **[1543]**:

> "Hi Gotz,
>
> Which question are you referring to?
> There are two questions in my previous email.
>
> Please note this is now at least the third time that I am seeking a clear guidance on which sensitivities YOU would like to see.
>
> In any case, why are you asking me to sit with Huayi and not with Henry - Serge?
>
> Many thanks,
> Christian"

751. On **24 April 2019**, Ms Li provided Mr Abanda Bella with suggestions on the most appropriate template and the required testing for different aspects of the QCB validation. She ended her email "Again, I am not deep in this project and just try to give suggestions" **[1593]**. Mr Abanda Bella's response suggested that her help was not welcome. He said that he would prefer she contributed when she had the time to fully commit to the project. He added "there are several inaccuracies in your understanding/suggestions and explaining them now would simply add to the number of iterations at the worst possible time for the project" **[1592]**. There were further emails between Mr Abanda Bella and Ms Li. Mr Abanda Bella asked Ms Li to stop sending requests to Mr Moune Nkeng "behind my back that distract him from making the planned gains on the Q/C/B project … this is extremely disruptive". Ms Li replied

that the email chain had been copied to Mr Rienacker and the request for help was open. Mr Rienacker was away on holiday at the time. In a response dated 25 April 2019, Mr Rienacker said he was "okay for Henry-Serge running tests for the FiDEs payout project". He added it made sense, avoided potential delay in waiting for IT and should not lead to any "disruption" in the Q/C/B projects **[1808]**. He put the word "disruption" in quotes as a direct response to Mr Abanda Bella's previous email.

752. On **28 April 2019** 1:19AM, whilst he was away on holiday, Mr Rienacker provided further detailed guidance to Mr Abanda Bella on the correct approach to take on the Q/C/B validation. He asked whether Mr Abanda Bella had agreed implementation testing with QA; and whether he had a test plan for IVU testing. He also asked for a rough timeline for the first IVU drafts for the four models **[1624]**. This is indicative of the lengths to which Mr Rienacker was going to support Mr Abanda Bella and provide him with appropriate guidance to complete the task.

753. Mr Abanda Bella responded by inserting his comments into Mr Rienacker's earlier email. The wording of the covering email was as follows:

> "I am having to repeat the same information again and again. It might good [sic] that you take the time to fully digest the information at your disposal before each iteration. This is all the more so, given that you seem to have agreed a debatable approach on testing with QA without a full grasp of the details, and which has thus been less than ideal as a result so far."

754. In the text inserted into the body of the email, he said that QA thought they had already agreed implementation testing with Mr Rienacker; that Mr Rienacker had still not provided clear enough guidance on IVU testing; and that he would be able to get something "very basic" to QA next week. He blamed the delay on QA not providing a clear methodology around the basket. **[1625]**

755. Mr Abanda Bella alleges that in April 2019 Mr Kim and Mr Rienacker failed to provide guidance, clarity and support to assist him with the Q/C/B validation, did not consult and ignored his requests for clarification and that this amounted to protected disclosure detriment **[CAB issue 1/3.15]** and victimisation **[CAB issue 1/6.10]**. The Tribunal rejects this factual allegation. Mr Kim was not directly involved in the Q/C/B validation. Mr Rienacker took the time to provide guidance, support and clarification to Mr Abanda Bella in several emails.

756. On **3 May 2019**, Mr Jedei asked Mr Abanda Bella and other colleagues to keep the momentum going. He asked for a quick update and said that if they did not have time he could speak to Mr Rienacker. Mr Abanda Bella's response two working days later, on **6 May 2019**, criticised the approach taken by others, specifically that there was no agenda prior to a meeting. He added:

> "We don't have that kind of time left on our end and thus, as I have already indicated, I now favor working only on the basis of written exchanges, prior agendas and specific points with trackable progress" **[1676]**

757. Mr Abanda Bella was insisting on everything being done in writing. In his response, on **7 May 2019**, Mr Jedei started by saying "we are happy to work according to any protocol that you think is best". He disagreed with Mr Abanda Bella's assessment of current progress. He said that the QA assessment of the situation was that some basic points were still not understood on the IVU side. He ended his email "Please let me know how you want to proceed. Time is running out" **[1675].** On the same day, Mr Jedei emailed Mr Rienacker asking for someone else to help with this validation. He used the same phrase he had written in his email to Mr Abanda Bella saying: "Time is running out and we are still discussing the methodology with Christian/Henry-Serge". It is clear from this wording that no agreement had yet been reached as to the appropriate methodology.

758. There was a further exchange of emails between Mr Rienacker and Mr Abanda Bella about the Q/C/B validation that started on **30 April 2019**. In that email, Mr Rienacker encouraged Mr Abanda Bella to raise his concerns about the Q/C/B validation in a more constructive way.

759. Mr Abanda Bella's lengthy response on **7 May 2019 [1684]**, was inserted into Mr Rienacker's email of 30 April 2019. This accused Mr Rienacker of not keeping him in the loop when agreeing a different testing methodology with Mr Jedei; of taking "an extremely long time to review the Asian draft, despite Asian needing to be validated before Q/C/B could be completed"; of preferring that Mr Moune Nkeng took a risk to mess up his set up doing Ms Li's tests; of failing to ensure that his own guidance on work allocation was clear and accurate; and of not taking seriously that Ms Li undermined work on the Q/C/B project by withholding information from a key Validator of that project. He went into details of his criticism of Ms Li and commented that Mr Rienacker's defence of her conduct "indicates that you are now promoting actions that directly compromise the tools I need to work on and deliver the Q/C/B project to a high standard. This is unacceptable and yet another extremely serious instance of your pattern of harassment against me". He was reacting to Mr Rienacker's decision that Mr Moune Nkeng should be permitted to carry out certain testing for Ms Li, as detailed in the Tribunal's findings of fact above. The email made further direct criticisms of Mr Rienacker's managerial judgment.

760. When questioned as to why he chose to speak to Mr Rienacker in this direct way, Mr Abanda Bella justified his language as that of someone who is dealing with mental health issues. This was not a point he had made in his witness statement. He accepted he had not told his managers at this point that he was suffering from mental health symptoms.

761. In his email of 30 April 2019, Mr Rienacker had written "note also that you do not "own" Henry-Serge as a resource" **[2470]**. In his response on 7 May 2019, Mr Abanda Bella wrote "there are no instance suggesting such a slavery-related word "own" on my part. This remark is thus completely uncalled for and I find disturbing that you would use such a word in this context. Instead, you provided an inaccurate guidance on work allocation, according to which Huayi and Huayi alone was assigned to her project". Notwithstanding his reference to "slavery", he did not accuse Mr Rienacker in terms of treating him in a way that amounted to race discrimination or racial harassment.

762. He alleges his email of 7 May 2019 was a protected disclosure **[CAB issue 1/1.16].** He alleges that the disclosure was of information tending to show a breach or a "likely" breach of SR11-7, ss172 and 174 Companies Act 2006; and the obligations not to subject employees to victimisation under section 27 Equality Act 2010 and not to subject them to detriment for making a protected disclosure. The email does not make any express reference to any of these provisions. Nor does it allude to any requirements imposed by these provisions.

763. He also alleges his email of 7 May 2019 was a protected act **[CAB issue 1/4.8].** There is no reference in this email to the Equality Act 2010 or any allegations of discrimination. There is no reference to Mr Rienacker treating him differently from how he treated Ms Li. There is no reference to Mr Rienacker retaliating against him because he had previously raised allegations of discrimination.

764. In his further email of **8 May 2019**, Mr Rienacker started with a measure of contrition: "every one of us might have made some small communication mistake here". He wrote that he did not find it fair or correct for Mr Abanda Bella to say that Ms Li's request for assistance could have put the Q/C/B project in serious danger or even suggest that he or Ms Li were deliberately trying to jeopardise the project. He said the reason for his earlier email was to remind Mr Abanda Bella to raise his concerns in a positive and helpful way, not to prevent you from speaking openly. He continued that he wanted to avoid a situation where team members feel discouraged asking colleagues for support in a validation. "If Validators help each other, it is a win for everybody". He also added:

> "Pls also put my (I think respectful) critique in perspective to your very harsh, repeated and generalizing/accusing comments below and in other emails. A simple test for writing emails is whether you yourself would feel comfortable receiving the email. Hope this helps. Let's move on and work together to complete the Q/C/B project successfully"

765. He inserted his further responses to each of Mr Abanda Bella's comments in green font next to those comments **[C/2465]**. These included that the test plan was still a proposal and it needed to be agreed in detail by all of the participants, including Mr

Abanda Bella and Mr Moune Nkeng. Much of the focus of his comments was explaining why it was appropriate for Mr Moune Nkeng to help Ms Li. Mr Rienacker said that Mr Abanda Bella's concerns should be raised in a positive and helpful way. He also noted that the tone in his email to Ms Li was not particularly helpful - "Huayi indicated to me that she felt very uncomfortable in the situation".

766. On **13 May 2019**, Mr Rienacker emailed Mr Abanda Bella and Mr Moune Nkeng. He endorsed Mr Jedei's suggestion of a meeting to discuss methodology and testing on the Q/C/B validation, although said he was unable to come to the office that day. He encouraged them to meet with Mr Jedei – "I think it is always better if you see the people you speak to in a meeting" **[1717]**. Responding to a further email from Mr Abanda Bella, Mr Rienacker said "No, we should discuss any testing you would like to add, or specific flaws in the test plan you see. That's why I want to have this meeting". This is confirmation that, contrary to Mr Abanda Bella's position, no final agreement had been reached about the required testing even by that stage.

767. In the morning on **14 May 2019**, Mr Rienacker met with Mr Abanda Bella and colleagues from QA to discuss the methodology and testing on the Q/C/B validation. In the List of Issues, Mr Abanda Bella argues that he made a protected disclosure at this meeting **[CAB issue 1/1.17]**. The allegation is that he referred to gaps within the new testing approach agreed between Mr Rienacker and the QA team. "Gaps" appears to be shorthand for his belief that there was a lack of robust and convincing evidence that the code was organised in a modular fashion.

768. He also alleges that during the meeting Mr Rienacker made derogatory remarks about his list of concerns about the new testing approach; and alleged that this was followed up with equivalent remarks in an email. This conduct is alleged to be victimisation **[CAB issue 1/6.11]** and harassment related to race **[CAB issue 1/14.2**]. Despite this being one of his specific allegations, somewhat surprisingly, when asked about this in cross-examination Mr Abanda Bella claimed he could not remember such a meeting.

769. At the meeting, Mr Abanda Bella did not promote any particular solution to the points in dispute. The Tribunal finds that Mr Abanda Bella displayed an attitude which was not collaborative or constructive. He raised a list of general challenges rather than specific points. During the meeting, Mr Rienacker described Mr Abanda Bella's approach as 'philosophical'. This was Mr Rienacker's characterisation of the theoretical objections that Mr Abanda Bella was raising.

770. Following the meeting, Mr Abanda Bella emailed Mr Rienacker in the following terms **[1739]**:

> "Your belittling comments during the Q/C/B catch-up meeting with QA this morning, saying twice that my perfectly valid point about the "modular" testing

> approach that you had agreed with Ayman, was "philosophical", were completely uncalled for and unacceptable.
>
> This is yet another instance of your constant harassment and bullying towards me".

771. Mr Abanda Bella alleges that his email was a protected act **[CAB issue 1/4.9]**.

772. In the first of two emails timed at 1:15PM **[1739]**, sent only to Mr Abanda Bella, Mr Rienacker explained what he meant by describing Mr Abanda Bella's points as 'philosophical' – "the points you make need to be specific, and you should also keep the introductions … rather short, otherwise it is difficult to follow for the participants". He then evidenced his point with a particular example from what Mr Abanda Bella had said in the meeting. He refuted he was engaged in bullying and harassment; but said he would be forwarding the email chain to Mr Kim, suggesting that the three of them meet to talk. He added "it is in our all interest to work together in a constructive way". He finished his email by re-emphasising the need to reach an agreement with QA and MCO as quickly as possible, adding that "IVU should not only raise concerns but also contribute to the solution". The Tribunal rejects Mr Abanda Bella's allegation that this email was adding more abuse and shutting him up so he could be treated as invisible because of his race (CAB witness statement paragraph 543-544). This is a complete mischaracterisation of Mr Rienacker's wording. Mr Rienacker was encouraging Mr Abanda Bella to work constructively with all other stakeholders in order to find solutions.

773. That evening, Mr Rienacker sent a second email, timed at 21:27, detailing various points to be considered in relation to the content of the validation. It was sent to Mr Abanda Bella and to the stakeholders **[1764]**. This was responding to an email from Mr Abanda Bella setting out his concerns sent in advance of the meeting, timed at 11:05AM. Mr Rienacker commented in his email "it is a valid point that conceptual soundness of Q/C/B in conjunction with the dependent pricers should be covered", before adding "but from my experience, such issues will be often clarified as part of iteration between validators and developers/owners (the devil is usually in the details)". In so commenting, he was encouraging the various stakeholders to reach agreement. He ended his email saying: "some of the points below [ie Mr Abanda Bella's points] are valid (although admittedly raised at a somewhat late stage of the project)". At that point, the official submission from QA was due at the end of May. Mr Rienacker was attempting, through his email, to progress the project by encouraging dialogue and co-operation between QA and the Validators about the type and extent of the testing required. It was reasonable for him to comment on the stage at which Mr Abanda Bella had raised his points, given the impending deadline.

774. Also on **14 May 2019**, there was a significant email exchange between Mr Rienacker and Mr Kim **[1738]**. Mr Rienacker forwarded Mr Abanda Bella's email complaining

about the use of the word “philosophical” and his response to the email address used by managers in the Model Validation team. He explained the reason why he referred to Mr Abanda Bella’s concerns as “philosophical”, saying “he did not come straight to the point but always had these lengthy introductions about general principles, so it was very difficult to understand which concrete point he had”. He added “In my opinion, he was clearly obstructive in the meeting with QA, and I tried to be helpful, ie clarifying his standpoint and also QA standpoint”.

775. Mr Kim replied “Sure, pls do setup the mtg thx”. This was a reference to the three-way meeting Mr Rienacker had suggested in his email timed at 1:15PM between himself, Mr Kim, and Mr Abanda Bella. In his reply, Mr Rienacker set out his assessment of the risks created by Mr Abanda Bella’s stance:

> “I see two risks:
> - CAB repeating the "B&H" statement often enough in itself can create problems and could be taken as "evidence" by a third party that he would be treated incorrectly - at least making our conduct case against him more murky
> - It becomes now impossible to remove him from the Q/C/B project or to take away responsibility from him, even though he is very obstructive and QA already complained about the slow progress”

776. Mr Kim’s response was:

> “I don't see those risks myself
> 1) I have sent him the policy, explained what he needs to do, offered to meet. Followed up. He's done nothing. This is logged with ERDirect. Each time he claims "B&H", we've noted that it isn't.
> 2) You have to let him know a plan/target and the reason, e.g. if no material progress by end of week then you will reassign to someone who can make progress or if he does not proceed as instructed by you then you will reassign to someone who can proceed as instructed. The reason being that it has already taken far too long for this type of project and you have lost confidence that he can close it out.”

777. This exchange, to which Mr Abanda Bella was not a party, provides an insight into Mr Kim and Mr Rienacker’s thinking about the emails Mr Abanda Bella was writing at this time. They considered he had not formalised any allegations of bullying and harassment despite having been sent the policy; and they noted that progress needed to be made on Q/C/B. His lack of progress was a reason why Mr Kim was losing confidence in Mr Abanda Bella’s ability to complete the task.

778. Mr Abanda Bella did not reply to Mr Rienacker’s suggestion, made in his email of 14 May 2019 1:15PM, of a three-way meeting attended also by Mr Kim. That meeting did not take place.

779. Mr Abanda Bella's case is that from **9 to 17 June 2019**, Mr Rienacker excluded Mr Abanda Bella from communications and decisions between himself and the project stakeholders for the Asian Option validation. This treatment is said to be protected disclosure detriment **[CAB issue 1/3.17]**; detriment for doing protected acts **[CAB issue 1/6.12]**; direct race discrimination **[CAB issue 1/11.11]** and harassment related to race **[CAB issue 1/14.3]**.

780. Mr Rienacker told Mr Abanda Bella on **Sunday 9 June 2019** he would follow up with QA with particular queries on the Asian Option validation. Mr Abanda Bella responded in the evening on **Monday 10 June 2019** as follows:

> "It still seems that you disagree with the model choice/specification from QA, so please feel free to follow-up with QA/MCO whilst keeping the main Validators in the loop" **[1864]**

781. Mr Rienacker had decided to follow up himself because, as he told Mr Abanda Bella in a further email on **11 June 2019** 8:38PM **[1863]** he had not had a comprehensive reply "from your side" to questions he had raised in his earlier email on **3 June 2019 [1864]**. He said he would let Mr Abanda Bella know the outcome. He did not promise to copy him into all correspondence.

782. Mr Rienacker sent his queries to QA on **Sunday 9 June 2019**. He did not copy Mr Abanda Bella into this email **[1871]**. There followed further email exchanges between Mr Rienacker and QA on technical details. Mr Rienacker raised further questions on **16 June 2019 [1869]**. At this point, he copied Mr Abanda Bella into his email. This would have enabled Mr Abanda Bella to see the earlier email exchanges between Mr Rienacker and QA.

783. The Tribunal accepts that Mr Abanda Bella was not copied into email exchanges between Mr Rienacker and Roman Gayduk (the QA) from **9 June 2019 until 15 June 2019**. These were direct communications between the two individuals with the only other person copied into the exchanges being Ahmad Bilal. On **16 June 2019**, Mr Rienacker copied Mr Abanda Bella and Mr Moune Nkeng into his email, so informing them of the progress of the discussions and the current state of play. He was letting them know the outcome as he had undertaken to do in his email of 11 June 2019 8:38PM. The Tribunal finds he chose to have these discussions with QA without involving Mr Abanda Bella in order to make swifter progress in resolving issues that had apparently not been solved when Mr Abanda Bella had taken the lead in communications with QA.

784. Mr Abanda Bella had taken issue with Mr Rienacker's language in his **11 June 2019** email. On **12 June 2019** he wrote "your derogatory behavior below is another example of bullying and harassment towards me. You have ignored my request for clarification and made unsubstantiated, inaccurate and damaging remarks about my

work in front of more junior team member. This is unacceptable" **[1862**]. The reference to a junior team member was a reference to Mr Moune Nkeng. This email is alleged to be a protected act **[CAB issue 1/4.10].** Having reviewed the entirety of the email, the Tribunal notes that there is no reference either expressly or by implication to the Equality Act 2010 or to any rights created by that piece of legislation.

785. On **15 June 2019**, Mr Rienacker responded. He said he thought that Mr Abanda Bella's accusations were unfounded, and his previous replies did not comprehensively answer the questions/challenges he had raised. He offered Mr Abanda Bella the opportunity to discuss further in a one-to-one meeting **[1862]**. Mr Abanda Bella did not take Mr Rienacker up on that offer.

786. On **18 June 2019**, Mr Abanda Bella and Mr Moune Nkeng met with Mr Rienacker to discuss the Q/C/B project. During the meeting, Mr Abanda Bella had his mobile phone out. Mr Rienacker formed the impression that Mr Abanda Bella was using the phone to record the meeting. Later that day, Mr Abanda Bella sent Mr Rienacker an email with the Subject "Unacceptable Conduct". It was worded as follows **[1884]**:

> "FYI
>
> During the meeting on on 18/06/2019 between Henry-Serge Gotz and myself, Gotz attempted to have a look at my phone screen just before the start of the Q/C/B meeting, even though it was and explicitly angled towards me and away from both Henry -Serge and Gotz.
>
> This is a clear and unacceptable violation of privacy and another example of Gotz harassment and bullying towards me.
>
> Christian"

787. This email is alleged to be a protected act **[CAB issue 1/4.11]**. It does not refer either expressly or by implication to the Equality Act 2010, nor does it allege that the Bank has contravened the rights contained within the legislation.

788. Mr Abanda Bella's case is that Mr Rienacker's attempt to look at what was on his phone screen during the meeting, and his failure to forward his email onto HR as a grievance amounts to an act of direct race discrimination **[CAB issue 1/11.12]** and an act of harassment related to race **[CAB issue 1/14.4].** He also complains about Mr Rienacker's failure to forward this 18 June 2019 email to HR, alleging this email amounted to a grievance and the failure to forward it was an act of protected disclosure detriment **[CAB issue 2/4.5]** and victimisation **[CAB issue 2/7.2]**.

789. This meeting took place shortly before Mr Rienacker started psychotherapy treatment for the stress that the breakdown in the working relationship with Mr Abanda Bella was causing him. These sessions started in **July 2019**. He forwarded Mr Abanda Bella's **18 June 2019** email to Mr Kim saying: "I was actually concerned he would try to record me during our weekly catch-up. Maybe I am getting too paranoid. But it is also an indication that the working relationship is really difficult and stressful for me" **[1884]**. The reason why Mr Rienacker looked at Mr Abanda Bella's screen was because he thought Mr Abanda Bella was using the phone to record the meeting. The Tribunal makes no finding as whether Mr Abanda Bella was covertly recording during this meeting. Mr Abanda Bella's email was not described as a grievance and Mr Rienacker did not regard it as such.

790. Mr Rienacker emailed Mr Abanda Bella the following day, **19 June 2019**, asking for a quick catch-up tomorrow **[1883]**. Mr Abanda Bella chose not to respond to this suggestion, nor did he escalate the issue to anyone in Mr Rienacker's management chain. No meeting took place to discuss the breach of privacy issue Mr Abanda Bella had raised in his earlier email.

791. On the same day, **19 June 2019**, Mr Abanda Bella contacted the Raising Concerns team **[1880]**. His case is that this communication was both a protected disclosure **[CAB issue 1/1.18]** and a protected act **[CAB issue 1/4.12]**. His report concerned the conduct of Mr Rienacker. He added he suspected or knew that Mr Kim, Mr Rood and Mr Harrison were involved. He framed the issue as "harassment, bullying, retaliation, violation of privacy". He reported it had been going on for "3 months to a year". Under the heading details, the record reads "Since February 2019, from Gotz Rienacker, there have been multiple instances of:

- retaliation for speaking up about issues about the way the team operates
- unfounded and inaccurate comments about my work, including to other colleagues
- deliberate exclusion from essential communications on my projects
- setting me up for failure by withholding important information and actively encouraging others to do so.
- derogatory and insulting remarks and comments including in front of other colleagues.
- violation of privacy: attempting to look into my mobile phone.
- setting impossible and self -contradicting operating targets"

792. On **24 June 2019**, the Raising Concerns team asked Mr Abanda Bella for more information as to "retaliation for speaking up about issues about the way the team operates" **[1881]**. Mr Abanda Bella did not provide any response at that point. Notwithstanding this lack of a response, the Raising Concerns team referred the issues to the Whistleblowing Team **[8309]**. They were unable to confirm timescales for the investigation. They emailed Mr Abanda Bella on **16 September 2019** to notify him that their team had been asked to investigate. The name of the investigator was

also identified **[2587]**. On **18 October 2019**, Mr Abanda Bella attempted to upload a document to the casefile, although the document was noted to be blank **[1881]**.

793. In the meantime, Mr Abanda Bella had been off work on sick leave from **21 June 2019** for 2 weeks with 'stress'. The relevant GP entry for this date reads as follow: "Very stressed – loss of appetite, poor sleep. Slowing of processes. Lots of stress at work. >1 month. No suicidal thoughts. Usually quite active" **[C/10774].** At this point, the Bank did not know this level of detail about his mental health.

794. Following his return from sick leave on **8 July 2019**, he returned to his GP on **10 July 2019**. The entry in his GP records notes that "things are a lot better – started CBT on Monday … work issue is still causing stress. Feels he has more support. Back at work this week." [**C/10774]**.

795. Mr Abanda Bella had a catch-up meeting with Mr Rienacker on **15 July 2019** to check on his health and see whether he needed any support **[2065]**. Mr Rienacker asked Mr Abanda Bella how he was and informed him of the Be Supported helpline. There was a discussion about an Occupational Health referral. Mr Rienacker sent Mr Abanda Bella the Ill Health Policy and the Occupational Health Information leaflet **[2228]**. The Ill-Health policy provided that it was particularly important that the Line Manager notified ER Direct at the earliest opportunity of any stress related absence **[1/1188]**.

796. At that point, Mr Abanda Bella was still responsible for three projects which had been in progress for some time. These were Asian Option, Equity Swap and Q/C/B. On **16 July 2019**, Mr Rienacker convened a meeting with Mr Abanda Bella, Mr Moune Nkeng and Ms Li to discuss the resourcing of current equity projects **[2063]**. He allocated these three Validators between Asian Option, Equity Swap and Q/C/B, noting that the first two projects had deadlines at the end of September. The implication for Mr Abanda Bella was he was to continue working on Asian Option and Q/C/B, whilst Ms Li would work on Equity Swap. To facilitate this, Mr Moune Nkeng would have a handover meeting with Ms Li on Equity Swap, and Mr Abanda Bella would send related emails and any open issues. Mr Abanda Bella alleges that what he said in the meeting on 16 July 2019 was a protected disclosure, namely that the Asian Option validation review had not been completed fully. This is said to be a disclosure of information that the Bank had failed, was failing or was likely to fail to comply with its legal obligation under Article 269 of EU Regulation 575/2013 **[CAB issue 1/1.18.1]**.

797. The best indications as to what Mr Abanda Bella said during the meeting emerges from the subsequent emails between Mr Abanda Bella and Mr Rienacker, which record their recollections of the meeting. Mr Rienacker told him he should start working on the Asian Option draft immediately and should aim for Mr Kim to be able to review a draft when he returned from his holidays on 29 July 2019. Mr Abanda

Bella queried the 29 July deadline stating that this seemed arbitrary when there remained a lack of clarity identifying and assessing particular issues with that validation. Once these issues had been identified he said he would know how much more work was required.

798. In his email of **18 July 2019**, Mr Rienacker asked Mr Abanda Bella to tell him as soon as possible if he did not have the bandwidth to fully work on this **[2061]**. He also set out a bulleted list of further points to add to the list of issues to be addressed **[2062]**.

799. In his email response on **19 July 2019**, Mr Abanda Bella disputed some of the contents of Mr Rienacker's email as "not appear[ing] to be in line with what was agreed in the meeting on July 16th". In his reply, Mr Rienacker asked him to start the draft as soon as possible, rather than waiting until all his issues and questions are resolved or answered. He reiterated the deadline of the end of July, adding "but as usual, targets/timelines can be further adjusted to accommodate any unforeseen issues/difficulties" **[2060]**.

800. On **19 July 2019**, Mr Rienacker followed up to check whether Mr Abanda Bella had made a decision whether he should be referred to Occupational Health **[2065]**. Mr Abanda Bella did not respond to agree to an Occupational Health referral at that point.

801. On **22 July 2019**, Mr Rienacker emailed Mr Abanda Bella asking whether he had had a chance to look at queries raised by the QAs **[2081]**. There was a meeting later that day over Webex attended by Ms Li, Mr Moune Nkeng, Mr Rienacker and Mr Abanda Bella. The purpose of the meeting was to discuss progress on the current equity projects. This was a difficult meeting. The Tribunal is unable to make clear findings as to the precise wording used by Mr Abanda Bella to raise his concerns. It accepts that Mr Abanda Bella raised the broad issues he noted in his email to Mr Moune Nkeng, Ms Li and Mr Rienacker the following day. In doing so, Mr Abanda Bella adopted a confrontational stance and at times appeared to Mr Rienacker to be shouting. As Mr Rienacker noted in his email the following day, no agreement had been reached by that point on the adequacy of the current implementation testing for Q/C/B **[2083]**. This was a matter which would continue to be discussed internally, and discussion with QA would be postponed until the IVU team's position on various technical aspects of the validation had been clarified. Therefore, the Tribunal does not accept, as alleged in **[CAB issue 1/1.17],** that during the meeting Mr Abanda Bella referred to gaps with the new testing approach which had been agreed with the QA team for the validation of the Q/C/B models. At that point, the methodology had not been finalised.

802. Following the meeting there was an exchange of emails between Mr Abanda Bella and Mr Rienacker, also including Mr Moune Nkeng and Ms Li, disagreeing about

what had been discussed and agreed **[2201]**. Mr Rienacker and Ms Li were attempting to find a specific solution in order to resolve this issue.

803. On or around **23 July 2019**, Mr Rienacker decided to change the work allocation between Mr Abanda Bella, Mr Moune Nkeng and Ms Li. He decided that because Asian Option and Q/C/B were both top priority with significant work to be done on both validations, it was not feasible for one Validator to effectively work on both projects at the same time. He reassigned Equity Swap to Mr Abanda Bella and allocated Q/C/B to Ms Li. Mr Moune Nkeng, whilst supporting all validations would work on Q/C/B. He asked Mr Abanda Bella and Ms Li to hand over any work carried out during the last week to each other for the projects on which they would now be working **[2082]**.

804. There had been no consultation about this reallocation of workload with Mr Abanda Bella, Mr Moune Nkeng or Ms Li. There was no reason for Mr Rienacker to do so. As the head of the asset class, it was his role and responsibility to allocate those in his team so that projects were progressed in the most efficient manner, as the needs of the business required.

805. That afternoon there was an internal meeting attended by Mr Moune Nkeng, Ms Li and Mr Rienacker to discuss the work that Ms Li had been doing up to that point on Equity Swap. The reason why Mr Abanda Bella did not attend was he had either left early or he was working at home on that day. The Tribunal rejects Mr Abanda Bella's assertion that Mr Rienacker ignored his concerns and requests for clarification about the Q/C/B project and that he was excluded from a "secret" meeting on 23 July 2019 to discuss work allocation (as alleged in **[CAB Issue 1/3.19; 1/6.14]** to be protected disclosure detriment and victimisation) **(cf HSMN Issue 1 8.10; 12.19).**

806. As part of the handover arrangements, Ms Li had chosen to send the work she had been doing on Equity Swap over the past week to the Model Control Office. Mr Abanda Bella took objection to this. In an email to Mr Rienacker, Ms Li and Mr Moune Nkeng, he said he would like Ms Li to "rescind her email and own up to her mistake" **[2205]**. Despite Mr Rienacker's reply accepting that "it would have been better if [Mr Abanda Bella] had sent out the email, as you are working on Equity Swap", Mr Abanda Bella's response was to accuse Mr Rienacker of lacking "basic respectful manners", excluding him from a meeting, and not taking his opinion seriously. He characterised this treatment as "ostracism on 3 successive counts". He concluded his comments with the following:

> "In addition, this effectively means that our stakeholders might work on Huayi's feedback only to discover that I do not endorse them later on, wasting their already stretched resources and potentially bringing discredit to the function in the process." **[2205]**

807. This email, dated **25 July 2019**, 4:30AM **[2204]**, is alleged to be a protected disclosure, namely that Mr Rienacker was bringing discredit to the IVU function and was harassing Mr Abanda Bella **[CAB issue 2/1.10]**. Mr Abanda Bella argues that he was disclosing information that the Bank had failed, was failing or was likely to fail to comply with its obligations under Section 1(2) Health and Safety at Work Act 1974, and that the Bank had failed, was failing or would be likely to fail with its legal obligations under Regulation 575/2013 and Fed/OCC guidelines for sound MRM (SR 11/7).

808. Despite the way this email is described in the second list of issues, the email makes no reference to 'harassment'. The email made no reference to the Health and Safety at Work Act 1974 or any obligations under it; or to Regulation 575/2013 or SR 11/7.

809. Mr Rienacker emailed back, asking him to stop this email thread, "as it is not constructive and distracts all team members from their projects". He added "Yesterday I and Huayi spent a significant part of the work day answering your various emails." He ended the email "Pls take this as an order. Thanks!" **[2204]**. Ms Li emailed Mr Rienacker with her perspective on Mr Abanda Bella's emails **[9600]**:

> "All these communications are just to create unresolvable issues, endless discussion and tension in working place, finally just the excuses of not making any progress. Let's see what happen at end.
>
> Btw, I don't know the tension towards me is in person or just for the email I sent. This make me feel particularly bad. I think I might be over sensitive."

810. Mr Abanda Bella's case is that Mr Rienacker subjected him to detrimental treatment for making protected disclosures and doing protected acts by failing to forward his emailed comments made on 25 July 2019 to HR as a grievance – this is said to be protected disclosure detriment **[CAB issue 2/4.6]** and victimisation **[CAB issue 2/7.2]**. Mr Abanda Bella knew full well how to raise a grievance. He did not need to rely on Mr Rienacker doing it for him by contacting HR on his behalf. It was not part of Mr Rienacker's function as Mr Abanda Bella's line manager to decide whether such an email amounted to a grievance. At best he should have checked with Mr Abanda Bella whether he wanted to formalise this as a grievance; at best have a quiet word as to whether to deal with it informally.

811. On **29 July 2019** Mr Abanda Bella started a further period of sick leave, which has continued until the date of the Final Hearing. On that day and again on **5 August 2019 [2388]**, Mr Rienacker followed up in relation to Mr Abanda Bella's position on the proposed Occupational Health referral.

812. The Bank's Ill Health Procedure states "employees must assist Barclays in protecting their wellbeing and helping them to return to work" **[1/1188]**. Particular requirements

were then listed in bullet points including keeping in touch with their Line Manager and "where necessary, consenting to any referrals requested by OH, for example, to one of their medical professionals or an independent expert, or allowing OH to contact their treating specialist as requested". The Ill Health Procedure also states that "it is particularly important that the Line Manager notifies ER Direct at the earliest opportunity of any absence resulting from stress, depression or any mental health condition".

813. The guidance also says the following under the heading "Long Term Sickness":

> "When an employee is absent for 28 calendar days or where the Line Manager is aware that the absence is likely to last longer than four weeks, the Line Manager, whilst remaining accountable for managing the employee's absence, must seek expert advice from ER Direct and OH. Employees and Line Managers must ensure that they keep in regular and appropriate contact throughout the absence."

814. Mr Abanda Bella sent a further four-week fit note on **2 September 2019 [2555]**. This signed him off work for a period of 2 months until 27 October 2019. The reason given was "stress".

815. On **4 September 2019**, Mr Rienacker emailed Mr Abanda Bella asking him to confirm if he agreed to an Occupational Health referral **[2555]**. He suggested a catch-up in person or by telephone; or alternatively asked for a quick update by email. There was no response from Mr Abanda Bella.

816. In a further email on **9 September 2019**, Mr Rienacker provided more details about the Occupational Health (OH) referral. He attached the Occupational Health Information Sheet, summarising the main aspects of an occupational health referral in various bullet points. His email, which was written on advice from HR, stated that there was a contractual obligation to engage with OH in cases of long-term sickness. He warned him that if he did not engage with OH, the business would only be able to make decisions based on the information they had available, and this would limit the reasonable adjustments that the business can put in place to support him. He said he would like to start the OH referral as soon as possible **[2554]**. Again, Mr Abanda Bella failed to respond.

817. Mr Rienacker took further advice from HR on **11 and 12 September 2019**. He was advised to send letters to Mr Abanda Bella's home address and to add in Mr Abanda Bella's personal email address to the referral form **[2306]**. On **13 September 2019**, Mr Rienacker sent Mr Abanda Bella a letter approved by ER Direct. It asked Mr Abanda Bella to contact him as soon as possible and in any event by 17 September 2019. He was warned that continued failure to co-operate with the Barclays Ill Health policy might result in disciplinary action due to not following the correct absence

reporting procedure and/or withdrawal of his company sick pay **[2562]**. This was in accordance with the Ill Health Policy, which provides as follows:

> "Failure to provide proper notification and to cooperate with the Ill Health Policy and provisions may result in an absence being unauthorised which could result in disciplinary action and/or sick pay not being payable." **[1/1188]**

818. The policy also provided that "Employees must assist Barclays in protecting their wellbeing and helping them to return to work by … keeping in touch with their Line Manager" **[1/1188]**. On **13 September 2019**, on advice from ER Direct, Mr Rienacker initiated an Occupational Health referral, which was acknowledged by OH the same day **[2310]**. Mr Abanda Bella had not consented to this referral in advance of it being made.

819. Occupational Health contacted Mr Abanda Bella on **18 September 2019** to make an appointment. He told them he was refusing to make an appointment because he was not happy for an Occupational Health referral to be made **[2314]**. He was unwilling to accept this when the point was put to him in cross-examination. He claimed instead that it was Occupational Health who told him they could not deal with him given the limited discussion between him and his line manager.

820. On **19 September 2019**, Mr Abanda Bella emailed Employee Relations **[2622]**. The title of his email was "Sick Leave – Reasonable Adjustment - OH". This was prompted by receiving the letter dated 13 September 2019 posted to his home address. He noted he had not consented to an Occupational Health referral being made. He asked, as a reasonable adjustment, to be separated from "my line manager" and to liaise with HR and/or Employee Relations directly during his sick leave, including on matters relating to Occupational Health. This is admitted to be a protected act **[CAB issue 1/4.13]**. This email was initially sent to the ER mailbox for the BI business area, rather than to the ER mailbox for the risk business area. On **1 October 2019** it was forwarded to the correct team; and on **2 October 2019**, Mr Abanda Bella was told it had been sent to the correct team **[2617]**. By **7 October** it had been received by Mrs Richardson **[2622]**.

821. In the meantime, Mr Rienacker had sent a further email to Mr Abanda Bella about the Occupational Health referral. This warned him again that failure to engage with OH may lead to disciplinary action and/or withdrawal of his sick pay **[2615]**. He set a deadline of **7 October 2019** for a response. This prompted Mr Abanda Bella to complain on **7 October 2019** in an email sent to the correct Employee Relations address that he had been contacted again by Mr Rienacker despite his request to be separated from him as a reasonable adjustment **[2617]**. This email is alleged and accepted to be a protected act **[CAB issue 1/4.13.1]**.

822. On **7 October 2019**, Mrs Richardson discussed the request for a reasonable adjustment with Mr Kim, following up her discussion with an email asking for there to be an agreement as to a suitable method to maintain contact going forwards **[2625]**. Mr Kim said that Mr Rienacker would take advice from ER Direct and discuss the possibility of him (Mr Kim) being the point of contact going forwards **[2625]**. The advice from ER Direct was that ER Direct was only available to managers and so could not be the point of contact for Mr Abanda Bella during his sickness absence. A decision was made that Mr Kim should be the new case owner. He would be the point of contact for Mr Abanda Bella **[2330]**. Mr Kim informed Mr Abanda Bella of this in an email dated **10 October 2019 [2662]**. He had not interpreted Mr Abanda Bella's reasonable adjustment request as a request to be separated from all those currently in the line management chain of responsibility. Mr Kim's email also asked Mr Abanda Bella to confirm he was willing to engage with Occupational Health and also to attend a welfare meeting with Mr Kim. He warned Mr Abanda Bella that a failure to engage would result in company sick pay being suspended and potential disciplinary action. Mr Abanda Bella said he would reply by lunchtime the following day.

823. On **11 October 2019**, Mr Abanda Bella emailed Employee Relations, asking to be separated from Mr Kim's line management as a reasonable adjustment **[2646]**. His emailed stated he had previously specifically asked to liaise with HR and/or Employee Relations directly during his sick leave, including on matters relating to Occupational Health. He said that ignoring his request, without providing reasons, was "quite upsetting and very detrimental to my recovery and my efforts towards getting back to work". He said he was reiterating his earlier request. This email is admitted to be a protected act **[CAB issue 1/4.14]**. It is also alleged to be a protected disclosure **[CAB issue 1/1.19]**.

824. On receipt of this request, there were internal email discussions between Mr Haworth, Complex Case Manager, and a representative from ER Direct. Mr Haworth was seeking to understand whether there had been any relevant Occupational Health advice. He noted that assuming line management responsibility during sickness absence was not normally how the ER or HR teams operated **[2650]**.

825. Mr Haworth emailed Mr Abanda Bella at 17:02 on the same day, **11 October 2019**, responding to his reasonable adjustment request **[2644]**. He said he was "comfortable" with Mr Kim remaining as Mr Abanda Bella's alternate line manager as "it is not appropriate for ER or HR to adopt this role". He encouraged Mr Abanda Bella to engage with Occupational Health and reminded him of the Employee Support Team and of the confidential 24/7 support service.

826. The contents of this email is alleged to be discrimination arising from disability **[CAB issue 26.1]**.

827. On **1 October 2019**, Mr Abanda Bella received an email at his work email address from HR Employee Communications informing him that the 2019 year-end performance review process opened that day **[2607]**. It asked him to complete his self-review by 28 October 2019. It informed him that after 28 October 2019 he could not make any further changes to his review and his manager would be able to access his self-review. He was told that his manager would complete their review of his performance and then there would be a year-end performance conversation before 31 January 2020. This was an email featuring standard wording sent to all Validators in the IVU team. This was followed by a second email on **25 October 2019,** again sent to his work email address, giving him a final reminder to complete the year end self-review by 28 October 2019 **[2840]**.

828. On **15 October 2019**, Mr Abanda Bella submitted a ten-page document, which he ended with the words "please accept this letter as a formal letter of grievance". This is the first time he had described one of his written communications in this way. It is relied on as a protected disclosure **[CAB issue 1/1.20]** and a protected act **[CAB issue 1/4.15]**. It was sent to Mr Kim and copied to various Employee Relations email addresses **[2662]**. It alleged breaches of the implied term of mutual trust and confidence; failure to act in accordance with the ACAS Code; failure to make a reasonable adjustment; bullying and harassment contrary to Section 26 Equality Act 2010; direct discrimination on the grounds of race; disability discrimination and breaches of health and safety at work **[3273]**. It justified why his absence for stress amounted to a disability.

829. Towards the end of the document, he also alleged he had been treated unfavourably because of something arising in consequence of his anxiety, contrary to Section 15 Equality Act 2010. The document did not expressly allege he had suffered detriment for making protected disclosures, or victimisation contrary to Section 27 Equality Act 2010 for doing a protected act.

830. The ten-page document did not at any point state or imply he had previously informed the Bank of the extent of his mental health symptoms. It alleged, as a result of the medical record he was attaching, "my employer now has 'imputed knowledge' of my 'mental health impairments'". He said his employer had constructive knowledge that his mental health was suffering back in June 2019, given that he had been signed off work with "stress". He referred to several appellate authorities to substantiate his points, as well as to the EHRC Statutory Code of Practice on Employment (2011).

831. Unbeknown to the Bank at the time, Mr Abanda Bella had in fact self-referred to a psychotherapist in July 2019 due to the state of his mental health **[C/10766]**. Thereafter he had engaged in weekly online Cognitive Behavioural Psychotherapy sessions.

832. In the grievance letter, Mr Abanda Bella identified Mr Rienacker and Mr Kim as "the root causation of my work-related stressors viz: due to a systemic campaign of bullying, harassment and less favourable treatment on protected grounds of race" **[3277]**. He asked, as a reasonable adjustment, that "my line manager and line manager's manager desist contacting me during my disability-related sickness absence" **[3281]**.

833. For the first time, he said he was amenable to consulting Occupational Health, so long as it was done on his terms. These he stated as:

> "Please send me the list of specific questions, which the HR Department wants the OH Department to answer no less than 72 hours in advance of the actual assessment.
>
> Should I be amenable to the questions posed, I will give my consent under GDPR 2018." **[3281]**

834. It is evident that the ten-page document would have required considerable thought and research. It is also clear that Mr Abanda Bella was planning to expand the scope of his grievance by submitting a further letter, which he expected to provide on or around 11 November 2019 **[3273]**. The focus of the 15 October 2019 document was predominantly on an alleged failure to make reasonable adjustments. Although there was general reference to both direct race discrimination and to breaches of health and safety at work, there were no specific allegations of either type of breach of a legal obligation.

835. The Respondents admits the document is a protected act, as Mr Abanda Bella alleges **[CAB issue 1/4.15]**. It is also alleged to be a protected disclosure **[CAB issue 1/1.20]**. Mr Abanda Bella argues that it identified failures to comply with legal obligations imposed by the Equality Act 2010, the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and/or that a person's health and safety had been, was being or was likely to be endangered.

836. He attached a GP's letter of referral to a psychotherapist, dated 21 June 2019, recommending Mr Abanda Bella as suitable for counselling **[3133]**. No more recent medical letter was attached, although by this point almost four months had passed since this GP had been consulted. This letter came from the GP's practice based close to the Bank's office and was worded as follows:

> "Thank you for seeing this gentleman who is dealing with a large amount of stress which is affecting him physically and mentally. He has a very stressful work situation and has noted low mood, difficulty concentrating, slowing of processing, sleep disturbance and reduced appetite. In the past he has been good at

identifying and managing symptoms with exercise and diet but this has been overwhelming.

He is not suicidal. He does not drink alcohol and he does not smoke.

I think he would benefit from counselling.

We would be grateful if you could send your report via email (address at top of letter) and to this patient's NHS GP. if they consent to this."

837. The GP letter did not refer Mr Abanda Bella to a psychiatrist for detailed investigation and diagnosis. The GP did not attempt to put any diagnostic labels on Mr Abanda Bella's health condition, beyond the layman's term "stress". This was despite Mr Abanda Bella referring in the grievance itself to a diagnosis of anxiety and depression. The GP's letter did not indicate he had been prescribed antidepressants. There is no indication in this letter as to how long the stress condition had lasted or was likely to continue; nor as to how much future treatment may be required.

838. On **16 October 2019**, Mr Kim acknowledged Mr Abanda Bella's grievance **[2670]**. He told him that an independent manager would be appointed.

839. On the same day, **16 October 2019**, he wrote to Mr Abanda Bella inviting him to a formal meeting on 23 October 2019 as part of the sickness absence procedure **[2668]**. It was worded as follows:

"Subject: Invite to formal meeting

Further to my last correspondence I am writing to confirm our meeting arrangements.

Please join me at 1 Churchill Place on Wednesday 23rd October at 10.30am

As discussed, the purpose of this meeting is to discuss your current absence from work, for you to provide an update on your medical condition and to ensure you are receiving all the appropriate support.

I will be joined by Chris Parker who will take notes so I can focus on the meeting with you.

I look forward to meeting with you on Wednesday 23rd October, however, please do contact me if there is anything you wish to discuss before we meet."

840. The letter is said to be victimisation **[CAB issue 1/6.15]** and disability related harassment **[CAB issue 1/38.1]**.

841. At this point, Mr Kim did not realise that Mr Abanda Bella had been asked to be separated from his line management. Mr Abanda Bella's email of 11 October 2019,

asking to be separated from Mr Kim **[2646]**, had not been sent to Mr Kim. The Tribunal accepts that Mr Kim had not been told by ER Direct at this point that there had been a request for him to withdraw as Mr Abanda Bella's line manager.

842. Mr Abanda Bella had previously emailed Mr Kim on **14 October 2019 [2662]** responding to Mr Kim's suggestion made on 10 October 2019 that there should be a welfare meeting. In his email of 14 October 2019, he said: "I will reply to your communication below by tomorrow lunchtime". He did not state in that email that he wanted to be separated from Mr Kim's line management. The first time Mr Kim could have become directly aware that Mr Abanda Bella did not want to be line managed by him was from the contents of the grievance letter he had been sent at 13:21 on 15 October 2019. In the short period of time between receipt of the grievance letter and sending his email on 16 October 2019, Mr Kim did not analyse the details contained in the ten-page document.

843. Earlier during the day on **16 October 2019**, he had asked ER Direct to approve the proposed wording of his letter inviting Mr Abanda Bella to a wellbeing meeting. They had suggested an amendment, which Mr Kim had incorporated. The documents do not suggest ER Direct cautioned him against writing to Mr Abanda Bella at all given the request made by Mr Abanda Bella within his detailed grievance document. The Tribunal accepts Mr Kim's evidence that he did not realise when sending the 16 October 2019 email that Mr Abanda Bella had asked to be separated from Mr Kim's line management. At a point where it appeared to Mr Kim that Mr Abanda Bella had not yet consented to an Occupational Health referral, it was a supportive step to invite him to a wellbeing meeting to better understand the impact of his health condition.

844. On **18 October 2019**, Mr Abanda Bella emailed a lengthy letter to Mr Kim and others **[2698]**, with the word "Grievance" in the email subject line. The letter was addressed to Mr Kim **[3285]**. This complained about the letter of 16 October 2019 inviting him to attend a well-being meeting with Mr Kim at Churchill Place. He said Mr Kim was ignoring his request made on 15 October 2019 (in his grievance) that he be separated from Mr Kim's line management. He said that receiving correspondence from him exacerbated his mental health issues and amounted to Mr Kim acting in a Machiavellian manner. He alleged that this was a serious breach of the implied term of mutual trust and confidence and an act of on-going victimisation. He said he was raising further grievances against him for acting in a malicious manner with malicious intent. He said the treatment was also discrimination arising from disability. He said that there had been a failure to implement reasonable adjustments in relation to the invitation to the wellbeing meeting. He wrote "I am putting you on notice that if you continue to write to me during my disability-related sickness absence, then you will leave me no choice in the matter but to go to the Magistrates Court and seek a Restraining Order against you". He also referred to caselaw setting out the legal principles applicable to a personal injury claim for stress at work. He alleged that the

motivation behind Mr Kim's behaviours was race related, being harassment 'related to' race and less favourable treatment 'because of' race. He based this in part on similar treatment received by Louis Samnick. He wrote he would not be attending the scheduled meeting on 23 October 2019. In the letter, Mr Abanda Bella wrote he was "blowing the whistle" **[3291]**.

845. The Respondents admit that this letter is a protected act **[CAB issue 1/4.16**]. Mr Abanda Bella also alleges the letter was a protected disclosure **[CAB issue 1/1.21]**. This is on the basis he was disclosing information of a failure to comply with legal obligations under the Equality Act 2010 and specifically the prohibition against victimisation, as well as disclosure of health and safety legislative breaches and of information showing health was being endangered.

846. Referring to both his own situation and to that of Mr Samnick, Mr Abanda Bella wrote "If Barclays wants to turn a blind eye to your on-going pursuit of bullying harassment, discrimination and victimisation against myself and Louis Samnick, then Barclays runs the risk (as do you) that these complaints will be turned into claims at an Employment Tribunal **[3292]**.

847. This second grievance letter was forwarded to ER. It was reviewed by Mr Haworth. On **21 October 2019**, Mr Haworth emailed several of those with some involvement in Mr Abanda Bella's case. To Mr Kim he wrote "based on the nature of the content it would clearly not be appropriate for you to send any communications, written or email as the employee is alleging that this is causing distress". The same email made it clear that another line manager would pick up Mr Kim's responsibilities **[2816]**.

848. On **22 October 2019**, the Bank wrote to Mr Abanda Bella **[3293]**. The letter told him that his entitlement to full sick pay was about to be exhausted. This was because as an employee with less than three years' service he would shortly have had more than sixteen weeks off sick during the last 12-month period. As a result, his pay would reduce to nil pay with effect from 31 October 2019. The letter advised him of the right to request benefits through either the Ill Health Income Plan or the Barclays Income Protection Scheme. At the time, his current sick note ran to 27 October 2019.

849. On **30 October 2019** Mr Haworth acknowledged receipt of Mr Abanda Bella's grievance letter of 15 October 2019, noting he was invoking the grievance procedure and was also intending to lodge a further grievance. He said he was in the process of identifying an independent manager to be appointed to hear the grievance. He indicated that Mr Bill Chen would be the ongoing point of contact in relation to welfare issues as it was not appropriate for either HR or ER Direct to have this role. He noted Mr Abanda Bella was consenting to an Occupational Health referral and attached an employee information sheet about Occupational Health for Mr Abanda Bella's information. Mr Haworth asked for his preferred telephone/mobile number and an

email address. He said these were required before they could make the referral **[3383]**.

850. Mr Abanda Bella accepted in cross-examination that in **late October 2019** he was seeking legal help. He had accessed help from a particular solicitor in relation to bringing tribunal proceedings but chose not to retain that solicitor as his representative.

851. On **4 November 2019**, Mr Abanda Bella responded, rejecting Mr Bill Chen as his point of contact during his sickness absence. He said there was a conflict of interest because he (Mr Abanda Bella) had assisted Mr Samnick in bringing a grievance against Mr Bill Chen **[2944].** Mr Samnick had lodged his grievance against Mr Bill Chen on 22 October 2019, around two weeks earlier. As a result, Mr Haworth decided that Mr Patel should be the contact manager **[2945]**. This was confirmed to Mr Abanda Bella the following day **[2948]**. In that email, the Bank did not insist that any well-being meeting with him should take place at 1 Churchill Place.

852. On **4 November 2019 [2941]**, Mr Abanda Bella was reminded of his right to apply for payments under the Barclays Income Protection Scheme (BIPS). This was because he had been absent from work for several weeks and as a result "may be eligible to receive benefits". In order to claim under BIPS, he was told he needed to complete a claim form and the insurers needed to carry out an assessment of his current incapacity. He was sent an information sheet explaining the BIPS **[1/1237]**.

853. On **7 November 2019**, Mr Kim emailed his IVU Directors with the overall rankings for those at Vice President or Assistant Vice President grade. Ms Li was in first place followed by Mr Maouche. The three Claimants were in 10th, 11th and 12th positions (out of 12). Mr Abanda Bella was ranked eleventh **[2984].**

854. On **11 November 2019**, Mr Abanda Bella provided his contact details for an Occupational Health referral. He said he required sight of the specific set of questions that would be sent to Occupational Health, no less than 72 hours in advance of the OH meeting **[3381]**. On **19 November 2019**, Mr Haworth listed the questions that Occupational Heath had been asked in relation to Mr Abanda Bella **[3381]**. A telephone assessment took place with Occupational Health on **28 November 2019**. ER Direct received the report on **17 December [2366] [4413]**. The reason for the delay between the assessment and the report is that Mr Abanda Bella had asked to see the report before it was released to the Bank.

855. Based on what Mr Abanda Bella had told the OH advisor, the Occupational Health report recorded that there were no adjustments currently in place. This was not an accurate reflection of the present position. Mr Abanda Bella had objected to having contact with Mr Rienacker, Mr Kim and Mr Chen. The Bank had instead assigned

him Mr Patel as his line manager during his sick leave, even if they had not described doing so as a reasonable adjustment.

856. The Occupational Health report also noted as follows:

> "The employee advises that his psychological health started to decline approximately 18 months ago. He reports he is currently experiencing reduced energy levels, sleep disturbance, impaired appetite, social withdrawal, low mood and anxiety. He additionally detailed significant impairment to his processing ability and notable reduction to his memory."

857. The report went on to record that he was seeing a psychotherapist and had completed just under 20 sessions to date. The treatment had apparently been beneficial and there were no plans currently to end the treatment. The report did not indicate he was taking any prescription medication. In answer to the question "Is the impairment "long term" i.e. has it lasted, or is it expected to last 12 months or more?", the report recorded that the employee reported symptoms that had exceeded 12 months. Symptoms were likely to continue at a level that would prevent him from being fit for work until the perceived work concerns had been resolved. A further Occupational Health review was diarised for 22 January 2020.

858. There is a report in the Claimants' bundle of documents **[C/10766]** from Mr Abanda Bella's treating psychotherapist, dated **16 November 2020**. It provides a somewhat different perspective as to when symptoms started. It records significant impairments that had impaired his social, occupational, physical, psychological and daily activity functioning "have occurred since therapy onset" **[C/10769]**. The first session of therapy was noted to have taken place on 8 July 2019. What Mr Abanda Bella told Occupational Health is also inconsistent with what he reported to his GP when he first consulted him on 21 June 2019, when he said he had been stressed at work for over a month. The Tribunal finds that Mr Abanda Bella did not provide an accurate account to Occupational Health of the duration of his symptoms. It is more likely that they started in the middle of 2019, intensifying at the start of July 2019 such that he sought psychological treatment.

859. In the meantime, as foreshadowed in his 15 October grievance, on **11 November 2019**, Mr Abanda Bella had lodged a further formal written grievance, which he described as "Grievance & Whistleblowing" **[3017]**. It was emailed to ER, HR, Ms Armata, Raising Concerns and the Whistleblowing Team. The grievance letter ran to 305 paragraphs over fifty-seven pages with 56 exhibits **[3075]**. It is accepted to be a protected act **[CAB issue 1/4.17]**. The Respondents do not accept that it was a protected disclosure **[CAB issue 1/1.22].**

860. He said that the purpose of the letter of grievance was to establish the specific grounds and reasons why his line managers (and their line managers) had

systematically failed to treat his written complaints since 2017 as grievances. He alleged that Mr Rienacker had discriminated against him because of his race throughout the period since 2017. He said he believed Mr Rienacker had instructed caused and induced other managers (specifically Mr Kim) to act in contravention of the Equality Act 2010; and that Mr Kim had unlawfully aided Mr Rienacker to discriminate against him.

861. He also alleged that there had been discrimination against Mr Samnick and against Mr Moune Nkeng, which he described as “indirect discrimination”. He referred to the relationship of trust and confidence as “hanging by a thread” and implied the treatment he had received amounted grounds for claiming constructive dismissal.

862. He asked that the person appointed to investigate his grievances should have received equality training and had some understanding of employment law. He argued that neither the HR Department nor the Whistleblowing Compliance Team should have any involvement in the investigation as they were the subject of some of his complaints. He then made various observations and raised numerous questions about many of the documents he exhibited. The earliest of these documents dated from September 2017.

863. Throughout the document he made many references to appellate authorities to substantiate the points he was making. He also referred to Section 123 Equality Act 2010. This is the section that provides that there is a primary time limit of three months for bringing complaints to the employment tribunal **[3122]**. In a final section headed “Summarisations”, he said he could not return to work whilst “the working environment was prejudicial to my health, safety and welfare as an employee diagnosed with anxiety and depression”. He alleged he was asserting a statutory right, because returning to work would endanger his health and well-being. As part of what he regarded as an appropriate outcome, he wanted the Bank to warn Mr Kim and Mr Rienacker in writing that any further actions in contravention of the Equality Act 2010 or other statutes would leave him no choice but to name them as additional Respondents in any Tribunal claims. He alleged that the decision to stop his pay was discrimination arising from disability, because it would not have happened but for the conduct of Mr Rienacker, Mr Kim and the HR Department. He listed sixteen different reasonable adjustments as “just some of the adjustments, which could have should have and ought to have been put in place at the material time my employer had constructive knowledge of my anxiety and depression.” Significantly, he did not specifically request, as he now argues should have occurred by way of a reasonable adjustment, that meetings should take place at a neutral venue or in his home, or by video link or telephone, nor was he asking to be permitted to be accompanied at the grievance hearing by a person of his choice, or instead that the grievance should be conducted in writing.

864. On **15 November 2019**, Mr Abanda Bella had a Webex meeting with Jolanta Hollett, the appointed whistleblowing investigator, to enable her to investigate the concerns he had first raised when he contacted the whistleblowing team on 19 June 2019. The meeting lasted for 35 minutes between 10am and 10.35am. Edwina Coughlin from ER Direct also attended the meeting. By this point, the lengthy grievance letter of 11 November 2019, sent four days earlier, was with the Raising Concerns team. It had not yet been formally referred to the Whistleblowing Team. That happened on **29 November 2019**. Ms Coughlin had seen that a grievance had been lodged but not yet studied the details. Ms Hollett did not know that there was a more recent grievance until it was raised by Mr Abanda Bella towards the start of the meeting. Mr Abanda Bella forwarded the 11 November grievance letter to the whistleblowing investigator during the meeting. Because Mr Abanda Bella wanted Ms Hollett to first consider the details of his most recent grievance, the meeting did not discuss the substance of his concerns. It was understood that there would be a further remote meeting.

865. At the outset of the meeting, Mr Abanda Bella had announced he was recording the meeting so he could listen back for any errors. He said he was doing so because of his current health conditions as it was easier for him **[3326]**. He did not give any details about his health condition. This prompted Ms Hollett to seek advice about recording from her line manager, Mr Andrew Butler. He joined the meeting. He said "we ask that you don't record the interview. We are happy to share the notes afterwards and you can make any changes. Does that sound like a compromise?". The Tribunal does not accept Mr Abanda Bella was told he would be provided with the minutes of the meeting immediately after the meeting had ended. This word does not feature even in Mr Abanda Bella's own notes of the meeting, which he said were written immediately after the end of the call **[3412]**. At the time of this meeting, Mr Butler did not know any further details about Mr Abanda Bella's health condition. By that stage, no Occupational Health report had yet been received by the Bank.

866. Mr Abanda Bella agreed not to record the interview. He asked to be sent a copy of the notes afterwards. He now argues that it was an act of victimisation on Mr Butler's part not to permit him to record the meeting **[CAB issue 1/6.16]**, discrimination arising from disability **[CAB issue 1/26.4]** and a failure to make reasonable adjustments **[CAB issue 1/30.3/32.3]**.

867. Mr Abanda Bella chose to make his own notes of the meeting straight after the call had ended **[3412] [3420]**. These were detailed notes. As Mr Abanda Bella said in a subsequent grievance: "Thankfully I noted the minutes of the meeting straight after the call, so that the statements were fresh in my mind" **[3420]**.

868. On **18 November 2019**, Ms Coughlin emailed Ms Hollett about various matters arising from the 15 November meeting, including the preparation of notes **[9610]**. On

19 November 2019, Ms Hollett apologised to Mr Abanda Bella that he did not yet have the minutes of the meeting. She said they were currently being reviewed and would be sent to him as soon as the review was complete.

869. On **26 November 2019**, before receiving a copy of the minutes of the 15 November 2019 meeting, Mr Abanda Bella submitted a further grievance letter **[3408] [3409]**. The grievance was headed "Further Breaches of the Implied Term of Mutual Trust and Confidence" and was set out over three pages. It focussed on the delay in providing the notes of the telephone meeting with the Whistleblowing Team on 15 November 2019. He said he had not yet received a copy of the minutes. He said he reasonably believed that the meeting minutes were being "deliberately concealed" and purported to be making a protected disclosure. The delay in providing the minutes was, he said, seriously undermining his trust and confidence in the whistleblowing team. He suspected that the minutes were being manipulated. Mr Abanda Bella alleges that this grievance was a protected disclosure **[CAB issue 1/1.23]** in setting out that a miscarriage of justice had occurred. He ended his email by saying that the failure to provide the minutes was a fundamental breach of the implied term of mutual trust and confidence.

870. The minutes were agreed between Ms Hollett and Ms Coughlin and sent to Mr Abanda Bella at 4pm on the same day, **26 November 2019 [3416]**. This was seven working days after the meeting. This delay was longer than the time often taken to circulate notes of meetings. However, Mr Abanda Bella was told on 19 November 2019 that the notes were still being reviewed and would be emailed to him when finalised. The covering email told Mr Abanda Bella that the notes were not verbatim but were meant to reflect the salient points of the discussion. When he was sent the notes, he was asked to review them and to mark any comments by way of tracked changes. He never took the opportunity to do so.

871. The Bank's minutes were substantially similar to the notes taken by Mr Abanda Bella. Mr Abanda Bella's case is that the Bank has edited out references where Mr Butler had apparently promised he would receive the minutes immediately after the meeting and where he (Mr Abanda Bella) had apparently made several references to his mental impairments. The Tribunal does not accept that any such action was taken in relation to the official minutes. The Tribunal is satisfied that the official minutes are a reasonably accurate record of what was said during the meeting.

872. On **27 November 2019**, Mr Abanda Bella submitted a further grievance **[3419]**. This six-page grievance complained about the accuracy of the minutes of the meeting sent the previous day. It argued that there was a failure to make a reasonable adjustment and discrimination arising from disability in failing to permit him to record the meeting, given the extent of health condition. By that point, the Bank was not aware of the extent of his health condition, because the Occupational Health report had yet to be received. Mr Abanda Bella alleges that this further grievance is also a

protected disclosure. The grievance itself claims that it is a protected disclosure of a breach by Mr Butler of his 'fiduciary duties' to ensure that the Bank complies with its statutory duties under the Equality Act 2010 (paragraph 21). It did not suggest he was disclosing information tending to show a miscarriage of justice, as he now alleges **[CAB issue 1/1.23]**.

873. Given that Mr Abanda Bella had his own detailed notes of the meeting, and was sent Ms Coughlin's official minutes, which he had the opportunity to amend if he so wanted, Mr Abanda Bella was not substantially disadvantaged by the fact that the meeting was not recorded. The fact that the Tribunal permitted him to make an audio recording of the Final Hearing (and some earlier hearings) does not indicate that this would have been a reasonable step to have taken in relation to the whistleblowing meeting. The decision to allow Mr Abanda Bella to record Employment Tribunal Hearings was taken at the outset of the hearings before hearing any evidence on the point.

874. Towards the end of 2019, Mr Abanda Bella decided to join a union. He mentioned to them that he had a big grievance against his employers. The union told him there was little they could do to support him with this grievance because it predated the start of his union membership. In the Tribunal's experience, this has been the standard trade union practice for many years.

875. On **11 December 2020**, Ms Octavia Knox Cartwright replied to Mr Abanda Bella's emails of 26 and 27 November **[3511]**. She introduced herself and her role as the Group Head of Compliance Regulatory Remediation, Investigations and Whistleblowing. She said she had investigated the issues raised in his emails concerning the rejection of his request to record the whistleblowing meeting and the delay in providing the minutes. She explained why the notes of the meeting were sent out on the 7th business day after the meeting. She said she did not regard this delay as unreasonable. In relation to the accuracy of the notes of the meeting, she invited him to mark any changes in track or submit his notes about the accuracy of the minutes. If he did so, then these would be kept on file. Concerning recordings, she said that the Bank had a practice of not recording these meetings. As to the reason for this, she said it was "borne of experience, which tell us that it makes both parties to the conversation, interviewer and interviewee, more self-conscious and/or reticent and impedes the full and frank exchange of information which is so important to an investigation". She had understood that a compromise would be agreed with him that the notes of the meeting would be shared with him for his comments.

876. On **17 December 2019**, Mr Abanda Bella responded by putting in another grievance **[3617]**. This is relied upon as an alleged protected disclosure (said to be disclosing information which he reasonably believed tended to show a breach of the Equality Act 2010) and a protected act **[CAB issues 1/1.24 and 1/4.18]**. It is admitted to be

a protected act but disputed as a protected disclosure. It challenged the extent of Ms Knox Cartwright's investigation outcome, alleging that it had not covered all matters raised in his grievances of 26 and 27 November 2019. He argued that Ms Knox Cartwright had acted in contravention of his statutory rights under the Equality Act 2010. He also said he was making a protected disclosure. The basis for his protected disclosure was that, in his view, she had failed to comply with her fiduciary duties. He said he was "blowing the whistle to ensure that in the future, you do not discriminate against other Barclays employees with disabilities as you have done with me, and furthermore that you make the adjustments, which employees with disabilities need in order to remove the disadvantage arising in consequence of their disability, and moreover, the substantial disadvantage in comparison to non-disabled persons" **[3621]**.

877. Ms Knox Cartwright replied on **19 December 2019 [3617]**. She said that "if you wish to explore any of these matters further, that can occur in the context of the ongoing grievance process." She said that the grievance manager had been provided with his email of 17 December 2019.

878. Mr Abanda Bella's response on **8 January 2020** was to note he did want to explore these matters further **[3616]**. He finished his short email "it is my perception that you have wasted and that you are wasting time, and that this further undermines the implied term of mutual trust and confidence". This email is alleged to be a protected disclosure **[CAB issue 2/1.2]** and a protected act **[CAB issue 2/5.2]**.

879. In the meantime, Mr Haworth had been identifying a suitable person to support the investigation into Mr Abanda Bella's various grievances. On **17 December 2019**, Mr Haworth emailed Mr Abanda Bella to confirm that Mr Easdon, Head of Litigation EME, had been appointed to hear the grievance set out in his letter of 11 November 2019 and in his earlier grievances as recorded by Mr Haworth in his email of 30 October 2019 **[3534]**. He said: "the next step is to arrange a grievance meeting, and we will be in touch with you shortly to propose a date, time and location for the meeting". He added that the Bank was still waiting for advice from Occupational Health, but "if [he should] have any specific needs for the meeting which [he] would like us to consider beforehand" he should contact him as soon as possible. He told him that the whistleblower retaliation elements would be investigated "as a whistleblow" by the Investigations and Whistleblowing team.

880. By the time Mr Haworth wrote this email, he had not yet seen the Occupational Health report that was uploaded to the ER Direct system on the same date. Mr Abanda Bella did not respond to Mr Haworth to ask for any particular adjustments in relation to the proposed grievance meeting or its location.

881. On **20 December 2019**, Mr Abanda Bella emailed Mr Haworth to object to the appointment of Mr Easdon as grievance investigator **[3576]**. He said this:

> "Further to your email dated 17.12.19, reasonable adjustments will need to be made to the grievance procedures. However, until such time as I receive the date and time for the grievance meeting, I am unable to state what specific adjustments I will need.
>
> With regards to the appointment of Chris Easdon, whom you have informed me is the **Head of Litigation EME**, to hear my grievance, I do not believe that this appointment is either fair or equitable, by reason that it perverts the equality of arms ie it does not put the parties on an equal footing. Therefore, I object to the appointment of Chris Easdon." (emphasis in the original).

882. On **7 January 2020**, HR Operations wrote a second letter to Mr Abanda Bella regarding BIPS. It was sent by post to his home address. This was following up on the letter dated 4 November 2019. The letter stated that Unum advised they had not received a completed Employee Questionnaire and Claims Processing Consent form. He was asked to do so within 10 working days of the date of the letter and warned that late applications may not be accepted **[3607]**.

883. Mr Abanda Bella did not object to receiving this letter sent in the post. There was no indication that his health would have been at risk from the Covid-19 Pandemic at this point. There had been few if any reported cases of Covid-19 in Europe. He had not suggested that his mental health might be impacted by receiving correspondence in the post, and there is no medical evidence substantiating this.

884. On **8 January 2020**, Mr Abanda Bella sent a letter to Mr Haworth asking about the status of the investigations into his grievance concerns. He said he required a date by which he could expect to have received the grievance outcome. He added:

> "As you are no doubt aware, under Section 123 of the Equality Act 2010, there are timeframes, which I have to observe" **[3613]**

885. On **16 January 2020**, Mr Haworth emailed Mr Abanda Bella responding to his objection to Mr Easdon being appointed. He said Mr Easdon was not an employment lawyer and would not be acting in his capacity as a lawyer but as an accredited Hearing Manager. He notified Mr Abanda Bella of a provisional date, time and location for the grievance meeting. This was at 10.30am on 5 February 2020 at either 1 Churchill Place or 5 North Colonnade – "in case you would prefer to avoid attendance at your place of work" **[3679]**. He was reminded he was entitled to be accompanied by a trade union representative or a work colleague at the grievance meeting. He was asked to let Mr Haworth know if he would like the Bank to consider making any adjustments. Mr Haworth was not insisting that the meeting should definitely go ahead at the Bank's premises. Mr Abanda Bella did not subsequently contact Mr Haworth to request any adjustments.

886. Mr Abanda Bella argues that the suggestion of a meeting at either 1 Churchill Place or 5 North Colonnade was discrimination arising from disability **[CAB issue 1/26.5].**

887. On **20 January 2020**, Mr Abanda Bella lodged a six-page grievance **[3679]** which was dated 17 January 2020 **[3685]**. The grievance was expressed, in the first paragraph, to be a rebuttal to Mr Haworth's letter dated 16 January 2020. Mr Abanda Bella argues that this grievance was a protected act **[CAB issue 1/4.19]** (which is admitted), and a protected disclosure **[CAB issue 1/1.25]** (which is disputed). The protected disclosure is said to be about failures in relation to the Bank's grievance investigation processes, a failure to make reasonable adjustments and the risk of employee's health and safety being endangered. It is alleged to be disclosing information about a failure to comply with the Equality Act 2010, and about health and safety being endangered.

888. In the grievance, he raised concerns about the choice of Mr Easdon as the Hearing Manager, given he was a lawyer. This was a surprising objection, given that in his grievance of 11 November 2019, Mr Abanda Bella had requested someone with knowledge of employment law should conduct his grievance. He suggested a neutral location for the grievance meeting would have been a reasonable adjustment and commented that the estimated duration was insufficient to cover the material. For the first time, he asked to be allowed to be accompanied by someone other than a colleague or trade union representative as a reasonable adjustment given the state of his mental health. He did not specify who he had in mind to accompany him. He set out a list of nine other adjustments that he was requesting. These also included asking for the grievance to be conducted in writing. He again called for the Bank to provide a timescale for providing the outcome to his grievances. He sought to equate his situation with that of Mr Samnick, arguing that they both required equivalent reasonable adjustments.

889. On **23 January 2020** Mr Haworth responded. He noted that Mr Abanda Bella had asked for the grievance to be conducted in writing **[3833]**. Agreeing with this proposal, he said he would be writing shortly with a list of questions for further clarification and was aiming to send this to him next week. He said he was unable to provide any definitive timescales to conclude the matter but would provide a progress update in 14 days' time.

890. On **27 January 2020**, Mr Abanda Bella emailed to raise concerns about the investigation timescale. He said that the longer the investigation took, the more severe the damage to his mental health was likely to be **[3833] [3840]**. This is alleged to be a protected disclosure **[CAB issue 1/1.25.1].**

891. The further Occupational Health review anticipated during the November assessment in fact took place in a telephone assessment on **28 January 2020 [4416]**. Mr Abanda Bella alleges that he received a first version of the report on 31

January 2020, sent a letter by email to AXA on 3 February 2020 asking for the report to be modified, and then received an amended report on 5 February 2020 (**CAB witness statement paragraphs 895 – 899**) informing him it had been released to his employer and to him at the same time. However, he does not cross refer to any documents to evidence this. The Tribunal presumes that any such documents, being restricted to AXA and to Mr Abanda Bella, would not have been seen by Barclays. If these have not been provided to the Tribunal, this would have been as a result of a failure on Mr Abanda Bella's part. As a result, the Tribunal cannot be clear as to the extent of his comments on the first draft of the OH report, whether he asked to see the report again before it was submitted to Barclays, and as to the extent of the changes made to the original report in the light of his comments. In particular, the Tribunal cannot be clear on the extent to which the clinician had taken on board the points he was making.

892. Mr Haworth received the report on **5 February 2020.** It noted that he had provided verbal consent for the following to be reported to the business. The report noted that there had been a deterioration in Mr Abanda Bella's psychological health since November 2019.

893. The report stated:

> "The employee reports impairment to functionality and is experiencing poor erratic sleep, poor appetite, poor concentration low energy levels and poor motivation. He describes being confused at times memory loss. He is currently not taking any prescribed mood stabilising medication and has recently been prescribed medication to aid sleep but reports he is not always compliant in taking the medication. He reports being unable to complete any exercise due to his symptoms and has ceased all previous hobbies. The employee reports he has help once a week with household tasks and his partner prepares his meals."

894. The Occupational Health report stated: "we continue to look to obtain consent from the employee to request further medical evidence". The Tribunal infers that Mr Abanda Bella had not provided Occupational Health with consent for them to obtain his GP records.

895. The writer stated that it was likely that the Fit Note which was due to expire on 22 February 2020 would need to be further extended. Mr Abanda Bella had recently been prescribed medication to aid sleep but the report made no reference to Mr Abanda Bella being prescribed any mood stabilising medication.

896. Mr Abanda Bella complains that on **5 February 2020**, the Bank applied a provision, criterion or practice of permitting AXA to share Occupational Health reports with the Bank without an employee's consent **[CAB issue 1/33.4]**. The Bank's policy was as set out in the applicable written procedure **[1/1189]**. This stated: "Employees will also

be given the option of seeing any report provided by Occupational Health or any assessment by an Occupational Health professional or independent expert before this is released to their Line Manager or to anyone else in Barclays". In addition **[1/1508]**, the Bank's policies provided as follows:

> **"Q10 Can an employee request OH withhold certain information from Barclays?**
>
> Yes although OH do encourage employees to allow all information to be shared with Barclays. On the rare occasions that an individual decides to restrict information, OH will provide as much guidance to Barclays as possible whilst working to any stipulated restrictions".

897. The Occupational Health report dated 28 January 2020 stated that "the employee had provided verbal consent for the following to be reported to the business. They have requested sight of the update before it is sent to the business" **[4416]**. There is no evidence indicating that, contrary to their written policy, AXA had a practice of sharing Occupational Health reports with the Bank without an employee's consent. If AXA did improperly release the report, this would have been a failure on their part, rather than on the Bank's part.

898. At this point in the Tribunal's factual findings, the Tribunal makes findings about the state of Mr Abanda Bella's health in the period from January to April 2020, based on his GP records **[C/10773]**. He was not anticipating that the records of his discussions with his treating practitioners would be disclosed to Barclays or in subsequent proceedings. They are therefore a potentially more accurate record than what he told an occupational health practitioner.

899. In January and February 2020 he was experiencing a range of mental and physical symptoms. These were difficulty in sleeping for days in a row but not feeling tired; unable to switch his mind off; coughing up blood in the mornings; feeling nauseated in the evenings and sometimes being sick. By 10 March he was reporting a series of nightmares, sweats, panicking in the night and anxiety attacks. His hands were shaking and he was experiencing nausea. He noted forgetfulness, slowing, low mood and tiredness. Up until this point, he had not been put on any antidepressants. He started on Escitalopram on 17 March 2020. His short-term memory was impacted and his mood was affected by his perception that the grievance was not moving forward. On 14 April 2020, the GP notes recorded he had started to hear voices and was suffering symptoms of paranoia.

900. Even though Mr Abanda Bella had been absent on sick leave since July 2019, the Bank still needed to complete a review of his 2019 performance. In accordance with the Bank's normal annual review cycle, this would ordinarily culminate in early 2020 with an appraisal meeting with his line manager and a subsequent meeting with Mr Kim to discuss remuneration. The process had started in October 2019 with two email

reminders to complete his self-review. The first was an automatically generated email sent on **1 October 2019** to his work email address instructing him to complete his self-review including any feedback he had received during the year by 28 October 2019. The email made it clear that "after 28 October, you cannot make any further changes to your review". Because the wording of the email was standard wording, it was not adjusted in any way to reflect that Mr Abanda Bella was absent on sick leave **[2607].** A second email was sent on **25 October 2019** also to his work email address, again featuring standard wording. This was a final reminder to submit his self-review by 28 October 2019 **[2840]**. No self-review was uploaded by the deadline. No manager spoke to Mr Abanda Bella to ensure he had received the emails and to remind him to complete the self-review. These emails were not sent to his personal email address. By **mid-November 2019**, Mr Kim had already discussed the appraisal ratings to be given to IVU team members **[3324]**. It had been decided to give Mr Abanda Bella 'Improvement Needed' against both the 'What' and the 'How' for the period up until July 2019 before his period of extending sick leave started.

901. On **27 January 2020**, Mr Rienacker emailed Mr Kim to ask "what is the best way to do the appraisal" for Mr Abanda Bella **[3872]**. He noted that because Mr Abanda Bella was on long term sick it was not possible to do the end of year conversation. He asked if he should still upload a manager review. On **30 January 2020**, Mr Kim told Mr Rienacker he should "keep drafts of your appraisals somewhere" but "not upload to the system". He said that the reasons for not uploading were "no self-appraisals and no chance of 1-to-1 discussions" **[3980]**. On **5 February 2020**, Mr Kim provided further advice to Mr Rienacker, having heard back from Mr Haworth. He wrote that Mr Rienacker should send his appraisal on Mr Abanda Bella to Mr Haworth and to Mr Kim. Mr Haworth would then communicate directly with Mr Abanda Bella.

902. On **6 February 2020**, Mr Haworth emailed Mr Abanda Bella at his personal email address. He asked him whether he would like the Bank to communicate the performance ratings "and related PD commentary" and the compensation decisions which were due on 13 February. He asked how and from whom he wished to receive such communications **[4037]**. Mr Abanda Bella responded from his personal email address asking Mr Haworth to send all PD-related information to him by email. He did not suggest he wanted to have an appraisal meeting or to provide his self-review late.

903. On **19 February 2020**, Mr Haworth confirmed Mr Abanda Bella's appraisal ratings and the decisions made in relation to his compensation by email. The language used to do so was as follows: **[4081]**

> "In respect of your response to me on 14 February 2020, I also have advice of your 2019 PD Ratings, which has been confirmed as Improvement Needed for both the `'What" and 'How'.

In relation to compensation, the variable compensation award is Nil, and your base salary remains unchanged at £122,500."

904. No explanation was given as to the reasons behind these decisions. He was not provided with the downward appraisals that would have been shared with those employees who were not on sick leave during the performance review meeting.

905. On **20 February 2020**, Mr Rienacker emailed Mr Haworth with a final version of the appraisal commentary following the latest changes **[4072]**.

906. The process and outcome of Mr Abanda Bella's 2019 appraisal is alleged to be protected disclosure detriment **[CAB issues 1/3.21.1-4; 3.22]**; victimisation **[CAB issue 1/6.19]**; direct race discrimination **[CAB issue 1/11.13]** and discrimination arising from disability **[CAB issue 1/26.7.1-2]** as well as harassment related to disability **[CAB issue 1/38.2.1-6]** and a failure to make reasonable adjustments **[CAB issue 1/30.6; 32.6].**

907. On **22 February 2020**, Mr Abanda Bella emailed Mr Haworth asking a series of questions in relation to his email on 19 February 2020 **[4084]**. These were as follows:

1. "With regards to each of the "What" and "How" ratings, please provide the names of the persons who produced and reached the conclusion underpinning those ratings?
2. I also require to know what the rationale was that they used to justify each rating?
3. I require to know what evidence was used to support that rationale?
4. I require to know how that rationale relates to the performance objectives set at the start of 2019?
5. In particular, the above should include which areas, if any, are in need of improvement, what rationale and evidence, if any, are there to support that those areas are in need of improvement, and what such improvement(s) would look like?

Please also include the policies that describe the process that was followed in the production of the ratings."

908. In essence he was seeking the rationale and the supporting evidence for the decisions recorded in that email, at a point when he had not yet received Mr Rienacker's downwards appraisal.

909. In **January 2020**, Mr Abanda Bella had applied for income protection payments under the income protection policy provided by Unum. If a successful income protection application is made, payments are made via the Bank's payroll directly to the employee for two years. The Bank is the policy holder and is responsible for making any payments to employees under the policy. On **12 February 2020**, Unum

confirmed its decision to Barclays Healthcare Team in relation to Mr Abanda Bella's application **[4003]**. This was that they did not consider he was entitled to payments under the policy, for the reasons given in the letter.

910. This decision was relayed to Mr Abanda Bella in a posted letter dated **24 February 2020**, enclosing the Unum letter of 12 February 2020 **[4290]**. The covering letter set out his two options if he was unhappy with this decision – appeal the decision or raise a complaint. These two options were described in the following way:

> "Appeal the decision
>
> If you have new medical evidence, you can appeal Unum's decision. Please address any appeal request to us, detailing why you disagree with the decision and include any additional evidence that you would like Unum to consider. Once this is received we will then forward this to the Claims Management Specialist at Unum, for them to review your appeal. The appeal documentation must be received by us within 90 days of the date of this letter.
>
> Raise a Complaint
>
> If you have no additional medical evidence but are dissatisfied with Unum's decision or any part of Unum's management of your claim, you can submit a complaint to us within 90 days of the date of this letter. We will then forward this to the Claims Complaint Team at Unum who are the dedicated complaints team who will provide a 'Final Response'.
>
> If you remain dissatisfied with Unum's 'Final Response' following submission of a complaint, you are eligible to refer your complaint to the Financial Ombudsman Service (FOS) within six months from the date of Unum's 'Final Response'."

911. Mr Abanda Bella alleges that the Bank had a practice not only that Unum communications would be conveyed via the Bank but also that Unum's policies were unclear and not disclosed to employees upfront **[CAB issues 1/30.8; 1/33.8; 2/23.1]**. Mr Abanda Bella was never provided with copies of the full insurance contract documentation between the Bank and Unum. He also alleges that the Bank had a policy of not indicating whether any automated decision making was involved in processing employee's applications for permanent health payments **[CAB issue 2/23.9].**

912. At some point during his employment, Mr Abanda Bella had chosen to upgrade his Premier health cover to Premier Plus. As a result, a monthly sum of around £18 was deducted from his payslip every month via salary sacrifice. When his contractual and statutory sick pay expired and he was no longer receiving any tax rebates, he was no longer receiving sufficient income each month through the payroll to pay for his

enhanced medical cover. As a result, his medical cover defaulted from Premier Plus to Premier cover.

913. On **26 February 2020**, the Healthcare Benefits team wrote to Mr Abanda Bella about his Premier Plus cover **[4289]**. He was told that his Premier Plus cover had been cancelled with effect from 1 February 2020. This was because there were insufficient funds from his salary as he was "on a career break". The reference to a "career break" appears to have been a misunderstanding on the part of HR Operations when writing the letter. He was told his cover would continue under the Premier Plan. This decision to downgrade the cover and wait almost four weeks to inform Mr Abanda Bella is said to be discrimination arising from disability **[CAB issue 1/26.8]**

914. This decision was communicated in a letter rather than by email. The letter was sent in the post to his home address. This method of communication of this letter (and the earlier letter sent to him on 24 February 2020) is said to be an act of discrimination arising from disability **[CAB issue 1/26.9]**; a failure to make reasonable adjustments **[CAB issue 1/30.9 & 33.9]**; and indirect disability discrimination **[CAB issue 33.6]**.

915. On **9 March 2020**, Mr Abanda Bella emailed a five-page long letter of grievance. The focus of the grievance was on the letter he had received on 26 February 2020 informing him that his Premier Plus cover with AXA had been cancelled with effect from 1 February 2020 **[4291]**. Under this insurance cover, he was receiving medical treatment. Because the policy had been cancelled, he now had to pay the going rate for ongoing treatment which he claimed he was not able to afford. The cancellation decision was taken because he was no longer receiving full sick pay and, as a result, the monthly premium for Premier Plus had not been able to be deducted directly from his salary.

916. In the same letter, he also complained about three letters which had been sent to him by post. This he argued, was contrary to his previous request that all correspondence should be sent to him by email as a reasonable adjustment. On this point, Mr Abanda Bella was wrong. He had not previously asked for all correspondence to be by post. His grievance of 17 January 2020 had suggested dealing with the grievance in writing and suggested that communications in relation to the grievance be by email rather than post for speed and to ensure that correspondence did not get crossed in the post (paragraph 25) **[4302]**. This request was not a request which asked that all postal correspondence from any department on any topic should cease. In his grievance letter dated 9 March 2020, he asked for all correspondence to be sent to him by email, irrespective of whether it was also sent through the post (paragraph 19) **[4294]**.

917. Mr Abanda Bella complained in the 9 March 2020 communication both that cancelling the Premium Plus policy and sending him letters were failures to make reasonable adjustments and were discrimination arising from disability. This letter is admitted to

be a protected act **[CAB issue 1/4.20].** This letter is said to be a grievance and the refusal to acknowledge this as a grievance is said to be victimisation **[CAB issue 1/6.22]**, failure to make reasonable adjustments **[CAB issue 1/30.10.1]** and indirect disability discrimination **[CAB issue 1/33.9].**

918. On **10 March 2020**, Mr Haworth acknowledged receipt of the 9 March 2020 email **[6826]**. Mr Haworth followed up with HR Operations about the Premier Plus cover. On **13 March 2020**, Steven Moore in HR operations responded to Mr Haworth about the issue Mr Abanda Bella was raising **[6823]**. He quoted from the policy on the My Rewards website which was worded as follows:

> "If you go on unpaid leave, you will revert back to your default level of cover in the Premier plan, as the additional monthly net deductions for enhanced Premier Plus cover will stop and membership for any dependents covered will also cease …."

919. Earlier Steven Moore emailed had Mr Haworth on the same topic. He said **[6824]**:

> "This policy has been in place since 2013 and has always been stated on the My Rewards website, because of this we do not issue communication ahead of time …. For this employee, we would be happy to make an exception and allow the continuation of his Premier Plus cover. We would require him to complete and return the attached direct debit instruction to us and then we can set this up and reinstate his Premier Plus cover. Once signed please can he email the instruction to healthcare.team@barclays.com"

920. On **16 March 2020**, given the evolving Covid-19 Pandemic, the Prime Minister advised all in the UK against "non-essential" travel and contact with others, and asked people to work from home if possible.

921. On **18 March 2020**, Mr Haworth replied to Mr Abanda Bella's emails of 22 February 2020 and 9 March 2020 **[4355]**. He wrote that no salary increase or incentive award (i.e. bonus) was payable given the 'Needs Improvement' rating. He did not specifically address the particular questions asked by Mr Abanda Bella in his email of 22 February about how the appraisal had been performed and the rating reached. He said that rather than deal with the letter of 9 March 2020 under the grievance policy he was treating it as a complaint, because it related to the application of current policy and procedures applicable to all colleagues on a universal basis. So far as the Premier Plus cover was concerned, he passed on the information he had been told by Mr Moore, namely that this could continue if Mr Abanda Bella set up a direct debit to pay the monthly premium. He enclosed a direct debit mandate form to the email. He asked Mr Abanda Bella to email it to the Healthcare Team.

922. Mr Haworth's failure to address the specific questions raised by Mr Abanda Bella in his 22 February 2020 email is alleged to be protected disclosure detriment **[CAB issue 1/3.23]** and victimisation **[CAB issue 1/6.21].** The failure to treat complaints

concerning policies applicable to all colleagues as grievances is said to be a failure to make reasonable adjustments **[CAB issue 1/30.10; 1/32.10]** and indirect disability discrimination **[CAB issue 1/33.9]**.

923. With his email he attached Mr Rienacker's review commentary in support of the 2019 PD ratings **[4362]**. This commentary included a short section under "What went well?" for both the 'What' and the 'How'. In respect of both, there were substantially longer sections under the Heading "Areas for development". The "Areas for development" under the 'What' and the 'How' made reference to the same or similar problems that had been raised on previous occasions. Previously he had been rated 'Strong' on the 'What'. This time, in relation to the 'What', the "What went well?" was detailed as follows:

> "Christian was mainly working together with a junior team member on three Tier -2/3 inception validation projects (some of them continued from 2018) and several annual validations. In his reviews, he was able to clearly identify model shortcomings and issues in documentation, although his challenges were sometimes out of context with materiality."

924. The comments under "Areas for development" were as follows:

> "Although Christian was able to identify and raise model/documentation shortcomings, he did not spend sufficient effort in driving these challenges to resolution in co-operation with lead Validator/line manager, model developers and MCO.
>
> There was further lack of quality and progress in his reviews and supervision work, in particular no detailed test plans were provided or executed, and peer-reviewed IVU drafts were of poor quality containing various issues/inconsistencies.
>
> As a result, none of the main validation projects (the Tier -2/3 models) were finished in time, leading to significant delay in deliveries and additional workload for other IVU team members.
>
> As previously raised, Christian should seek improvement on the following points:
>
> - Attention to detail in review/supervision work, e.g. be familiar with model or test details, spot inconsistencies in IVU draft documentation.
> - Consistency in standards of review/challenge of model documentation, e.g. apply the same principles of materiality and accuracy
> - More specific/pragmatic approach to discussion, leading to timely solution of issues
> - Timely delivery of validation drafts, updates to lead validator and manager on progress to avoid last-minute surprises"

925. So far as the 'How' was concerned, "What went well?" was described as "Christian worked respectfully with some colleagues, and not so well with other colleagues". The "Areas for development" were listed as follows:

> "Unfortunately, there was no improvement in Christian's behaviour to colleagues and team members in 2019. There are still the same issues as raised in the previous-year appraisal, which diminished productivity and prevented him from fulfilling his potential.
>
> When Christian returns to work, we will look to share the basis of these development areas with him alongside dealing with the potential conduct issues identified:
> 1) Lack of co-operation and examples of insubordination
> 2) Lack of transparency and not sharing appropriate amount of information timely
> 3) Communication in an unproductive and confrontational style"

926. By way of Additional Comments, the review concluded with "Unfortunately, Christian has not taken the advice given in the 2018 EY appraisal and continued showing the same behavioural issues mentioned under the 'How' above. This has also contributed to the insufficient results on the 'What' side, in particular, lack of progress in the validation projects he conducted/supervised. Christian must work to improve on the aspects raised in both 'What' and 'How' in order to fulfil his potential" **[4363]**.

927. On **23 March 2020**, the UK Government imposed a national lockdown. This included a requirement that all but essential workers should work from home.

928. On **25 March 2020**, Mr Abanda Bella requested to use his holiday entitlement that had accrued during his sick leave, but which had not been taken in order to fund the Premier Plus cover **[4383]**. This was requested as a reasonable adjustment. He chose not to complete the Direct Debit form Mr Haworth had sent him with his email of 18 March 2020.

929. Mr Abanda Bella explained in oral evidence that he was not well enough to process financial decisions, such as completing a Direct Debit form. He said he was worried he would not have enough income in his bank account to cope with regular direct debit payments. This is not an explanation he had given to Mr Haworth at the time or provided in his witness statement. It is not supported by any medical or financial evidence he has provided. The Tribunal does not accept that this is a plausible explanation, particularly when he could have received assistance with completing this from his partner or could have asked for help from someone else.

930. In oral evidence, Mr Abanda Bella said that Mr Haworth never came back to him on his suggestion. In fact, Mr Haworth emailed Mr Abanda Bella on **2 April 2020 [4459]**

saying that it was not normal policy to pay unutilised accrued holiday. Rather unused holiday would accrue into the next holiday year so it could be taken as part of the overall holiday entitlement. He quoted from the relevant policy. He added "however, having carefully considered the matter, and after careful reflection, we have decided to exercise discretion to allow for the holiday accruals to be paid out if requested". He wrote he did not believe Mr Abanda Bella would be able to extend the Premier Plus cover by surrendering the accrued but untaken holiday to fund the premiums but said he would check the position.

931. As he had promised, Mr Haworth raised this issue with Mr Moore. Mr Moore replied "we do not offer employees the option of a lump sum to cover the costs of the benefit. Should he wish to continue his PMS Plus cover whilst on nil pay he will need to complete the DD form as previously advised" **[4458]**. The following day, **3 April 2020**, Mr Haworth confirmed to Mr Abanda Bella that holiday accruals could not be used to fund this cover. He repeated that Mr Abanda Bella would need to complete a direct debit mandate **[4487]**. Mr Haworth arranged for a lump sum for accrued holiday pay to be paid to Mr Abanda Bella and this was done in the April payroll, on **23 April 2020 [C/7096]**.

932. On **26 March 2020**, Mr Abanda Bella submitted a sixteen-page long grievance complaining about the income protection application process and outcome **[4392]**. This letter was not sent to the whistleblowing team. Instead, it was sent to the ER complex cases team. He alleges that this was a protected disclosure **[CAB issue 1/1.26]** and (as the Respondents admit) also a protected act **[CAB issue 1/4.21].** The protected disclosure is said to be of information that either the Bank or AXA had failed, was failing or would be likely to fail to comply with its legal obligations under GDPR or the Access to Medical Records Act 1996.

933. In this document, Mr Abanda Bella took issue with the provisions describing the potential routes for disputing an outcome, whether by way of appeal or by way of complaint. He alleged that this treatment was discrimination arising from disability and a failure to make reasonable adjustments, as well as a breach of his right to privacy, his rights under data protection legislation and also indirect disability discrimination. He quoted the following provisions of the General Data Protection Regulation (GDPR):

> **"Article 7(1)** Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation.
>
> **"Article 7(2)**: "If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain

language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding".

Recital 32: Consent should be give by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement … Silence, pre-ticked boxes or inactivity should not therefore constitute consent.

Article 4(11): "Consent of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her".

934. He said that "in the event that the service user (in this case me) were to attempt to respect the process described in Exhibit 1E whilst still opting out of sharing their medical information with Barclays HR Operations team and thus attempt to appeal Unum's decision and/or complaint about Unum's management of their income protection insurance claim without sharing any medical information, the service user (in this case me) would suffer major detriment as the chance of their appeal or complaint being successful and/or upheld would drop since their appeal would be automatically rejected for lack of new evidence, and/or they would be likely to face major constraints in articulating their complaint cogently" **[4397].**

935. He also complained about receiving correspondence in relation to his income protection claim by post despite him asking, as a reasonable adjustment, for all communications with him to be by way of email. He said that the requirement to use the post put him at an increased risk of contracting Covid-19.

936. Mr Haworth forwarded this letter to the Raising Concerns team, which he did on **14 April 2020 [4936]**. The Raising Concerns team had told him by **30 April 2020** that these were not matters to be considered under the Grievance Procedure **[4935]**. The Raising Concerns team did not consider that it should be referred to the Whistleblowing Team, but rather back to the ER Case Management Team (see Schedule to Ms Bonniface's witness statement **[WB/1070]**). It was at that point, **30 April 2020**, that Mr Abanda Bella's letter was forwarded to Ms Emily Watson, in HR Operations. The reason for doing so was that the ER Case Management team is not involved in the income protection scheme process. This was within the remit of the HR Operations Team. Ms Watson could consider and address Mr Abanda Bella's concerns about the necessary mechanism for challenging Unum decisions. The wording of Mr Haworth's email indicated a decision had already been made that he could submit his medical evidence directly to Unum without needing to send it to

Barclays. Mr Haworth's email explored how to avoid Unum disclosing the medical evidence to Barclays when advising the Bank of the appeal outcome.

937. Various allegations are made in relation to way the Bank dealt with that letter. Mr Abanda Bella argues that this grievance was forwarded to the HR Operations team, thereby revealing his identity as a whistleblower without his consent. This is said to be an act of detriment for having made protected disclosures and protected acts **[CAB issue 2/3.2; 2/7.1];** and discrimination arising from disability **[CAB issue 2/19.3]**. It is said that Mr Haworth and Ms Watson ignored the complaints in this correspondence from 26 March 2020 until 11 May 2020, again because of previous protected disclosures **[CAB issue 2/3.3];** previous protected acts **[CAB issue 2/7.1]** and this was an act of indirect disability discrimination **[CAB issue 2/26.1]**. He also alleges that the Bank failed to address the concerns he was raising about the processes for dealing with income protection claims **[CAB issue 2/3.4; 2/7/1]**.

938. On **11 May 2020**, Ms Watson responded **[5301/2]**. She explained that Mr Haworth had asked her to look into the matters she had raised, as HR Operations manages the BIPS scheme. Her letter said it was intended to address the points made in Mr Abanda Bella's letter of 26 March. She said:

> "We note your concerns regarding the medical information shared between Unum and Barclays. However, as the Policyholder of the scheme, it is a requirement for us to understand the context around Unum's decisions on claims. The information contained within Unum's decision letters is such that it provides a high-level overview of the employee's situation and Unum's reasoning for accepting or declining a claim. This is important to enable us to manage the income protection scheme on behalf of Barclays."

939. She did indicate that the normal process would be modified in his case in the following way:

> "Although our recommendation would be to submit your appeal to us on the Barclays Healthcare Team in line with our usual process, if you wish, and addressing your concern about the disclosure of medical information, please feel free to send your appeal directly to Unum without sharing it with us. If you wish to do this, please email Barclays@Unum.co.uk."

940. In the meantime, Mr Abanda Bella had made a complaint directly to Unum. It reviewed his complaint and confirmed its decision to reject his income protection claim **[5387]**.

941. On **7 April 2020**, Mr Abanda Bella had submitted a further complaint which he labelled a 'grievance' **[4495]**. The focus of this complaint was Mr Haworth's refusal to treat Mr Abanda Bella's letter of 9 March 2020 as having the status of a grievance

because Mr Abanda Bella's concern was said to be of universal application. Mr Abanda Bella argued that Mr Haworth's conduct amounted to victimisation contrary to Section 27 Equality Act 2010. He also complained about the failure to grant his request that the cash value of his holiday entitlement could be used to fund the insurance premiums for his private medical cover. In the letter, Mr Abanda Bella did not refer to having any particular difficulties in completing a direct debit mandate. He claimed that there had been various failures to comply with obligations under the Equality Act 2010. In paragraph 39, Mr Abanda Bella said he was at an increased risk of death from contracting Covid-19 as a result of receiving correspondence by post rather than by email. He said that the failure to send all correspondence by email was a failure to make a reasonable adjustment. He ended his letter as follows (at paragraph 48 **[4506]**):

> "By reason that I have raised grievances against both you, you now have a palpable conflict of interest in having any further involvement in the grievance and whistle blowing procedures in accordance with Barclays' grievance procedure … You must not influence and/or materially influence the investigations and/or outcomes."

942. This letter is admitted to be a protected act **[CAB issue 1/4.22]**. It is also alleged to be a protected disclosure insofar as it alleged that the Bank's approach to grievances raising points of general application was indirect disability discrimination **[CAB issue 1/1.27].** This is argued to be disclosure of information tending to show a breach of a legal obligation under the Equality Act 2010. Mr Abanda Bella does not argue that this email was a disclosure of information tending to show that health and safety has been, is being, or was likely to be endangered (under Section 43B(1)(d) Employment Rights Act 1996) in his reference to receiving correspondence by post rather than by email. The letter is also alleged to be bringing to the Bank's attention by reasonable means circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety, namely the risk of death from contracting Covid-19 from receiving documents by post [**CAB issue 2/33].**

943. Mr Abanda Bella complains that Mr Haworth failed to treat this letter of 7 April 2020 as a formal grievance or whistleblowing complaint. This response is said to be protected disclosure detriment **[CAB issue 2/3.10]** and victimisation **[CAB issue 2/7.1].** It is correct that the Bank did not treat the 7 April 2020 letter as either a grievance or a whistleblowing complaint. It was not referred to the Raising Concerns team, given that it is not referred to in the Schedule of emails referred as itemised at the end of Ms Bonniface's witness statement. The Respondents' position is that his key concerns were answered and resolved by Mr Haworth – specifically by ensuring his Premier Plus cover continued; he could fund the premiums from the lump sum payment of his accrued but untaken holiday pay; and an explanation was given of

the failure to give him advance warning of the downgrade in his cover from Premier Plus to Premier.

944. On **15 April 2020**, Mr Abanda Bella submitted a 15-page letter of complaint **[4616]**. This is relied upon as a protected act **[CAB issue 1/4.23]** (which is admitted) and also as a protected disclosure **[CAB issue 1/1.28]**. The latter is said to be a disclosure of information tending to show breach of a legal obligation imposed by the Equality Act 2010. Its focus was on the contents of the downwards appraisal commentary written by Mr Rienacker commentary about Mr Abanda Bella's performance during the first half of 2019; and on the rationale for the decisions made in early 2020 about his fixed and variable compensation. He was critical of Mr Haworth for failing to answer his specific questions about the appraisal process. He said that he was blowing the whistle in order to ensure that in the future Mr Haworth and Barclays "did not victimise other employees whom do protected acts as you have done with me"; and to ensure that they made reasonable adjustments for employees with disabilities. He did not name or provide details of any other disabled employees who had been impacted in this way.

945. Mr Abanda Bella concluded his letter by saying this (at paragraphs 60 and 61):

> "By reason that I have raised grievances against you, you now have a palpable conflict of interest in having any further involvement in the grievance and whistle blowing procedures in accordance with Barclays grievance procedure … You must not influence and/or materially influence the investigations or outcomes.
>
> This is all very disappointing Jeremy. I had hoped that it would not come to it, but the extensive, repeated and wilful failures on your/Barclays part are now leaving me with no choice but to start considering more serious legal options".

946. At an earlier point in the letter, he had said he may bring claims in the High Court or the Employment Tribunal.

947. Mr Haworth acknowledged receipt of this letter on **16 April 2019 [4657]**, and again on **30 April 2020** when he added that the matters raised were currently being considered **[4943]**. The letter was referred to the Raising Concerns team **[5463]**.

948. On **17 April 2020 [4676]** Mr Abanda Bella submitted a complaint to ER complex cases team. He was complaining about AXA sharing his 28 January 2020 Occupational Health report with the Bank without his consent. He alleged that what took place amounted to discrimination arising from disability, indirect disability discrimination and a failure to make reasonable adjustments. He said he was not able to provide his informed consent to carry on with the OH process. He concluded that the issues raised in this letter were so serious that "unless I receive effective remedy and redress, you will leave me no choice but to report these issues to the

Information Commissioner's Office (ICO) and to seek redress directly in court". He exhibited a standard form document headed Cover Letter produced by AXA explaining the circumstances in which AXA would pass medical reports onto Barclays **[4681]**. He took particular exception to the following paragraph, which he had highlighted:

> "Please note that it will not be possible to accommodate a request for the report to be viewed again following any amendment, before it is sent to your employer. Any such request will be treated as a Consent Withdrawal to continue the process. Your employer will be notified accordingly."

949. Read in the context of the whole document, this paragraph was dealing with a scenario where an employee had submitted comments to the clinician having viewed his original report; and the clinician made amendments in the light of those comments. That was, on Mr Abanda Bella's case, was he had done to the first draft of the report. The paragraph was saying that there was no option to view the amended report before it was sent to the employer. If such a request was made it would be treated as withdrawing consent to continue the process. In such circumstances, it would be treated as if consent had been withdrawn and the report would not be shared with the employer. Therefore, far from threatening to disclose medical information to Barclays without an employee's consent in these circumstances, it was indicating that consent would be deemed to have been withdrawn. The report would not be shared with the employer. Because the Tribunal has not seen the correspondence between Mr Abanda Bella and AXA about the first draft report, it is unclear whether he indicated that he wanted to see the report before it was released. If he omitted to say this, then releasing it to the employer and the employee at the same time was consistent with AXA's policy. If he insisted on seeing the report first, then it should not have been provided to Barclays.

950. He indicated that the consequences of the disclosure of a medical report to Barclays without his consent were to cause potential discrimination, adverse financial repercussions in his income protection claim with Unum and added delay. He said that these points caused anxiety "which significantly influences the frequency and intensity of my anxiety attacks" **[4679]**.

951. Mr Abanda Bella's communication dated 17 April 2020 is admitted to be a protected act **[CAB issue 1/4.24].** It also claimed to be a protected disclosure **[CAB issue 1/1.29]**. In these proceedings Mr Abanda Bella argues that the disclosure was of information tending to show a breach of legal obligations namely GDPR and the Access to Medical Reports Act as well as a disclosure that a person's health was being or was likely to be endangered.

952. On **7 May 2020**, Mr Abanda Bella discussed his current health with a consultant psychiatrist on the telephone. It would have been on the telephone because no in-person consultation would have been possible due to restrictions imposed as part of

the national lockdown. The contemporaneous medical record noted as follows: **[5211]**

> "I reviewed this gentleman in Out-patients on 7 May 2020 via telephone. He said he is a bit better because he stopped the Escitalopram two weeks ago and he said that shortly after the auditory hallucinations went and the people in his head have also gone "they were people who were against me". He is still quite clear that he believes people are watching his house.
> Mr Abanda Bella said that he has not taken any of the Olanzapine. He has bought it but he is sleeping all right and he wants a clear mind. He does not want to change anything while he is doing his case. His application for an employment tribunal has to be in by 10 May 2020 which is a Sunday. He is obsessing about it and he feels it is all achievable. He does not take medication at present. I have advised him to take the Olanzapine after 10 May and I will discuss matters with him further. I certainly feel there is a paranoid psychosis underplaying a lot of his issues at present and this will need to be considered. He seemed happy with this idea. I will keep you informed of developments."

953. In evidence, Mr Abanda Bella said he felt that this medical letter over exaggerated the extent to which he was feeling better. He said he was feeling better because he had stopped the Escitalopram but not to the extent descried in the letter. The Tribunal accepts that the contents of this medical report would have fairly reflected what the consultant was told by Mr Abanda Bella. It did not over exaggerate the extent to which he had felt better. It is consistent with the GP records disclosed by Mr Abanda Bella in the course of these proceedings, although they were not disclosed to the Bank at the time **[C/10772]**.

954. Mr Abanda Bella alleges that during the grievance investigation, on or around 7 May 2020, Mr Rienacker provided misleading answers to Mr Easdon; and alleges that on the same date Mr Rienacker denied that he had raised any grievances as part of his 2018 annual appraisal. When interviewed on **7 May 2020** as part of the grievance investigation, Mr Rienacker did deny that Mr Abanda Bella had raised a grievance about the ratings he had been given in the 2018 performance review **[6953]**. These 'misleading answers' and denial are said to be protected disclosure detriments **[CAB issue 2/4.7, 2/4.8]** and victimisation **[CAB 2/7.2].**

955. No examples of misleading answers were given in Mr Abanda Bella's Particulars of Claim or witness statement. The Tribunal does not find that there were any misleading answers. Mr Abanda Bella's first grievance was lodged on 15 October 2019. Mr Abanda Bella did add a comment after the 2018 performance review on the appraisal form **[3178]**. This was not about his ratings and was not a grievance. It was not seen by or sent to Mr Rienacker as he had signed off the appraisal at that stage.

956. On **12 May 2020**, Mr Abanda Bella contacted ACAS to initiate Early Conciliation in his dispute with Barclays. He followed initiating Early Conciliation against Mr Haworth on **21 May 2020** and Mr Easdon on **25 May 2020**.

957. On **20 May 2020**, Mr Abanda Bella was informed by Barclays by email that Unum's review of his complaint had been completed. They had considered further medical information and Occupational Health reports but maintained their decision to decline liability. This was because Unum considered that there was no evidence to suggest that Mr Abanda Bella had an underlying health condition that would limit his ability to fulfil his role at another employer as his issues were specific to the situation he was experiencing at Barclays. This was a final decision **[5387]**.

958. Mr Abanda Bella alleges that the Bank failed to open whistleblowing cases/investigations into his various complaints and failed to communicate with him about them. He says this was detriment for making protected disclosures **[CAB issue 1/3.24]**.

959. Mr Abanda Bella's email of 17 April 2020 was referred to the Raising Concerns team for triage. They considered he was not raising whistleblowing concerns. On **2 June 2020**, Mr Haworth responded to Mr Abanda Bella. This was Mr Haworth informing Mr Abanda Bella of the triage decision and proposing a way forward to address his concerns about AXA **[5473]**. He noted that the contents of the 17 April 2020 complaint related to the conduct of AXA. As a result, he said that whilst the Bank was happy to seek AXA's responses to his concerns, "we do not consider that they are matters appropriate to be handled under the internal grievance procedure". He also asked Mr Abanda Bella to clarify what he was complaining about in the second part of the email headed "Grievance 2". This response from Mr Haworth is alleged to be protected disclosure detriment **[CAB issue 2/3.5]** and victimisation **[CAB issue 2/7.1],** specifically because the 17 April 2020 letter was not treated as a grievance or whistleblowing concern and because Mr Haworth refused to recuse himself from decision making. Mr Abanda Bella did not ask for Mr Haworth to recuse himself in his 17 April 2020 letter. He had referred to Mr Haworth's ongoing involvement in the 15 April 2020 letter.

960. On **3 June 2020**, Mr Haworth informed Mr Abanda Bella of the outcome of the Raising Concerns triage assessment **[5483]**. He confirmed that the complaints directly relating to the 2019 performance rating would be considered under the grievance procedure, whilst the allegations of victimisation and retaliation would be considered by a separate investigations team who would decide whether they should be included within the grievance. It was not clear from the language used whether this investigations team would be considering whether these were whistleblowing complaints which were under investigation. Mr Haworth notified Mr Abanda Bella that Mr Easdon would investigate the further complaints raised alongside the matters he was currently considering as part of his grievance investigation, given the factual

overlap. Mr Abanda Bella was asked to confirm whether or not he wanted to attend an investigation meeting or whether instead he would prefer for the grievance to be managed by way of written submissions as had been arranged for his other grievances. If he wanted a grievance hearing, he was told of his right to be accompanied by a work colleague or trade union official.

961. In the same email, Mr Haworth also provided an update on progress in considering Mr Abanda Bella's other grievances. He said that there had been a delay as a result of Mr Rienacker being unwell during April, given the volume of issues that needed to be covered with him. Investigations with Mr Rienacker were now concluded but Mr Easdon was in the process of seeking input from Mr Kim. Mr Haworth said he would let Mr Abanda Bella know when investigations with Mr Kim had been concluded.

962. Although not expressly stated in the email, around this time the Bank was having to adapt to a remote workforce given the national Covid-19 lockdown. The ER case management team was overburdened and under-resourced and the Raising Concerns team was receiving unprecedented numbers of whistleblowing concerns as a result of the outbreak of Covid.

963. Mr Abanda Bella argues that in this reply, Mr Haworth misrepresented the nature of Mr Abanda Bella's concerns and trivialised them; and failed to explain clearly which claims were treated as whistleblowing concerns and why. This is said to be protected disclosure detriment and victimisation **[CAB issue 2/3.6; 2/7.1]** He also argues that it was protected disclosure detriment **[CAB issue 2/3.7]** and victimisation **[CAB issue 2/7.1]** for Mr Easdon to be appointed as investigating manager and for Mr Easdon to fail to decline the appointment**.**

964. Mr Abanda Bella's argument that Mr Haworth trivialised his concerns is based on Mr Haworth's use of the word "allegations" to describe the points Mr Abanda Bella was making. This was an entirely proper label to use to describe the points he was raising. It did not imply that there was no merit or gravity in the substance of his concerns. The Tribunal does not find that this reply misrepresented Mr Abanda Bella's concerns.

965. On **8 June 2020**, Mr Abanda Bella was told that the concerns he raised of whistleblowing retaliation in his letter to Mr Haworth of 15 April 20219 in relation to his 2019 appraisal would be investigated by Mr Mark Schreiber from the Whistleblowing Team **[5538]**. The email was written by Mr Bhandal in the Global Compliance Whistleblowing Team. It clarified the scope of this investigation:

> "Please note the scope of the whistleblowing review will be limited to the allegations of whistleblower retaliation, which are in respect of your end of year assessment."

966. The email attached a copy of the Whistleblower's Charter and also asked him to confirm whether he was content for the Bank to share his identity and his contact details with Mr Schreiber on a confidential basis.

967. On **18 June 2020**, Mr Abanda Bella presented his first claim to the Employment Tribunal.

968. Each month, Mr Abanda Bella's pension contributions were deducted at source from his monthly income as recorded on his payslips. Mr Abanda Bella had set the level of his pension contributions at £1600 each month. Apart from January 2020, he had received sufficient pay, lump sums or tax rebate to fund his chosen level of contribution. In January 2020 the monthly pension contribution was made even though he did not have sufficient income from which the contribution could be deducted. No claim has been made by the Bank for reimbursement. In April 2020, as a result of the lump sum payment of his accrued holiday entitlement, there was sufficient pay from which pension contributions of £1600 could be deducted **[C/7096].** In May 2020, Mr Abanda Bella had a tax rebate. This also gave him sufficient funds from which his monthly pension contribution of £1600 could be deducted **[C/7097]**. However, on **23 June 2020**, Mr Abanda Bella received only a small tax rebate, leaving him insufficient funds from which to pay his salary sacrifice for rewards and benefits, including employee pension contributions. As a result, no pension contributions were made **[C/7070]**. Mr Abanda Bella says that this reduction in his pension contributions to nil was done without any explanation, and this was protected disclosure detriment **[CAB issue 2/3.8]** and victimisation **[CAB issue 2/7.1]**. It is also alleged to be discrimination arising from disability **[CAB issue 2/19.7]** and a failure to make reasonable adjustments **[CAB issue 2/23.10]**.

969. On **26 June 2020**, Mr Abanda Bella submitted another email and letter of complaint. The complaint spanned eight pages **[6218]**. It did not respond to Mr Haworth's request for clarification of Grievance 2, as he had asked in his email of 2 June 2020**.** The focus of this grievance was on the way that the Bank was responding to his previous complaints set out in his grievance of 17 April 2020, questioning why it had not been regarded as a qualifying disclosure by the Whistleblowing Team and why it would not be treated as a grievance under the internal grievance procedure. Mr Abanda Bella alleges this was a protected disclosure **[CAB issue 2/1.3]** and a protected act (which is admitted) **[CAB issue 2/5.3].**

970. On **29 June 2020 [6233]**, Mr Abanda Bella emailed Mr Haworth to tell him that his IT account had been disabled and to ask why this had happened. He had not been given any advance notice that this would occur. In his email, he alleged this was an act of victimisation and protected disclosure detriment, as well as discrimination arising from disability. In these proceedings, Mr Abanda Bella had alleged this was a protected disclosure **[CAB issue 2/1.4]** – an allegation which is now withdrawn – and a protected act (which is admitted) **[CAB issue 2/5.4]**.

971. Prompted by Mr Abanda Bella's email, Mr Haworth asked Mr Rienacker to look into this **[7062]**, and then chased him for a response on several occasions. In one reply, Mr Rienacker told Mr Haworth he would chase IT every other day. The Tribunal finds his IT account was suspended due to inactivity, as Mr Abanda Bella accepted in cross-examination. There was no reluctance or refusal by Mr Haworth to reinstate it from 29 June 2020 onwards. The IT account was re-enabled in early September 2020. Mr Abanda Bella alleges that the Bank and Mr Haworth failed to communicate with him prior to 24 June 2020 when he discovered that his IT access had been disabled **[CAB issue 2/3.9.1].** This is also argued to be discrimination arising from disability **[CAB issue 2/19.8]** and a failure to make reasonable adjustments **[CAB issue 2/23.3].**

972. Mr Abanda Bella has now withdrawn an allegation that there was a refusal by the Bank and by Mr Haworth to reinstate his IT access and that this was protected disclosure detriment and victimisation **[CAB issue 2/3.9.2; CAB issue 2/7.1]** During this time, the IT department was under significant pressure as a result of the changes in working patterns caused by the Covid-19 pandemic.

973. On **29 June 2020**, Mr Abanda Bella was told by Edwina Coughlin in the Whistleblowing Team that the investigator would be completing his investigation into the matters raised in his grievance of 11 November 2019 and would be writing to update him when the investigation was complete. It was also noted that another investigation had been opened into the other whistleblowing concerns he had raised and the team would be in touch shortly **[6236]**. These were the concerns that had been given reference numbers C251915 and C263982.

974. On **6 July 2020 [6761]**, Mr Abanda Bella raised a further grievance. The focus of his grievance was the use by the Bank of the word "allegations" when referring to his complaints. He argued that this trivialised what he was saying. In particular, he argued that it overlooked the fact that he was disclosing information by making a protected disclosure. Mr Abanda Bella said he was still unclear which of his disclosures were being investigated and asked for clarification of this before deciding whether his identity should be revealed to the investigator. This new grievance was expressed to be a protected disclosure and alleged he had suffered unlawful victimisation and discrimination arising from disability. The 6 July 2020 grievance is not alleged to be a protected disclosure or a protected act in the List of Issues setting out the protected disclosures raised by Mr Abanda Bella in his second tribunal claim. Therefore, the Tribunal does not need to adjudicate on whether this was a protected disclosure.

975. On **7 July 2020**, Mr Abanda Bella submitted an eleven page letter of complaint to Mr Haworth, rather than to the Whistleblowing Team **[6707]; [6709]**. The focus of this letter was about how his individual income protection claim had been handled and

about subsequent communications. It alleged that his identity had been disclosed to Ms Watson and the HR Operations Team. He complained about the Bank's failure to treat his complaints in his letter of 26 March 2020 as grievances. It argued that he had suffered victimisation and discrimination arising from disability as well as direct race discrimination. It also complained about Unum openly discussing his medical information with the Bank without his consent in a letter dated 20 May 2020. This letter of complaint is alleged to be a protected disclosure **[CAB issue 2/1.5]** and a protected act **[CAB issue 2/5.5].** The Respondents admit this was a protected act, but denies it was a protected disclosure.

976. On **9 July 2020**, Mr Abanda Bella submitted a 13-page grievance raising various complaints including a complaint about Mr Easdon being the grievance manager in relation to his 15 April 2020 letter, in which he had complained about his 2019 performance appraisal **[6742]**. He also criticised the use of the term "allegations" to refer to the contents of that This further grievance is alleged to be a protected disclosure **[CAB issue 2/1.6]** and also a protected act **[CAB issue 2/5.6]**. The latter is admitted.

977. As a result of Mr Abanda Bella lodging this 9 July 2020 grievance, the decision was taken that someone other than Mr Easdon should consider criticisms about the 2019 appraisal that did not overlap with the investigations already within Mr Easdon's existing remit. This decision was communicated to him in an email dated **19 October 2020** sent by Ms Gonzalez **[7151]**.

978. On **18 July 2020 [6803]**, Mr Abanda Bella emailed another written grievance to Mr Haworth. It was alleged to be a protected disclosure. He complained about the delay in notifying him that a grievance investigation had started into his grievance submitted on 7 April 2020, which he alleged was an act of victimisation and discrimination arising from disability. He said his request that all communications should be by email rather than post was being ignored, despite him raising the risk of contracting Covid-19 in his grievance of 7 April 2020. This was in response to receiving payslips by post. He quoted directly from that earlier grievance **[2/33.** He also complained of a failure to make reasonable adjustments to reinstate his medical cover back from Premier to Premier Plus. He repeated his previous complaint that the letter of 7 April had not been treated a raising a whistleblowing concern. Finally he complained about his payslips being sent to him by post, despite his request for them to be sent by email as a reasonable adjustment. He said that this raised the risk of contracting Covid-19. This email is alleged to be a protected disclosure **[CAB issue 2/1.7]** and a protected act **[CAB issue 2/5.7]**.

979. On **28 July 2020** and again on **7 August 2020**, the Raising Concerns team contacted the Claimant to confirm that various of his recent letters were being triaged. These were letters dated 26 June, 6 July, 7 July, 9 July, 18 July and 3 August **[6918/9]**.

980. On **3 August 2020,** Mr Abanda Bella wrote a further letter to the Whistleblowing Team in which he claimed to be invoking Barclays' grievance and whistleblowing policies and procedures **[6907].** He was questioning why Ms Knox-Cartright did not treat disclosures of information he had made on 17 December 2019 as raising whistleblowing concerns; why disclosures made to Mr Butler on 27 November 2019 were not treated as whistleblowing concerns; and why disclosures made to Mr Kim on 18 October 2019 was not treated as whistleblowing concerns. He also complained about the treatment received from Ms Hollett in the Whistleblowing Team. In these proceedings, this letter is not alleged to be a protected disclosure or a protected act.

981. Within a letter dated **4 August 2020**, Mr Abanda Bella asked whether automated decision making was used in relation to his job application **[7020]**. He was sent a response on **19 August 2020** saying that automated decision making was not used in the Bank's recruitment processes **[7022]**. He replied on **27 August 2020 [7012].** He considered that the information provided in the 19 August 2020 email was "both incomplete and misconstrued". He asked the Bank to disclose full details of the Unum policy relied on to assess his income protection claim. This correspondence of 27 August 2020 is alleged to be a protected disclosure **[CAB issue 2/1.9]** and a protected act **[CAB issue 2/5.9].**

982. On **18 August 2020**, the Raising Concerns team asked for further information in relation to his letters of 26 June and 6, 7 and 9 July 2020. He was asked to provide further information in relation to the concerns he was raising. In particular, he was asked to identify the disclosures he was referring to as alleged protected disclosures **[6942]**.

983. On **21 August 2020**, Mr Abanda Bella submitted another grievance letter **[6968]**. It extended over 15 pages and purported to raise eight different grievances. This included Mr Rienacker looking at Mr Abanda Bella's phone, which he alleged was unlawful harassment. He raised other matters in relation to Mr Rienacker's conduct which he said were victimisation and a breach of Section 15 Equality Act 2010, as well as direct race discrimination. He argued that, as a reasonable adjustment, the end of his sick pay entitlement should be delayed by the length of the investigations into his grievances and protected disclosures (paragraph 30 on **[6975]**). He also alleged that Unum's actions had caused him to suffer various detrimental treatments contrary to both the Employment Rights Act 1996 and the Equality Act 2010. Finally, he referred to the fact that his work IT account had been disabled and he was receiving letters by post. The contents of this grievance letter are alleged to be a further protected disclosure **[CAB issue 2/1.8]** and a protected act **[CAB issue 2/5.8]**.

984. Mr Abanda Bella argues that on **21 August 2020**, the Bank refused to extend his sick pay, and this was discrimination arising from disability **[CAB issue 2/19.11],** and

failure to make reasonable adjustments **[CAB issue 2/23.8; 2/25.8]**. By the time his sick pay had ended, he had already benefited from 16 weeks sick pay, which was his contractual entitlement.

985. Mr Abanda Bella argues that by **21 August 2020**, the Bank's HR was continuing to send payslips to him by post, despite previous requests that this should not be done because of the resulting risks and detriment to his health and his mental health (including the risk of contracting Covid-19). He alleges this was protected disclosure detriment **[CAB issue 2/3.12]**; victimisation **[CAB issue 2/7.1]**; discrimination arising from disability **[CAB issue 2/19.12]**; failure to make reasonable adjustments **[CAB 2/23.6]** and health safety detriment **[CAB 2/34]**.

986. Mr Abanda Bella's payslips were sent to him by people working in the payroll function, rather than people working in HR or elsewhere in the Bank. They would not have known of any protected disclosures or any protected acts. They did not know that Mr Abanda Bella was disabled. On **22 May 2020**, Mr Haworth had asked HR Services to request that the relevant team send the payslips to Mr Abanda Bella by email. It was implicit in the request that these should be emailed to his personal email address **[C/6992]**.

987. Mr Haworth chased HR services on **1 July 2020** to see whether payslips could be sent electronically instead of by post. By response on the same day, Mr Haworth was told this by Arun, a process expert in the HR Operations team **[7037]**:

> "Yes this can be sent electronically, however Christian needs to raise an request to Helpdesk for each month which is not possible because of his off sick.
>
> So that is the reason for those employees we will send via post."

988. Mr Haworth replied:

> "Thanks Arun - so there is no way we can put in a monthly reminder for them to be issued to him directly by email - just checking, as I would appreciate it if we are able to accommodate?"

989. The response from HR Operations was "we would be happy to do that, however we don't have such process as of now" **[7036]**. By **1 July 2020**, Mr Haworth had been provided with electronic copies of Mr Abanda Bella's payslips from November 2020 to date and forwarded them to Mr Abanda Bella on that date.

990. The Tribunal has no reason to doubt the accuracy of the explanation provided by the Process Expert in the HR Operations team for why payslips would continue to be sent by post.

991. On **3 September 2020**, Mr Haworth asked HR to provide payslips for July and August so he could forward them to Mr Abanda Bella by email **[7035]**. On **19 October 2020**, Ms Gonzalez explained to him that there was no automated process to provide payslips electronically, so they had defaulted to providing payslips by post. She concluded "However now that your IT access has been reinstated, you should be able to view these online" **[7151]**.

992. On **29 September 2020** Mr Abanda Bella presented his second claim to the Employment Tribunal.

993. On **21 October 2020**, Mr Abanda Bella received Mr Easdon's grievance outcome **[7153; 7154]**. The letter was 63 pages long. It is appropriate at this point to make our factual findings about the steps that had been taken to investigate this grievance, given that Mr Abanda Bella refers to the delay between lodging his grievances and the grievance outcome. He alleges that there was a practice of taking a significant time to complete workplace investigations **[CAB issue 1/30.5] [CAB issue 2/25.7]**.

994. By **13 December 2019**, ER had pulled together a scoping document analysing the timeline of events raised by the **11 November** grievance **[3519]**. On **20 December 2019 [3685]** and **17 January 2020**, Mr Abanda Bella complained about the choice of Mr Easdon as investigator and asked for the grievance to be conducted in writing. This meant that questions had to be formulated in writing and responded to in writing. Questions were sent on **30 January 2020 [4042]** and Mr Abanda Bella responded on **17 February 2020 [4043]**. Mr Easdon then sent questions to Mr Rienacker, which were answered, and interviewed him on **7 May 2020**. Some of the delay in getting answers back from Mr Rienacker was explained by Mr Rienacker's time off work on sick leave in **April 2020**. Mr Easdon also sent questions to Mr Kim on **5 June 2020**, who responded on **17 June 2020**. He was then interviewed on **25 June 2020**. Questions were also submitted to Mrs Richardson and to Mr Bill Chen.

995. In the meantime, Mr Easdon had also been handling Mr Samnick's grievances. Mr Abanda Bella submitted his detailed grievance in relation to his 2019 appraisal on **15 April 2020**. There was then an ongoing discussion as to whether it was appropriate for Mr Easdon to handle this grievance. A decision was made that this investigation should be carried out by Samantha Linsley instead. The investigation outcome into that grievance was sent to Mr Abanda Bella on 2 July 2021.

996. A further factor lengthening the process was that on 23 March 2020, the country went into the first national lockdown, in response to the Covid-19 Pandemic. For the previous week, employees had been asked to work from home where possible. This and the sickness absence of staff with Covid-19 or anxious about the prospect of developing Covid-19 would inevitably have stretched the resources available to the Bank, particularly with the HR function, given the novel and potential complex issues

that would have been raised by employees. It would also have potentially made it more difficult to speak to employees in the course of the grievance investigation.

997. Furthermore, during the period from **February 2020** to **September 2020**, Mr Abanda Bella had lodged around thirteen further grievances and whistleblowing complaint letters. Some of these documents were lengthy and complex. These would have further delayed the progress of Mr Easdon's grievance investigation. There was a delay in the investigations and whistleblowing team waiting for Mr Abanda Bella to confirm he consented to his identity being used in their investigations **[8247]**. In the absence of his consent, it was not possible for the investigation into whistleblower retaliation to progress **[8250].**

998. The Bank had a policy that evidence gathered during grievance investigations would not be shared with the person lodging the grievance, other than the notes of their own interviews. The Bank's explanation for this is that a grievance process is a confidential process and witnesses who are interviewed are told this. This is said to be a policy **[CAB issue 2/23.4]** that placed Mr Abanda Bella at a substantial disadvantage. The Tribunal's view is that this was entirely appropriate to ensure full candour and co-operation from witnesses. Evidence that Mr Easdon regarded as important to conclusions was detailed in the outcome letter sent to Mr Abanda Bella on 20 October 2019.

999. On **6 November 2020**, the Whistleblowing Team wrote to Mr Abanda Bella in relation to several emails submitted by him between 26 June 2020 and 27 August 2020, alleged to amount to protected disclosures. They stated they had opened whistleblowing investigations in relation to several of his complaints. They asked him if they could provide his identity and contact details to the investigator. The email stated that "for investigations into retaliation concerns, we also ask for a whistleblower's consent to share their identity more widely, on a confidential basis". This was so that the investigator could investigate the acts of reported retaliation by identifying him to witnesses or describing facts which could identify him in order to gain evidence from those witnesses **[7352]**. It was appropriate to ask him for his permission for his identity to be disclosed. However, refusing to consent to share his identity more widely would inevitably hamper any investigation as potential witnesses could not be asked specific questions about the treatment of the 'whistleblower' if they did not know his identity.

1000. On **16 August 2021** Ms Linsley emailed Mr Haworth following the conclusion of her investigation into Mr Abanda Bella's grievance about his 2019 annual appraisal. Her feedback to Mr Haworth was that his response did not address a number of his questions. She said that this appeared to have created a degree of uncertainty and led to further requests for clarity. She concluded that a more comprehensive response to the letter may have been beneficial and may have resolved some of his concerns without the need for a formal grievance process **[8589]**.

1001. The Bank's policy "in normal circumstances" was to complete grievance investigations within 20 days following the grievance meeting **[1/1147]**. So far as whistleblowing investigations are concerned, the normal policy is to conclude an investigation within six months **[5538]**.

1002. Mr Abanda Bella's case is that Mr Rienacker engaged in what he referred to as racially stereotyping him as a "lazy black man". There is no evidential basis to support such an allegation. Mr Rienacker's assessment of Mr Moune Nkeng, shortly before Mr Abanda Bella arrived, as recorded in Mr Moune Nkeng's 2017 annual appraisal, was that he was busy, productive, diligent, helpful, cooperative and eager to learn **[787]**. Two years later, in the 2019 appraisal, Mr Rienacker considered that Mr Moune Nkeng demonstrated diligence, commercial thinking and the ability to work hard to reach his goals **[3902]**. Mr Moune Nkeng shares Mr Abanda Bella's ethnicity. When this was put to him in cross-examination, Mr Abanda Bella said that the stereotyping was about him, rather than about Black men in general (transcript 040523).

LEGAL PRINCIPLES

1003. It is argued by the Claimants that on several occasions, the Respondents failed to treat written complaints as 'grievances'. They contend that this was contrary to established caselaw or contrary to the ACAS Code of Practice on Disciplinary and Grievance procedures. Previous caselaw addressing the different question of what constituted a grievance under the now repealed statutory dispute resolution procedures has no application to this issue. Nor does the ACAS Code require complaints noted in emails to be regarded as formal grievances. The ACAS Guide distinguishes between 'complaints' which 'should be dealt with carefully'; and a 'formal grievance about a fellow employee' where the guidance on handling formal grievances will apply. Complaints in emails are not grievances as a matter of law or as a matter of good industrial relations practice merely by being recorded in writing.

Burden of proof for Equality Act 2010 claims

1004. Section 136(2) and (3) of the Equality Act 2010 is worded as follows:

> (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.

1005. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong* [2005] ICR 931. This guidance has subsequently been approved by the Court of

Appeal in *Madarassay v Nomura International plc* [2007] ICR 867 and by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054 (at paras 25-32). In *Efobi v Royal Mail Group Limited* [2021] ICR at paragraph 26, Lord Leggatt made it clear that Section 136 EqA 2010 had not made any substantive change to the previous law.

1006. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of his protected characteristic. At the first stage, when considering what inferences can be drawn from the primary facts, the Tribunal must ignore any explanation for those facts given by the Respondents and assume that there is no explanation for them. It can however take into account evidence adduced by the Respondents insofar as it is relevant in deciding whether the burden of proof has moved to the Respondent.

1007. The initial burden of proof is on the Claimants. In order for the burden of proof to shift from each Claimant to the Respondent on a particular allegation, it is well established that it is insufficient for the Claimant merely to show a difference in status and detriment treatment (see *Madarassay* at paragraph 54). In *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865, Elias J at paragraph 15 said that the mere fact that an unsuccessful candidate was a Black woman and successful candidates were White men would be insufficient to be capable of leading to an inference of discrimination in the absence of a satisfactory non-discriminatory explanation. To shift the burden of proof a claimant must also prove something more. That is, in the present case the Claimants must prove facts from which the Tribunal could infer that there is a connection between the protected characteristics of race and the detrimental treatment, in the absence of a non-discriminatory explanation.

1008. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the impugned decisions to reject the Claimant's application. If the Tribunal accepts that the reason given for the treatment is genuine, then unless there is evidence to warrant a finding of unconscious discrimination, such that the Tribunal is really finding that the alleged discriminator has concealed the true reason even from himself, there will be no basis to infer unlawful discrimination at all.

1009. In *Hewage v Grampian Health Board* [2012] ICR 1054, in a passage endorsed by Lord Leggatt in *Efobi* at paragraph 38*,* Lord Hope reminded that it was important not to make too much of the role of the burden of proof provisions:

> "They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other" (paragraph 32).

1010. The Tribunal has also born in mind the nuanced approach to the burden of proof explained by His Honour Judge James Tayler in *Field v Steve Pye & Co* [2022] IRLR 948 at paragraphs 33 to 46. At paragraph 46, he said that where a claimant contends that there is evidence that should result in a shift in the burden of proof they should state concisely what that evidence is in closing submissions, particularly where represented.

Direct discrimination

1011. Section 13 of the Equality Act 2010 is worded as follows:

> (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.

1012. The three Claimants seek to compare themselves against identified individuals who do not share their ethnicity, or to how a hypothetical comparator would have been treated. Such a comparator, whether actual or hypothetical must in all other respects be in a comparable position to the Claimants apart from their ethnicity.

1013. As with other strands of discrimination, victimisation or detrimental treatment, the focus is on the mental processes of the person that took the impugned decisions. In a direct discrimination claim, the Tribunal should consider whether that person was influenced consciously or unconsciously to a significant (i.e. a non-trivial) extent by each Claimant's ethnicity. The decision makers' motives are irrelevant.

1014. Paragraphs 3.4 and 3.5 of the Equality and Human Rights Commission's Code of Practice on Employment (the EHRC Code) states:

> "If the employer's treatment of the worker puts the worker at a clear disadvantage compared to other workers, then it is more likely that the treatment will be less favourable …
>
> The worker does not have to experience actual disadvantage (economic or otherwise) for the treatment to be less favourable. It is enough that the worker can reasonably say that they would have preferred not to be treated differently from the way the employer treated – or would have treated another person".

1015. The less favourable treatment needs to be because of the relevant protected characteristic. It does not need to be the sole reason. As was said by Lord Nicholls in *Nagarajan v London Regional Transport* [1999] ICR 877, at 886E-F: "If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out". Significant means more than trivial.

1016. Unreasonable treatment is not, on its own, a basis for making an inference of unlawful discrimination. An employer does not need to prove that he behaves equally unreasonable to everybody.

1017. In *JP Morgan Ltd v Chweidan* [2012] ICR 268 the Court of Appeal considered whether it was necessary for the Tribunal to carry out a two-stage approach in each case. This is what Elias LJ said at paragraph 5:

> "In many cases it is not necessary for a tribunal to identify or construct a particular comparator (whether actual or hypothetical) and to ask whether the claimant would have been treated less favourably than that comparator. The tribunal can short circuit that step by focusing on the reason for the treatment".

1018. In *D'Silva v NATFHE* [2008] IRLR 412, the claimant had sought to argue that the Tribunal had failed to construct the hypothetical comparator correctly before considering how such a hypothetical comparator would have been treated. Underhill J commented (at paragraph 30):

> "It might reasonably have been hoped that the Frankensteinian figure of the badly-constructed hypothetical comparator would have been clumping his way rather less often into discrimination appeals since the observations of Lord Nicholls in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 (see in particular paragraph 11 at p.289) and the decision of this tribunal, chaired by Elias J, in *Law Society v Bahl* [2003] IRLR 640, at paragraphs 103–115 (pp.652–654)."

1019. The passages quoted by Underhill J from *Shamoon* and *Bahl* emphasise that it is not necessary to construct a hypothetical comparator in order to test whether there is less favourable treatment. It is not possible to state whether the chosen comparator would have been differently treated independently of knowing why the alleged victim was treated in the way in which he or she was. Employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was.

Harassment

1020. Section 26 of the Equality Act 2010 is worded as follows :

> (1) A person (A) harasses another (B) if-
>
> a. A engages in unwanted conduct related to a relevant protected characteristic, and
> b. The conduct has the purpose or effect of –
>
> i. Violating B's dignity, or

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for B

….

(4) In deciding whether conduct has the effect referred to in (1)(b), each of the following must be taken into account-

a. The perception of B;
b. The other circumstances of the case
c. Whether it is reasonable for the conduct to have that effect.

1021. In relation to a claim for harassment under Section 26, it is open to a Tribunal to find that conduct was unwanted even if a claimant chooses to stay in employment and even if a claimant chooses not to object whether formally or informally (*Munchkins Restaurant Ltd v Karmazyn and others* EAT 0359/09). The EHRC Code states as follows:

> 7.7. Unwanted conduct covers a range of behaviour, including spoken or written words or imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.
> 7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not meant that express objection has to be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment.

1022. When considering whether a comment was "related to" a protected characteristic under Section 26 Equality Act 2010, this covers a wider category of conduct than conduct "because of a protected characteristic" under Section 13 Equality Act 2010. A broader enquiry is required involving a more intense focus on the context of the offending words or behaviour (*Bakkali v Greater Manchester Buses (South) Limited t/a Stage Coach Manchester* [2018] UKEAT/0176/17).

1023. In order to assess the "purpose" of the alleged conduct, the Tribunal must consider the alleged harasser's motive or intention. When considering the "effect" of the alleged conduct, the Tribunal needs to analyse the three specific factors set out in Section 26(4)(a) to (c). This has both a subjective and an objective aspect. As to the former, the claimant must have felt or perceived his dignity to have been violated or an adverse environment to have been created. As to the latter, if the claimant had experienced those feelings or perceptions, the Tribunal must consider if it was reasonable for him to do so. If a claimant is unreasonably prone to take offence, there will have been no harassment within the meaning of the section (*Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 at paragraph 15).

1024. In assessing whether the conduct met the required threshold by producing the proscribed consequences, Tribunals should not place too much weight on the timing of any objection (*Weeks v Newham College of Further Education* UKEAT/0630/11).

Whether it was reasonable for a claimant to regard treatment as amounting to treatment that violates his dignity or has an intimidating, hostile, degrading, humiliating or offensive environment is a matter for factual assessment of the Tribunal having regard to all the relevant circumstances, including the context (*Richmond Pharmacology v Dhaliwal* [2009] IRLR 336). In that case the EAT said at paragraph 22:

> "Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct … it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase".

1025. In speaking of the statutory language in Section 26(1), Elias LJ in *Land Registry v Grant* [2011] ICR 1390 said (at paragraph 47):

> "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment".

Knowledge of disability

1026. The statutory provision prohibiting discrimination arising from disability in Section 15(1) Equality Act 2010 does not apply if the person alleged to have committed this discrimination shows they did not know and could not reasonably have been expected to know that the claimant has a disability.

1027. An employer is not subject to a duty to make reasonable adjustments if it does not know and could not reasonably be expected to know that the claimant has a disability and is likely to be placed at a substantial disadvantage (Equality Act 2010, Schedule 8, paragraph 20).

1028. As a result, actual or constructive knowledge is relevant to both causes of action. The required knowledge for actual or constructive knowledge are of the facts constituting the employee's disability, namely the following three elements:

> "(a) a physical or mental impairment, which has (b) a substantial and long-term adverse effect on (c) his ability to carry out normal day to day duties"

1029. Provided the employer has actual or constructive knowledge of the facts constituting the employee's disability, the employer does not also need to know that, as a matter of law, the consequence of such facts is that the employee is a 'disabled person' (*Gallup v Newport County Council* [2014] IRLR 211 at paragraph 36).

1030. The EHRC Code provides as follow:

> Paragraph 5.14 "Employers should consider whether a worker has a disability even where one has not been formally disclosed".
>
> Paragraph 5.15 "employers must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially".

1031. Where a Respondent has failed to make enquiries, the Tribunal must go on to decide what the employer might reasonably have been expected to know had it made such an inquiry. This includes assessing whether the claimant would have suppressed information about symptoms even if reasonable enquiries had been made (*A Limited v Z* [2020] ICR 199).

1032. Information known by Occupational Health about a disability will be attributable to an employer if the Occupational Health adviser was acting as the employer's agent. The decision as to whether or not an employee is disabled, so as to trigger the duty of reasonable adjustment, is one for the employer to make. It is not a decision that can be delegated to an Occupational Health advisor. Contemporaneous medical opinion as to the likelihood of an employee's impairment continuing is likely to be of the very greatest value (*Donelien v Liberata UK Ltd* UKEAT/0297/14/JOJ at paragraph 31).

Discrimination arising from disability

1033. Section 15 Equality Act 2010 is worded as follows:

> (1) A person (A) discriminates against a disabled person (B) if-
>
> a. A treats B unfavourably because of something arising in consequence of B's disability; and
> b. A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

1034. The first issue for the Tribunal to assess is whether the Claimant's treatment was influenced to any significant extent by any consequences of the disability. This requires a focus on the reasoning in the mind of the person making the decision. The Tribunal needs to consider the conscious or unconscious thought processes of the alleged discriminator, keeping in mind that their actual motive in acting as they did is irrelevant. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial)

influence on the unfavourable treatment, and so amount to an effective reason for or cause of it (*Pnaiser v NHS England* [2016] IRLR 70 at paragraph 31).

1035. The second issue, namely whether the reason/cause is "something arising in consequence of B's disability" was explained in as follows *Pnaiser* at paragraph 31:

> "the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability. […]
>
> This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator."

1036. In *York City Council v Grosset* [2018] ICR 1492, the Court of Appeal considered the extent of knowledge that was required under Section 15. In short, there is none beyond actual or constructive knowledge of the disability itself. If there is a causal link between the consequences of the disability and the unfavourable treatment, it is not necessary that the alleged discriminator knew of that connection (see paragraph 39).

1037. If the unfavourable treatment was influenced by any consequences of the disability, then it is for the Respondent to show, under Section 15(1)(b) on the balance of probabilities that the decision was justified. That requires that the Tribunal form its own assessment of whether the unfavourable treatment was a proportionate means of achieving a legitimate aim. This is a different analysis from the range of reasonable responses approach required when considering an unfair dismissal claim.

1038. So far as legitimate aim is concerned, the EHRC Code provides that it "should be legal, should not be discriminatory in itself, and must represent a real, objective consideration. Reasonable business needs and economic efficiency may be legitimate aims, but solely aiming to reduce costs is not [4.28 & 4.29].

1039. In assessing proportionality, the Tribunal must assess whether on a fair and detailed analysis of the working practices and business considerations involved, the decision was reasonably necessary in order to achieve the legitimate aim (*Hardys & Hansons Plc v Lax* [2005] ICR 1565).

1040. There must be an assessment of "the balance between the discriminatory effect of the measure [or treatment] and the legitimate aim" (*Harvey, Industrial Relations and Employment Law* paragraph 338.03).

Failure to make reasonable adjustments

1041. Section 20(3) Equality Act 2010 provides:

> "… a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage"

1042. Section 21 Equality Act 2010 provides:

> (1) A failure to comply with [this] requirement is a failure to comply with a duty to make reasonable adjustments.
>
> (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."

1043. The Tribunal must assess whether the Respondent applied a provision, criterion or practice which placed the claimant at a substantial disadvantage in comparison to those employees not sharing her disability. If so, the duty to make reasonable adjustments is engaged. The Tribunal must then consider whether a reasonable adjustment might have eliminated or reduced that disadvantage.

1044. Paragraph 6.10 of the EHRC Code provides:

> "The phrase [PCP] is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, or qualifications including one-off decisions and actions …"

1045. In *Ishola v Transport for London* [2020] IRLR 372 Simler LJ discussed the extent to which the words 'provision criterion or practice' could apply to one off acts. She said "To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply … the comparator can be a hypothetical comparator to whom the alleged PCP could or would apply" (paragraph 36).

1046. She added (at paragraph 38):

> "all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again."

1047. In an appropriate case, it is open to a Tribunal to reformulate the way a PCP has been expressed by a litigant in person so as to identify an alternative PCP (see *D v E* at paragraph 24 relying on the approach of HHJ James Tayler in *Cox v Adecco*

[2021] ICR 1307 at paragraphs 28 to 30). However, as with any change to the contents of a list of issues, the Tribunal should be cautious about doing so after evidence and submissions have concluded, particularly where the list has already been the subject of substantial discussion and review.

1048. In order for the disadvantage suffered by the employee to be "substantial" it must be more than minor or trivial: *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 at paragraph 21.

1049. The substantial disadvantage must be "in comparison with persons who are not disabled". This requires a comparative exercise. However, there is "no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances … rather the matter ought to be measured by comparison with what the position would be if the disabled person did not have a disability" (*Sheikholeslami v University of Edinburgh* [2018] IRLR 1090 at paragraphs 48 and 49).

1050. Paragraph 20 of Schedule 8 to the Equality Act 2010 is worded as follows:

> An employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know … that the employee has a disability and is likely to be placed at a disadvantage.

1051. In *Secretary of State for Work and Pensions v Alam* [2010] IRLR 283 (EAT) at paragraph 17, Lady Smith stated that the Tribunal ought to ask itself two questions:

a. First, did R know both that C was disabled and that his disability was liable to disadvantage C substantially by reason of the impugned PCP?

b. Second, and if the answer to the first question is "no", ought R to have known both that C was disabled and that his disability was liable to disadvantage C substantially by reason of that PCP?

1052. In *Newham Sixth Form College v Saunders* [2014] EWCA Civ 734 at paragraph 14, Laws LJ said as follows:

> "the nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot, as it seems to me, make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP.'"

1053. The burden of proof is on the claimant to establish the existence of the provision, criterion or practice and to show that it placed him at a substantial disadvantage - see *Project Management Institute v Latif* [2007] IRLR 579 at paragraph 45. In other words, to establish that the duty to make reasonable adjustments has been engaged.

1054. Thereafter the onus remains on the claimant to identify the potential reasonable adjustments with a sufficient degree of specificity to enable the Respondent to address them evidentially and the Tribunal to consider the reasonableness of providing them. The claimant must establish not only that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. At that point where the claimant has identified one or more potential reasonable adjustments, the burden of proof is reversed. The Respondent must then show, on the balance of probabilities, that the adjustment could not reasonably have been achieved – *Latif* at paragraphs 53-54.

1055. The reasonableness of the steps to be taken to avoid the disadvantage is to be determined on an objective basis: *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 at paragraph 73.

1056. Further guidance as to the considerations that are relevant in assessing reasonableness is provided in paragraph 6.28 of the EHRC Code. These are "whether taking any particular steps would be effective in preventing the substantial disadvantage; the practicability of the step; the financial and other costs of making the adjustment and the extent of any disruption caused; the extent of the employer's financial or other resources; the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work) and; the type and size of the employer". Examples are also given in paragraph 6.33.

1057. The reasonable adjustments duty is "primarily concerned with enabling the disabled person to remain in or return to work with the employer". As a result, it would be a "very rare case indeed" where merely giving higher sick pay beyond the end of the contractual entitlement (and therefore than would be payable to a non-disabled person) would be considered necessary as a reasonable adjustment" (*O'Hanlon v Commissioners for HR Revenue & Customs* [2007] IRLR 404 at paragraph 67).

Indirect discrimination

1058. So far as is material, section 19 Equality Act 2010 provides:

> (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's;
>
> (2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant characteristic of B's if-
>
> a. A applies or would apply, it to persons with whom B does not share the characteristic,

b. It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
c. It puts, or would put, B at that disadvantage, and
d. A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant characteristics are … disability …

1059. As explained in paragraph 4.3 of the EHRC Code, indirect discrimination occurs when an employer applies an apparently neutral provision, criterion or practice which puts workers sharing a protected characteristic at a particular disadvantage. As explained by Lady Hale in *Chief Constable of West Yorkshire Police v Homer* [2012] ICR 704 at paragraph 17:

> "The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic … the resulting scrutiny may ultimately lead to the conclusion that the requirement can be justified. But if it cannot, then it can be modified so as to remove the disadvantage".

1060. Paragraph 4.4. emphasises that four requirements must be met:

a. the employer applies (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular worker;

b. the provision, criterion or practice puts, or would put, people who share the worker's protected characteristic at a particular disadvantage when compared with people who do not have that characteristic ("group disadvantage");

c. the provision, criterion or practice puts, or would put, the worker at that disadvantage ("individual disadvantage"); and

d. the employer cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

1061. The burden of proof starts on a claimant. It is for the claimant to establish the first, second and third requirements. If these are satisfied, then it is for the respondent to justify the PCP as a proportionate means of achieving a legitimate aim.

1062. 'Disadvantage' is a similar concept to 'detriment'. 'A disadvantage does not have to be quantifiable and the worker does not have to experience actual loss (economic or otherwise)' (EHRC Code paragraph 4.9). There is no particular level or threshold of disadvantage required.

1063. The statutory language requires the Tribunal to identify a pool of workers which the PCP affects (or would affect) either positively or negatively, whilst excluding those who are not so affected.

1064. Paragraph 4.19 of the Code explains the nature of the comparison which must be carried out when analysing a complaint of indirect discrimination – "a comparison must be made between the impact of the provision, criterion or practice on people without the relevant protected characteristic, and its impact on people with the protected characteristic".

1065. In *Essop v Home Office (UK Border Agency)* [2017] IRLR 558 at paragraph 41, Lady Hale said this:

> "all the workers affected by the PCP in question should be considered. Then the comparison can be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the group without it […] There is no warrant for including only some of the persons affected by the PCP for comparison purposes. In general, therefore, identifying the PCP will also identify the pool for comparison."

1066. As to "group disadvantage", the Claimants' group is restricted to those who have the same disability, given the wording of Section 6(3) Equality Act 2010:

> "In relation to the protected characteristic of disability
>
> (a) A reference to a person who has a particular protected characteristic is a reference to persons who has a particular disability;
>
> (b) A reference to persons who share a protected characteristic is a reference to persons who have the same disability."

1067. The Tribunal must consider whether the group with the same disability is at a particular disadvantage when compared to the group without that disability.

1068. Paragraph 4.21 of the ECHR Code provides the following guidance as to the comparative exercise:

> "If the Employment Tribunal is asked to undertake a formal comparative exercise to decide an indirect discrimination claim, it can do this in a number of ways. One established approach involves the Employment Tribunal asking these questions:
> • What proportion of the pool has the particular protected characteristic?
> • Within the pool, does the provision, criterion or practice affect workers without the protected characteristic?
> • How many of these workers are (or would be) disadvantaged by it? How is this expressed as a proportion ('x')?

• Within the pool, how does the provision, criterion or practice affect people who share the protected characteristic?
• How many of these workers are (or would be) put at a disadvantage by it? How is this expressed as a proportion ('y')?"

1069. The Tribunal then compares (x) with (y) to determine whether group (y) experiences a particular disadvantage when compared with group (x).

1070. In relation to "individual disadvantage", the claimant must prove that the PCP puts (or would put) him at "that disadvantage". In other words, at the same disadvantage as those others who share the relevant characteristic.

1071. The Tribunal should apply the same approach to "objective justification" in an indirect discrimination claim as set out above in relation to a claim for discrimination arising from disability.

Victimisation

1072. Section 27 of the Equality Act 2010 is worded as follows:

(1) A person 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.

1073. Protected acts include bringing proceedings under the Equality Act 2010 (section 27(2)(a)) and making an allegation (whether or not express) that A or another person has contravened the Equality Act 2010 (section 27(2)(d)).

1074. In *Beneviste v Kingston University* [2007] (UKEAT/0393/05) the EAT (HHJ Richardson) discussed at paragraph 29 the minimum requirements for a communication to satisfy the requirements of Section 27(2)(d), by reference to helpful examples:

> "There is no need for the allegation to refer to the legislation, or to allege a contravention, but the gravamen of the allegation must be such that, if the allegation were proved, the alleged act would be a contravention of the legislation. If a woman says to her employer, "I am aggrieved with you for holding back my research and career development" her statement is not protected. If a woman says to her employer, "I am aggrieved with you for holding back my research and career development because I am a woman" or "because you are favouring the men in the department over the women", her statement would be protected even if there was no reference to the 1975 Act [Sex Discrimination Act 1975] or to a contravention of it."

1075. Merely making reference to a criticism, grievance or complaint without suggesting that the criticism, grievance or complaint was in some sense an allegation of discrimination is insufficient.

1076. A complaint that a person is being "discriminated against" may or may not fall within the scope of Section 27 depending on an analysis of complaint in its context. It depends whether the word "discriminated" is a reference to unfair treatment generally, rather than specifically because of race (*Durrani v London Borough of Ealing* [2013] UKEAT/0454/12). It is relevant to consider whether a claimant was articulate and well-educated and knew the appropriate language to use to allege race discrimination.

1077. Section 27(3) contains two elements. First that the allegation is false and that in making the allegation, the claimant was acting in bad faith.

1078. In *Saad v Southampton University Hospitals NHS Trust* [2019] ICR 311, at paragraph 50 HHJ Eady gave the following guidance as to whether a claimant should be regarded as acting in bad faith:

> "I do not say that the existence of a collateral motive could never lead to a finding of bad faith not least because it is impossible to foresee all scenarios that might arise but the focus should be on the question whether the employee was honest when they gave the evidence or information or made the allegation in issue. In answering that question, the employment tribunal will already have established that the evidence, information or allegation was false; that does not mean the employee acted in bad faith, although it may be a relevant consideration in determining that question (the more obviously false the allegation, the more an employment tribunal might be inclined to find that it was made without honest belief). Similarly, the employee's motive in giving the evidence or information or in making the allegation may also be a relevant part of the context in which the tribunal assesses bad faith. The tribunal might, for example, conclude that the employee dishonestly made a false allegation because they wanted to achieve some other result, or that they were wilfully reckless as to whether the allegation was true (and thus had no personal belief in its content) because they had some collateral purpose in making it.

> Motivation can be part of the relevant context in which the tribunal assesses bad faith, but the primary focus remains on the question of the employee's honesty."

1079. A detriment will only exist if a reasonable worker would also take the view that the treatment was to his detriment: *Ministry of Defence v Jeremiah* [1980] ICR 13 at paragraph 31. An unjustified sense of grievance does not amount to a detriment.

1080. In order to succeed with a claim of victimisation, there must be a sufficient causal connection between a protected act and the alleged detriment. It is enough if the protected act had a significant influence on the outcome.

1081. If the alleged detriment is a failure to investigate a complaint of discrimination or harassment, there must be a causative link between the fact of the employee making the EqA complaint and the failure to investigate it. It is insufficient for the protected act to be a "but for" cause. Langstaff J commented as follows at paragraphs 21-23 in *A v Chief Constable of West Midlands Police* (UKEAT/0313/14/JOJ (21.4.15):

> "But omissions to act must be carefully scrutinised in this regard. The purpose of the victimisation provision is protective. It is not intended to confer a privilege upon the person within the hypothetical bubble I have postulated, for instance by enabling them to require a particular outcome of a grievance or, where there has been a complaint, a particular speed with which that particular complaint will be resolved. It cannot in itself create a duty to act nor an expectation of action where that does not otherwise exist.
>
> It follows that in some cases – and I emphasise that the context will be highly significant – a failure to investigate a complaint will not of itself amount to victimisation. Indeed there is a central problem with any careful analysis and application of section 27 to facts broadly such as the present. That is that, where the protected act is a complaint, to suggest that the detriment is not to apply a complaints procedure properly because a complaint has been made, it might be thought, asks a lot and is highly unlikely. The complaints procedure itself is plainly embarked on because there has been a complaint: to then argue that where it has not been embarked on with sufficient care, enthusiasm or speed those defects are also because of the complaint itself would require the more careful of evidential bases…
>
> It might be different in some circumstances. An example might be if the particular nature of the complaint meant that it would not be discussed or dealt with in a way in which other complaints of a different nature would. For instance, if a particular employer found the prospect of dealing with a complaint of sexual harassment embarrassing to the extent that it took no action on such a complaint when otherwise it would have a duty to do so, or there was a well-established expectation that the complaint would be dealt with, it is in my view possible that a Tribunal might conclude that the omission to act, if it caused the victim of the alleged harassment a detriment in terms of

the particular effects of her disappointed expectations, could conceivably come within the scope of victimisation."

1082. *Iwuchukwu v City Hospitals Sunderland NHS Foundation Trust* [2019] IRLR 1022 is an example of a case where a Tribunal found that the failure to investigate the claimant's grievances was materially influenced by the content of the grievances (which had alleged race discrimination) and was therefore an act of victimisation. This conclusion was upheld by the Court of Appeal.

1083. It is open to an employer to allege that the reason for the treatment was not the protected act but some feature of it which could "properly be treated as separable" (*Martin v Devonshires Solicitors* [2011] ICR 352 (Underhill P)).

1084. In order for the burden of proof to shift from a claimant to the respondent, the claimant must establish more than that the claimant has suffered a detriment and has done a protected act. There must be some factual basis for potentially inferring that the protected act has influenced the detrimental treatment.

Instructing, causing or inducing contraventions

1085. So far as is material, section 111 is worded as follows:

(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part … 5 or section 112(1) (a basic contravention)

(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention

(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention

(4) For the purposes of subsection (3), inducement may be direct or indirect.

(5) Proceedings for a contravention of this section may be brought … by C, if C is subjected to a detriment as a result of A's conduct

(6) For the purposes of subsection (5), it does not matter whether-
   a. The basic contravention occurs
   b. Any other proceedings are, or may be, brought in relation to A's conduct.

(7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to A.

(8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.

(9) …

1086. The EHRC Code (paragraph 9.16) provides that "It is unlawful to instruct someone to discriminate against, harass or victimise another person because of a protected characteristic or to instruct a person to help another person to do an unlawful act. Such an instruction would be unlawful even if it is not acted on."

1087. Paragraph 9.18 explains inducement: "An inducement may amount to no more than persuasion and need not involve a benefit or loss. Nor does the inducement have to be applied directly: it may be indirect. It is enough if it is applied in such a way that the other person is likely to come to know about the inducement".

Help (Section 112 EqA)

1088. Section 112 Equality Act 2010 provides as follows:

(1) A person (A) must not knowingly help another (B) to do anything which contravenes Part … 5 or Section 111 (a basic contravention)

(2) It is not a contravention of subsection (1) if-
   a. A relies on a statement by B that the act for which the help is given does not contravene this Act, and
   b. It is reasonable for A to do so

1089. 'Help' means cooperate or collaborate. It is not enough to instigate a chain of events that leads to discrimination. It does not matter who instigates or initiates the relationship (*Anyanwu v South Bank Student Union* [2001] IRC 391). Help will be unlawful even if it is not substantial or productive, so long as it is not negligible. A person who helps another in this way will be treated as having done the act of discrimination, harassment or victimisation themselves.

1090. The EHRC Code clarifies (at paragraph 9.28) that "For the help to be unlawful, the person giving the help must know at the time they give the help that discrimination, harassment or victimisation is a probable outcome. But the helper does not have to intend that this outcome should result from the help."

1091. As a result, an individual who recklessly aids the commission of a prohibited discriminatory act or who provides aid in circumstances where there is a foreseeable risk of discriminatory action by someone else is not liable (see *Hallam v Avery* [2000] ICR 583 (CA) at paragraph 27).

Law on time limits under the Equality Act 2010

1092. Section 123 of the Equality Act 2010 is worded as follows:

> (1) …proceedings on a complaint brought 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) ….
>
> (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

1093. Under Section 123 of the Equality Act 2010, proceedings on a complaint may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates. An act "occurs when it is done, not when you acquire knowledge of the means of proving that the act done was discriminatory" (*Mensah v Royal College of Midwives* [1995] EAT/124/94). The act is complete for the purpose of the time limitation when the decision is taken rather than when it is communicated. Therefore, time does not start from when the employee acquires knowledge of the act or deliberate failure to act (*Virdi v Commissioner of Police of the Metropolis*) [2007] IRLR 24).

1094. A failure to make a reasonable adjustment is not a continuing act and is instead an omission. Time runs from when the person is taken to have decided on a failure to do something, as explained in subsections (a) and (b) of Section 123(4) Equality Act 2010 above (*Kingston Upon Hull v Matuszowicz* [2009] IRLR 288 (CA). The principles set out in the authorities were summarised as follows by HHJ Beard in *Fernandes v Department of Work and Pensions* [2023] IRLR 967 at paragraph 16:

> a. The duty to make an adjustment, under the statutory scheme, arises as soon as there is a substantial disadvantage to the disabled employee from a PCP (presuming the knowledge requirements are met) and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to have to make the adjustment.

b. Where the employer is under a duty to make an adjustment, however, limitation may not begin to run from the date of breach but at a later notional date. As is the case where the employer is under a duty to make an adjustment and omits to do so there will be a notional date where time begins to run whether the same omission continues or not.

c. That notional date will accrue if the employer does an act inconsistent with complying with the duty.

d. If the employer does not act inconsistently with the duty the notional date will accrue at a stage where it would be reasonable for the employee to conclude that the employer will not comply, based on the facts known to the employee.

1095. Conduct extending over a period is to be treated as done at the end of the period (Section 123(3) Equality Act 2010). There is conduct extending over a period if there is a continuing discriminatory state of affairs as opposed to a succession of unconnected or isolated specific acts. If so, then the three-month time period for bringing a claim only runs from the date on which the state of affairs ends (*Metropolitan Police Commissioner v Hendricks* [2003] ICR 530). However, if any of the constituent acts is found not to be an act of discrimination, then it cannot be part of a continuing act (*South West Ambulance NHS Foundation Trust v King* [2020] IRLR 168).

1096. The three-month time for bringing Tribunal proceedings is paused during Early Conciliation such that the period starting with the day after Early Conciliation is initiated and ending with the day of the early conciliation certificate does not count (Section 140B(3), Equality Act 2010). If the time limit would have expired during Early Conciliation or within a month of its end, then the time limit is extended so that it expires one month after Early Conciliation ends (Section 140B(4), Equality Act 2010).

1097. If the claim has been brought outside the primary limitation period, then the Tribunal has jurisdiction to consider the claim if it was brought within such other period as the Tribunal considers just and equitable. The Tribunal has a wide discretion and the EAT has a limited basis on which it can interfere. This is the proper principle to derive from *Robertson v Bexley Community Centre (t/a Leisure Link)* [2003] IRLR 434, CA, as explained by HHJ Tayler in *Jones v Secretary of State for Health and Social Care* EAT 23.1.24 at paragraphs 27-38).

1098. Factors which are almost always relevant to an exercise of the discretion are the length of and the reasons for the delay, and whether the delay has prejudiced the Respondent (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194 at paragraph 19). However:

> There is no … requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the

absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard (*Abertawe* at paragraph 25)

1099. It is not necessary for a Tribunal to consider the checklist of factors set out in Section 33 of the Limitation Act 1980, given that that Section is worded differently from Section 123 of the Equality Act 2010, so long as it does not leave a significant factor out of account.

1100. It will frequently be fair to hold Claimants bound by time limits which they could, had they taken reasonable steps, have discovered. If the delay in issuing proceedings has been caused by the fault of an adviser, this is a potentially relevant factor that potentially excuse a failure to issue proceedings in time, or a delay in issuing proceedings thereafter (*Hunwicks v Royal Mail Group plc* EAT 0003/07; 20 March 2007 per Underhill J at paragraphs 9 and 13). However, to be a relevant factor, the bad advice must have been the reason for the delay.

1101. Awaiting the outcome of an internal grievance procedure before making a complaint is just one matter to be taken into account by a tribunal considering the late presentation of a discrimination claim (*Apelogun-Gabriels v Lambeth London Borough Council* [2002] ICR 713, CA per Peter Gibson LJ at p719).

1102. Where it is asserted that the claimant's medical condition is the reason for the delay in issuing proceedings, the Tribunal is not bound to accept untested medical evidence as a sufficient basis for concluding that a claimant had difficulty in taking the necessary steps to issue proceedings. It is appropriate to evaluate that medical evidence in the light of other evidence as to what the claimant was capable of doing during the limitation period. This may include evidence of seeking legal advice or of writing coherent letters on this or unrelated matters (*Chouafi v London United Busways Limited* [2006] EWCA Civ 689). The question is whether it is just and equitable to extend time in the light of the claimant's medical difficulties, which are one relevant factor to be considered - even if they were not such as actually to prevent the claimant commencing proceedings (*Watkins v HSBC Bank plc* [2018] IRLR 1015 at paragraph 50).

1103. When balancing the prejudice to each party as a result of granting or refusing to grant an extension of time, the Tribunal may have regard to the following factors:

a. The obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence;

b. The forensic prejudice which a Respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents and losing touch with witnesses;

c. The prejudice to the claimant in not being awarded a remedy for an otherwise legally sound complaint if the Tribunal holds the complaint to be time barred.

1104. If there is no forensic prejudice to the Respondent that is (a) not decisive in favour of an extension and (b), depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts (*Miller v Ministry of Justice* (UKEAT/0003/15/LA) (15.3.16).

Detriment on the ground of protected disclosure

1105. A claimant has the right not to be subject to any detriment by any act, or any deliberate failure to act, by the respondent done on the ground that the claimant has made a protected disclosure (Section 47B(1A)(a)). A protected disclosure is defined in Section 43A as "a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of sections 43C to 43H".

Qualifying disclosures

1106. Section 43B is in the following terms:

> (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.

1107. Only those disclosures that meet the statutory requirements set out in Section 43B qualify for protection. The starting point is that the disclosure must be a "*disclosure of information*" made by the worker bringing the claim. That disclosure must have two features. Both are based on the belief of the worker, but that belief must be a reasonable belief.

1108. The first is that at the time of making the disclosure the worker reasonably believes the disclosure tends to show a 'relevant failure' in one of five specified respects; or deliberate concealment of that failure. The second is that at the time of making the disclosure, the worker reasonably believes the disclosure is made in the public interest.

(1) Disclosure of information

1109. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 the Court of Appeal rejected the view that allegations could not amount to a disclosure of information. Sales LJ noted that allegations could amount to disclosures of information depending on their content and on the surrounding context. By itself, an allegation made by an NHS employee that "*You are not complying with health and safety requirements*" would be so devoid of specific factual content that it would not fit within the statutory language – such a statement does not disclose information tending to show health and safety is being endangered. If such a statement was made whilst pointing to sharps lying discarded on the ward floor, then this context would give the disclosure sufficient factual content to amount to a qualifying disclosure.

1110. Sales LJ set out the following test for determining whether the information threshold had been met so as to potentially amount to a qualifying disclosure: the disclosure has to have *"sufficient factual content and specificity such as is capable of tending to show"* one of the five wrongdoings or deliberate concealment of the same. It is a matter *"for the evaluative judgment of the tribunal in the light of all the facts of the case"* (paras 35-36).

1111. Protected disclosures will commonly be made in grievances, particularly where there is no formal whistleblowing policy. However, section 43B does not limit the manner of the disclosure. Verbal disclosures can be qualifying disclosures - although verbal disclosures may be disputed, and a claimant will have to prove that the disclosure was made as alleged. Qualifying disclosures can also be made having regard to a series of communications viewed as a whole, even where the recipients of those communications are different. The disclosure can still be a qualifying disclosure if the recipient is already aware of the information – Section 43L(3).

1112. However, the Tribunal will need to assess whether, given the factual context, it is appropriate to analyse a particular communication in isolation or in connection with others. In *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540 (EAT), Slade J (at paragraph 22) said that *"an earlier communication can be read together with a later one as embedded in it, rendering the later communication a protected disclosure, even if taken on their own they would not fall within Section 43B(1)(d)"*. Whether or not it is correct to do so is a question of fact.

1113. In *Kilraine,* one of the alleged protected disclosures was made using these words: *"There have been numerous incidents of inappropriate behaviour towards me, including repeated sidelining, and all of which I have documented"*. In itself, this lacked sufficient factual content and specificity. The oblique reference to other documented instances did not incorporate other documents by reference. In *Simpson v Cantor Fitzgerald Europe* [2021] ICR 695, the Court of Appeal upheld the ET's decision not to aggregate 37 communications to different recipients in order to assess whether there was a protected disclosure. Whether communications are read together is a question of fact for the Tribunal.

(2) Reasonable belief disclosure tends to show wrongdoing

1114. There are two separate requirements here – (a) a genuine belief that the disclosure tends to show a relevant failure in one of the five respects (or deliberate concealment of that wrongdoing); and (b) that belief must be a reasonable belief. Reasonableness involves applying an objective standard to the personal circumstances of the discloser. The reasonableness test might differ depending on whether the discloser was a lay person or an expert. For example, a consultant surgeon would generally be expected to check medical records before it would be reasonable for them to believe their disclosure tended to show medical malpractice. A lay observer may reasonably believe the same disclosed information indicated wrongdoing without first making such checks (*Korashi v Abertawe Bro Morgannwg Local Health Board* [2012] IRLR 3, EAT). The definition is concerned with what the worker believed at the time when they made the disclosure, not what they may have come to believe later on (*Dodd v UK Direct Solutions Limited* at paragraph 55 [2022] EAT 44 (18.3.22)).

1115. If the disclosure has a sufficient degree of factual content and specificity, then that belief is likely to be regarded as a reasonable belief (*Kilraine* at paragraph 36). The belief has to be that the information in the disclosure tends to show the required wrongdoing, not just a belief that there is wrongdoing (*Soh v Imperial College of Science, Technology and Medicine* EAT 0350/14*).* The disclosure may still be a protected disclosure even if the information does not stand up to scrutiny. A belief may be a reasonable belief even if it is wrong: *Babula v Waltham Forest College* [2007] ICR 1026. Unlike disclosures made to a regulator (see below), where a disclosure is made to the claimant's employer there is no additional requirement that the claimant must have had a reasonable belief that the information disclosed, and any allegation contained in it, were substantially true. Therefore, the Tribunal will not usually need to determine whether the employee believed that the disclosed information was correct or not. That said, in many cases, the determination of the factual accuracy of the disclosure will be an important tool in determining whether the worker held the reasonable belief that the disclosure tended to show a relevant failure (*Darnton v University of Surrey* [2003] IRLR 133).

1116. In relation to each of the five prescribed types of relevant failure - there is a potential past, present or future dimension. For instance, in relation to breach of a legal obligation, the reasonable belief must be that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation. So far as future wrongdoing is concerned the phrase *"is likely to"* has been interpreted as meaning more than a mere possibility. In *Kraus v Penna* [2004] IRLR 260 the EAT held that to be a qualifying disclosure, the information disclosed should tend to show, in the claimant's reasonable belief, that failure to comply with a legal obligation was *"probable or more probable than not"*. Although *Kraus v Penna* has been overruled by the Court of Appeal on a different issue, it remains good law on this point.

1117. ***Breach of a legal obligation*** (Section 43B(1)(b)): Any legal obligation potentially suffices, including breach of an employment contract: *Parkins v Sodexo* [2002] IRLR 109]. ET cases have held that a wide range of legal obligations are relevant, in addition to the employment contract itself:

a. Breach of an equal opportunities policy;
b. Pressurising parking attendants to meet targets, such that they falsified entries in a log book – this was breach of the obligation to fairly administer provisions of road traffic legislation;
c. Pressure to include false lines of business so as to artificially inflate the accounts;
d. A complaint that hospital staff were unable to take proper rest breaks.

1118. A belief that particular conduct amounts to discrimination would be "*breach of a legal obligation*".

1119. Unless the legal obligation is obvious, Tribunals should consider the particular wrong that the claimant alleges they believe has been breached. However, there are no sub-rules requiring that the worker should expressly accuse the employer of acting in breach of a legal obligation, still less identify a particular legal obligation in the disclosure. Such additional requirements go beyond the statutory wording and are inconsistent with the purpose of the legislation. However, what the worker said about the legal obligation, and whether the matter is obvious are relevant evidential matters in deciding what they believed and the reasonableness of what they believed. If the nature of the worker's concern is stated – e.g. they say that they consider that the report information shows a breach of a legal obligation - *"it will be harder to dispute that they held this belief and that the professed belief that the disclosure tended to show the specified matter was reasonable"* (*Twist DX Limited v Armes and others* at paragraph 87).

1120. In *Eiger Securities LLP v Korshunova* [2017] ICR 561, the claimant complained to her line manager that it was wrong for him to trade from her computer without identifying that he was the person trading rather than her; and told him what her

clients thought of this behaviour. The EAT remitted the case to the ET to consider whether the claimant believed that there was a legal as opposed to a moral obligation that had been broken. Merely believing that conduct 'was wrong' could be a belief that the employer had breached a moral or lesser obligation, which would be insufficient.

1121. In *Kilraine v London Borough of Wandsworth* [2018] ICR 1850, the disclosure in issue related to an occasion when the worker had raised a child safeguarding issue and claimed to have received an inadequate response. The ET held that this did not tend to show breach of a legal obligation, and this was upheld in the Court of Appeal. As the Court of Appeal noted, nothing in the Particulars of Claim or the witness statement indicated that the claimant had a particular legal obligation in mind. It was only later that her representative suggested a potential breach of the Children Act 2004 and the Education Act 2002.

1122. ***Endangerment of health and safety*** (Section 43B(1)(d)): This will typically be disclosures about actions or failures by the worker's employer but can also extend to the conduct of third parties: *Hibbins v Hesters Way Neighbourhood Project* [2009] ICR 319. The nature of the health and safety danger needs to be specified, but this can be done in general terms. So in *Fincham v HM Prison Service* 0925/01 the EAT held that a statement: 'I feel under constant pressure and stress awaiting the next incident' was sufficiently detailed to identify the danger to health and safety – it inferred that the claimant's own health was at risk. Disclosures which in the reasonable belief of the worker tend to show that the health or safety of any individual has been, is being or is likely to be endangered will generally be reasonably believed to be in the public interest (see below).

1123. ***Deliberate concealment*** (Section 43B(1)(f)): It is a relevant failure and so potentially a qualifying disclosure if the worker reasonably believes that information tending to show one or more of the previous five failures has been deliberately concealed. A belief that information has been inadvertently deleted would not come within this wording.

(3) Reasonable belief that disclosure is made in the public interest

1124. There must be a reasonable belief on the part of the worker that the disclosure was in the public interest. This requirement has two components – first a subjective belief, at the time, that that the disclosure was in the public interest; and secondly, that the belief was a reasonable one.

(a) Genuine belief

1125. This component may not be apparent to a litigant in person or even to some professional representatives. As a result, it may be incumbent on a Tribunal to ask a

litigant who does not address the issue in their witness statement, whether they believed that they were acting in the public interest. If the answer is yes, then they could be asked for an explanation, which could be the subject of cross-examination as to whether it was a belief only formed at a later stage: see *Ibrahim v HCA International plc* [2020] IRLR 224 at paragraph 25. In the present case, it was clear from the way they had worded their grievances that each of the Claimants were aware they needed to show a genuine belief that the information being disclosed was made in the public interest. Furthermore, this issue was raised with them in cross-examination. As a result, the Tribunal did not ask each claimant in relation to each alleged qualifying disclosure whether the disclosure was believed to be in the public interest.

(b) Reasonable belief

1126. Secondly, that belief must be a reasonable one. What amounts to a reasonable belief that disclosure was in the public interest was considered by the Court of Appeal in *Chesterton Global Limited v Nurmohamed* [2018] ICR 731. Mr Nurmohamed was the manager of the Chelsea branch of Chestertons Estate Agents. He and other managers were remunerated in part based on the extent to which their sales enhanced the businesses profits. He believed his employers had been adjusting the business' accounts so as to depress the profits and so deprive managers of bonuses. He shared his view in three meetings, stating he believed that the bonus payable to 100 managers was affected. The Tribunal found he reasonably believed this was in the public interest. That decision was upheld by the EAT and the Court of Appeal.

1127. The Court of Appeal considered that a disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker's own interests. Motive was irrelevant. What was required was that the worker reasonably believed disclosure was in the public interest in additional to his own personal interest. So long as workers genuinely believed that disclosures were in the public interest when making the disclosure, they could justify the reasonableness of the public interest element by reference to factors that they did not have in mind at the time.

1128. Underhill LJ, giving the leading judgment, refused to define "public interest" in a mechanistic way, based merely on whether it impacted anyone other than the claimant or whether it impacted those beyond the workforce. Rather a Tribunal would need to consider all the circumstances, although the following fourfold classification of relevant factors was potentially a "*useful tool*":

(a) The **numbers in the group whose interests the disclosure served** – although numbers by themselves would often be an insufficient basis for establishing public interest.

(b) The **nature and the extent of the interests affected** – the more important the interest and the more serious the effect, the more likely that public interest is engaged.

(c) The **nature of the wrongdoing** – disclosure about deliberate wrongdoing is more likely to be regarded as in the public interest than inadvertent wrongdoing.

(d) The **identity of the wrongdoer** – the larger or more prominent the wrongdoer, the more likely that disclosure would be in the public interest.

1129. There may be more than one reasonable view as to whether a particular disclosure was in the public interest. All that matters is that the claimant's subjective belief was objectively reasonable (*Chesterton* at paragraphs 28-29). Applying these factors to Mr Nurmohamed's disclosure, the factors indicated he did reasonably believe it was in the public interest – he believed it potentially affected 100 managers; he believed that profits were being depressed by £2m - £3m; he believed that it was being done deliberately; and the wrongdoer was a very substantial and prominent business in the London property market.

1130. Underhill LJ said that Tribunals should be cautious about concluding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the numbers of others who share the same interest. In practice, the larger the number of individuals affected by a breach of the contract of employment, the more likely it is that other features of the situation will engage the public interest.

Protected disclosure detriment

1131. The test for "detriment" is the same as in discrimination law. If a reasonable worker might regard the treatment as a detriment, and the claimant genuinely does so, that is sufficient to establish there has been a detriment. There does not necessarily need to be any physical or economic consequences. An unjustified sense of grievance cannot amount to a detriment *(Derbyshire v St Helen's MBC* [2007] ICR 841).

Detriment claims against co-workers

1132. Under Section 47B(1A), workers also have the right not to be subject to detriments by co-workers acting in the course of their employment, or by agents of the employer. This includes dismissal decisions. The employer is deemed to be vicariously liable for the co-worker's actions, subject to a statutory defence – that the employer has taken all reasonable steps to prevent the worker from doing that thing (Section 47B(1D)).

Causation of detriment

1133. In *Osipov v Timis* [2017] EAT, Simler P summarised the proper approach to inference drawing and the burden of proof when considering causation as follows (at paragraph 115):

> "(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.
>
> (b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them…
>
> (c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."

1134. This approach was approved by Choudhury J in *Malik v Cenkos Securities Plc* [2018] (UKEAT/0100/17/RN) (17.1.18) at paragraph 80(c), relying on the discussion carried out by Underhill J in *London Borough of Harrow v Knight* [2003] IRLR 140 at paragraphs 19-21. Underhill J expressed the view that section 48(2) is not to be read as deeming the employer to have acted on the ground of the protected disclosure where he does not prove any other reason.

1135. As a result, as with discrimination claims, the burden remains on the claimant to prove facts from which an inference can be drawn that the protected disclosure a cause of the detrimental treatment. At that point, the burden shifts to the employer to show the ground on which the detrimental act was done. If a Tribunal rejects the reason advanced by the employer, then it is not bound to accept the reason advanced by the worker, namely that it was on the ground of a protected disclosure: it is open to the Tribunal to find that the real reason for the detriment was a third reason.

1136. The Tribunal must consider what, consciously or unconsciously, was the employer's reason for the detriment. It will need to consider whether to draw an inference from its findings of fact. Causation will be established unless the employer can show that the protected disclosure played no part whatsoever in its acts or omissions: *Fecitt v NHS Manchester* [2012] ICR 372, CA. The result is that there will be a sufficient causal connection if a protected disclosure was one of several reasons for the detriment, even if it was not the predominant reason. It is enough if it was a material influence, in the sense of being more than a trivial influence. There is no need to consider how a hypothetical or real comparator would have been treated.

1137. The fact that an otherwise unexpected event followed rapidly on from an event which might have caused it (such as a protected disclosure) provided some evidence that it might have done so, which could be added to other available evidence (*Oxford Said Business School v Heslop* EA-2021-000268-VP (EAT 11.11.21)).

1138. When considering the employer's potential liability, the Tribunal must focus on the mental processes of the individual decision maker, in asking whether the employer was materially influenced by a protected disclosure. This will require the decision maker to know of the protected disclosure. If one worker influenced by a protected disclosure procures a detrimental decision by another unaware of the protected disclosure, that detrimental decision will not be on the ground that the claimant has made a protected disclosure (*Malik v Centos Securities plc* UKEAT/0100/17/RN). However, the co-worker procuring the decision may be personally liable for this detrimental act (under Section 47B(1A)), and the employer may be vicariously liable for that act (under Section 47B(1B)).

1139. There is a potential distinction between the protected disclosure and some feature of it (which can properly be treated as separable). This was addressed by the Court of Appeal in *Kong v Gulf International Bank Limited* [2022] IRLR 854:

> "56. […] there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employer's computer system to demonstrate its validity. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision-maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. […]
>
> 57. […] Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn […].
>
> 59. […] In a proper case, even where the conduct of the whistle-blower is found not to be unreasonable, a tribunal may be entitled to conclude that there is a separate feature of the claimant's conduct that is distinct from the protected disclosure and is the real reason for impugned treatment."

Health and Safety Detriment (Section 44 Employment Rights Act 1996)

1140. A claimant has a right not to be subject to any detriment by any act, or deliberate failure to act, by his employer done on the grounds of various specified matters in relation to health and safety. The relevant provisions in Section 44 which are applicable to the disputed issues is set out in Section 44(1)(c), which protects the raising of health and safety issues. The wording is as follows:

"being an employee at a place where—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety".

1141. In *Balfour Kilpatrick Ltd v Acheson* [2003] IRLR 683, the EAT summarised the three conditions that must be considered at paragraph 47:

> "First, it is necessary to show that it was not reasonably practicable for the employee to raise the health and safety matters through the safety representative or safety committee. Second, he must have brought to the employer's attention by reasonable means the circumstances that he reasonably believes are harmful or potentially harmful to health or safety. Third, the reason for his dismissal [in the instant case, detriment] or at least the principal reason if there is more than one, must be the fact the employee was exercising his rights."

1142. During the Claimants' employment, there was a health and safety representative. They must show that it was not reasonably practicable to raise health and safety concerns with that representative, such that he had to bring the matter to the attention of his employer. On particular facts, persistently using offensive or disrespectful language to raise health and safety concerns with an employer may not amount to "reasonable means".

1143. The claimant must reasonably believe that there are circumstances connected with his work that are harmful or potentially harmful to health or safety. In considering what is reasonable, care should be taken not to place an onerous duty of enquiry on an employee. The purpose of the legislation is to protect employees who raise matters of safety about which they are concerned. The fact that the concern might be allayed by further enquiry need not mean that it is not reasonable (*Kerr v Nathan's Wastesavers Limited* [EAT 91/95].

1144. The same causation test applies to a claim under Section 44 to a protected disclosure detriment claim under Section 47B; as does the same approach to the burden of proof.

Protected disclosure detriment/Health & Safety detriment - Jurisdiction

1145. The same test applies to the Tribunal's jurisdiction to consider protected disclosure detriment claims and health and safety detriment claims. Section 48(3) provides:

> "An employment tribunal shall not consider a complaint under this section unless it is presented—
>
> (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
>
> (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

1146. The period runs from the date of the act or failure to act, not from the date on which the detriment is first suffered or the date on which the employee came to know of the matter of which he is now complaining.

1147. A "series of similar acts or failures" [i.e. detriments] is present where there is some link between the acts which makes it just and reasonable for them to be treated as in time and for the claimant to be able to rely on them.

1148. So far as the sufficiency of the connection is to be a series of similar acts or failures, the Court of Appeal (Mummery LJ) gave the following guidance in *Arthur v London East Railway* [2007] ICR 193 at paragraph 35:

> "It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find "motive" a helpful departure from the legislative language according to which the determining factor is whether the act was done "on the ground" that the employee had made a protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."

1149. Each of the acts forming part of the alleged series must in itself be unlawful.

1150. Section 48(4)(a) is worded as follows:

> (4) For the purposes of subsection (3)-
>
> a. Where an act extends over a period, the "date of the act" means the last day of that period, and
>
> b. A deliberate failure to act shall be treated as done when it was decided on;
>
> And in the absence of evidence establishing to the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.

Extension of primary time limit

1151. If the claim was not presented within the applicable three-month time limit for a particular complaint, the Tribunal has the power to extend time in the circumstances set out in Section 48(3)(b).

1152. This has two elements. The first is that the claimant must show it was not reasonably practicable to present his claims in time. The burden is on the claimant to persuade the Tribunal of this. If he succeeds in doing this, the Tribunal must be satisfied that the further time period beyond the expiry of the primary limit was itself reasonable.

1153. In assessing whether it was "not reasonable practicable" to meet the time limit, the Tribunal must ask whether it was "reasonably feasible" to present the complaint within the relevant time limit (*Palmer and Saunders v Southend-on-Sea Borough Council* [1984] ICR 372 (CA) at page 385). In that case the Court of Appeal said that the Tribunal will no doubt investigate what was the substantial cause of the employee's failure to comply with the statutory time limit. This approach was endorsed by Sir Thomas Bingham MR in the later case of *London International College v Sen* [1993] IRLR 333.

1154. Where ill health is relied upon as rendering it not reasonably practicable to present the claim in time will depend on all the circumstances. It is important for the Tribunal to reach clear factual findings as to the nature of the illness and the extent of its impact on the claimant's ability to embark on litigation. Attention will in the ordinary way focus on the closing rather than the early stages of the three month limitation period (*Schulz v Esso Petroleum Ltd* [1999] IRLR 488 (CA) per Potter LJ).

1155. Because the burden is on the claimant of demonstrating that the impairment meant it was not reasonably feasible for him to present his claims in time, this will ordinarily require a claimant to adduce medical evidence to support both the existence of the

impairment at the material time; and that this prevented the claimant from submitting the claim on time or within a reasonable further period.

1156. Where a claimant seeks to rely on their ignorance of the time limit or proper process, the overarching question is whether that state of mind was itself reasonable. Ignorance of his rights or ignorance of the time limit is not just cause or excuse unless it appears that he or his advisors could not reasonably be expected to have been aware of them (*Walls Meat Co Ltd v Khan* [1978] IRLR 499).

1157. In assessing the issue of ignorance/mistake, it is relevant to have regard to the particular circumstances of the individual claimant (i.e. their level of knowledge, aptitude and skills; their ability (and means) to access appropriate professional advice etc.).

1158. If the Tribunal is satisfied that it was not reasonably practicable to present the claim in time, it must then at stage 2 be satisfied that it was presented within a further "reasonable period". This is not the same as asking whether the claimant acted reasonably; still less is it equivalent to the question whether it would be just and equitable to extend time. Instead, it requires an "objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances – having regard, certainly to the strong public interest in claims in this field being brought promptly and against a background where the primary time limit is three months" (*Cullinane v Balfour Beatty Engineering Services* [2011] (UKEAT/0537/10) (5 April 2011) Underhill P at paragraph 16).

THE TRIBUNAL'S APPROACH TO ITS CONCLUSIONS

1159. Each of the three Claimants raises numerous specific allegations, ranging across many different legal complaints. Notwithstanding the Respondents' arguments about the application of time limits, the Tribunal has decided to address each of these allegations on their merits, as well as separately considering whether the Tribunal has the jurisdiction to award a remedy in relation to those allegations, given the application of statutory time limits. This is because the matters were fully argued over a lengthy hearing.

1160. The Tribunal's general approach has been not to address those issues that no longer require a decision because of the Tribunal's conclusion on other issues. For instance, the Tribunal has not adjudicated on those complaints of Section 15 Equality Act 2010 discrimination arising from disability where the unfavourable treatment occurred when the Respondents did not know and could not reasonably have been expected to know that a Claimant had a disability. In relation to protected disclosure detriment complaints, the Tribunal has not necessarily addressed each of the five legal questions which arise when deciding if a communication said to be a qualifying

disclosure has that status as a matter of law. If the Tribunal has concluded that one of those legal questions is to be answered in a way that fails to satisfy the required legal test, it is unnecessary for the Tribunal to consider each of the further legal questions. In some instances, where the Tribunal has been able to conclude that the alleged qualifying disclosure also fails to meet a second legal test, this has been stated.

1161. The Tribunal has taken this approach to shorten what is already a lengthy exercise and so minimise the delay between the end of the Final Hearing and the time when the Judgment and Written Reasons are ready for promulgation.

1162. On closer examination, some allegations expressed as a single issue appear to raise additional allegations potentially requiring separate analysis and conclusions. As a result, there are several more allegations the Tribunal needs to decide than an arithmetical totaling of the individual issues might indicate. As a result of the further representations made by the parties on the draft confidential copy of these Written Reasons, the Tribunal is confident that each issue raised in the Lists of Issues has been addressed and a conclusion stated.

PROTECTED DISCLOSURES

1163. All three Claimants assert that they made qualifying disclosures to the Bank that thereby became protected disclosures; and that they have suffered detriments on the grounds of those protected disclosures. There are certain common themes to their alleged qualifying disclosures it is convenient to consider at this point, before dealing with individual allegations in turn. This will enable the Tribunal to give briefer reasons in addressing those specific allegations. However, the Tribunal has considered each alleged qualifying disclosure on its own particular facts.

1164. The Claimants argue that in raising concerns about validation models they were making qualifying disclosures. Their very function as Validators was to challenge assumptions and calculations included in models prepared by model developers. That does not preclude their disclosures from having the status of qualifying disclosures if the necessary legal requirements are met. A disclosure can be a protected disclosure even if that was not the predominant motive. However, this is important context for the Tribunal to bear in mind when evaluating whether a particular claimant had the required beliefs at the relevant time; and whether those beliefs were reasonable. It is also relevant to the likelihood that a Validator challenging the content of a model would prompt retaliation from senior managers.

1165. The process of validation involves an ongoing interchange of drafts between model developer and Validator; and regular dialogue and discussion between Validator and Lead Validator. At this point, nothing is set in stone. The process of dialogue is

intended to identify and rectify any errors in the model. Even after a validation report has been written and a model has been approved by the Approver, the model is not 'live' until the product is launched. Whilst it is still under development and before it goes 'live' there is no past or present breach of a legal obligation imposed by regulatory requirements. The contingent status of a model even after the validation process had been completed would have been well understood by each of the Claimants. In any event, the legal obligations imposed by the regulatory regime required only that the RegCap models should be "fit for purpose" and be appropriately validated. The Tribunal does not consider that any of the Claimants believed that by identifying a defect in a model at the development stage they were disclosing information which tended to show that a person was likely to fail to comply with a legal obligation, in the sense that this was more probable than not. That is because ordinarily they would have expected such defects to be removed by the time the model went live as the product was launched.

1166. Furthermore, the Tribunal does not find that the regulatory regime imposed legal obligations which required a particular validation to be in place for a particular scenario. Rather, the regime required that there should be an effective validation framework in place, checking the soundness of the financial models, for particular types of lending. For other types of risks, the legal regime was even less onerous. This is relevant to whether any of the Claimants had a belief that a legal obligation was likely to be breached, where there were what they regarded as unsatisfactory features in particular model validations.

1167. The Tribunal finds that each of the Claimants well knew that individuals holding the role of Director were not subject to the statutory duties on directors imposed by the Companies Act 2006. Those duties only applied to those sitting on the Bank's Board. The title 'Director' was the description given to those occupying a particular level of seniority within the Bank's hierarchy. The evidence from Mr Kim was that the Bank had between 1500 and 2000 employees with the corporate title of Director and between 200 and 250 employees with the corporate title of Managing Director. As fellow directors of the same company, with statutory responsibilities, Mr Samnick and Mr Moune Nkeng fully appreciated the distinction. Mr Abanda Bella also fully understood the difference.

1168. In relation to several issues, the Claimants have sought to characterise grievances about discriminatory treatment as also amounting to protected disclosures because of the potential for others to experience similar treatment. For this reason, they argue that they believed that the disclosure was made in the public interest and that this was a reasonable belief. Where the disclosure asserts there is a prospect of others experiencing similar discriminatory treatment without providing any factual specificity, the Tribunal does not find that the Claimants had a reasonable belief that such disclosures were in the public interest. In so finding, the Tribunal applies the

principles explained by the Court of Appeal in *Chesterton Global Limited v Nurmohamed* [2018] ICR 731. Where there is specific reference only to the allegedly discriminatory impact on the person making the disclosure, the disclosure does not serve a wider interest than the private or personal interest of the person making the disclosure. This remains the position even if the communication refers specifically to the other two Claimants. As Underhill LJ said at paragraph 35, where the interest involved is personal in character such an interest does not change its character simply because it is shared by another person. By application to the Claimants, a personal interest does not become a public interest because it is shared by two other persons.

1169. As Underhill LJ stated at paragraph 37, where the interest in question is personal in character "there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker". Considering the fourfold classification of relevant factors listed at paragraph 34:

a. The numbers in the group whose interests the disclosure served – where the complaint is about discriminatory practices impacting on others, then the interests of other employees are only served if specific detail is given about the allegedly discriminatory practices that they are facing. The starting point is that each employee's circumstances are very often different and therefore reference to the discriminatory treatment of one person does not generally apply in exactly the same way to the treatment of another person. Even then, even if the disclosure does cover the circumstances of all then references to the treatment of the Claimants is only to two other employees in the same specific department of the same organisation.

b. The nature of the interests affected and the extent to which they are affected – the Tribunal accepts that prohibiting discrimination against those of Black African ethnicity and against those who are disabled is a vital interest that the law rightly enforces. However, whilst the assertions are of discriminatory treatment were widespread, the Tribunal's findings of discriminatory treatment have been extremely limited to only one specific respect for Mr Abanda Bella and for Mr Samnick.

c. The nature of the wrongdoing – whether the wrongdoing is deliberate or inadvertent. Whilst the Claimants have alleged deliberate wrongdoing, the only discrimination upheld by the Tribunal is inadvertent.

d. The identity of the alleged wrongdoer – the Tribunal accepts that Barclays is a large organisation with a significant number of people in its community, in terms of its staff, suppliers and clients.

1170. The Tribunal addresses other qualifying disclosure scenarios in dealing with specific allegations.

RACE DISCRIMINATION – GENERAL CONSIDERATIONS

1171. Each of the Claimants raise allegations of direct race discrimination or race related harassment. The Tribunal does not consider that any inferences of race discrimination or racial harassment can potentially be drawn in relation to specific allegations from the general ethnicity information contained in Barclays' Race at Work report. The racial composition of the IVU is very different from the racial composition indicated across the whole of the Bank. It is significantly diverse and there is no majority racial group. By late 2020, of the six directors in the IVU, four were non-White or non-European (Mr Kim, Mr Maouche, Ms Li and Mr Bill Chen). The Race at Work report provides no insight into the mental processes of the decision makers within IVU or within HR/ER taking the decisions alleged to be race discrimination or racial harassment. The same is true of the Ethnicity Pay Group Reports.

1172. It is true that there were no Black African employees at Director level within the IVU during the time period covered by this claim. No inferences can be drawn from this relatively small sample holding Director positions as to how Mr Kim or others would have treated Black African promotion candidates. On the evidence before the Tribunal, the only Black African individuals potentially interested in working as Director within the IVU during the period with which the Tribunal is concerned were Mr Abanda Bella and Mr Samnick. The reasons why they were not promoted to Director are best evaluated in the light of their personal performances. There were several individuals within the IVU at Vice President level who by November 2019 had not been promoted – David Thorpe (White); Nimrod de Bremaeker (White); Maryam Rastegar (Iranian); Mr Prakash (Asian); and Sandeep Shetty (Asian).

1173. The Tribunal has considered the annual rankings of IVU team members to see if there is any pattern that those of particular ethnicities tended to be ranked towards the top or the bottom. Aside from the Claimants who tended to be ranked towards the bottom, no pattern is evident or has been suggested. Again, the reasons why the Claimants have been given low rankings are best evaluated in the light of their personal performances.

1174. Mr Abanda Bella's contentions of racial stereotyping are rejected. These were made for the first time in his witness statement. He had not previously argued in any of his many grievances, in his two Particulars of Claim or in the lists of issues that alleged discriminators held racially stereotypical views of the Claimants as "aggressive", "stupid" or "lazy". This contention is not repeated in the witness evidence of Mr Moune

Nkeng or Mr Samnick. The Tribunal finds that none of the Claimants were viewed as "stupid" or "lazy". As recorded at the end of our findings of fact in relation to Mr Moune Nkeng, Mr Rienacker regarded him as a hard worker. So far as the suggestion that any of the Claimants were "aggressive", there were a few occasions when the tone that Mr Abanda Bella adopted in email correspondence was unduly critical or harsh. It was this inappropriate tone that led his conduct to be described as aggressive. This word was not used by any of the alleged discriminators to describe the conduct of Mr Moune Nkeng or Mr Samnick.

1175. Despite the number of race discrimination allegations made by each of the Claimants, none are of overtly racist behaviour towards people of Black African ethnicity. To the extent that the Claimants made allegations of overtly racist conduct for the first time in cross-examination, the Tribunal rejects such late assertions as improbable. They are not supported by any of the contemporaneous documents. Nonetheless in the case of each allegation, the Tribunal has looked to see if there is "something more" apart from difference in race and difference in treatment which is capable of founding an inference of race discrimination.

1176. In so doing, the Tribunal has considered the points raised by each of the Claimants in their closing submissions as the basis for drawing inferences, even if each of those arguments are not individually addressed in these reasons. This is because, unless otherwise stated, the points raised by the Claimants are not capable of founding such an inference. By way of example, Mr Abanda Bella argues that an inference of race discrimination can be drawn from Mr Kim's comment in his witness statement that he felt 'surprised that Christian thought he was due a promotion after such a short track record (paragraph 69 [WS/1248]). At this point, Mr Abanda Bella had only been in post for around six months. Mr Kim's comment is no basis for inferring race discrimination unless there was evidence (which there was not) that Vice Presidents of other ethnicities had been promoted to Director after only six months employment.

CONCLUSIONS - HENRY SERGE MOUNE NKENG

Protected disclosure

1177. **[HSMN Issue 1/3.1]** The Tribunal rejects the contention that Mr Moune Nkeng made a protected disclosure during the course of the Culture Focus Group meeting on 24 August 2018. The information disclosed did not have the necessary factual specificity to be a qualifying disclosure. Given the Tribunal's factual findings, during this meeting Mr Moune Nkeng did not refer directly or indirectly to the SR 11-7 guidelines nor did he refer directly or indirectly to any obligations under the Equality Act 2010 or to the whistleblowing provisions in the Employment Rights Act 1996. Furthermore, he therefore did not disclose information which in Mr Moune Nkeng's reasonable belief tended to show a breach of a legal obligation in the alleged respects.

1178. **[HSMN Issue 1/3.2]** This was not a qualifying disclosure for the following reasons:

a. ***No genuine belief*** - The Tribunal finds that Mr Moune Nkeng did not have a genuine belief that the information in his communications with the Whistleblowing Team tended to show a breach of the Equality Act 2010; or of the Health & Safety at Work Act 1974. There was no direct or indirect reference in what was recorded that referred to the Equality Act 2010 or to any obligations under that Act. Nor was there any direct or indirect reference to Health and Safety at Work Act 1974, nor was there any allegation that Mr Abanda Bella had suffered an injury to his health or that his health was at risk.

b. ***No reasonable belief*** - Any such beliefs would not have been reasonable beliefs given the limited information he was communicating in this disclosure. Whilst the Tribunal finds there was a genuine belief that the information he was disclosing was that Mr Abanda Bella had suffered detriments for making protected disclosures, this was not a reasonable belief. Whilst he alleged that there was "retaliation [against Mr Abanda Bella] for raising up material issues"; and he specified the particular validations on which Mr Abanda Bella had raised concerns, he did not identify how these concerns amounted to breaches of legal obligations and there was no factual specificity whatsoever explaining why raising the issues he did had prompted the alleged retaliation.

c. ***No belief that disclosure in public interest*** - In addition, Mr Moune Nkeng did not belief that the information he was disclosing was in the wider public interest. His sole focus was on the impact on Mr Abanda Bella personally.

d. ***No reasonable belief that disclosure in the public interest*** - Even if he did believe that the information was in the public interest, such a belief would not be a reasonable belief. The only person who is said to have been mistreated with bullying, harassment and retaliation was Mr Abanda Bella.

e. ***No causation*** - In any event, the alleged protected disclosure in this communication of 31 July 2019 cannot have prompted any detrimental treatment in the way Mr Moune Nkeng alleges. Mr Moune Nkeng was communicating with the Whistleblowing Team as part of a confidential process. There is no evidence that any of the protagonists alleged to have engaged in detrimental treatment as a result of this protected disclosure ever knew of its existence.

1179. **[HSMN Issue 1/3.3]** Whilst he asked the IT department for help in retrieving emails, Mr Moune Nkeng did not disclose to the Bank's IT department information that he believed showed his emails had disappeared in breach of the Sarbanes Oxley Act.

Nor did make such a disclosure to Mr Rienacker. The Tribunal does not find he genuinely believed that the information he was disclosing tended to show a breach of this particular legal obligation. His witness statement does not explain anything about his understanding of the Sarbanes Oxley Act and its application to a UK based employee working for a UK registered bank. Any such belief would not have been a reasonable belief given the context. It was implicit in the wording he was using in his communications with the IT Department that the emails could be retrieved. Therefore, the Tribunal does not find that this amounted to a qualifying disclosure.

1180. **[HSMN Issue 1/3.4**] For the same reasons as **Issue 1/3.3**, the Tribunal rejects the contention that the communication with the IT department on **4 May 2020** about missing emails was a protected disclosure. Nothing was said by Mr Moune Nkeng indicating that the emails were irretrievable or that the difficulties in locating these emails might be a breach of any legal obligation, let alone the Sarbanes Oxley Act. Mr Moune Nkeng did not have a genuine belief when sending this email that he was disclosing information that tended to show a breach of a legal obligation; and if he did, then that belief was not a reasonable one. He did not have a genuine belief that he was disclosing information in the public interest; and if he did, this belief was not a reasonable belief. The issue he was raising concerned only his own emails, not those of others in the wider organisation.

1181. **[HSMN Issue 1/3.5]** The written grievance of **19 June 2020** was not a qualifying disclosure. The heart of the complaint about Ms Richardson related to how she had responded to his email sent to her eight months earlier raising concerns about the impact of his workload on his own health. He was arguing Ms Richardson should have treated it as a formal grievance and consequently invoked that procedure. He believed this disclosure was in the public interest because "Barclays workers should know when raising complaints and concerns for their own safety that HR … representatives … have not received … sufficient support, guidance and training" to recognise that a grievance was being invoked and concerns were being raised about their own health and safety. He wanted further training to be provided to HR representatives to comply with their statutory duties for the safety of staff. The Tribunal finds that as there was no reference to health and safety in original email and so no genuine belief that the information he was disclosing tended to show his health and safety was endangered. He had not made any reference to the past or present impact on own health or that of other staff and did not have a genuine belief that an impact on his health was "likely" to result in the sense of being more likely than not. At that point he had not been apparently experiencing symptoms or requiring medical treatment. Further, the Tribunal does not find that any genuine belief would have been a reasonable belief. He did not make specific reference to whether communications from other employees had miscategorised as grievances; and therefore did not make specific reference to the actual or potential impact on the health of these other employees. Applying the factors identified in *Chesterton* – of

particular relevance here, the numbers in the group whose interests the disclosure served were essentially limited to Mr Moune Nkeng; and the nature of the wrongdoing, is the failure to classify a communication as a grievance which he had not labelled as a grievance – any belief by Mr Moune Nkeng that disclosure was in the public interest was not a reasonable belief.

1182. The complaint about Mr Rienacker in the same letter of 19 June 2020 was that he was putting him under "extremely and unusual heavy workload" and "excessive pressure", by persisting and continuing to persist in seeking to have him to validations in areas which he did not have the experience or training to undertake. This was said to be a breach of the Health and Safety at Work Act 1974 and also of the implied term of mutual trust and confidence in the employment contract. Mr Moune Nkeng made no reference in the grievance to the public interest underlying his complaint about the workload Mr Rienacker was asking him to perform. The focus of his complaint against Mr Rienacker was entirely on his own workload. Even if Mr Moune Nkeng genuinely believed that this was in the public interest (which the Tribunal rejects), the Tribunal does not consider this was a reasonable belief**.** Again applying the approach in *Chesterton,* his focus was on his private dispute with his line manager about the extent of his workload.

1183. **[HSMN Issue 1/3.6]** The email dated 15 July 2020 was not a protected disclosure. It did not disclose any information, still less information with sufficient factual specificity to amount to a protected disclosure. Instead, it asked a series of questions about why his previous letter of 21 June 2020 was not a protected disclosure. Further, this letter was sent to Ms Henry in the Raising Concerns team. It was not shared with Mr Rienacker, Mr Kim or Ms Li nor did they know of its contents. As a result, it cannot have influenced the way that they subsequently treated him.

1184. **[HSMN Issue 1/3.7]** The Tribunal rejects the allegation that his communication with IT support on 25 July 2020 was a qualifying disclosure. For the same reasons as **Issues 1/3.3 and 1/3.4**, he did not reasonably believe he was disclosing information which tended to show a breach of a legal obligation; nor did he have a reasonable belief that this disclosure was in the public interest.

1185. **[HSMN Issue 1/3.8]** Mr Moune Nkeng's written grievance lodged on 29 July 2020 is alleged to contain information tending to show a breach of a legal obligation, namely obligations under the Equality Act 2010 and the whistleblowing provisions of the Employment Rights Act 1996. It is also said to disclose information tending to show that a person's health and safety had been, was being, or was likely to be endangered. He did not have a reasonable belief that the information he was disclosing tended to show health and safety was being endangered. No information was disclosed that the health of anyone apart had been affected or was likely to be

impacted, apart from a single sentence stating "On 29.7.19 Christian went on long term sick leave" (paragraph 15 [6845]).

1186. Further, in any event, the Tribunal finds that Mr Moune Nkeng did not have a reasonable belief that it was in the public interest to disclose any of this information. Almost the entire focus of the grievance was on the impact of the alleged treatment solely on himself. Toward the end of the grievance, he asked the appointing officer to find the reason why "Gotz Rienacker has (and is) treating me (and others who share my race and national origins) in the discriminatory way he is doing". No others who fell into this category were named, apart from Mr Abanda Bella. Having regard to the *Chesterton* criteria when gauging the public interest question, Mr Moune Nkeng did not reasonably believe that his disclosure was in the public interest. The numbers in the group whose interests the disclosure served were only two – himself and Mr Abanda Bella; the nature of the wrongdoing was discrimination; the nature and extent of the interests involved were the right not to suffer discrimination; and the Bank was a prominent employer. Mr Moune Nkeng was essentially raising a grievance about private workplace dispute which he was seeking to reinforce by reference to the alleged treatment of Mr Abanda Bella.

Detriments on ground of protected disclosures

1187. **[HSMN Issues 1/5.1 – 1/5.4]** The Tribunal does not find that the alleged disclosures at **HSMN issues 3.1 to 3.3** were qualifying disclosures. Therefore, issues 1/5/1 – 1/5.4 cannot amount to detriments for making protected disclosures.

1188. The Tribunal has found that the email of **23 October 2019** was not intended to be a grievance and it was not reasonable to regard it as such. Therefore, the Tribunal does not find that Mr Moune Nkeng suffered the detriment alleged at [**HSMN issue 1/5.1]**.

1189. The Tribunal has rejected Mr Moune Nkeng's contention that he was placed under pressure at the meeting held on 23 October 2019 to work on traded risk space under Mr Rood's supervision. **[HSMN Issue 1/5.2]** is not accepted as factually accurate.

1190. **[HSMN issue 1/5.3]** The Tribunal rejects the contention that Mr Moune Nkeng was excluded from emails discussing Equity Swap by Mr Rienacker because of previous protected disclosures. It was not Mr Rienacker who removed Mr Moune Nkeng from those included in the circulation of the email chain by copy. This was Mr Thiercelin. He also removed two others who were also copied into the email chain, who had not made protected disclosures. There is no evidential basis for inferring that the removal was linked to previous protected disclosures. Mr Thiercelin would not have known about them. Individuals were subsequently added to the email circulation list when the need arose. The Tribunal infers that Mr Moune Nkeng was added to the

circulation list when he was because at that point he was needed to work on finalising the validation report. That is why, twenty minutes after restoring him to the email circulation list, Mr Rienacker emailed him with his comments and edits and suggested that they work together on resolving the missing parts. There is no proper basis for inferring that Mr Moune Nkeng's exclusion from this circulation list for a period of about three months had anything to do with any previous protected disclosures.

1191. **[HSMN Issue 1/5.4]** The Tribunal has rejected the factual basis on which this allegation is founded.

1192. **[HSMN Issue 1/5.5]** The Tribunal has rejected the factual basis on which this allegation is founded.

1193. **[HSMN Issue 1/5.6].** It is factually correct that Mr Rienacker noted Mr Moune Nkeng's name as responsible for Equities Swap UTR in the email of 7 May 2020 showing the distribution of risk model validations between team members. Although Mr Moune Nkeng had stated he was not interested in working on risk models, Mr Rienacker as his line manager was entitled to expect him to do so. It was within his job description and was consistent with the distribution of these risk models across the team. He was being treated consistently with other team members and the allocation of this task had nothing to do with any previous protected disclosures.

1194. **[HSMN Issue 1/5.7]** The Tribunal has rejected the factual basis on which this allegation is founded.

1195. **[HSMN Issue 1/5.8]** The Tribunal's conclusion in relation to **HSMN issue 1/5.6** is reiterated. Mr Rienacker's stance had nothing to do with any previous protected disclosures.

1196. **[HSMN Issue 1/5.9]** The Tribunal has found that the entire reason Ms Li sent her email to the model developer on 9 June 2020 was to resolve issues identified with the contents of a spreadsheet. It did not have anything to do with a previous protected disclosure.

1197. **[HSMN Issue 1/5.10]** The Tribunal has found that the communications from Mr Rienacker to Mr Moune Nkeng responding to his concerns about Ms Li's communications with the model control owner were proper and appropriate. The way he responded was not in any way influenced by any previous protected disclosures. It was not necessary or appropriate for these concerns to be addressed by Mr Kim.

1198. **[HSMN Issue 1/5.11]** The Tribunal has found that it was standard practice for the name of the Validator making an editorial update on a validation report to be

substituted as the Validator on the report. As he had made editorial changes, Mr Moune Nkeng this was why he was named as Validator. He was not being treated any differently in being named as Validator on the report.

Victimisation - Protected acts

1199. **[HSMN Issue 1/6.1]** The Tribunal has found that Mr Moune Nkeng made no reference to the Equality Act 2010 or to any allegations of discrimination during the course of the Culture Focus Group meeting on **24 August 2018**. He therefore did not do a protected act. In any event, the detail of what was communicated by Mr Moune Nkeng was not relayed to others who were not at the meeting. Therefore, it cannot have triggered any retaliation in the way Mr Moune Nkeng alleges.

1200. **[HSMN Issue 1/6.2]** The communication with the Whistleblowing Team on **31 July 2019** made no express reference to the Equality Act 2010. Whilst the communication did refer to 'harassment', seen in context this was not a reference to Section 26 Equality Act 2010. There was therefore no implied reference to the Equality Act 2010. This was not a protected act.

1201. **[HSMN Issue 1/6.3]** Mr Moune Nkeng's email dated **22 October 2019**, sent to Mrs Richardson, makes no allegation whether expressly or by implication that any person had contravened the Equality Act 2010. The email makes no reference to the Act itself or to any of its provisions. Therefore, this was not a protected act.

1202. **[HSMN Issue 1/6.4]** Mr Moune Nkeng's email dated **10 June 2020** sent to Mr Rienacker, makes no reference to the Equality Act 2010, nor raises any allegations that provisions in that legislation have been infringed. This was not a protected act. The Tribunal does not accept that by criticising Ms Li in the email of 10 June 2020 for performing actions he believed he should be performing as sole Validator, that he was therefore making a comparison of less favourable treatment with Ms Li. There was no comparison with how Ms Li had been treated in analogous circumstances, still less any implication that the reason for unfavourable treatment was because of his race. All he was doing was criticising Ms Li's involvement in a performing a task he considered he should have been doing by himself.

1203. **[HSMN Issue 1/6.5]** Given the contents of Mr Moune Nkeng's email of **12 June 2020**, it did not make any allegation, whether express or implied, that any person had contravened the Equality Act 2010. It was not a protected act.

1204. **[HSMN Issue 1/6.6]** Admitted as a protected act.

1205. **[HSMN Issue 1/6.7]** The letter of 15 July 2020 was not a protected act. It made no reference to the Equality Act 2010 or to any conduct prohibited by that Act.

1206. **[HSMN Issue 1/6.8]** Admitted as a protected act.

1207. **[HSMN Issue 2/1.2]** Admitted as a protected act.

1208. **[HSMN Issue 2/1.3]** The Tribunal finds that this was a protected act. Although Mr Moune Nkeng was not alleging that he himself had yet suffered any discrimination from Mr Bill Chen, he was referring to a previous discrimination allegation made against Mr Chen by Mr Samnick. It is implicit in what he said in the remainder of this bullet point that he was accusing the Bank of racial bias against Black colleagues.

1209. **[HSMN Issue 2/1.4]** Admitted as a protected act.

1210. **[Issue 2/1.5]** The email of 22 December 2020 makes no allegation that anyone has contravened the Equality Act 2010, nor does it do any other thing for the purposes of or in connection with that Act. It is therefore not a protected act.

1211. **[Issue 2/1.6]** Admitted as a protected act.

1212. **[Issue 2/1.7]** Admitted as a protected act.

Victimisation (Detriments because of protected acts)

1213. **[Issues 1/8.1 – 1/8.10 inclusive]** These allegations of detriments because of protected acts are all rejected for the same reason. In order to succeed, they all require the Tribunal to find that Mr Moune Nkeng made a protected act at the Culture Focus Group meeting in August 2018. The Tribunal has found that there was no such protected act. Therefore, these allegations must fail for this reason alone. In addition, we have found that the detail of what was said by Mr Moune Nkeng during this meeting was not communicated to Mr Rienacker, Mr Kim or to Mr Rood.

1214. **[HSMN Issue 1/8.11]** Mr Rienacker did not insist that Mr Moune Nkeng work on traded risk validations under Mr Rood's supervision. When Mr Moune Nkeng refused to carry out this work, this refusal was accepted by Mr Rienacker. This allegation is factually incorrect.

1215. **[HSMN Issue 1/8.12]** It is correct that Mrs Richardson did not treat Mr Moune Nkeng's email of 22 October 2019 as a grievance. It would not have been reasonable for her to regard it as such. However she did suggest informal resolution with either Mr Rienacker or Mr Kim and referred him to the grievance policy if an informal route was not successful. Her response was entirely appropriate. It did not amount to a detriment and was not influence by any previous protected acts.

1216. **[HSMN Issue 1/8.13]** The Tribunal rejects the contention that Mr Moune Nkeng was placed under pressure by Mr Rienacker to work on trade risk space validations under Mr Rood's supervision. Further, the Tribunal has found that the comment from Mr Rienacker alleged by Mr Moune Nkeng was never made at the meeting on 23 October 2019. Therefore he did not suffer detriment as alleged.

1217. **[HSMN Issue 1/8.14]** The Tribunal repeats its findings in relation to issue [**HSMN Issue 1/5.3]**. There is no basis for inferring that Mr Moune Nkeng's exclusion from this email chain was influenced by previous protected acts.

1218. **[HSMN Issue 1/8.15]** The Tribunal has rejected the factual basis on which this allegation is founded.

1219. **[HSMN Issue 1/8.16]** Left blank.

1220. **[HSMN Issue 1/8.17] – [HSMN Issue 1/8.20] inclusive** These are identical factual allegations to those at HSMN Issue 1/5.5 to 1/5.8. The Tribunals conclusions in relation to those allegations are repeated. There is no basis on which to infer that previous protected acts had any influence on how Mr Moune Nkeng was treated in these respects. These allegations are rejected.

1221. **[HSMN Issue 1/8.21]** The Tribunal has found that the entire reason Ms Li sent her email to the model developer on **9 June 2020** was to resolve issues identified with the contents of a spreadsheet. It did not have anything to do with any prior protected act.

1222. **[HSMN Issue 1/8.22]** The Tribunal has found that communications from Mr Rienacker to Mr Moune Nkeng responding to his concerns about Ms Li's communications with the model control owner were proper and appropriate. The way he responded was not in any way influenced by any previous protected acts. It was not necessary or appropriate for these concerns to be addressed by Mr Kim.

1223. **[HSMN Issue 1/8.23]** It was standard practice to change the name of the Validator to record the name of the last person that had made changes to a validation report. The two reports to which Mr Moune Nkeng's name was added for this reason did not contain errors. Adding Mr Moune Nkeng's name to these validation reports was not detriment for doing a protected act.

1224. **[HSMN Issue 2/3.1]** This issue is intentionally left blank.

1225. **[HSMN Issue 2/3.2]** The Tribunal accepts the explanation provided by Mr Rienacker in the email sent when Mr Moune Nkeng first queried the wording of the Outlook invite. It was worded in this way due to a quirk in the Outlook system, rather than

because Mr Rienacker had deliberately worded it in this manner. As a result, it was not an act of victimisation.

1226. **[HSMN Issue 2/3.3]** It is factually correct that Mr Moune Nkeng was not informed or included in the promotion process nor was he promoted in November 2020. This was not detriment because of any protected acts done by Mr Moune Nkeng. The Bank only included in its promotion process those whose consistently high performance made them suitable candidates for promotion. Mr Moune Nkeng's performance since he started had not merited consideration for promotion because he had received average or below average ratings. The Tribunal has accepted that the reasons given by Mr Kim in his email of 19 November 2020 were the reasons why Ms Li and Mr Maouche were promoted. The decision not to promote Mr Moune Nkeng or to involve him in the promoted process was not influenced by any previous protected acts.

1227. **[HSMN Issue 2/3.4]** Mr Rienacker informing Mr Moune Nkeng on 27 November 2020 that he would now be reporting to Ms Li, following her promotion was nothing to do with any previous protected acts. Rather it was the consequence of the IVU reorganisation carried out for operational reasons following two Director promotions, coupled with Mr Moune Nkeng's decision to remain on the equity asset class rather than transferring to Mr Bill Chen's team.

1228. **[HSMN Issue 2/3.5]** It was accurate for Ms Gonzalez to inform him that his key accountabilities would stay the same if he moved asset classes and that this was not a change to his terms and conditions. It was therefore not influenced to any extent by previous protected acts and so not an act of victimisation.

1229. **[HSMN Issue 2/3.6]** Given the Tribunal's factual findings, this allegation is factually incorrect.

1230. **[HSMN Issue 2/3.7]** Due to the way that it was designed, when the Outlook invitation system for regular meetings was updated to include a further participant, it updated the identity of the participants at previous meetings. This was a function of the Outlook system and happened automatically. It had nothing whatsoever to do with any previous protected acts.

1231. **[HSMN Issue 2/3.8]** Regular meetings were held between Mr Rienacker, Ms Li and Mr Moune Nkeng to discuss projects on which Mr Rienacker had previously been the Lead Validator. This was part of the handover arrangements now that Ms Li was taking over Mr Rienacker's previous responsibilities. The decision that Mr Rienacker should attend these meetings was taken for business reasons and had nothing to do with any previous protected acts.

1232. **[HSMN Issue 2/3.9]** This allegation is factually incorrect. Ms Li did communicate appropriately with him to familiarise herself with his projects. It was appropriate for Mr Rienacker to stay involved as part of the handover arrangements.

1233. **[HSMN Issue 2/3.10]** This was not a detriment. Ms Phillips was explaining Mr Moune Nkeng's current reporting line, namely that Mr Moune Nkeng would be reporting to Ms Li. This was because Mr Moune Nkeng had chosen to remain in the Equity Class team and following her promotion, Ms Li had been appointed to head up that team. Ms Phillips also offered to explore alternative reporting lines and invited Mr Moune Nkeng's suggestions.

1234. **[HSMN Issue 2/3.11]** The Tribunal has rejected the factual premise on which this allegation is based.

1235. **[HSMN Issue 2/3.12]** The reason Ms Li copied Mr Rienacker into her emails to Mr Moune Nkeng was because he continued to be involved in those projects for which he had previously been named as the Lead Validator as part of the handover of responsibility to Ms Li. Her decision to do so was not influenced by any previous protected acts done by Mr Moune Nkeng.

1236. **[HSMN Issue 2/3.13]** The Tribunal has found that the change in the name given to the weekly meeting on the recurring invitation did not constitute a detriment.

1237. **[HSMN Issue 2/3.14**] The Tribunal has found that these were not additional tasks, as Mr Moune Nkeng accepted in cross-examination. As a result, this allegation is not factually correct.

1238. **[HSMN Issue 2/3.15]** The email which Mr Moune Nkeng criticises did not redistribute his existing workload, contrary to his allegation. It concerned additional workload. This allegation is not factually correct.

1239. **[HSMN Issue 2/3.16]** Ms Phillips' email of 18 December 2020 was not misleading about Mr Moune Nkeng's willingness to work on other asset classes. She had said they could explore a reporting line into another colleague within the Equities Asset class team. This indicated she believed he might be willing to be supervised by someone else, rather than being unwilling to move to work for any other supervisor. This allegation is therefore factually incorrect.

1240. **[HSMN Issue 2/3.17]** Mr Sawant was not aware of any of Mr Moune Nkeng's protected acts. His decision to word his email in the way that he did cannot have been triggered by any such protected acts.

1241. **[HSMN Issue 2/3.18] and [HSMN Issue 2/3.19]** Ms Phillips' email of 8 January 2021 and Ms Li's email of 11 January 2021 concerning Mr Moune Nkeng's ongoing

reporting line reflected Ms Li's role as his line manager, and Mr Rienacker's ongoing role in handing over his responsibilities for equity asset class work to Ms Li. Neither of these emails was in any way influenced by any previous protected acts.

1242. **[HSMN Issue 2/3.20]** It was entirely appropriate for Mr Rienacker and Ms Li to be conducting Mr Moune Nkeng's end of year review for 2020. They were best placed to comment on the quality of his work during 2020 as they had been his line managers during that period. The Tribunal rejects the contention that this decision was influenced to any extent by previous protected acts.

1243. **[HSMN Issue 2/3.21]** This issue has intentionally been left blank.

Direct race discrimination

1244. Save in relation to **HSMN issue 1/9.2** (where he also makes a specific comparison with Ms Karpowicz) Mr Moune Nkeng seeks to compare his treatment as set out in the first claim against the treatment that a hypothetical non-Black person would have received in identical circumstances. He seeks to persuade the Tribunal to draw an inference of discrimination from the following matters:

1. Ms Li referring in her witness statement to her fear that the Claimants would be aggressive towards her in the way they would seek to ask their questions during the course of the Tribunal hearing. He argues that this was based on an aggressive Black man stereotype that she was using when dealing with him. The Tribunal does not accept this characterisation. Based on our assessment of Ms Li, we consider that she was genuinely concerned about the prospect of giving evidence given the way that she had been treated in email correspondence during the normal course of her work. Some of the emails she had received, as recorded in our factual findings, were insensitive and inappropriate and liable to be upsetting. We do not find that her concerns about the prospect of giving evidence were in any way influenced by the colour of any of the Claimants.

2. Ms Li writing in an email on 29 July 2020, commenting on Mr Moune Nkeng's grievance: "However their trick is to set up a set of their own rules in their mind, benchmark your behaviour against their own rules and then exaggerate the issue" **[6892]**. Mr Moune Nkeng argues that Ms Li's repeated reference to "they" was her stereotyping his approach as consistent with her view of how black people behave. In order to interpret this email, the Tribunal considers Ms Li's general approach as set out in our factual findings to both Mr Moune Nkeng and to Mr Abanda Bella, with whom she had previously worked. The immediate context was Mr Moune Nkeng's grievance; but she saw his criticisms as similar to the criticisms that Mr Abanda Bella had also made

about project allocation and delivery. The Tribunal agree with Mr Moune Nkeng to the extent that she was deliberately using the plural in her email, rather than just referring to Mr Moune Nkeng alone. However, she would, the Tribunal finds, have used the same language had Mr Moune Nkeng and Mr Abanda Bella been White. It was a comment about their approach to working in the IVU team, rather than one based on any racial stereotype.

3. The reference made to there being a French clique. This was a reference to those who spoke French to each other in the office. It therefore included not only the three Claimants, but it also included Mr El Ghazouni, a French speaker of North African origin, as Mr Moune Nkeng accepted in cross examination (transcript 14.4.23 page 69 lines 7-10; page 71, line 5; page 73 lines 1-7). In his closing submissions, Mr Moune Nkeng has sought to argue that the other person that Mr Kim was referring to as being in the clique was Mr Laurent Lefort, another French speaker of Black Caribbean ethnic origin, rather than Mr El Ghazouni. He sought to justify this view by reference to certain documents. He did not suggest to Mr Kim in cross examination he was referring to Mr Lefort rather than Mr El Ghazouni nor ask him to comment on the documents on which he now relies. The Tribunal is not persuaded that the fourth person that Mr Kim had in mind when referring to the clique was Mr Lefort. It was far too late for Mr Moune Nkeng to advance a new identity to the fourth man in his closing submissions, when this could not be tested and fully addressed in evidence.

1245. As a result, none of these matters provide a proper basis for drawing any inferences of race discrimination.

1246. **[HSMN Issue 1/9.01]** The Tribunal has rejected the factual basis on which this allegation is advanced. Mr Rienacker was not instructing Mr Moune Nkeng to come to the office one day a week. Rather he was suggesting he might do so if it was medically possible, because it was probably not good for him if he was out of the office for too long.

1247. **[HSMN Issue 1/9.02]** The Tribunal has found that Mr Rienacker's email of 31 May 2016 was not forcing him to work from the office at least one day a week. This alleged detriment is therefore factually incorrect.

1248. **[HSMN Issue 1/9.1]** There is no plausible basis for inferring that any part of the reason for the 'Needs Improvement' ranking could be based on his race, in the absence of a non-discriminatory explanation. Furthermore, we have heard no evidence to undermine the accuracy of the assessment of Mr Moune Nkeng's 2016 performance as stated on the appraisal form. During 2016, his ability to devote the whole of his time to his work duties had been impacted by his leg injury and its

consequences in terms of ongoing symptoms and treatment. The appraisal form noted that he had not to any significant extent met the objective of broadening his experience to other classes of model validation, despite this being a clear objective for 2016. The Tribunal accepts the clear non-discriminatory explanation for the ranking of 'Needs Improvement'.

1249. **[HSMN Issue 1/9.2]** Mr Moune Nkeng compares his failure to be included in or informed of the promotion process in 2017 at the same time as Ms Karpowicz was promoted to Vice President. He says that this was direct race discrimination. Ms Karpowicz was not an actual comparator for the purposes of direct discrimination. Her situation was not identical to that of Mr Moune Nkeng in that she had performed substantially more strongly during 2015 and 2016. Given the disparity in their respective performances, the Tribunal does not find that her promotion provides any evidential basis for inferring that Mr Moune Nkeng's failure to secure promotion or to be informed of the promotion process was influenced by his race. Therefore the burden of proof does not shift to the Respondents. The Tribunal accepts the non-discriminatory explanation advanced, namely that Ms Karpowicz was promoted on merit and Mr Moune Nkeng's performance had not been strong enough to merit promotion. There is no evidence to indicate that others who had been performing at Mr Moune Nkeng's level had been included in, or informed of, the promotion process. This direct race discrimination allegation is rejected.

1250. **[HSMN Issue 1/9.2.1]** The Tribunal accepts Mr Moune Nkeng's factual allegation that Mr Rienacker questioned him about his motivation for wanting to enrol to study for an IRM Certificate during the meeting on 8 September 2017. It was appropriate for Mr Rienacker to do so. If he did enrol on the course, this would be funded by the Bank. It would also take time away from the time he could spend on validation work. It was therefore appropriate for Mr Rienacker to check that Mr Moune Nkeng was fully committed to the course; knew what it would involve and knew the potential benefits if completed. The Tribunal rejects the allegation that questioning his motivation was an act of direct discrimination. Mr Moune Nkeng has not provided any evidential basis from which an inference could be drawn that this was influenced by his race, in the absence of a non-discriminatory explanation. Furthermore, the Tribunal accept the Respondents' non-discriminatory explanation, namely Mr Rienacker was checking he was fully committed to the course.

1251. **[HSMN Issue 1/9.2.2]** As set out in the Tribunal's findings of fact, the Tribunal has rejected the factual contentions on which this alleged act of racial harassment is based.

1252. **[HSMN Issue 1/9.3]** The Tribunal has found that the constructive criticism made on Mr Moune Nkeng's 2017 appraisal form was fully justified by his performance. As a result, making these comments was not direct race discrimination.

1253. **[HSMN Issue 1/9.4]** The Tribunal accepts the factual premise of this allegation, namely that Mr Rienacker did not endorse every aspect of Mr Abanda Bella's glowing assessment of Mr Moune Nkeng's performance he had given in August 2018. The Tribunal accepts that Mr Rienacker genuinely believed what he recorded about Mr Moune Nkeng in the 2018 mid-year assessment. He did so based on his evaluation of Mr Moune Nkeng's performance on the totality of his work, not just the work carried out with Mr Abanda Bella**.** There is no basis for inferring that any part of the reason for his evaluation was because of race so as to shift the burden of proof onto the Respondents. The Tribunal accepts Mr Rienacker's non-discriminatory explanation, namely this was his genuine and justified assessment of Mr Moune Nkeng's performance. This allegation of direct race discrimination is therefore rejected.

1254. **[HSMN Issue 1/9.5]** The Tribunal has rejected Mr Moune Nkeng's contention on which this allegation is based. Mr Rienacker was asking Mr Moune Nkeng to work under Mr Maouche's supervision on an XVA Simulation Model. He was explaining why this appropriate. When Mr Moune Nkeng resisted, Mr Rienacker did not press the point by requiring him to carry out this work. Mr Rienacker was not required to discuss this work allocation with Mr Moune Nkeng first.

1255. **[HSMN Issue 1/9.6]** The Tribunal has found that the requirement for feedback from three external stakeholders was a general requirement within Mr Kim's team, unrelated to the race of team members. There was therefore no difference in treatment. As a result, the Tribunal rejects Mr Moune Nkeng's allegation that this amounts to direct race discrimination.

1256. **[HSMN Issue 1/9.7]** The Tribunal does not accept that Mr Moune Nkeng was put forward for this work in order to fail. He was put forward to give him a career development opportunity. The Tribunal does not accept that putting him forward to work on this project when he did not already have full experience in the particular area was incompatible with regulatory guidance. It is only when Validators work on particular projects under the guidance of a Lead Validator – which here would have been Mr Rood – that they gain wider experience and develop their skills. The suggestion that Mr Moune Nkeng should work on this particular project was consistent with the conclusion of his 2018 mid-year appraisal that he should work on risk models to broaden his experience.

1257. **[HSMN Issue 1/9.7.1]** The Tribunal finds that the sole reason why Mr Rienacker postponed Mr Moune Nkeng's 2018 appraisal discussion meeting at short notice was because there was a genuine concern that Mr Abanda Bella might accompany Mr Moune Nkeng to the meeting as he had at the equivalent meeting for Mr Samnick. Mr Abanda Bella had worked closely with Mr Moune Nkeng on several projects under Mr Rienacker's line management. Mr Abanda Bella had previously been asked for his comments on Mr Moune Nkeng's performance. The decision to postpone Mr

Moune Nkeng's appraisal meeting had nothing to do with Mr Abanda's Bella's race (or with Mr Moune Nkeng's race) and everything to do with the inappropriate way Mr Abanda Bella had attempted to attend Mr Samnick's appraisal meeting. It was therefore not an act of race discrimination.

1258. **[HSMN Issue 1/9.8]** Mr Moune Nkeng had turned down the opportunity to work with Mr Rood and Mr Maouche without providing a persuasive rationale for doing so, other than his lack of previous experience in this area. He had previously been encouraged to work on other asset classes as a development objective. As a result, it was appropriate for Mr Moune Nkeng's refusal to take this opportunity to expand his experience to be noted in his 2018 end of year performance review and for this to be recorded as an area for development in the next appraisal year. This allegation of direct race discrimination is therefore rejected. The treatment complained about was not because of race.

1259. **[HSMN Issue 1/9.9].** Mr Moune Nkeng has not established any facts from which the Tribunal could infer that the reason (or part of the reason) for his reduced bonus was because of his race to any extent. The Tribunal accepts that the entire reason he received the level of bonus he did for his performance in 2018 was because this was what his performance was considered to merit. His bonus for 2017 was higher because in that year he had received a share of the bonus that otherwise would have been paid to a departing colleague. This allegation of direct race discrimination is therefore rejected.

1260. **[HSMN Issue 1/9.10]** Mr Rienacker's "honest feedback" email at 1:05am on **2 April 2019** represented his genuine concerns about the standard of the validation prepared by Mr Moune Nkeng and peer reviewed by Mr Abanda Bella; and the lack of communication from both about the potential timescale for its completion. He genuinely believed that this created a negative impression about his team's competence to complete the required task effectively. Mr Moune Nkeng has not established any facts from which the Tribunal could infer that the reason for this treatment was because of race, in the absence of a non-discriminatory explanation. The Tribunal accepts the Respondents' non-discriminatory explanation, namely that his email reflected his genuine concerns about the standard of service that Mr Moune Nkeng and Mr Abanda Bella had provided.

1261. **[HSMN Issue 1/9.11] (also 1/12.17)** Ms Li's request for help from Mr Moune Nkeng was reasonable. It related to a discrete task that could be performed within an hour. She did so only after checking with Mr Rienacker and getting his approval. As Mr Moune Nkeng's line manager, it was Mr Rienacker's role to decide how Mr Moune Nkeng spent his time. Helping with this particular task was not unduly onerous. There was an obvious non-discriminatory reason for making the request, namely that unlike Ms Li, Mr Moune Nkeng had the SPARX programme on his computer. The Tribunal

accepts that this was the only reason for Ms Li sending the email. It did not constitute direct race discrimination.

1262. **[HSMN Issue 1/9.12] (also 1/12.18)** The email exchanges between Mr Rienacker and certain stakeholders in relation to the Asian Option Validation project were standard work communications. Mr Moune Nkeng was only peripherally involved in this project, and it was for Mr Rienacker to decide on the extent to which he should be copied into all his communications on this project with others. There are no facts from which it could be inferred in the absence of a non-discriminatory explanation that the extent of his involvement was influenced by race.

1263. **[HSMN Issue 1/9.13]** The Tribunal has found that Mr Rienacker did not insist that Mr Moune Nkeng should work on traded risk space under Mr Rood's supervision. Therefore, this allegation is factually incorrect.

1264. **[HSMN Issue 1/9.14]** The Tribunal has rejected the factual basis on which this allegation is founded.

1265. **[HSMN Issue 1/9.15]** The Tribunal has rejected the factual basis on which this allegation is founded. He did not insist that Mr Moune Nkeng do this work. Mr Kim had previously told him: "nobody can force anyone to do anything they simply refuse to do, obviously. The usual main consequence is appropriate reflection in their appraisal". The reason why Mr Rienacker was encouraging Mr Moune Nkeng to get involved in traded risk work was that it was being performed by all other team members, this workload should be fairly shared amongst the team and it was important for Mr Moune Nkeng to broaden his experience including on risk models.

1266. **[HSMN Issue 1/9.16]** As stated in the Tribunal's factual findings, Mr Moune Nkeng was not put under undue pressure to carry out traded risk work, nor was he threatened with the removal of work on equity projects.

1267. **[HSMN Issue 1/9.17]** The Tribunal has found that the entire reason Ms Li sent her email to the model developer on 9 June 2020 was to resolve issues identified with the contents of a spreadsheet. It did not have anything to do with Mr Moune Nkeng's race.

1268. **[HSMN Issue 1/9.18]** The Tribunal has found that communications from Mr Rienacker to Mr Moune Nkeng responding to his concerns about Ms Li's communications with the model control owner were proper and appropriate. The way he responded was not in any way influenced by his race. It was not necessary or appropriate for these concerns to be addressed by Mr Kim also communicating with Mr Moune Nkeng.

1269. **[HSMN Issue 1/9.19]** It was standard practice to change the name of the Validator to record the name of the last person that had made changes to a validation report. The two reports to which Mr Moune Nkeng's name was added for this reason did not contain errors. Adding Mr Moune Nkeng's name to these validation reports was not direct race discrimination.

1270. So far as the second claim is concerned, Mr Moune Nkeng seeks to compare the treatment he received with the treatment received by Ms Karpowicz and by Ms Li, who he alleges are actual comparators.

1271. **[HSMN Issue 2/5.1]** In being named as Validator on the report, Mr Moune Nkeng was being treated in the same way as any other Validator who had made editorial changes to report prepared originally by a different Validator. He was being treated in accordance with the Bank's standard practice. In relation to this allegation, there is no evidence that either Ms Karpowicz or Ms Li had edited a validation report but had not been named as Validator. They are therefore not actual comparators.

1272. **[HSMN Issue 2/5.2]** The Tribunal accepts the non-discriminatory explanation provided by Mr Rienacker in the email sent when Mr Moune Nkeng first queried the wording of the Outlook invite. It was worded in this way due to a quirk in the Outlook system, rather than because Mr Rienacker had deliberately worded it in this manner. It was therefore not an act of race discrimination. So far as Ms Li and Ms Karpowicz are concerned, there is no evidence they were invited by Mr Rienacker to a regular meeting by updating an earlier invitation and were not subject to the same quirk in the Outlook system. They were not therefore actual comparators.

1273. **[HSMN Issue 2/5.3]** The decision not to promote Mr Moune Nkeng and not to inform or include him in the promotion process was entirely the result of his recent performance levels. They did not merit promotion. The Bank's practice was that those not being considered for promotion would not be informed of or included in the promotion process. It had nothing to do with his race. Whilst Ms Li was promoted, she was not an actual comparator for race discrimination purposes. This is because her promotion position was not identical to that of Mr Moune Nkeng. Her past performance had been consistently substantially stronger and had been noted as such. She was therefore a much stronger candidate for promotion. In any event, the grade of promotion in her case was different. She was promoted from Vice President to Director. Mr Moune Nkeng was seeking to be promoted from Assistant Vice President to Vice President. Ms Karpowicz was not in the same position but for her race because unlike Mr Moune Nkeng she had already been working at the higher grade of Vice President since June 2017.

1274. **[HSMN Issue 2/5.3.1]** At the start of December 2020, Mr Kim requested Mr Moune Nkeng's transfer from the non-traded cost centre to the traded IVU population cost centre. This was to regularise payroll arrangements, ensuring that Mr Moune Nkeng

was paid each month from the correct departmental budget. There is no evidence that the remuneration received by Mr Moune Nkeng had incorrectly calculated. He has not suffered any less favourable treatment and in any event the error in relation to the cost centre had nothing to do with his race. There is no evidence that Ms Karpowicz or Ms Li were in the same payroll position as Mr Moune Nkeng and yet were treated differently. They were therefore not actual comparators.

1275. **[HSMN Issue 2/5.4]** Due to the way that it was designed, when the Outlook invitation system for regular meetings was updated to include a further participant, it updated the identity of the participants at previous meetings. This was a function of the Outlook system and happened automatically. It had nothing whatsoever to do with Mr Moune Nkeng's race. Ms Li was treated in the same way as Mr Moune Nkeng in that the quirk in the Outlook system meant she was also recorded as having been present at previous meeting. This is therefore no basis for inferring race discrimination. There is no evidence that Ms Karpowicz was treated differently in relation to the same issue. She is therefore not an actual comparator on this issue.

1276. **[HSMN Issue 2/5.5]** Regular meetings were held between Mr Rienacker, Ms Li and Mr Moune Nkeng to discuss projects on which Mr Rienacker had previously been the Lead Validator. This was part of the handover arrangements now that Ms Li was taking over Mr Rienacker's previous responsibilities. The decision that Mr Rienacker should attend these meetings was taken for business reasons and had nothing to do with Mr Moune Nkeng's race. Neither Ms Karpowicz or Ms Li were actual comparators because they were not at the same grade of Assistant Vice President as Mr Moune Nkeng.

1277. **[HSMN Issue 2/5.6]** This allegation is factually incorrect. Ms Li did communicate appropriately with him to familiarise herself with his projects. It was appropriate for Mr Rienacker to stay involved as part of the handover arrangements. Neither Ms Karpowicz or Ms Li were actual comparators because they were not at the same grade of Assistant Vice President as Mr Moune Nkeng.

1278. **[HSMN Issue 2/5.7]** This allegation is factually incorrect. Mr Rienacker was not redistributing Mr Moune Nkeng's existing workload. Neither Ms Karpowicz or Ms Li were actual comparators because they were not at the same grade of Assistant Vice President as Mr Moune Nkeng.

1279. **[HSMN Issue 5.8]** This issue has intentionally been left blank.

<u>Harassment related to race</u>

1280. **[HSMN Issue 1/12.1]**. The Tribunal has found that Mr Moune Nkeng has mischaracterised what was said at the meeting on **10 September 2015**. Based on

the Tribunal's factual findings, Mr Rienacker's comment did not have the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We refer to this required threshold hereafter as the 'proscribed purpose or effect'. This complaint is therefore rejected.

1281. **[HSMN Issue 1/12.2].** Mr Rienacker's email suggesting a face-to-face meeting was entirely appropriately worded given the indication from Mr Moune Nkeng that he would be coming into the office in any event. This complaint is rejected because the treatment did not have the proscribed purpose or effect. Furthermore, there is no basis for reasonably inferring that Mr Rienacker worded the email for a reason related to Mr Moune Nkeng's race.

1282. **[HSMN Issue 1/12.3]**. This allegation was withdrawn during the course of oral evidence.

1283. **[HSMN Issue 1/12.4]** The Tribunal finds that the reason this work was redeployed away from Mr Moune Nkeng was because Mr Bi had indicated an interest in the work and had signalled he had the capacity to take it on. Mr Moune Nkeng retained responsibility for the "new scripts" which he was expected to work on when he returned from sick leave. Mr Rienacker was carrying out one of his core responsibilities, namely assigning work to his team members depending on their capacity to take on work given the needs of the business. It was therefore not direct race discrimination.

1284. **[HSMN Issue 1/12.4.1] [see also issue 1/9.01]** We have rejected Mr Moune Nkeng's characterisation that the email of **11 February 2016** was forcing him to work from the office. It was a suggestion not an order. His ability to act on the suggestion would depend on his physical health. It was not harassment because it did not have the proscribed purpose or effect. The comment was not related to race. Rather it was sent in order to ensure that Mr Moune Nkeng was not isolated from the rest of the team.

1285. **[HSMN Issue 1/12.5]**: This issue number was intentionally left blank. It therefore does not raise an issue which required adjudication.

1286. **[HSMN Issue 1/12.6]** Mr Moune Nkeng alleges that Mr Kim and Mr Rienacker did an act of racial harassment in failing to make him aware of the Bank's Flexible Working Policy and process. There was no need to do so. Mr Moune Nkeng was not being asked to fill out an application under the Flexible Working Policy. That would have been an application for a permanent change to his terms and conditions. Mr Kim's approach enabled him to retain his original contractual terms, whilst having the flexibility to work from home whilst his leg symptoms continued to restrict his mobility. Furthermore, he would have been able to access the policy on the staff intranet. The

failure to refer him to the formal policy at that point did not have the proscribed purpose or effect.

1287. **[HSMN Issue 1/12.6.1] [also issue 1/9.02]** The Tribunal has found that Mr Rienacker's email of 31 May 2016 was not forcing him to work from the office at least one day a week. This allegation is therefore factually incorrect.

1288. **[HSMN Issue 1/12.7]** The Tribunal has found that this allegation is factually incorrect.

1289. **[HSMN Issue 1/12.8]** The Tribunal has found that this allegation is factually incorrect.

1290. **[HSMN Issue 1/12.9]** Reference is made to the discussion above in relation to **[HSMN Issue 1/9.1]**. For the same reason, this is rejected as an allegation of racial harassment. Mr Rienacker's assessment was that Mr Moune Nkeng merited a 'Needs Improvement' rating. He had not achieved his development objectives. The basis for his assessment was not related to race.

1291. **[HSMN Issue 1/12.10]** The Tribunal has found that this allegation is factually incorrect.

1292. **[Issues 1/12.10.1]** Reference is made to the discussion above in relation to **HSMN Issue 1/9.2.1**. For the same reason, this is rejected as an allegation of racial harassment. Mr Rienacker did not question his motivation for seeking promotion. He did not commit an act of racial harassment in checking on Mr Moune Nkeng's motivation for enrolling on the course.

1293. **[HSMN Issue 1/12.10.2] (also HSMN Issue 1/9.2.2)** As set out in the Tribunal's findings of fact, the Tribunal has rejected the factual contentions on which this alleged act of racial harassment is based.

1294. **[HSMN Issue 1/12.11] (also HSMN Issue 1/9.3)** The Tribunal has found that the constructive criticism made on Mr Moune Nkeng's 2017 appraisal form was fully justified by his performance. As a result, making these comments was not racial harassment.

1295. **[HSMN Issue 1/12.12]** Reference is made to the Tribunal's conclusions in relation to **HSMN issue 1/9.4** above. For the same reason, Mr Rienacker's disagreement with Mr Abanda Bella's comments was not related to race, and therefore not an act of racial harassment.

1296. **[HSMN Issue 1/12.13] [also issue 1/9.5]** Reference is made to the Tribunal's conclusions in relation to **HSMN issue 1/9.5** above. This was not an act of racial harassment.

1297. **[HSMN Issue 1/12.14] [also issue 1/9.6]** The Tribunal has found that the requirement for feedback from three external stakeholders was a general requirement within Mr Kim's teams, unrelated to the race of team members or to any concerns they may have raised in the past. As a result, the Tribunal rejects Mr Moune Nkeng's allegation that this amounts to racial harassment.

1298. **[HSMN Issue 1/12.14.1] [also issue 8.4.1 and issue 9.7.1]** The Tribunal finds that the sole reason why Mr Rienacker postponed Mr Moune Nkeng's 2018 appraisal discussion meeting at short notice was because there was a genuine concern that Mr Abanda Bella might accompany Mr Moune Nkeng to the meeting as he had at the equivalent meeting for Mr Samnick. This concern related to the inappropriateness of one colleague attending another colleague's appraisal discussion meeting. It had nothing to do with Mr Moune Nkeng's race or with Mr Abanda Bella's race.

1299. **[HSMN Issue 1/12.15] [also issue 1/8.5] [also issue 1/9.8]** Mr Moune Nkeng had turned down the opportunity to work with Mr Rood and Mr Maouche without providing a persuasive rationale for doing so, other than his lack of direct experience. As a result, it was appropriate for this to be noted in his 2018 annual appraisal and to be regarded as an area for development in the next appraisal year. This allegation of harassment is therefore rejected. The act of which Mr Moune Nkeng complains was not related to race.

1300. **[HSMN Issue 1/12.16]** The Tribunal refers to its conclusions above in relation to **issue 1/9.10**. For the reasons given there, the comments in the email were not related to race. Further, Mr Rienacker was careful in how he phrased his feedback, using the word "we" rather than the more accusatory "you". The Tribunal does not find that either the content of the criticisms in the email or the manner in which the email was written had the proscribed effect. This allegation of racial harassment is therefore rejected.

1301. **[HSMN Issue 1/12.17]** The Tribunal refers to its conclusions above in relation to **issue 1/9.11**. For the reasons given there, Ms Li's email request was not related to race. Furthermore, the Tribunal rejects the contention that the email request had the proscribed effect. This allegation of racial harassment is therefore rejected.

1302. **[HSMN Issue 1/12.18]** The Tribunal refers to its conclusions above in relation to **issue 1/9.12**. For the reasons given there, the extent to which Mr Moune Nkeng was involved in these email exchanges was not related to race. Furthermore, the Tribunal rejects the contention that the email request had the proscribed effect. This allegation of racial harassment is therefore rejected.

1303. **[HSMN Issue 1/12.19]** The Tribunal has accepted the explanation given by the Respondents was the entire reason for Ms Li's decision to email her feedback to the project stakeholders. She did so on Mr Rienacker's instruction having worked on the

validation for the past week before it was decided the project should be handed over to Mr Abanda Bella and Mr Moune Nkeng. She did so to speed up the process given the work she had already completed on the task. Mr Rienacker remained the Lead Validator. He was fully entitled as the line manager of Ms Li, Mr Abanda Bella and Mr Moune Nkeng to decide how the resources in his team should be deployed, including the extent to which Ms Li's preparatory work should be used, even if she no longer had an ongoing role in relation to the project. Mr Moune Nkeng has not pointed to any particular evidential feature indicating that race had anything to do with the decision. Accordingly, the Tribunal does not find that it was related to race. This allegation of racial harassment therefore fails.

1304. **[HSMN Issue 1/12.20]** The Tribunal has found that Mr Rienacker did not insist that Mr Moune Nkeng should work on traded risk space under Mr Rood's supervision. Therefore, this allegation is factually incorrect.

1305. **[HSMN Issue 1/12.21]** The Tribunal has rejected the factual basis on which this allegation is founded.

1306. **[HSMN Issue 1/12.22]** Mr Rienacker did not insist that Mr Moune Nkeng should work on the risk traded model validations under Mr Rood's supervision. This allegation is factually incorrect.

1307. **[HSMN Issue 1/12.23]** The Tribunal has found that the entire reason Ms Li sent her email to the model developer on 9 June 2020 without discussing it with Mr Moune Nkeng first was to resolve issues identified with the contents of a spreadsheet. It did not have anything to do with Mr Moune Nkeng's race. There was no reason for Mr Rienacker to indicate that Ms Li had done anything wrong.

1308. **[HSMN Issue 1/12.24]** The Tribunal has found that communications from Mr Rienacker to Mr Moune Nkeng responding to his concerns about Ms Li's communications with the model control officer were proper and appropriate. The way he responded did not violate his dignity nor did it have the proscribed effect. Further it was not in any way related to race. It was not necessary or appropriate for these concerns to be addressed by Mr Kim.

1309. **[HSMN Issue 1/12.25]** It was standard practice to change the name of the Validator to record the name of the last person that had made changes to a validation report. The two reports to which Mr Moune Nkeng's name was added for this reason did not contain errors. Adding Mr Moune Nkeng's name to these validation reports did not have the proscribed environment and was not in any way related to race.

1310. **[HSMN Issues 2/8 & 2/9]** In his second claim, Mr Moune Nkeng alleges that most of the itemised detriments because of protected acts (i.e. acts of victimisation) also amount to harassment related to race. Where the Tribunal has found that there was

no detriment, there can be no equivalent act of harassment. In relation to the alleged acts of racial harassment included in the second claim by reference to particular allegations of victimisation **(HSMN issue 2/3)** and direct race discrimination **(HSMN issue 2/5)**, the Tribunal repeats its conclusions in relation to those allegations. In each case the Tribunal has found a non-discriminatory reason for such treatment which is not in any way related to any previous protected acts. Therefore, these further allegations of racial harassment do not succeed.

Instructing, causing or inducing basic contraventions

1311. **[HSMN Issue 1/16.1]** There was no instruction or inducement from Mr Kim to Mr Rienacker or to Mr Rood requiring Mr Moune Nkeng to carry out this work under Mr Rood's supervision. The communication from Mr Kim was to the opposite effect – that Mr Moune Nkeng could not be forced to carry out this work. He wrote: "nobody can force anyone to do anything they simply refuse to do, obviously. The usual main consequence is appropriate reflection in their appraisal".

1312. **[HSMN Issue 1/16.2]** The Tribunal has rejected this factual allegation. Mr Rood did not instruct or cause or induce Mr Rienacker to make aggressive comments during the appraisal meeting.

1313. **[HSMN Issue 1/16.3] and [HSMN Issue 1/17.3]** Mr Rienacker did not insist that Mr Moune Nkeng should work on traded models validations; and this was not something that Mr Kim had instructed, caused or induced him to do. Mr Kim had advised him: "nobody can force anyone to do anything they simply refuse to do, obviously. The usual main consequence is appropriate reflection in their appraisal".

1314. **[HSMN Issue 1/16.4]** Mr Kim had no involvement in Ms Li's decision to send an email on **9 June 2020** to the model developer without checking with Mr Moune Nkeng first.

1315. **[HSMN Issue 1/16.5]** Mr Kim did not instruct, cause or induce Mr Rienacker or Ms Li to send an email to the Model Control Office about issues on the tests she had run. This allegation is factually incorrect.

1316. **[HSMN Issue 1/17.1]** Mr Moune Nkeng was asked to work on traded risk because there was a need for Validators to carry out this work, particularly given Mr Samnick's absence on long term sick leave. Working on traded risk was one of his development objectives and would broaden his experience, so making him a more attractive candidate for promotion. This allegation is therefore factually incorrect.

1317. **[HSMN Issue 1/17.2]** This allegation is factually incorrect.

1318. **[HSMN Issue 1/17.4]** Mr Rienacker did explain why Ms Li had contacted stakeholders on a project on which Mr Moune Nkeng was the Validator **[5945]**. This explanation was expressed in a conciliatory tone and was not a detriment.

1319. **[HSMN Issue 1/17.5]** As set out in the Tribunal's findings of fact, Mr Moune Nkeng in cross-examination accepted that the email of 12 June 2020 from Mr Rienacker suggesting they have an open discussion in their scheduled catch up was a supportive email. It was not a detriment to suggest this or to try to discuss his concerns at the meeting itself.

1320. **[HSMN Issue 1/18.1]** Given the Tribunal's factual findings, this allegation is factually incorrect. Mr Kim was not failing to address any concerns raised by Mr Moune Nkeng about mistreatment; and Mrs Richardson was not aiding Mr Kim in writing her response in the way she did.

1321. **[HSMN Issue 1/18.2]** The Tribunal has rejected the factual basis of this allegation. There was no harassment of Mr Moune Nkeng by Mr Rienacker in what he said to him during the appraisal meeting. The approach taken by Mr Rienacker during the appraisal meeting was not knowingly helped by either Mr Kim or Mr Rood.

1322. **[HSMN Issue 1/18.3]** The Tribunal has rejected the allegation that Mr Rienacker harassed Mr Moune Nkeng in the way he encouraged him to become involved in traded risk model validations. Mr Kim and Mr Rood did not knowingly help Mr Rienacker with the way he approached Mr Moune Nkeng about this issue.

1323. **[HSMN Issue 1/18.4**] Given the Tribunal's findings of fact, this allegation is factually incorrect.

1324. **[HSMN Issue 1/18.5]** Mr Kim did not have verbal discussions with Mr Moune Nkeng, rather than putting those discussions in writing as Mr Moune Nkeng had requested. This allegation is factually incorrect.

<u>Aiding contraventions</u>

1325. **[HSMN Issue 2/24.1]** As Mr Moune Nkeng had done some editorial work on a validation report, his name was substituted as the Validator. This was the Bank's standard practice. In following this standard practice in Mr Moune Nkeng's case, he was not treating him any differently from any other Validator. His name was not added without telling him on purpose and to set him up to fail. He has not shown that there were any errors in the Validation for which he could be blamed.

Jurisdiction

1326. In relation to Mr Moune Nkeng's first claim, as regards the Bank and Mr Rienacker, any complaints before 9 April 2020 are on the face of it out of time. So far as the first claim against Mr Kim, Ms Li, Mr Rood and Mrs Richardson, any complaints before 4 May 2020 are prima facie in time. The Respondents accept that all the claims in the second claim are in time, apart from **HSMN issue 2/5.1 and 2/8**.

1327. The Tribunal agrees with the Respondents' submissions that Mr Moune Nkeng has provided no evidence or explanation for why he presented his Tribunal claims out of time. It was too late for him to provide evidence about this in his written closing submissions (as he purports to do in paragraphs 646-650). He does not argue he did not realise that there was a potential remedy in the employment tribunal or that there were applicable time limits. He had clearly been researching legal principles of potential application to his claims for some time, given the extensive references to caselaw with his grievances.

1328. There is no medical evidence that he was too unwell to crystalize his thoughts sufficiently to prepare and issue employment tribunal proceedings. He was well enough to lodge detailed grievances in June and July 2020 and also to continue working throughout without requiring any time on sick leave.

1329. Balancing the injustice to the Respondents in having to deal with out of time claims against the injustice to the Claimant of not being permitted to advance those claims, the Claimant has not discharged the burden of showing it would be just and equitable to extend time for any of the acts which predate 9 April 2020 or 4 May 2020 (as applicable). Therefore, the Tribunal would have lacked jurisdiction to consider complaints advanced under the Equality Act 2010 in relation to events occurring before these dates.

1330. The same conclusion applies to the protected disclosure detriment claim brought under the Employment Rights Act 1996. It was reasonably practicable to have issued proceedings within three months of the acts or the series of acts said to amount to detriment on the grounds of protected disclosures.

CONCLUSIONS – LOUIS SAMNICK

Knowledge of Disability

1331. **[LS Issue 1]** The Respondents have conceded that Mr Samnick had a disability at all material times. The key issue is when they had actual or constructive knowledge of this disability. Mr Samnick contends that the Respondents knew or could reasonably be expected to have known that he was disabled from 29 July 2019. That

was the date on which he started a period of sickness absence for stress at work, which lasted for two weeks. The reason given on the Fit Note was "stress at work".

1332. The Tribunal does not accept this. Up until 29 July 2019, Mr Samnick had not taken any previous sick leave for "stress at work" or equivalent condition. He had not complained of any mental health symptoms that were impacting on his normal day-to-day duties. Mr Samnick's absence and the accompanying Fit Note were the first indications received by the Bank that mental health symptoms were impacting on his ability to work. At that point, the Bank had no further information. There was no indication as to when Mr Samnick's symptoms had first appeared. The best indication as to the likely length of the sickness absence was the duration stated on the Fit Note, namely two weeks. The Bank did not have knowledge that the symptoms may well last for 12 months. The Bank could not reasonably have been expected to know that symptoms could well last for 12 months.

1333. On the day Mr Samnick's sick leave started, Mr Rood emailed suggesting a referral to Occupational Health. Receiving no response, he telephoned on 2 August 2019 only for Mr Samnick to hang up after he introduced himself. This failure to allow the Bank to make any reasonable enquiries about the extent of symptoms was a repeated pattern which continued for months. For several weeks after his second period of sick leave which started on 4 September 2019, the only further information received about Mr Samnick's symptoms were further Fit Notes. The Fit Notes continued to describe the reason for absence in general terms without providing any particular mental health diagnosis. The duration of each certificate continued to be limited to a short period. During this period, none of the Respondents knew that symptoms may well last for 12 months, nor ought it to have known this.

1334. The Bank received further information about the extent of Mr Samnick's condition only on 14 October 2019. With the formal grievance lodged on this date he enclosed a letter from his private GP. This was dated 17 September 2019 and was a referral for counselling. It did not provide any timescale for how long the symptoms had lasted or were likely to last. It recommended counselling to help him manage his symptoms. This further information did not give the Bank knowledge that his impairment met the statutory definition of disability. There were no further reasonable enquiries that the Bank could have made at that point to provide it with the necessary knowledge.

1335. The next point at which the Bank had further knowledge about Mr Samnick's health was when it received the first Occupational Health report. This was not received by the Bank until 10 December 2019. At that point, the Tribunal finds that the Bank had knowledge that the symptoms may well last for at least 12 months. Based on the Occupational Health advice, his symptoms predated July 2019 and were currently preventing him from returning to work. They would continue to prevent a return to any duties until sometime after a grievance outcome had been published, even if he

received a favourable outcome. As at that point in time, Mr Samnick had lodged five grievances. No date had yet been set for the grievance hearing and the scale of the grievance meant that there would be an inevitable delay before the grievance outcome could be published. The implication of the Occupational Health advice was that if the outcome of the grievance was not favourable from Mr Samnick's point of view, then his symptoms would last longer. It was a real possibility that the outcome of the grievance process may be several months away (Mr Easdon's report was in fact published on 11 May 2020); and that Mr Samnick would not perceive the outcome to be a favourable one (as in fact happened). Therefore, at this point, 10 December 2019, the Bank knew or could reasonably have been expected to know, that Mr Samnick was disabled.

Protected disclosures

1336. **[LS Issue 2.1]** The Tribunal has found that Mr Samnick was not present at the meeting on 9 July 2012. Therefore, he did not make any disclosure at that meeting. He did not make the alleged disclosure at the subsequent meeting held on 28 August 2012. Even if he had said that the model was structurally flawed due to its circular nature, he could not have reasonably believed that this information tended to show the Bank was failing to comply with a legal obligation, given that the model was still under development. Given the early stage of the alleged discussions, he could not have reasonably believed the information he was disclosing tended to show the Bank had failed, was failing or was likely to fail to comply with a legal obligation. So far as 'likely to fail', he could not have reasonably believed this was more probable than not.

1337. **[LS Issue 2.2]** In this email, Mr Samnick was challenging the appropriateness of the representative portfolio. Because of the redacted text in this email, it is not possible for the Tribunal to evaluate the particular information disclosed in this email. However, the legislation permits financial organisations to decide on the composition of their own representative portfolios. Therefore, Mr Samnick did not reasonably believe he was disclosing information which tended to show the Bank was failing or was likely to fail (in the sense of more probable than not) to comply with its legal obligations. A further reason why the Tribunal finds he did not have a reasonable belief he was disclosing information which tended to show this is because these discussions with model developers about model assumptions were about work in progress. The model was not operational until it had been validated.

1338. **[LS Issue 2.3]** Mr Samnick did not reasonably believe the contents of the email disclosed information tending to show the Bank was failing or would probably fail to comply with legal obligations under BIRPU 13.6.67 (7) and (8) or Article 294.1(h) and (i) of EU Regulation 575/2013. Again, the validation was work in progress, and therefore the particular model being validated was not yet operational. Again, the

legislation permitted financial organisations to adopt their own representative portfolios.

1339. **[LS Issue 2.4]** The Tribunal has found that no verbal disclosure was made to Mr Bhandal in the Raising Concerns team on or around 22 June 2017.

1340. **[LS Issue 2.5]** Although Mr Samnick's email of 18 October 2017 did disclose information there was nothing to indicate he believed that this information showed a legal obligation was being breached or could be breached. The Tribunal finds he did not so believe. The email contained no reference to any particular legislative provisions nor did it otherwise imply that this was his belief from the language he was using. The tone and content are consistent with Mr Samnick carrying out what he saw as his role as a Validator as shown by the introductory paragraph "we should have requested clarifications before agreeing to review". By this point, Mr Samnick was not only aware of the designated procedure for raising whistleblowing concerns, he had already attempted to invoke that procedure. Further, given the developmental stage of the validation process, there was no information in Mr Samnick's email which he could reasonably have believed tended to show that a legal obligation had been, was being or was "likely" (in the sense of being more likely than not) to be breached.

1341. **[LS Issue 2.6]** The wording in Mr Samnick's minutes did not contain sufficient factual specificity to amount to the disclosure of information that he could reasonably believe tended to show a breach of a legal obligation. In any event, the Tribunal finds he did not reasonably believe that the information he provided tended to show there had been, was, or was likely (in the sense of being more probable than not) to be a breach of either SR11-7 or Article 369. It was therefore not a protected disclosure.

1342. **[LS Issue 2.7]** The Tribunal finds Mr Samnick did not have SR11-7 or Article 369 in mind when he wrote his self-assessment and nor did he believe that the information he was disclosing tended to show a breach or likelihood of a breach of these provisions. He was making the same point with the same level of generality as in his minutes of his mid-year review meeting. There was no reference to either provision in what he wrote.

1343. **[LS Issue 2.8]** Mr Samnick's email to Mr Patrick Chen was not a protected disclosure. It did not allege any wrongdoing in the information it disclosed, still less a breach of a legal obligation. This email is said to disclose information which he reasonably believed tended to show a breach or likely breach of EU Article 369 of EU Regulation 575/2013 or of SR11-7 Federal Reserve Guidelines. There is no reference to either provision within the brief email. The Tribunal has found that all Mr Samnick was doing with this email was to inform him about the revised PMA. The Tribunal does not find that Mr Samnick reasonably believed that the information in the email was a breach of these provisions. In any event the email was only addressed to Mr Patrick Chen. He is not criticised for carrying out any protected

disclosure detriment. There is no evidence suggesting that the contents of the email would have been shared with others such as Mr Rood or Mr Kim who are said to have retaliated against him for making protected disclosures.

1344. **[LS Issue 2.9]** The Tribunal has rejected Mr Samnick's evidence that he made a verbal protected disclosure to Mr Canabarro on 25 January 2018.

1345. **[LS Issue 2.10]** Mr Samnick did not reasonably believe that the information he was providing to Mr Patrick Chen tended to show the Bank had failed, was failing or was likely to fail to comply with legal obligations under BIRPU Regulation 7.10 and the Market Risk Rules. The Tribunal has accepted Mr Rood's evidence that Mr Samnick well knew that SVaR was not within regulatory approval request scope. In any event, Mr Rapley was not refusing to provide this information. Rather he was saying he did not have it to hand to send to Mr Samnick at that point. In any event, none of the relevant individuals Mr Samnick accuses of causing him detriment because of his previous protected disclosures knew about his email to Mr Patrick Chen. It was sent only to Mr Patrick Chen and Mr Samnick did not discuss it with others.

1346. **[LS Issue 2.11]** The information disclosed to the Ethics Point hotline focused on how he himself had been treated. There was no information disclosed with sufficient factual specificity about how others had been treated. As a result, Mr Samnick did not reasonably believe that the information he was disclosing was in the public interest, as that requirement has been explained in *Chesterton*. In any event, disclosure to the Ethics Point hotline was a disclosure made in a confidential process. The information disclosed would not have been shared with any of the individuals who are alleged to have retaliated in part as a result of this disclosure**.**

1347. **[LS Issue 2.12]** Mr Samnick has not sufficiently established he had a genuine belief that the version of the validation document provided to the audit team was different to the latest one available. As the subsequent Whistleblowing Team investigation established, the correct version was provided and the later one was not created until July 2019, a year after the audit. In any event, the Tribunal concludes Mr Samnick did not have a reasonable belief that, if Mr Rood had provided the incorrect version, this was a failure to comply with a legal obligation. Internal model standards were not legal obligations. Mr Samnick would have known that. Further, he would have known that Mr Rood was not a company director under the Companies Act 2006; and therefore could not have believed Mr Rood was in breach of duties imposed on directors under that Act. He would have understood the difference between the corporate title of Director and the entirely different statutory status of a company director. He himself was a company director of his own company. Finally, any disclosure made to the Whistleblowing Team would have been treated confidentiality. His identity as the source of the concern would not have been revealed. Even if this

had been a protected disclosure, it would not have triggered any of the alleged retaliation listed within paragraph 4 of the List of Issues.

1348. **[LS Issue 2.13]** This grievance letter focuses on the impact on Mr Samnick – the impact of alleged failures to make reasonable adjustments which affected him because of his medical condition; and the victimisation he suffered because of his previous protected acts. References to the impact on others are vague and lack any necessary factual specificity. The Tribunal finds that Mr Samnick did not reasonably believe he was disclosing information which it was in the public interest to disclose, as that statutory requirement has been explained in *Chesterton*. The focus of his complaints was on his own situation.

1349. **[LS Issue 2.14]** The Tribunal concludes that any belief by Mr Samnick that his disclosures were in the public interest was not a reasonable belief, applying the guidance in *Chesterton***.** The focus of his complaints was on his own situation and potentially also that of Mr Abanda Bella who is also named in passing. No factual specificity is provided about any inappropriate treatment of Mr Abanda Bella. The grievance did not raise any wider systemic concerns.

1350. **[LS Issue 2.15]** Mr Samnick's focus in his letter of 20 November 2019 was on himself. Whatever he may have believed about disclosure being in the public interest, any such belief was not a reasonable belief applying the guidance in *Chesterton*.

1351. **[LS Issue 2.16]** The Tribunal accepts that this grievance amounted to a qualifying disclosure. It disclosed specific information about the process for challenging a decision made by Unum and particularly about the requirement to send an appeal via the Bank. Mr Samnick believed that the requirement that medical evidence supporting any appeal be sent to the Bank to forward to Unum was a breach of his Article 8 right to privacy and of GDPR requirements designed to safeguard the confidentiality of sensitive personal data. It is not necessary for the Tribunal to decide whether his belief was legally correct. It was a reasonable belief given the general purpose behind these provisions. Furthermore, the Tribunal accepts that he genuinely believed that his disclosure was in the public interest. The disclosure concerned the implications of one of the Bank's policies. It therefore applied to all employees who were seeking to challenge a decision by Unum to reject an income protection claim. Applying the considerations set out in *Chesterton* it was reasonable for him to believe that this disclosure was in the public interest.

1352. **[LS Issue 2.17]** This was not a qualifying disclosure. The entire focus of this grievance was on Mr Samnick's own 2019 appraisal process and outcome, the resulting award of compensation, and the way he personally had been treated. Mr Samnick did not have a reasonable belief that the information he was disclosing was in the public interest.

Detriments for making protected disclosures

1353. **[LS Issue 4.1]** The Tribunal has found that this allegation is factually incorrect.

1354. **[LS Issue 4.2]** The Tribunal has found that this allegation is factually incorrect.

1355. **[LS Issue 4.3]** It is factually correct that Mr Samnick was not informed about the promotion process, not included in the promotion process and was not promoted. This was entirely because the quality of his performance was not worthy of considering him for promotion. It had nothing to do with any alleged protected disclosures.

1356. **[LS Issue 4.4]** – Intentionally left blank.

1357. **[LS Issue 4.5]** Criticisms made by Mr Albrecht in the 2015 mid-year review about his behaviours and his writing skills reflected Mr Albrecht's honest assessment of Mr Samnick's performance. There had not been any previous protected disclosures. Even if there had in the respects alleged, these did not influence Mr Albrecht in what he recorded about Mr Samnick's performance.

1358. **[LS Issue 4.6]** There was no need for Mr Kim to specifically inform Mr Samnick about the opportunity to apply for the role of Head of Traded Risk Model Validation. Mr Samnick was well aware that the Bank was recruiting to fill this vacancy. He was not included in the promotion process because he chose not to apply and was not appointed to the role because he had not submitted an application. The Bank's approach to Mr Samnick in relation to this recruitment process had nothing to do with any previous protected disclosures.

1359. **[LS Issue 4.7]** Intentionally left blank.

1360. **[LS Issue 4.8]** Mr Rood was not issuing lunch invitations on his first day in post and so did not fail to include Mr Samnick in the invitations. In any event, his decisions as to his lunch arrangements were not influenced by any previous protected disclosures. Mr Rood did not know at that point about any of the communications which Mr Samnick says were protected disclosures. The Tribunal has not found Mr Samnick was excluded from particular meetings. As a result, the second limb of this allegation must fail.

1361. **[LS Issue 4.9]** Mr Samnick accepted in cross-examination he was invited to this meeting and attended the meeting.

1362. **[LS Issues 4.10 - 4.12]** Intentionally left blank.

1363. **[LS Issue 4.13]** Mr Rood's comments on the quality of Mr Samnick's draft reports made during the mid-year 2017 appraisal reflected the comments he had made at the time about the need for improvement. They were based on his impression of the standard of the reports as shown by the examples he gave during the meeting. They were not influenced by any previous alleged protected disclosures.

1364. **[LS Issue 4.14]** Mr Rood's work allocation decisions at the start of November 2017 were not taken because of any previous protected disclosures. There had not been any previous protected disclosures. In any event Mr Rood was only aware of the alleged protected disclosure in **LS issue 1.5.** There is no basis for the Tribunal to infer that this email influenced his decisions as to the allocation of particular projects. The Tribunal accepts that the reason he gave Mr Samnick in his email of 8 November 2017 was the only reason why Mr Samnick was not allocated these particular projects.

1365. **[LS Issue 4.15]** The decision to promote Mr Bill Chen was taken entirely on merit, given his consistently high previous performance. The decision not to promote Mr Samnick or to include him in a promotion process was taken entirely on merit, namely his performance in recent years had not been strong enough to justify promotion. The Tribunal has not found that there had been any protected disclosures by this point. There is no evidential basis to infer that any of the alleged protected disclosures could have influenced the promotion decision.

1366. **[LS Issue 4.16]** The Tribunal has accepted the contemporaneous explanation given by Mr Larkin for not providing him with a transcript of any his conversations with the Whistleblowing Team. This was that it was standard practice not to provide records of these meetings because it was a confidential process. Further, conversations with the Whistleblowing Team were not recorded. Therefore there was no material from which to prepare a transcript. The Tribunal accepts that others whose concerns were being investigated by the Whistleblowing Team were treated in exactly the same way. They were not sent meeting notes. The Tribunal has found that there had not been any previous protected disclosures. Mr Larkin's response had nothing to do with any of the communications alleged to be previous disclosures. In any event, Mr Larkin would only have known about those communications received by the Whistleblowing Team.

1367. **[LS Issue 4.17]** The Tribunal rejects Mr Samnick's allegation that he was not allocated a full workload in January 2018 or that particular tasks he was allocated were less significant than those allocated to other Validators. It is not correct that he was only allocated one "off the record" project.

1368. **[LS Issue 4.18]** Intentionally left blank.

1369. **[LS Issue 4.19]** The Tribunal has found that Mr Samnick was provided with a sufficient opportunity to provide further information in support of his whistleblowing complaint before the investigation was closed with no finding of wrongdoing. The criticism underlying this factual allegation is therefore incorrect.

1370. **[LS Issue 4.20]** This project was reallocated to ensure that impending deadlines on this project and on the CDS spread validation project were met. The decision to do so had no connection with any of the communications alleged to be protected disclosures.

1371. **[LS Issue 4.21]** Mr Samnick was not interviewed because the recruiting manager wanted to appoint someone who was already at Director level. That was a grade higher than Mr Samnick's current grade of Vice President. The failure to give him an interview was not because of any previous protected disclosures.

1372. **[LS Issue 4.22]** The reallocation of the representative portfolio methodology was entirely due to Ms Giammarino's availability and to Mr Samnick's lack of availability. It was not because of any previous protected disclosures.

1373. **[LS Issue 4.23]** The decision to put Mr Samnick on a PIP and not to support him for the IRM Certificate unless he agreed to this was entirely the result of his inconsistent performance and his unwillingness to engage with constructive feedback. The Tribunal has rejected each of the alleged previous protected disclosures. Those communications did not have any influence on how Mr Rood treated Mr Samnick during the 14 September 2018 meeting.

1374. **[LS Issue 4.24]** This allegation is very similar to **issue 4.23** and is rejected for the same reason.

1375. **[LS Issues 4.25 – 4.26]** Intentionally left blank.

1376. **[Issue 4.27]** Requiring Mr Samnick to attend an interview with the Large Model Frameworks Team was good practice, especially where there were performance concerns. It enabled that team to be confident that he had the necessary skills and would be a good fit for the work they needed done. It was reasonable for Mr Mayenberger to ask that Mr Samnick attend an interview. The reason why Mr Samnick was not offered the role following the interview was that he was not considered a sufficiently strong candidate given his answers to interview questions. There is no evidence that Mr Mayenberger knew anything about the previous communications which Mr Samnick alleges amount to protected disclosures, and no reason why he should seek to retaliate even if he did.

1377. **[LS Issue 4.28]** It was for line managers to decide what work to allocate to which members of their team based on the nature of the task, their experience and their

current capacity to take on additional work. The Tribunal accepts that other Validators did have the requisite experience to work on the IHR VaR model; and Mr Samnick was already working on two projects. There is no evidential basis on which to infer that any previous protected disclosures had influenced the failure to assign him this task. The Tribunal finds that this decision was done solely on the needs of the business.

1378. **[LS Issue 4.29]** The sole reason for the 'Needs Improvement' rating at his 2018 appraisal in January 2019 for the 'What' was his inadequate performance, as foreshadowed by the earlier decision to put him on a PIP. There had been no improvement in his performance level since then. It was not influenced by any previous communications alleged to be protected disclosures. The most recent of these was in March 2018, around 10 months earlier **[issue 2.10]**.

1379. **[LS Issue 4.30]** Mr Samnick's total remuneration was not out of line with others in the team. His pay increase was consistent with the pay increase given to the other two Vice Presidents in Mr Rood's team. The most likely explanation for the substantial drop in bonus levels compared to 2016 and 2017 is that the Claimant was given a 'Needs Improvement' rating for the 'What'. It had nothing to do with an any alleged previous protected disclosures.

1380. **[LS Issue 4.31]** Properly analysed, the concerns Mr Samnick raised with the EthicsPoint hotline on 7 May 2019 were not in law protected disclosures. Nor were they appropriate matters for a whistleblowing investigation. Rather they were essentially complaints about the way he had been treated by his line manager. These were more appropriately matters to investigate as part of a grievance investigation.

1381. **[LS Issue 4.32]** The decision to move from a PIP to the formal capability procedure was taken because Mr Samnick was failing to engage with the PIP process. He had refused to have any discussion about the contents of the PIP and failed to attend any of the review meetings scheduled to discuss his progress. The PIP process had therefore failed. This decision was not taken because of any previous protected disclosures.

1382. **[LS Issue 4.33]** Before 17 October 2019, Mr Samnick had not asked to be removed from Mr Kim's line management. In response to his complaint about Mr Kim in his grievance of 17 October 2019, Mr Bill Chen was proposed as his welfare contact whilst he remained absent on sick leave. Mr Rood continued to be his line manager and Mr Kim continued to have ultimate responsibility for him as Mr Rood's line manager. The Bank's position on the identity of Mr Samnick's line managers had no connection with any previous protected disclosures.

1383. **[LS Issue 4.34]** The decision to refer Mr Samnick's letter of 25 October 2019 to Employee Relations to be investigated as a grievance rather than as a whistleblowing

concern was an appropriate decision. The focus of the 25 October 2019 letter was on how he had been treated rather than raising concerns with any factual specificity of more general application to other individuals. There is no evidential basis for inferring that this decision was influenced by any previous protected disclosures.

1384. **[LS Issue 4.35]** The decision to refer Mr Samnick's letter of 20 November 2019 to Employee Relations to be investigated as a grievance rather than as a whistleblowing concern was an appropriate decision. The focus of the 20 November 2019 letter was on how he had been treated rather than raising concerns of more general application. There is no evidential basis for inferring that this decision was influenced by any previous protected disclosures.

1385. **[LS Issue 4.36]** The reason for the error as to the date on which Mr Samnick's entitlement to sick pay stopped is explained in the Tribunal's factual findings. It was a simple administrative error which had nothing to do with any previous protected disclosures. This error was rectified very quickly.

1386. **[LS Issue 4.37]** There are no facts from which the Tribunal could infer that Mr Samnick's 2019 End of Year Performance Ratings and compensation decisions were influenced by any alleged protected disclosures. The Tribunal finds that these decisions were based entirely on Mr Samnick's work performance before he started his extended period of sickness absence. The decisions were made without the benefit of Mr Samnick's self-appraisal. The Tribunal finds that this omission occurred because Mr Samnick was absent on long-term sick leave and no steps had been taken to contact him including to ask for his self-appraisal, beyond the automated messages sent at the start of October 2019.There are no facts from which the Tribunal could infer that this failure to contact him was influenced by any alleged protected disclosures.

1387. **[LS Issue 4.38]** This duplicates **LS issue 4.37** and therefore is not pursued by Mr Samnick as a separate allegation.

1388. **[LS Issue 4.39]** It was not necessary or appropriate for Mr Easdon to decide legal issues when he published his grievance outcome letter. It was reasonable for him to decide that this fell outside the scope of the grievance process. His failure to reach conclusions on these matters was not influenced to any extent by any previous protected disclosures.

Victimisation - Protected acts

1389. **[LS Issue 5.1]** In his 2017 self-assessment, Mr Samnick referred to "an exceptionally suffocating environment" and to "unfair treatment" and to Mr Rood providing "biased feedback". However, he made no reference to the Equality Act 2010 nor did he allege

matters that if proved would amount to a contravention of the Act. The Tribunal applies the guidance given by the EAT in *Beneviste* at paragraph 29. This was not a protected act.

1390. **[LS Issue 5.2**] This alleged protected act is rejected as factually inaccurate. Mr Samnick did not raise a verbal complaint of discrimination in the meeting with Mr Kim on 17 November 2017.

1391. **[LS Issue 5.3]** Although Mr Samnick used the word "discrimination" in his email of 31 January 2018, he was not alleging discrimination based on any characteristics protected by the Equality Act 2010. This is clear from the way he explained his complaint at the subsequent meeting on 6 February 2018. Seen in context, based on its particular circumstances, this was not a protected act under either Section 27(2)(c) or (d) of the Equality Act 2010.

1392. **[LS Issue 5.4]** Mr Samnick did not speak to Mr Patrick Chen on 9 February 2018 as he claims alleging that his race might be part of the reason for being excluded from carrying out work for the Large Model Framework team. The factual basis of this alleged protected act is rejected.

1393. **[LS Issue 5.5]** Although Mr Samnick used the word "discrimination", the Tribunal considers that Mr Samnick was not alleging discrimination based on any characteristics protected by the Equality Act 2010. He was alleging the way he had been treated by Mr Rood had been the same since he had joined the team. Seen in the context of the consistent absence of any reference in his previous complaints to race discrimination (apart from a sole reference during the meeting on 14 September 2018), this complaint was a general reference to unfair treatment, rather than discrimination based on any protected characteristic. In all the circumstances, this was not a protected act under either Section 27(2)(c) or (d) of the Equality Act 2010.

1394. **[LS Issue 5.6]** Whilst Mr Samnick again used the word "discrimination" in his complaint to the Ethics Point hotline, he did not suggest that the harassment, bullying, discrimination, retaliation or harassment was because of race or disability or any other particular protected characteristic. Nor did he say that retaliation took the form of victimisation because he had complained of treatment contrary to the Equality Act 2010 or of detrimental treatment because of protected disclosures. No allegations that the Equality Act 2010 had been contravened were implicit from the language used. This was not a protected act. In any event, this communication with the Ethics Point hotline was confidential. Mr Samnick did not tell Mr Kim, Mr Rienacker or Mr Rood what he had raised. As a result, it did not trigger any detrimental treatment from Mr Kim, Mr Rood or Mr Rienacker.

1395. **[LS Issue 5.7]** The Respondents accept that Mr Samnick's email of 23 September 2019 was a protected act.

1396. **[LS Issue 5.8]** The Respondents admit that the formal grievance dated 14 October 2019 is a protected act in that it he alleged he was a disabled person suffering harassment and discrimination arising from disability and asked for reasonable adjustments.

1397. **[LS Issue 5.9]** The Respondents admit that the second formal grievance of 17 October 2019 was a protected act.

1398. **[LS Issue 5.10]** The Respondents admit that the fourth formal grievance of 25 October 2019 was a protected act.

1399. **[LS Issue 5.11]** The Respondents admit that the fifth formal grievance of 20 November 2019 was a protected act.

1400. **[LS Issue 5.12]** In this email Mr Samnick was querying the extent of his entitlement to sick pay. He was alleging it had ended prematurely and was blaming the dates of his sick leave that Mr Rood had entered in the system. He made no allegation as to why Mr Rood had done this. There was no reference to the Equality Act 2010 or to any acts of discrimination. The substance of this email does not come within the definition of protected act in Section 26 Equality Act 2010.

1401. **[LS Issue 5.13]** The Respondents admit that the sixth formal grievance of 14 April 2020 was a protected act.

1402. **[LS Issue 5.14]** The Respondents admit that the seventh formal grievance of 20 April 2020 was a protected act.

1403. **[LS Issue 5.15]** The Respondents admit that Mr Samnick's grievance appeal dated 22 May 2020 was a protected act.

Victimisation

1404. **[LS Issues 6.1- 6.2]** Intentionally left blank.

1405. **[LS Issue 6.3]** Mr Samnick was not interviewed because the recruiting manager wanted to appoint someone who was already at Director level. Mr Samnick was a Vice President, not a Director. It was not because of any previous protected acts – although the Tribunal has found that Mr Samnick did not do any previous protected acts.

1406. **[LS Issue 6.4]** The decision to put Mr Samnick on a PIP and not to support him for the IRM Certificate unless he agreed to this was entirely the result of his inconsistent performance and his unwillingness to engage with constructive feedback. The

Tribunal has rejected each of the three previous alleged protected acts were in fact protected acts. In any event, they did not play any part in how Mr Rood treated Mr Samnick during the 14 September 2018 meeting.

1407. **[LS Issue 6.5]** This largely replicates **issue 6.4** and is rejected for the same reason.

1408. **[LS Issue 6.6**] This largely replicates **issue 6.4** and is rejected for the same reason.

1409. **[LS Issue 6.7]** The Tribunal repeats its conclusion in relation to **LS issue 4.27**

1410. **[LS Issue 6.8]** It was for line managers to decide what work to allocate to which members of their team based on the nature of the task, their experience and their current capacity to take on additional work. The Tribunal accepts that other Validators did have the requisite experience to work on the IHR VaR model; and Mr Samnick was already working on two projects. There is no evidence basis on which to infer that any previous protected acts were the basis for failing to assign him this task. The Tribunal finds that this decision was done solely on the basis of the needs of the business.

1411. **[LS Issue 6.9]** Mr Kim was not threatening Mr Samnick with a conduct issue. He was giving him a reasonable warning that there may be disciplinary consequences if he refused to engage with a direct instruction from his line manager. His approach to Mr Samnick was not influenced by any previous protected acts.

1412. **[LS Issue 6.10]** There was no requirement that concerns raised with the Ethics Point hotline should be automatically treated as grievances if they were not considered appropriate to be investigated as whistleblowing complaints. It would be inappropriate to do so. Mr Samnick had chosen to raise his concerns through the Ethics Point helpline, a confidential service, rather than as a grievance. If he had raised his concerns as a grievance, his anonymity would not be protected. Therefore, he was given the option as to whether he wanted to trigger the grievance process.

1413. **[LS Issue 6.11]** The decision to move from a PIP to the formal capability procedure was taken because Mr Samnick was failing to engage with the PIP process. He had refused to have any discussion about the contents of the PIP and failed to attend any of the review meetings scheduled to discuss his progress. The PIP process had therefore failed. This decision was not taken because of any previous protected acts.

1414. **[LS Issue 6.12]** Mr Samnick was told by Mr Kim that his sick pay would be withdrawn and he may face disciplinary action if he did not make contact by 14 October 2019. In doing so, Mr Kim was acting on ER Direct advice and in accordance with the Bank's Ill Health Policy. Mr Samnick had access to that policy. Had he checked it he would have seen the warning it contained, namely that failure to co-operate with recommended steps during sick leave may result in disciplinary action and sick pay

not being payable. This communication had nothing to do with any previous protected acts.

1415. **[LS Issue 6.13]** This allegation is factually incorrect. Before 17 October 2019, Mr Samnick had not specifically asked to be removed from Mr Kim's line management, only from that of Mr Rood. In response to his complaint about Mr Kim in his grievance of 17 October 2019, Mr Bill Chen was proposed as his welfare contact. The Bank's position on the identity of Mr Samnick's line managers had no connection with any previous protected act.

1416. **[LS Issue 6.14]** Mr Samnick complains that the invitation to the grievance meeting failed to ask him what adjustments he needed "to get to, from and/or during the grievance meeting". The Tribunal rejects this criticism. The wording of this email was standard wording based on a template. It had not been adjusted in any way because of any protected acts that Mr Samnick had previously done. In any event, Mr Haworth's wording asked Mr Samnick to contact him if he had any specific needs at the meeting or if he had any other questions. This gave him a clear opportunity to highlight particular adjustments both in terms of the meeting and arrangements for getting to and returning home from the meeting.

1417. **[LS Issue 6.15]** There is no evidence from which to infer that the refusal to treat Mr Samnick's complaint about Mr Easdon's appointment as a grievance manager was influenced by any previous protected acts. The Tribunal accepts the explanation given by Ms Surendran for this refusal in her letter of 6 December 2019 and as further explained in her evidence. Further it is incorrect for Mr Samnick to argue that Ms Surendran would not address the alleged failure to make reasonable adjustments to the proposed grievance meeting. She had agreed the grievance process being managed by Mr Easdon could be conducted in writing as Mr Samnick had requested; and she had offered him the option of a separate grievance process in relation to Mr Haworth's conduct if he thought that Mr Haworth's actions were inappropriate. This would have included in relation to the extent of the adjustments offered. However, it was for Mr Samnick to indicate whether he wished to pursue that separate grievance process further.

1418. **[LS Issue 6.16]** The reason for the error as to the date on which Mr Samnick's entitlement to sick pay stopped is explained in the Tribunal's factual findings. It was a simple administrative error which had nothing to do with any previous protected acts.

1419. **[LS Issue 6.17]** The decision to conduct Mr Samnick's 2019 performance review without input from Mr Samnick was not influenced to any extent by previous protected acts. Mr Samnick has not established any facts from which such an inference could be made. The reason why it was completed without his input was because he had not responded to two emails sent in October 2019 asking for his input. He had been

absent throughout the period since and had not been contacted again asking for his input to be provided.

1420. **[LS Issue 6.18]** Mr Samnick criticises Mr Easdon's grievance outcome and the procedure that had been adopted in reaching the outcome. He has not provided any evidence from which an inference can fairly be drawn that Mr Easdon was influenced in his approach by previous protected acts.

1421. In his comments on an earlier draft of these Reasons, Mr Samnick has argued that the Tribunal needs to deal with the legal provisions in Section 27(1)(b) in determining the victimisation claims. Section 27(1)(b) provides that it is victimisation if A subjects B to a detriment because "A believes that B has done, or may do, a protected act". Having checked paragraph 4 of his Particulars of Claim (which lists the claims he is bringing) **[411]**; the List of Issues; and his written Closing Submissions, it is clear that he has not previously argued his victimisation claim on this basis. It is not now open to him to advance such a case.

Direct race discrimination

1422. **[LS Issue 7.1]** The Tribunal has found that this allegation is factually incorrect.

1423. **[LS Issue 7.2]** The Tribunal has found that there was no detrimental treatment in the respect alleged.

1424. **[LS Issue 7.3]** It is factually correct that Mr Samnick was not informed about the promotion process, not included in the promotion process and was not promoted. This was entirely because the quality of his performance was not worthy of considering him for promotion. It was not to any extent because of his race. Mr Harrison is not an appropriate comparator because his performance was significantly stronger. Mr Bill Chen and Ms Li are not appropriate comparators. They were treated in the exactly same way as Mr Samnick at the end of 2014 because they were not included in the promotion process either.

1425. **[LS Issue 7.4]** Mr Samnick ought to have fully appreciated the expectations for his written work before the mid-year performance appraisal. There was no failure to inform him of what was expected. In any event, Mr Albrecht's approach to managing and assessing Mr Samnick's performance had nothing to with Mr Samnick's race. Mr Harrison did not receive a copy of any "writing standards" document.

1426. **[LS Issue 7.5]** Mr Samnick would have known that the Bank was seeking to fill the vacancy created by Mr Albrecht's departure. He had the opportunity to apply for this vacancy but, for whatever reason, chose not to submit an application. Mr Rood is not an appropriate actual comparator for the purposes of a direct race discrimination

complaint, because both he and Mr Samnick had an equivalent opportunity to apply for the role.

1427. **[LS Issue 7.6]** The Tribunal has found that Mr Samnick was allocated a full workload. There was no indication from the projects to which he was assigned that it was not part of the plan for him to be in the team for the long term. This allegation is factually incorrect.

1428. **[LS Issue 7.7]** The Tribunal has rejected the factual basis on which this allegation is founded.

1429. **[LS Issue 7.8]** Mr Samnick was not included in the weekly meetings to discuss progress on the IHC VaR model validation because he had not been assigned as Validator for this project or given specific responsibilities that required his attendance. The named comparators (Mr Venkatraman, Ms Giammarino and Mr Mavros) were not in a directly comparable situation to him. They were involved in the project and Mr Samnick was not. This was not direct race discrimination.

1430. **[LS Issue 7.9]** Mr Samnick has not proved any facts from which it could be inferred that Mr Rood's comments during the mid-year 2017 appraisal meeting on the quality of Mr Samnick's draft reports were influenced by his race. Mr Rood's comments reflected the comments he had made at the time about the need for improvement. They were based on his impression of the standard required for validation reports as shown by the examples he gave during the meeting.

1431. **[LS Issue 7.10]** The decision to promote Mr Bill Chen was taken entirely on merit, given his consistently high previous performance. The decision not to promote Mr Samnick or to include him in a promotion process was taken entirely on merit, namely his performance in recent years had not been consistently strong enough to justify promotion. Others of different ethnicities working in the same team as Mr Samnick were not promoted either. Mr Samnick's failing to secure promotion was nothing to do with his race.

1432. **[LS Issue 7.11]** The Tribunal rejects Mr Samnick's allegation that he was not allocated a full workload in January 2018 or that particular tasks he was allocated were less significant than those allocated to other Validators. It is not correct that he was only allocated one active project. The factual basis of this allegation is rejected.

1433. **[LS Issue 7.12]** Ms Karopowicz and Mr Harrison - to whom the project was reallocated - are named as comparators. They are not actual comparators. Unlike Mr Samnick they were not also facing an impending deadline on another validation on which they were also working. This project was reallocated to them to ensure that impending deadlines on this project and on the CDS spread validation project were met. The decision to do so had no connection with the Claimant's race.

1434. **[LS Issue 7.13]** Mr Samnick was not interviewed because the recruiting manager wanted to appoint someone who was already at Director level. Mr Samnick was not at Director Level. It had nothing to do with his race.

1435. **[LS Issue 7.14]** The reallocation of the representative portfolio validation work to Ms Giammarino was entirely due to Ms Giammarino's availability and to Mr Samnick's lack of availability at the time. It was not race discrimination. Her availability and Mr Samnick's non-availability means that they are not actual comparators for the purposes of a direct race discrimination claim.

1436. **[LS Issue 7.15]** Having sought advice from ER, Mr Rood had decided to put Mr Samnick on a PIP in August 2018. This was prompted by Mr Samnick's inconsistent performance and his refusal to engage constructively with performance feedback. Both Mr Moune Nkeng and Mr Abanda Bella, who share Mr Samnick's race, were supported to enroll on the course to obtain an IRM Certificate. The reason why Mr Samnick was not similarly supported for this training opportunity without engaging in a PIP was to enable him to focus his energies on improving his work performance. The way Mr Rood treated Mr Samnick at the meeting on 14 September 2017 had nothing to do with his race. There is no evidential basis on which such an inference could be drawn.

1437. **[LS Issue 7.16]** It was for line managers to decide what work to allocate to which members of their team based on the nature of the task, their experience and their current capacity to take on additional work. The Tribunal accepts that other Validators did have the requisite experience to work on the IHR VaR model; and Mr Samnick was already working on two projects. There is no evidential basis from which to potentially infer that Mr Samnick's race was the basis for failing to assign him this task. The Tribunal finds that this decision was done solely on the basis of the needs of the business. Ms Karpowicz, Ms Giammarino, Mr Venkatraman, Ms Maryam Rastergard and Mr Lefort were not actual comparators because they had different levels of experience and different current workloads.

1438. **[LS Issue 7.17]** Mr Kim was not threatening Mr Samnick with a conduct issue. He was giving him a reasonable warning that there may be disciplinary consequences if he refused to engage with a direct instruction from his line manager. His approach to Mr Samnick was not influenced by Mr Samnick's race.

1439. **[LS Issue 7.18]** The decision to move from a PIP to the formal capability procedure was taken because Mr Samnick was failing to engage with the PIP process. He had refused to have any discussion about the contents of the PIP and failed to attend any of the review meetings scheduled to discuss his progress. The PIP process had therefore failed. This decision was not taken because of Mr Samnick's race.

1440. **[LS Issue 7.19]** This allegation is factually incorrect. Before 17 October 2019, Mr Samnick had not asked to be removed from Mr Kim's line management. In response to his complaint about Mr Kim in his grievance of 17 October 2019, Mr Bill Chen was proposed as his line manager. There was no failure on the part of the Bank to grant any request to remove Mr Kim as line manager. The Bank's position on the identity of Mr Samnick's line managers had no connection with Mr Samnick's race.

1441. **[LS Issue 7.20]** The reason for the error as to the date on which Mr Samnick's entitlement to sick pay stopped is explained in the Tribunal's factual findings. It was a simple administrative error which had nothing to do with Mr Samnick's race. This error was rectified very quickly.

1442. **[LS Issue 7.21]** Intentionally left blank.

Discrimination arising from disability

1443. **[LS Issue 10.1 – 10.7]** Each of these complaints must fail. By the dates of the alleged detrimental treatment, the Respondents did not know and could not reasonably have been expected to know that Mr Samnick had a disability.

1444. **[LS Issue 10.8]** The withdrawal of sick pay prematurely was not something arising from Mr Samnick's disability. It was the consequence of a clerical error which was made in October 2019 as to his sickness absence dates. Mr Kim had wrongly recorded that Mr Samnick's most recent period of sickness had started on 12 August 2019 rather than 2 September 2019 (as recorded on the HR Operations letter dated 21 January 2020 [3693]). At the point where the clerical error occurred, the Respondents did not know nor ought they to have known that Mr Samnick was disabled. The result of that clerical error was that Mr Samnick was wrongly recorded as having taken more sick leave than he had such that the full extent of his contractual entitlement to paid sick leave was wrongly noted to expire on 30 January 2020 rather than around three weeks later, as was in fact the case.

1445. **[LS Issue 10.9**] This alleges there was discrimination arising from disability in Mr Rood carrying out Mr Samnick's End-of-Year performance review without his input. The Tribunal needs to decide why Mr Rood completed the 2019 End-of-Year performance review without Mr Samnick's input. In doing so, it must focus on Mr Rood's 'mental processes' and ask whether any part of his thinking was influenced by something arising from Mr Samnick's disability. Line managers, including Mr Rood, had been told to ensure that the annual performance review process and ratings had been concluded by 31 January 2020. This impending deadline was why Mr Rood completed the performance review when he did, based on the information he had available at the time. The review deadline was not something arising from Mr

Samnick's disability. As a result, this issue does not amount to a breach of Section 15 Equality Act 2010.

Failure to make reasonable adjustments

1446. An employer is not subject to the duty to make reasonable adjustments if it did not know and could not reasonably be expected to know both that a claimant had a disability and that he was likely to be placed at a substantial disadvantage as a result of the alleged provision criterion or practice (Schedule 8, paragraph 20).

1447. The Tribunal has found that the Bank did not know and could not reasonably have been expected to know that Mr Samnick had a disability until the first Occupational Health report was uploaded on 17 December 2019. As a result, there cannot be a failure to make reasonable adjustments in the respects alleged in section 14 of Mr Samnick's List of Issues until after this date. As a result, the Respondents can only be potentially liable for failing to make reasonable adjustments after this date.

1448. Mr Samnick relies on six alleged provisions, criteria or practices (PCPs) **[LS issues 14.3; 14.4; 14.5; 14.6; 14.7 and 14.9]**. The Tribunal must first decide whether these PCPs existed and, if so, were still applicable after 10 December 2019, before considering whether if they amounted in law to a PCP, if they placed Mr Samnick at a substantial disadvantage and whether the Bank knew he was likely to be placed at a substantial disadvantage.

1449. **[LS Issues 14.1 – 14.2]**: Intentionally left blank.

1450. **[LS Issue 14.3]** – the "Disciplinary Threat PCP" focuses on an alleged threat made to Mr Samnick in two letters sent to him in mid-October 2019. The letters warned him of disciplinary action and of withdrawal of sick pay if he did not contact the Bank. By 17 December 2019 such a provision no longer applied. Mr Samnick had contacted the Bank, agreed to an Occupational Health referral, been seen by Occupational Health and a report had been prepared. He had not been subjected to disciplinary action and his sick pay had not been withdrawn. As a result, any alleged failure to make reasonable adjustments based on this PCP must fail.

1451. **[LS Issue 14.4**] – the "Absence Meeting PCP" is said to be a requirement the Bank insisted on having a meeting with him at Head Office to discuss his sickness absence. No such meeting took place at that point. On 20 November 2019, Mr Samnick asked for the meeting to consider his grievances to be conducted in written form. In her response dated 6 December 2019, Ms Surendran agreed that his grievance could be conducted in writing. Thereafter no further requests were made that Mr Samnick should attend a meeting at 1 Churchill Place to discuss his sickness absence. Thus, by the time the Bank could be expected to know of his disability,

there was no live ongoing requirement that he attend any meetings at 1 Churchill Place.

1452. **[LS Issue 14.5]** Mr Samnick argues that there was an ongoing requirement imposed on 17 October 2019 that he should be line managed during his sickness absence by Mr Kim and by Mr Rood. This he labels the "Line Management PCP", which he alleges placed him at a substantial disadvantage in comparison to non-disabled persons. In fact, management of his sickness absence was transferred to Mr Bill Chen on 21 October 2019. When Mr Samnick complained about Mr Bill Chen being the point of contact, day-to-day responsibility was assigned to Mr Patel. As a result, the Tribunal rejects the existence of this PCP. In any event, there was no failure to make this reasonable adjustment. Mr Samnick was asking by way of reasonable adjustment that his absence should be managed by an HR/Employee Relations adviser. From 1 November 2019 most of the email communication from the Bank to Mr Samnick came from Mr Haworth, ER Case Manager.

1453. **[LS Issue 14.6]** Mr Samnick argues that there was a "Grievance Meeting PCP", namely a requirement that he should attend a grievance meeting at the Bank's Head Office. The Tribunal accepts that this was the general practice for grievance meetings. Mr Samnick says this placed him at a substantial disadvantage. Again, the Tribunal accepts this is likely to be the case, based on the medical evidence in the Occupational Health report. However, when he objected to a meeting being held at the Bank's offices, Ms Surendran agreed to his request that the grievance process be conducted in writing. This was communicated to him on 6 December 2019, before the point at which the Bank knew or could reasonably be expected to know of his disability. Therefore, the Bank is not in breach of a duty to make reasonable adjustments in this respect.

1454. **[LS Issue 14.7]** The "Sick Pay PCP" is expressed as "R1 withdrew LS's sick pay due to R3 having entered incorrect sick leave dates for LS into R1's systems (saying his leave started on 12 August rather than 4 September 2019). This was a specific clerical error in Mr Samnick's case, rather than a general practice that placed him at a substantial disadvantage. Accordingly, the alleged PCP is not a legally permissible basis on which to base a duty to make reasonable adjustments.

1455. **[LS Issue 14.8]** Mr Samnick alleges that there was a "Performance Management PCP", namely a provision that his 2019 end-of-year performance review undertaken in February 2020 was carried out without his input. That is because, in his case, by the time it was finalised, he had not submitted any self-appraisal or any feedback from third parties nor had he attended a meeting to discuss his performance. The Tribunal accepts that this was a valid PCP for the purposes of a reasonable adjustment claim. A PCP "carries the connotation of a state of affairs indicating how the employer generally treats similar cases or how it would deal with a similar case if it occurred again" (*Ishola v Transport for London* [2020] ICR 1204). The Tribunal

finds that the Bank would have continued to carry out end-of-year performance reviews for other employees who, for whatever reason, had not provided their input. The Bank did so in relation to Mr Abanda Bella. This is because it was a regulatory requirement that there should be an annual review for each performance year.

1456. The next question is whether this "Performance Management PCP" placed him at a substantial disadvantage in comparison to non-disabled persons by reason of his disability. The features of his particular disability were set out in the Occupational Health reports. They indicated that attending any meeting in person and/or over the telephone would very likely exacerbate and trigger a panic attack. Given these features of his health, the PCP placed Mr Samnick at a substantial disadvantage in comparison to non-disabled persons. Non-disabled persons would have been able to speak to a manager to provide their input into the process which led to their Annual Review. The Bank knew or could reasonably be expected to know that that this provision placed him at a substantial disadvantage, because the Occupational Health report specifically advised he was not well enough to attend any meeting in person or over the telephone.

1457. As a result, the Bank came under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. Mr Samnick argues that he should have been asked for his input into the End-of-Year performance review **[LS issue 14.10.6]**. The Respondents argue Mr Samnick was asked for his input into the performance review process and failed to respond. They note he was asked for his input in automated emails sent on 1 and 25 October 2019 requesting him to provide a self-assessment review and any feedback from third parties. The Respondents argue he would have received and read these emails - even though he was on sick leave, he still had access to his work email address and had been using it to send regular emails.

1458. However, the duty to take such steps as it is reasonable to take to avoid the disadvantage arises at the point where the Bank had the required knowledge that a claimant was disabled. Here that is from 10 December 2019. The focus is therefore from that point onwards, rather than on what has happened in the past. Whether a particular step is reasonable at that point may be impacted by whether that step has already been effectively provided in the past. Even though he would have received the two previous automated emails, the Tribunal concludes that it would have been a reasonable adjustment for Mr Patel (or another manager) to have contacted him shortly after 10 December 2019 to request the necessary written input for his self-assessment and to request any feedback from colleagues. This is for the following reasons:

    a. The previous requests had come from an automated email service to his work email. Although he was able to access his emails, he was not in the office. By reason of his physical absence, it is a reasonable inference he was less well

placed to research the necessary details to include on the self-appraisal form; and to contact stakeholders.

b. Those email requests had been sent at a time when he was off sick and was unwell. At the time of the first email (1 October 2019), his line manager (who would be the natural person for him to contact with any questions in relation to his self-appraisal) was Mr Rood. It is implicit in the medical evidence and in his request for a different line manager that direct communications with Mr Rood would have been stressful for him. As a result, had the Bank specifically considered the point, it would have realized that Mr Samnick was unlikely to want to respond to Mr Rood with his self-review.

c. There had been no other communication from management seeking his input, either around the time of these two emails or since. There has been no evidence from Mr Patel. It does not appear that he sent Mr Samnick a single email since he emailed to introduce himself when appointed as the point of contact and when he was reassigned to the case on 18 November 2019 – until 5 October 2020 to note the 10-year anniversary of his employment at the bank.

d. No good reason has been provided as to why it would be too onerous for an alternative manager to have emailed Mr Samnick seeking his input into the performance review process. Indeed, Mr Haworth's evidence is that new guidance was introduced in Autumn 2021 on the steps that should be taken when the business is in the process of determining PD ratings and an employee is on long-term sick leave. This apparently includes taking steps to remind employees that they may submit a self-appraisal. That guidance has not been disclosed. The Tribunal reasonably assumes it would have required a proactive approach from management seeking a self-appraisal.

e. It appears that the implications of Mr Samnick's absence and lack of communication in relation to the 2019 process were not appreciated until shortly before the 2019 performance review deadline. This may have been because this was an unusual situation and because a different person was managing the sickness absence (Mr Patel) to the person who was assessing Mr Samnick's performance during 2019 (Mr Rood).

1459. As a result, the Tribunal finds that the Bank was in breach of its duty to make reasonable adjustments under Section 20 Equality Act 2010 in failing to specifically ask Mr Samnick at any point after 10 December 2019 for his input into the End of Year performance review.

Harassment related to disability

1460. **[LS Issue 15.1]** The language used in the 5 September 2019 email did not violate Mr Samnick's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for him. There is no contemporaneous evidence that it had a particular impact on him. His evidence in these proceedings about his reaction to this email is not plausible. He says he only saw this email in early 2020, but there is an email in which he forwarded it to Mr Abanda Bella and Mr Moune Nkeng on 6 September 2019. Furthermore, objectively speaking, it did not put an employee in his position under excessive pressure. The Tribunal has reached this conclusion having regard to the Respondents' previous unsuccessful attempts to get him to agree to an Occupational Health referral, and having regard to whether it was reasonable for Mr Rood's language to have the proscribed effect on Mr Samnick. A persistent failure to co-operate with reasonable instructions from a line manager would amount to a breach of contract. It was reasonable for Mr Rood to mention this contractual consequence when he asked Mr Samnick again to agree to an Occupational Health referral, particularly given the wording of the Ill Health Procedure and the lack of any good reason why he should not agree to this referral. Warning him that he would be in breach of contract was entirely appropriate.

1461. **[LS Issue 15.2]** Mr Rood did not know that Mr Samnick was disabled at this point. In terms of Mr Rood's mental processes in writing the emails of 13 September 2019 and 25 September 2019 as he did, this was not related to Mr Samnick's disability. Instead, it was his attempt to implement the Ill Health Policy by emphasising a consequence of failing to consent to an Occupational Health assessment. As stated in that policy, "if employees do not co-operate fully with the OH process, it may impact their eligibility for sick pay … Employees are therefore expected to provide their consent" That is why Mr Rood warned him that if he did not co-operate, his sick pay would be stopped. Furthermore, and with this aim in mind, and viewed in the context of the preceding correspondence, neither the purpose or the effect of Mr Rood's correspondence was to violate Mr Samnick's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. Even if Mr Samnick took offence, it was not reasonable for him to do so, given the wording of the Ill Health Procedure.

Racial harassment

1462. **[LS Issue 21.1]** The Tribunal has rejected the factual allegation that Mr Kim frequently referred to Mr Samnick, Mr Abanda Bella and Mr Moune Nkeng as the 'French legion'.

1463. **[LS Issue 21.2]** The Tribunal has rejected the factual basis on which this allegation is made. Mr Rood did not snub Mr Samnick at the Christmas lunch. In any event, whilst Mr Rood could have been personally liable, the Bank cannot be legally liable

for Mr Rood's conduct at this lunch, as he was not an employee at the time. He was attending as a guest and not in order to fulfill any contractual obligation.

1464. **[LS Issue 21.3A]** There was insufficient time for Mr Samnick to complete this validation after his return from paternity leave, given the impending deadline. Ms Karpowicz and Mr Harrison had the necessary experience and capacity to do this work. The decision to remove this validation from Mr Samnick was not related to race but for operational business reasons.

1465. **[LS Issue 21.3B]** Mr Samnick was never engaged in the IHC VaR validation before his paternity leave in May 2017. This validation was only assigned to the IVU in August 2017 and was allocated to Mr Venkatraman at that stage. It was not an act of harassment related to race.

1466. **[LS Issue 21.4]** As stated in the Tribunal's conclusion on **LS issue 7.8**, Mr Samnick was not included in the weekly meetings on IHC VaR because he was not included in those assigned to this validation. His exclusion was not related to race.

1467. **[LS Issue 21.6]** Mr Kim was not threatening Mr Samnick with a conduct issue. He was giving him a reasonable warning that there may be disciplinary consequences if he refused to engage with a direct instruction from his line manager. This was not conduct that violated Mr Samnick's dignity or created the proscribed environment. His approach to Mr Samnick was not influenced by Mr Samnick's race.

Instructing, causing or inducing basic contraventions

1468. **[LS Issue 23.1]** Mr Kim had no involvement in deciding whether or not Mr Samnick was invited to a team meeting on 3 October 2017 about the IHC VaR model validation. As already explained in the Tribunal's factual findings, Mr Samnick was not invited because he had no role in the validation. Therefore, his exclusion did not amount to direct race discrimination or racial harassment.

1469. **[LS Issue 24.1]** The Tribunal does not accept that Mr Samnick was ignored and made to feel embarrassed and humiliated in front of the team in not being invited to the meeting on 3 October 2017**.**

Aiding contraventions

1470. **[LS Issue 25.1]** There was no secret team meeting on 2 October 2017. There was a meeting on 3 October 2017 to discuss the IHC VaR model validation for those involved. Mr Samnick was not involved in that validation and therefore it was not appropriate for him to be included.

Jurisdiction

1471. Mr Samnick's failure to make reasonable adjustments claim has succeeded in one respect – failing to adjust the performance review process so that he had an effective opportunity of inputting into the process of assessment and review. The limitation period starts to run from the "expiry of the period in which the person might reasonably have been expected to do it" (Section 123(4)(b)). Interpreting the performance review period from Mr Samnick's point of view, the last date by which any self-review from Mr Samnick could have been considered as part of the overall process was the end of January 2020. Therefore the three month limitation period started to run on 31 January 2020 and expired on 30 April 2020.

1472. Mr Samnick contacted ACAS to initiate Early Conciliation in his dispute with Barclays on 11 May 2020. As a result, any complaints about events occurring before 12 February 2020 fall outside the primary limitation period.

1473. As a result, Mr Samnick is just under a fortnight out of time to bring this complaint. He has not succeeded on any of his other complaints. The result is that he cannot rely on any later incidents occurring within the primary limitation period to establish that this failure to make reasonable adjustments was part of conduct extending over a period.

1474. The Tribunal needs to assess whether it would be just and equitable to disapply the primary limitation period so that the Tribunal has the jurisdiction to award Mr Samnick a remedy for this act of discrimination. All relevant circumstances need to be considered, applying the legal principles set out above.

1475. The most relevant factors are the state of Mr Samnick's knowledge of relevant time limits; the state of his health and its impact on his ability to progress litigation in the employment tribunal; the extent to which that or anything else provides a good reason for his delay; and the extent of any prejudice caused to the Respondents.

1476. The Tribunal deals with each in turn.

1477. So far as Mr Samnick's knowledge of relevant time limits, the Tribunal is not aware that he made any reference to time limits in the contemporaneous documents. Mr Samnick does not state in his witness statement that he was unaware of relevant time limits. The Tribunal has found that Mr Abanda Bella was helping him with his grievance and Mr Abanda Bella did have knowledge of the three-month time limit for bringing employment tribunal proceedings (as he referred to in correspondence on 11 November 2019 and on 8 January 2020). The likelihood is that Mr Samnick would have realised that there were short time limits for bringing employment tribunal

proceedings by late 2019. However, at the end of January 2020, Mr Samnick did not appreciate the potential consequence for him of not participating in the appraisal process. He did not receive his ratings until the middle of February and not receive Mr Rood's written appraisal until a later point.

1478. So far as his state of health is concerned, he had been off work on sick leave since July 2019 with mental health symptoms. There is no suggestion that these mental health symptoms were not genuine. As a result, they would have impacted on his ability to concentrate and engage in complex tasks, such as drafting Tribunal proceedings featuring multiple complaints under various different legal jurisdictions.

1479. There is no specific evidence from the Respondent that it is at a forensic disadvantage as a result of the relatively short delay of less than two weeks in complaining about his lack of personal input into the 2019 performance review process.

1480. The health issues facing Mr Samnick are sufficiently significant that the balance of justice and equity favours disapplying the primary limitation period and allow Mr Samnick to obtain a remedy for this act of discrimination.

1481. The Tribunal does not find that the treatment he experienced before this date formed part of conduct extending over a period such that it is to be treated as done at the end of the period (Section 123(3)(a) Equality Act 2010). The earlier treatment did not amount to discriminatory acts or omissions.

1482. Because all of Mr Samnick's other complaints fail the Tribunal does not need to consider whether it would be just and equitable to extend time in relation to earlier matters.

1483. For the sake of completeness, the Tribunal finds:

a. That in relation to Equality Act 2010 complaints, it would not have been just and equitable to extend the primary time limit in relation to any events occurring before the start of his period of sick leave on 30 July 2019. This is because he would not have had a sufficient medical explanation for failing to bring Tribunal proceedings at an earlier point. Even if he was not sufficiently well to attend work, the evidence indicates he was sufficiently well to lodge lengthy grievances in late 2019.

b. That in relation to Employment Rights Act 1996 complaints, it would have been reasonably practicable to have issued proceedings within three months of any incidents occurring before the start of his period of sick leave on 30 July 2019.

1484. Therefore, the Tribunal lacks jurisdiction to consider any complaints in relation to events before 30 July 2019.

CONCLUSIONS - CHRISTIAN ABANDA BELLA

Protected disclosures

1485. **[CAB Issue 1/1.1]** The communication of 8 August 2017 was not a qualifying disclosure:

a. At the point he contacted the Whistleblowing Team on 8 August 2017, Mr Abanda Bella did not genuinely believe any of those individuals he was complaining about in his communication to the Whistleblowing Team were Company Directors and so were subject to specific duties under the Companies Act 2006. Given his extensive previous experience working in financial services, he would have known that those who had the legal status of directors were those who sat on the Bank's Board of Directors. He knew that those who had the job title 'Director' were not thereby statutory directors. He did not refer to this alleged belief in his Particulars of Claim. Therefore, he did not believe in relation to this alleged disclosure or the other disclosures where this is alleged (**CAB issues 1/1.2 to 1/1.5; 1/1.7 to 1/1.10, 1/1.12 and 1/1.16**) that the information he was disclosing tended to show a breach of Section 172 or Section 174 of the Companies Act 2006.

b. Further, given the wording of SR/11-7 as explained in the Tribunal's findings of fact, any belief that the information he was disclosing was a breach of SR/11-7 was not a reasonable belief. SR/11-7 is drafted so as to provide latitude for banks to devise their own templates and documentation.

1486. In any event, the communication with the Whistleblowing Team was confidential and so was not disclosed to Mr Rienacker or to any of the other managers who are alleged to have retaliated against him for making this alleged disclosure.

1487. **[CAB Issue 1/1.2]** Mr Abanda Bella's email of 7 September 2017 was not a qualifying disclosure:

a. For the same reasons as in relation to **[CAB Issue 1/1.1]**, Mr Abanda Bella did not have a genuine belief that the information he was disclosing tended to show a breach of the legal obligations imposed on statutory directors.

b. He did not have a reasonable belief that the information he was disclosing was a breach of SR/11-7. It was a complaint about the lack of a clear and up to date template, that made no express or implied reference to any obligations under SR/11-7.

1488. Mr Abanda Bella's email of 7 September 2017 was not distributed more widely than to Mr Rienacker.

1489. **[CAB Issue 1/1.3]** The information disclosed by Mr Abanda Bella in his communication with the Raising Concerns Hotline on 15 September 2017 did not have the necessary factual specificity to amount to a qualifying disclosure. What was said was expressed in general terms at that point and only clarified in response to specific questions later. This is apparent from the contemporaneous record noting that "the whistleblower was unable to relay his concerns fully" **[586]**

1490. **[CAB Issue 1/1.4]** Mr Abanda Bella did not reasonably believe that his communication with the Raising Concerns hotline was a disclosure of information tending to show breach of a legal obligation whether under SR/11-7 or otherwise. There was no reference to any breach of a legal obligation in what is recorded by the recipient of the information on the Raising Concerns Hotline. There was no express or implicit reference to the Equality Act 2010. Rather, his concern about the potential impact was that a late or an insufficiently strong submission might cause "serious reputational damage". Again, there was no genuine belief that the information disclosed tended to show there was or was likely to be a failure to comply with directors' duties.

1491. **[CAB Issue 1/1.5]** Mr Abanda Bella's email of 25 October 2017 only made reference to Barclays values, not to any particular legal obligation. Those values were not legal obligations. Specifically, the email did not reference SR/11-7, the duties of statutory directors, or any obligations imposed by the Equality Act 2010. He did not reasonably believe that the information he was disclosing tended to show a failure to comply with any legal obligation.

1492. **[CAB Issue 1/1.6]** Mr Abanda Bella's email of 24 January 2018 was expressed in very general terms. It did not have the necessary degree of factual specificity to amount to a qualifying disclosure. There was no reference either expressly or by implication to the Equality Act 2010. Mr Abanda Bella did not reasonably believe that his email disclosed information tending to show a breach of the Equality Act 2010.

1493. **[CAB Issues 1/1.7 and 1/1.8]** These were not qualifying disclosures:

    a. The Tribunal finds that Mr Abanda Bella did not believe that the proposed team move was an act of race discrimination. He did not refer to it as race discrimination in the meeting on 21 March 2018, in contemporaneous emails on 22 March 2018 or subsequently or when he lodged a formal grievance in relation to the whole period of his employment in 2019. Therefore, he did not believe that the information he was disclosing tended to show the Bank was failing to comply with its duties under the Equality Act 2010.

b. In questioning the legality of the move, he was not referring to any obligations under SR/11-7; or to the duties on directors imposed by the Companies Act 2006. He did not believe that the information he was disclosing tended to show the Bank was failing to comply with its duties under those provisions.

c. Instead, he was referring to his perception that such a move would be a breach of his employment contract. That was not a reasonable belief. Had he checked the terms of his contract he would have seen he was employed as "VP Pricing Model Validation … or such other role as the Company reasonably decides from time to time".

d. In any event, because it only concerned his own contractual situation and that of Mr Maouche, he did not genuinely believe that this disclosure was in the public interest. He did not say so at the time. Nor did he reasonably believe that this disclosure was in the public interest, as further explained in dealing with CAB Issue 1/1.9.1 below.

1494. **[CAB Issue 1/1.9]** Mr Abanda Bella did not make any disclosure about any gap in the LV model, given that he accepted that the density testing had already been done. As a result, this alleged protected disclosure is factually incorrect. In any event, Mr Abanda Bella did not believe that the approach that Mr Rienacker and Mr Kim were suggesting to the density testing was a breach of a legal obligation in any of the respects alleged in relation to this protected disclosure. As he himself said in paragraph 150 of his witness statement, he was worried about "the reputational and/or audit risk of the IVU function". He does not say he was worried about a breach of a legal obligation.

1495. **[CAB Issue 1/1.9.1]** The Tribunal accepts Mr Abanda Bella's reference to "illegal outcomes" reflected his genuine belief that a role swap with Mr Maouche would be a breach of his employment contract and of that of Mr Maouche. However, the Tribunal does not accept that this was a reasonable belief. There is no evidence that he checked the wording of his employment contract or sought advice from HR on whether such a swap was permitted by the contractual wording. In any event, the swap only concerned two employees. It involved two employees continuing to use their established skillset as a Validator, and applying it to a new type of model, whilst working under the supervision of a Lead Validator. It did not involve an alleged breach of any other employees' employment contracts. Mr Abanda Bella did not genuinely believe that the reference to "potentially illegal outcomes" was a disclosure made in the public interest. He did not say so, although this is a point he did make on other occasions when purporting to make protected disclosures. Furthermore, applying the guidance in *Chestertons*, the Tribunal does not find that Mr Abanda Bella reasonably believed that this disclosure was in the public interest. It affected only two individuals,

was never implemented, and did not have any specific consequences for particular projects.

1496. **[CAB Issue 1/1.10]** This was not a qualifying disclosure. The information in Mr Abanda Bella's email did not have the necessary factual specificity to disclose a breach or potential breach of any of the provisions on which he relies as a breach of a legal obligation – whether under SR 11-7, Article 369, or under ss172 & 174 Companies Act 2006.

1497. **[CAB Issue 1/1.11]** The Tribunal has been unable to make any factual findings as to what Mr Abanda Bella said during the Culture Focus Group meeting he attended. Therefore, he has not established that he made a qualifying disclosure.

1498. **[CAB Issue 1/1.12]** Mr Abanda Bella's email sent on 3 September 2018 with the subject line "Inception pricing controls gap" was not a qualifying disclosure. It did not refer to any of the legal obligations relied upon by Mr Abanda Bella to argue he was disclosing information tending to show a breach of a legal obligation (as listed in the Tribunal's findings of fact). Unlike some of his later communications, it did not describe itself as a qualifying disclosure. Whilst such a self-description is not a prerequisite for a determination of the legal status of the communication, it is relevant to whether he believed there was a breach of any of the legal obligations he now relies upon. The Tribunal finds that he did not. In any event, the email was expressed in very general terms and did not have the necessary factual specificity to amount to a disclosure of information for the purposes of a qualifying disclosure. This is highlighted by Mr Kim's response, asking for further detail and a concrete example. This was never provided.

1499. **[CAB Issue 1/1.13]** The Tribunal finds that when Mr Abanda Bella sent his email of 28 November 2018, he did not believe he was disclosing information which tended to show a breach or likely future breach of Article 369 of EU Regulation 575/2013. There was no reference to this Regulation in his email, either expressly or by implication. The Tribunal accepts that the Equity Swap validation was a pricing model validation. Article 369 only applied to risk model validations, and Mr Abanda Bella would have known this. As a result, it was not a qualifying disclosure.

1500. **[CAB Issue 1/1.14]** Mr Abanda Bella did not genuinely believe that in his email of 2 April 2019 he was disclosing information that tended to show a breach or a likely (i.e. more probable than not) breach of Article 369 of EU Regulation 575/2013. He was not making a qualifying disclosure. Rather he was responding to the criticisms made by Mr Rienacker about the quality of the work carried out by Mr Abanda Bella and Mr Moune Nkeng on this particular validation.

1501. **[CAB Issue 1/1.15]** The email of 3 April 2019 made no reference to the Equality Act 2010 or any allegations of discriminatory conduct. The Tribunal does not consider

that Mr Abanda Bella genuinely believed he was disclosing information that tended to show a breach or a "likely" breach of any of the provisions of the Equality Act 2010. Furthermore, the email was expressed in very general terms and did not contain the necessary degree of factual specificity to be a qualifying disclosure.

1502. **[CAB Issue 1/1.16]** Mr Abanda Bella's email of 7 May 2019 was not a qualifying disclosure. There is no disclosure of information reasonably believed by Mr Abanda Bella as tending to show a breach of a legal obligation, either expressly or by reasonable implication. His email made no reference to SR 11-7 to Sections 172 and 174 Companies Act 2006, or to the provisions against victimisation in the Equality Act 2010 or the protections for whistleblowers in the Employment Rights Act 1996. It made no reference to the contents of these provisions. In particular it did not allege he had previously complained of race discrimination or that this was the reason for any retaliation. Mr Abanda Bella was arguing by email about the way that Mr Rienacker had been managing himself and the team, epitomised by the phrase "this is … well below the standard of good managerial judgment". Insofar as the email alleged harassment, his email was speaking about his own situation, not alleging that the harassment was more widespread. For that reason, he did not reasonably believe that disclosure was in the public interest.

1503. **[CAB Issue 1/1.17]** This issue refers to three alleged communications by Mr Abanda Bella – an email on 7 May 2019; verbally in a meeting with project stakeholders on 14 May 2019; and verbally in a team meeting on 22 July 2019.

a. Email of 7 May 2019 – this appears to duplicate **[CAB issue 1/1.16]** and was not a qualifying disclosure for the same reason.

b. Meeting of 14 May 2019 – Mr Abanda Bella's points were raised in a general and abstract way. They lacked the necessary factual specificity to amount to a disclosure of information within Section 43B Employment Rights Act 1996.

c. Team meeting on 22 July 2019 – as set out in the Tribunal's findings of fact, this meeting was one part of an ongoing internal IVU team discussion about the appropriate methodology on the Q/C/B validation. Nothing was finalised and further discussion internally and with QA was anticipated. Therefore, the Tribunal rejects the suggestion that Mr Abanda Bella had a genuine belief that any existing gaps within the new testing approach agreed by Mr Rienacker with QA for the Q/C/B model validation at that point were liable to breach any regulatory requirements.

1504. Mr Abanda Bella did not have a reasonable belief that the information he was disclosing about Q/C/B testing tended to show any past, present or likely (i.e. more probable than not) future failure to comply with Article 369 of EU Regulation 575/2013. This is because, whatever he may have believed about the current

problems with the proposed approach to testing, no agreement had been reached on the current implementation testing for Q/C/B; still less had the model been finally approved. It was still in development.

1505. **[CAB Issue 1/1.18]** The matters raised by Mr Abanda Bella in his communication with the Raising Concerns team did not have the necessary factual specificity to amount to disclosures of information for the purposes of making a qualifying disclosure. The points he was making were expressed in very general terms without providing particular details. There was no information disclosed of events amounting to discrimination or victimisation under the Equality Act 2010. The allegation of "retaliation for speaking up about issues about the way the team operates" was expressed in very general terms and did not amount to disclosure of information he could reasonably believe tended to show a failure to comply with Section 47B Employment Rights Act 1996, namely the right not to suffer detriment on the ground he had made a protected disclosure.

1506. **[CAB Issue 1/1.18.1]** Given the Tribunal's factual findings as to what Mr Abanda Bella said during the 16 July 2019 meeting about the Asian Option validation, this was not a disclosure of information with the necessary factual specificity to amount to a qualifying disclosure. Furthermore, he did not have a reasonable belief that the information he provided tended to show the Bank was failing to comply with Article 369 of EU Regulation 575/2013. Mr Abanda Bella made no reference to Article 369 in what was said during the meeting. This cannot be implied from what was said or written. This particular project was still work in progress and had not yet been finalised. Article 369 concerns market risk models, not pricing models and the Asian Option was a pricing model.

1507. **[CAB Issue 1/1.19]** Mr Abanda Bella's email of 11 October 2019 was not a qualifying disclosure. He did not reasonably believe that the information he was disclosing was in the public interest. The entire focus of the email was on his own request to be separated from line management by Mr Kim as well as by Mr Rienacker, and the impact of Mr Kim's ongoing involvement on his own health. It did not concern the welfare of other employees.

1508. **[CAB Issue 1/1.20]** Mr Abanda Bella's ten-page document dated 15 October 2019 was styled as a grievance rather than raising a whistleblowing concern. He had previously raised whistleblowing concerns by contacting the Raising Concerns team. The Tribunal finds that Mr Abanda Bella did not have a genuine belief that the information he was disclosing was in the public interest. Even if he did, then this was not a reasonable belief. The entire focus of the document was on his own situation. It did not refer to any others who had been impacted by the treatment about which he was complaining.

1509. **[CAB Issue 1/1.21]** The letter of 18 October 2019 to Mr Kim, complaining about Mr Kim writing to him despite previously having been asked not to, was not a qualifying disclosure. Mr Abanda Bella did not reasonably believe that the information he was disclosing was in the public interest. Apart from reference to Mr Samnick, the entire focus of the document was on his own situation. The reference to Mr Samnick did not sufficiently expand the category of those affected by the alleged treatment so he could reasonably believe disclosure was in the public interest.

1510. **[CAB Issue 1/1.22**] The lengthy grievance dated 11 November 2019 is argued to be a qualifying disclosure under Section 43B(1) in various respects:

a. Disclosing information that Mr Abanda Bella reasonably believed tended to show a breach of the Equality Act 2010. The 57-page document frequently alleged breaches of various sections of the Equality Act 2010. It referred to Mr Samnick and to Mr Moune Nkeng (at paragraph 11) and elsewhere to "certain employees of African race" (paragraph 29) and "workplace colleagues from Cameroon" (paragraph 119) as those who had suffered discriminatory treatment. However, the only specific information disclosed about the treatment of Mr Samnick was at paragraphs 52-55, 176, and 196 and about Mr Moune Nkeng was at paragraphs 72 – 76. There was also a general reference to the treatment of Mr Moune Nkeng and Mr Samnick at paragraphs 115, 118, 195 and 300 - 305 without providing any specific factual detail. The closest that this document comes to making a factually specific allegation of discrimination involving employees other than Mr Abanda Bella himself is in paragraph 51. There he asks the investigating officer "to establish the grounds and reasons why certain managers like RR; JK; RG were 'selectively shepherding' key projects towards a small proportion of the team which divested other persons of my race and national origins access to opportunities for promotion, transfer or training or for receiving any other benefit". He does not identify the key projects; explain who they ought to have been allocated to and why; and does not identify those to whom they were allocated. It also did not provide specific details about the particular consequences of those project allocation decisions. Whilst the Tribunal accepts that Mr Abanda Bella genuinely believed he was disclosing information that was in the public interest tending to show contraventions of the Equality Act 2010, the Tribunal finds that this was not a reasonable belief because the information disclosed as to the treatment of others lacked the necessary factual specificity. Therefore, it was not a qualifying disclosure in this respect.

b. Disclosing information that Mr Abanda Bella reasonably believed tended to show a breach of the prohibitions on victimisation in Section 27 Equality Act 2010 or the prohibitions on protected disclosure detriment in the Employment Rights Act 1996. It is true that Mr Abanda Bella did repeatedly complain about

victimisation (e.g. paragraphs 69-71; 84-85, 97-98; 100, 140, 156, 209, 221) and did raise concerns of whistleblowing detriment (paragraph 100). However, he did so only in relation to the way he himself had been treated. Therefore, the Tribunal finds he did not believe that the information he was disclosing tended to show that there was victimisation or protected disclosure detriment against anyone other than himself. He did not believe his grievance disclosed information which was in the public interest in this particular respect. Therefore, it was not a qualifying disclosure of this alleged breach of a legal obligation.

c. Disclosing information that Mr Abanda Bella reasonably believed tended to show a breach of section 1 & 2 Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1998; or that health had been, was being or was likely to be endangered. Whilst there is reference to working under high pressure when completing a validation at the start of April 2019 (paragraph 104), and of the foreseeable risk of harm from bullying, harassment, discrimination and victimisation (paragraph 179), there is limited reference to the actual impact on Mr Abanda Bella's health (principally in paragraphs 183; 234-238; and 260-262) and no specific reference to the impact on others. Mr Abanda Bella's belief about the impact of working practices on health was limited to his own health and that of Mr Samnick. Being limited to the health of two people, that belief was not a reasonable belief that disclosing this information was in the public interest, applying the guidance in *Chesterton*. As a result, it was not a qualifying disclosure in that respect either.

1511. **[CAB Issue 1/1.23]** Mr Abanda Bella's complaint in his grievance of 26 November 2019 about the Bank's delay in providing him with their minutes of a whistleblowing investigation meeting is said to be a disclosure of information which in his reasonable belief tended to show a miscarriage of justice had occurred, namely that the minutes had been "deliberately concealed". Even if he had disclosed evidence of deliberate concealment of the Bank's minutes this would not necessarily amount to a miscarriage of justice. The Bank's internal whistleblowing procedure is fundamentally different from the justice system as administered by Courts and Tribunals. It would not be reasonable for Mr Abanda Bella to regard the two as equivalent, such that a failing with the Bank's whistleblowing procedure would be a miscarriage of justice. The Tribunal does not consider that he did – he pointed out to Mr Haworth on 17 January 2020 that "the grievance procedures are not quasi-judicial procedures" **[3685]**. He is likely to have taken a similar stance in relation to the whistleblowing procedures. In any event, delay apart, he did not have any basis for believing that the minutes were being deliberately concealed, given that the minutes had been repeatedly promised and so were still to be expected. References to the draft minutes being 'reviewed' did not reasonably raise suspicions about whether they would be

provided at all or would be incomplete. Therefore, the Tribunal does not find that Mr Abanda Bella had a reasonable belief that the information in his grievance on 26 November 2019 tended to show a miscarriage of justice. It was not a qualifying disclosure.

1512. So far as the grievance of 27 November 2019 is concerned, this raised various issues connected to the delay in providing the minutes and the accuracy of the minutes received the previous afternoon. It made no express reference to a miscarriage of justice and did not disclose information which could reasonably be believed as tending to show a miscarriage of justice.

1513. **[CAB Issue 1/1.24]** Mr Abanda Bella's email of 17 December 2019 was not a qualifying disclosure of information tending to show a breach of the Equality Act 2010. The focus of the information he was disclosing was entirely on his previous grievances. No specific information was disclosed about the Bank's compliance with the Equality Act 2010 in relation to other employees. Although he may have believed his disclosure was in the public interest (given his stated reason for making the disclosure, namely to ensure that Barclays did not discriminate against others with disabilities in the future), he did not have a reasonable belief that the information he was disclosing was in the public interest, applying the guidance in *Chesterton*.

1514. **[CAB Issue 1/1.25]** The six-page long grievance lodged on 17 January 2020 is alleged to be a qualifying disclosure as the disclosure of information reasonably believed as tending to show a breach of the Equality Act 2010 and a risk to health and safety. The Tribunal rejects this contention. The information disclosed did not have the necessary factual specificity to be a qualifying disclosure. Furthermore, because Mr Abanda Bella's focus was on his own situation and on the individual situation of Mr Samnick, any belief that his disclosure was in the public interest was not a reasonable belief.

1515. **[CAB Issue 1/1.25.1]** This was not a qualifying disclosure. Mr Abanda Bella's letter dated 27 January 2020 focused entirely on the potential impact of the grievance investigation timescale on his own health. It did not claim to be a qualifying disclosure and made no reference to the public interest. The Tribunal does not accept that Mr Abanda Bella believed the information he was disclosing about the potential impact on his health was in the public interest. If it was, applying the *Chesterton* principles, this was not a reasonable belief. It concerned only Mr Abanda Bella himself and did not disclose a risk to the health of anyone else.

1516. **[CAB Issue 1/1.26]** The letter of 26 March 2020 was a qualifying disclosure in relation to alleged GDPR breaches. It disclosed factually specific information about the process for appealing against an Unum decision to reject his claim for income protection payments. Specifically, it disclosed that updated medical evidence had to be sent to Barclays to be sent onto Unum. The Tribunal accepts that Mr Abanda Bella

genuinely believed that the information he was disclosing about the standard procedure for appealing tended to show a breach of legal obligations requiring an employee to consent before medical information is shared with their employer. The Respondents argue that this was not a qualifying disclosure because at this time Mr Abanda Bella had not sent this medical evidence to Barclays and as a result, there was no past or impending privacy breach; and if he chose to do so he would be consenting to the information being received by Barclays. However, he was fully intending to appeal. Therefore, he reasonably believed that, when he appealed, the Bank was likely to fail to comply with a legal obligation, in the sense of being more probable than not. If he had no option but to follow the appeal procedure and so provided his documents to Barclays under protest, he would not be freely providing his consent. As a result, it was a reasonable belief. Barclays' requirement that the medical information be sent to them was clear; and the legal requirement for employee consent to medical information being shared with employers was well understood. It was not necessary for Mr Abanda Bella to know the precise origin of this legal requirement, still less for this to be quoted in the disclosure. He alleged in the grievance that this was a breach of GDPR 2018 and quoted from the wording of that provision. It is not necessary for his belief to have been legally correct. He genuinely believed that it was in the public interest to make this disclosure. He said so at the end of the grievance **[4406]**. This was his genuine view. This was a reasonable belief given that the need to send personal medical information to Barclays was a requirement that potentially applied to all Barclays employees on long-term sick leave who were dissatisfied with an Unum decision. Given the size of the workforce at Barclays, this potentially affected hundreds if not thousands of employees (depending on the total number at any one time who were covered under the Unum income protection scheme). Because this qualifying disclosure was made to his employer, it was a protected disclosure.

1517. By parity of reasoning, the letter of 26 March 2020 was also a qualifying disclosure in relation to an alleged breach of legal obligations under the Equality Act 2010. He believed the "untenable choice" between sharing medical information with Barclays without his consent and being unable to effectively appeal Unum's decision inherent in the standard procedure amounted to disability discrimination against him and against others with equivalent mental health conditions by increasing their stress levels. He genuinely believed he was making a disclosure tending to show breach of a legal obligation which was in the public interest and that was a reasonable belief.

1518. It was also a qualifying disclosure insofar as it referred to the potential health consequences for himself and for those with equivalent mental health symptoms. He believed it was impacting on his health (which was worsening at the time); this was a reasonable belief; he believed that disclosing this was in the public interest; and this was a reasonable belief given the potential number of Barclays employees on long term sick leave with a mental health condition making an application to Unum.

1519. **[CAB Issue 1/1.27]** In the letter of 7 April 2020, Mr Abanda Bella did not disclose factually specific information tending to show that disabled persons were disadvantaged by denying the status of 'grievance' to complaints of general application. Rather he asserted that this was the case in general terms. As a result, it was not a qualifying disclosure.

1520. **[CAB Issue 1/1.28]** The Tribunal finds that the letter of 15 April 2020 was not reasonably believed to be a disclosure of information made in the public interest. The specific information disclosed focused entirely on how Mr Abanda Bella himself had been treated in the content of the downwards appraisal commentary and the decisions made about fixed and variable compensation. It did not disclose specific information applicable to other employees. The general reference to his belief he was blowing the whistle in order to ensure other disabled employees did not receive similar treatment was insufficient to render his belief a reasonable belief that disclosure was made in the public interest. This was therefore not a qualifying disclosure.

1521. **[CAB Issue 1/1.29]** The Tribunal accepts that Mr Abanda Bella genuinely believed that there had been a breach of a legal obligation, namely an obligation that sensitive personal data (his amended Occupational Health report) should not be shared with his employer without his consent. However, because he has not referred to any documents to support what he alleges at paragraphs 895 – 899 of his witness statement, the Tribunal is unable to find that this was a reasonable belief in his case. Furthermore, applying the principles in *Chesterton* the only factually specific information that he provided in his letter of 17 April 2020 concerned his own situation. No information was disclosed making it reasonable for him to think that this was a more widespread problem than in relation to his own situation. As a result, the Tribunal finds that he did not have a reasonable belief that what he was disclosing was in the public interest.

1522. So far as disclosure of information about health or safety of any person being endangered, the Tribunal finds that he did have a genuine belief that his health and safety was impacted by the Occupational Health report being sent to his employer when it was. He was particularly unwell at the time, as shown most clearly by the contents of the record made by a consultant psychiatrist on 7 May 2020 reviewing his health over recent weeks. The Tribunal found this to be an accurate record. He had been experiencing auditory hallucinations and believed that people were watching his house. The Tribunal accepts he was particularly sensitive about the disclosure of personal medical information to Barclays without his prior express consent. Whether or not it did in fact worsen his symptoms, it was reasonable for him to believe that it had over the period from 5 February to 17 April 2020. Therefore, this was a reasonable belief. Even though it only concerned his own mental health, he genuinely and reasonably believed that it was in the public interest to disclose to

Barclays actions by AXA that had impacted on his health. This was because there was a real prospect that similar action by AXA towards employees in similar circumstances might worsen the mental health of others. The potential category of individuals who might be so affected would be all those with mental health issues, who were distrustful of the operation of the income protection scheme agreed between the Bank and AXA. So far as the *Chesterton* factors are concerned - the category of those impacted was potentially large; the nature of the interests affected was the mental health of those who were already unwell and (in some cases) those satisfied the legal label of 'disabled'; the wrongdoing was not deliberate; and the identity of the wrongdoing was one of the UK's largest banks. These factors tend to indicate that Mr Abanda Bella's belief that disclosure was in the public interest was a reasonable one. Therefore, the Tribunal accepts that this was a qualifying disclosure.

1523. **[CAB Issue 2/1.2]** The letter of 8 January 2020 was not a qualifying disclosure. It did not contain a disclosure of information which could be reasonably believed as tending to show one of the six matters listed in Section 43B(1). This is because it did not have the necessary degree of factual specificity.

1524. **[CAB Issue 2/1.3]** This letter of 26 June 2020 is argued to be a qualifying disclosure of information tending to show breach of a legal obligation in several respects. Much of the letter raises questions rather than discloses factually specific information. Dealing with each of the alleged respects in which this is said to be a qualifying disclosure:

a. Implied term of mutual trust and confidence: the contents of his letter dated 26 June 2020 related entirely to his treatment under his own employment contract. He was not suggesting that there was equivalent treatment that potentially breached the implied term of mutual trust and confidence in the employment contracts of others. As a result, he did not have a reasonable belief that the matters he was disclosing were in the public interest.

b. Obligations under the Equality Act 2010/victimisation: for the same reason, Mr Abanda Bella did not have a reasonable belief that the information he was disclosing was in the public interest. The alleged breaches of the Equality Act 2010 related entirely to his own situation. In his victimisation complaint, he alleged retaliation against himself because he had made allegations of discrimination. His Section 15(1) Equality Act 2010 complaint related to how the Bank was treating him, given the consequences of his own health condition. He was not raising issues of broader application.

c. Right not to be subjected to detriment on the ground that he had made a protected disclosure. Again, his complaint was about the detrimental treatment he was suffering in retaliation for him previously making protected

disclosures. It did not concern protected disclosures made by others or the way others had been treated as a result. As a result, he did have a reasonable belief that his disclosure was in the public interest.

d. Obligations under the GDPR: The letter of complaint made no reference to GDPR. The Tribunal concludes that Mr Abanda Bella did not have a genuine belief that the limited information he was disclosing tended to show a breach of GDPR.

e. Obligations under the ACAS Code: Assuming that this is a reference to the ACAS Code on Grievances and an alleged failure to comply with this Code by refusing to treat his earlier letter as a grievance, he did not have a reasonable belief that this was in the public interest. His complaint was limited to his own 'grievance' rather than of a wider systemic problem.

f. Failing to comply with legal obligations under the Health and Safety at Work Act 1974: Whilst the letter of 26 June 2020 makes frequent references to statutes, there is no mention of the Health and Safety at Work Act 1974. Although he makes reference to the frequency and intensity of his anxiety acts, the Tribunal finds that Mr Abanda Bella did not believe he was disclosing information tending to show a breach of obligations under this statute. Had he so believed, he would have referred to it in the letter.

1525. Therefore, this letter was not a qualifying disclosure in any of the respects alleged.

1526. **[CAB Issue 2/1.4]** This issue has been withdrawn.

1527. **[CAB Issue 2/1.5]** Again, the letter of 7 July 2020 is said to be a qualifying disclosure in several respects:

a. Implied term of mutual trust and confidence: the only reference to this term in his letter dated 7 July 2020 was at paragraph 21 where he refers to the failure to acknowledge that his communications had the status of grievances. He was not suggesting that there was equivalent treatment that potentially breached the implied term of mutual trust and confidence in the employment contracts of others. As a result, he did not have a reasonable belief that the matters he was disclosing were in the public interest.

b. Obligations under the Equality Act 2010 including allegations of victimisation. The letter makes various allegations of breaches of this Act. All the allegations relate to his own situation. They do not relate to any other named individuals. As a result, he did not have a reasonable belief that the matters he was disclosing were in the public interest.

c. Obligation to comply with Article 8 European Convention on Human Rights/Human Rights Act 1998. The letter makes no reference to the Human Rights Act 1998. Whilst it alleges that there was a failure to keep his identity as a whistleblower confidential, the provision he referred to was not the ECHR but the Barclays Whistleblowers Charter (paragraph 12). The Tribunal does not find he genuinely believed that the information he was disclosing tended to show a breach of Art 8 ECHR. This is likely to have been an afterthought which he alighted on at a later stage.

d. Obligation to comply with GDPR: In paragraph 23, Mr Abanda Bella repeated what he had said in his letter of 26 March 2020 about the requirement to go through Barclays HR Operations when providing medical information. The Tribunal has already found that this letter of 26 March 2020 was a protected disclosure **[CAB Issue 1/1.26].** In repeating what was said in that earlier letter, Mr Abanda Bella restated the same protected disclosure.

e. Obligations under the ACAS Code: The same point applies as in relation to the letter of 26 June 2020. Mr Abanda Bella did not reasonably believe that any failure to recognise he had lodged a grievance was in the public interest.

f. Obligations under the Health and Safety at Work Act 1974: The letter referred to this Act at the start and referred to the specific impact the treatment was having on his health. However, it did not disclose information of a potential impact to the health of anyone else. As a result, he did not reasonably believe that disclosure was in the public interest.

1528. This was therefore a qualifying disclosure as explained in dealing with **[CAB Issue 1/1.26]** above.

1529. **[CAB Issue 2/1.6]** The letter of 9 July 2020 is said to be a qualifying disclosure and containing information reasonably believed as tending to show breach of legal obligations under the Equality Act 2010, including victimisation, whistleblowing protections under the Employment Rights Act 1996, legal obligations under the ACAS Code and legal obligations under the Health and Safety at Work Act 1974. The letter refers to the implied term of mutual trust and confidence (paragraphs 17, 29 and 38) but this is not listed as one of the legal obligations that he was disclosing information he reasonably believed was being breached in the List of Issues. The entire focus of the substance of this letter was on Mr Abanda Bella's own situation. It did not make any factual specific disclosures about other employees. It was not sufficient to say he was blowing the whistle "to ensure that in the future, Mr Easdon and Barclays make that adjustments to ensure that all Barclays employees benefit from a timely handling of their concerns as per Barclays grievance policy". This was

not factually specific and a belief that the breaches were likely to recur (i.e. more probable than not) was not a reasonable belief. Therefore, the Tribunal finds it was not a qualifying disclosure because any belief that disclosure was in the public interest was not a reasonable belief.

1530. **[CAB Issue 2/1.7]** Mr Abanda Bella argues that in his letter of 18 July 2020 he was disclosing information tending to show a breach of the Equality Act 2010 (including its provisions as to victimisation) a breach of the whistleblowing provisions in the Employment Rights Act 1996, a breach of the obligation to comply with the ACAS Code and a breach of obligations under the Health and Safety at Work Act 1974. Yet again, the entire focus of this correspondence was on his own situation. Whilst he asserted that the contraventions of the Equality Act 2010 and the Health and Safety at Work Act 1974 affected not just him but "all Barclays employees", this was not a reasonable belief. Beyond assertion, the basis of this contention was not explained. He also claimed in the first paragraph that a failure to make reasonable adjustments was to his detriment and to the detriment of persons who share his protected characteristics. He did not provide any factual specificity as to the impact on others. As a result, if he believed that this disclosure was in the public interest, this was not a reasonable belief.

1531. **[CAB Issue 2/1.8]** This relates to the letter of 21 August 2020. He said that the disclosures he was making in the email related not just to him "but to all Barclays employees, including those employees that submit an income protection claim to Unum". He said he was safeguarding the health and safety of Barclays employees who shared his protected characteristic (race), and to ensure that reasonable adjustments were made which "employees with my disabilities need in order to remove the disadvantage". However, over the course of 15 pages, his entire focus was on the way he had been treated by Mr Rienacker in a meeting and in correspondence. He disclosed no specific information about the treatment of other employees other than a general concern that others might be treated in the same way that he considered he had been treated. The Tribunal finds he did not have a reasonable belief that the matters he was disclosing were in the public interest.

1532. **[CAB Issue 2/1.9]** The letter of 27 August 2020 is alleged to be a qualifying disclosure of information which he reasonably believed tended to show a breach of particular legal obligations – under the Equality Act 2010, under GDPR and under the Health and Safety at Work Act 1974. The entire focus of Mr Abanda Bella's letter was on how he personally had been treated in the way others had responded to his previous letters. He did not identify others in the organisation by name or grouping where he believed that they had also suffered a detriment as a result of an equivalent breach of legal obligations, nor did he provide any factually specific information to support such a belief. As a result, the Tribunal finds he did not reasonably believe that any disclosure was made in the public interest.

1533. **[CAB Issue 2/1.10]** The information disclosed in Mr Abanda Bella's email of 25 July 2019 concerned his perception of the response from Mr Rienacker and Ms Li to his objection to Ms Li communicating directly with stakeholders. His perception was that Mr Rienacker's stance lacked "basic respectful manner"; amounted to ostracism of him, and potentially wasted already stretched resources and brought discredit to the IVU function. The Tribunal does not find that Mr Abanda Bella had a genuine belief that he was disclosing information tending to show a breach of the Health and Safety at Work Act 1974, Article 369 of Regulation 575/2013 or SR 11/7. Even if he did, such a belief would not have been a reasonable belief, given the limited contents of the email and the lack of reference to any information relevant these legal obligations. This was therefore not a qualifying disclosure.

Summary of position in relation to protected disclosures

1534. In summary, the Tribunal finds that the following were protected disclosures:

a. The letter of 26 March 2020 complaining about the Unum appeal process **[4392] [CAB issue 1/1.26]**

b. The letter of 17 April 2020 **[4676] [CAB issue 1/1.29]**

c. The letter of 7 July 2020 **[6709]**, by repeating the privacy breach point made in the letter of 26 March 2020 **[CAB issue 2/1.5]**

Detriment for making protected disclosures

1535. **[CAB Issue 1/3.1]** Mr Rienacker's emails on 7 and 12 September 2017 were not detriments for making protected disclosures. There had been no previous protected disclosure. Mr Rienacker's email of 7 September 2017 was based on a misunderstanding of Mr Abanda Bella's original email in which he thought Mr Abanda Bella was criticising Mr Moune Nkeng by email. He was also referring to the critical tone adopted by Mr Abanda Bella towards him in his email of 7 September 2017. The email exchange ended on 12 September 2017 with Mr Rienacker apologising to Mr Abanda Bella for his misunderstanding.

1536. **[CAB Issue 1/3.2]** Mr Abanda's allegation is factually incorrect. Mr Rienacker did not label Mr Abanda Bella as aggressive. Rather he described a specific email sent by Mr Abanda Bella as aggressive. He did so entirely because of the content and tone of the email rather than because of any previous protected disclosure.

1537. **[CAB Issue 1/3.3]** The Tribunal rejects the factual basis of this allegation. Mr Rienacker did not say or imply that there was no formal promotion process in place

or that it was Mr Kim who decided who got promoted. Mr Rienacker would have reiterated what he had been told by Mr Kim. If Mr Abanda Bella believed he was being overlooked for promotion that was his misunderstanding, rather than a fair reaction to what Mr Rienacker was telling him.

1538. **[CAB Issue 1/3.4]** Given the Tribunal's factual findings, it was entirely appropriate for Mr Rienacker in his written review to describe Mr Abanda Bella's communication style as "sometimes overly strong or argumentative"; and to maintain this during the annual review. It was not necessary for Mr Rienacker to give him specific examples of this criticism in his written feedback given that Mr Rienacker had repeatedly raised his concerns about the wording of Mr Abanda Bella's emails at the time. If Mr Abanda Bella needed examples these could be discussed during the annual review meeting – as in fact occurred, when Mr Abanda Bella asked for examples. The content of Mr Rienacker's feedback had nothing to do with any of his previous protected disclosures.

1539. **[CAB Issue 1/3.5]** The Tribunal rejects the allegation that Mr Rienacker tried to force him to swap teams with Mr Maouche. He asked him if he would be prepared to swap teams. When Mr Abanda Bella responded by questioning whether Mr Rienacker was asking him or instructing him, Mr Rienacker said he would have to check. He ended the meeting by asking Mr Abanda Bella to think about the proposed swap.

1540. **[CAB Issue 1/3.6]** Mr Abanda Bella is correct to allege that Mr Patrick Chen failed to treat his email of 22 March 2018 as a grievance. There was no reason for him to do so. The email did not purport to be a grievance. Mr Patrick Chen was not his line manager. This failure has nothing to do with any alleged protected disclosures.

1541. **[CAB Issue 1/3.7]** The Tribunal has rejected Mr Abanda Bella's contention that Mr Rienacker shouted at him on 22 March 2018 or on 26 April 2018; that he made "denigrating" comments in emails about the concerns that Mr Abanda Bella had raised as to the technical soundness of the testing methodology; or that he produced baseless, untimely and unfounded feedback about Mr Abanda Bella's work on the LV MC validation.

1542. **[CAB Issue 1/3.8]** The Tribunal has found that Mr Kim and Mr Rood had decided not to respond given the inflammatory and unprofessional language used by Mr Abanda Bella, and the lack of specific examples he had provided of his particular concerns. Mr Abanda Bella did not chase for a response. It had nothing to do with any previous protected disclosure.

1543. **[CAB Issue 1/3.9]** Mr Abanda Bella did not hand any piece of paper to Mrs Richardson during his Culture Focus Meeting. As a result, the Bank did not receive any written complaints that could conceivably form the basis of a formal grievance. There was no failure to recognise that Mr Abanda Bella was raising a grievance.

1544. **[CAB Issue 1/3.10]** Mr Abanda Bella's feedback on Mr Moune Nkeng was not a grievance. There was no failure to treat it as a grievance.

1545. **[CAB Issue 1/3.11]** Mr Rienacker's feedback at the mid-year review meeting in September 2018 was appropriate both in terms of the areas that had gone well and the areas for improvement. It reflected his genuine view of Mr Abanda Bella's performance. It was not influenced by any alleged protected disclosures.

1546. **[CAB Issue 1/3.12]** The Tribunal finds he was not invited to the meeting because this was not a meeting to which Vice Presidents were invited. The subject matter did not require his attendance. No other Vice Presidents attended this meeting. It had nothing to do with any previous protected disclosures.

1547. **[CAB Issue 1/3.13]** Mr Rienacker's comments recorded on the 2018 annual appraisal form reflected his genuine view that Mr Abanda Bella's conduct had been unsatisfactory and needed improvement. As his email to Mr Kim of 28 January 2019 enclosing his initial draft demonstrated, Mr Rienacker had examples to substantiate each of his criticisms. They were not influenced by any previous protected disclosures. Mr Rienacker did not verbally abuse Mr Abanda Bella during the 31 January 2019 annual appraisal meeting. This aspect of this allegation is therefore factually incorrect.

1548. **[CAB Issue 1/3.14]** The decisions taken by Mr Kim in February 2019 about Mr Abanda Bella's pay increase and bonus were not influenced by any previous protected disclosures. They were entirely based on Mr Abanda Bella's performance. In particular, they reflected Mr Abanda Bella's rating of 'Needs Improvement' for the 'How', and his ranking of 11th out of 12 in Mr Kim's team.

1549. **[CAB Issue 1/3.15]** The Tribunal rejects the factual basis of this allegation. Mr Kim was not involved in this project; and Mr Rienacker did provide sufficient guidance, clarity and support.

1550. **[CAB Issue 1/3.16]** The Tribunal rejects Mr Abanda Bella's contention that Mr Rienacker repeatedly ignored, criticised and mistreated him for expressing concerns about the testing approach to be adopted on the QCB validation. As set out in the Tribunal's findings of fact, Mr Rienacker attempted to assist Mr Abanda Bella in reaching agreement with the model developer. Therefore, the factual basis of this allegation is incorrect.

1551. **[CAB Issue 1/3.17]** The Tribunal has found Mr Rienacker chose to have these discussions with QA without involving Mr Abanda Bella in order to make swifter progress in resolving issues that had apparently not been solved when Mr Abanda Bella had taken the lead in communications with QA. There was no requirement that

he involve Mr Abanda Bella in every communication. He had not promised to do so. His approach to this issue had nothing to do with any previous protected disclosures.

1552. **[CAB Issue 1/3.18]** Withdrawn.

1553. **[CAB Issue 1/3.19]** The only factual allegation forming part of this issue that the Tribunal has accepted is that the QCB project was taken from him and assigned to Ms Li. Mr Rienacker did this to optimise the progress on priority projects. It had nothing to do with any previous protected disclosures.

1554. **[CAB Issue 1/3.20]** Not permitted**.**

1555. **[CAB Issue 1/3.21.1-3]** It is correct that Mr Abanda Bella's annual appraisal for 2019 was performed without input from Mr Abanda Bella. It is also true that no reasonable adjustments were suggested to the standard 2019 appraisal process in Mr Abanda Bella's case. It is also the case (insofar as this is a different allegation from CAB issue 1/3.21.1) that there was a failure to prevent the 2019 annual appraisal from being based solely on Mr Rienacker's comments. There is no evidential basis for inferring that the process followed in Mr Abanda Bella's case was influenced in any way by previous communications said to be protected disclosures. Rather the process followed in Mr Abanda Bella's case was the standard process applicable to those on long-term sick leave at the point when the appraisal process was concluding. The same process applied to Mr Samnick who had not conducted the same communications as Mr Abanda Bella.

1556. So far as **CAB Issue 1/3.21.4** is concerned:

a. the Tribunal accepts that Mr Rienacker's feedback in Mr Abanda Bella's 2019 performance review was expressed in general terms, both in relation to the 'What' and the 'How'. It was consistent with the level of detail that Mr Rienacker had provided on previous performance reviews. Had there been an annual appraisal meeting, these general comments could have been discussed more specifically. Even without such a meeting, properly interpreted, the general comments made in the "Areas for development" section for the 'What' related to the three Tier -2/3 inception validation projects on which he had been working during the first half of 2019. He was criticised for the Tier -2/3 models not being finished on time, and for the additional workload caused to other IVU team members. As the Tribunal has found in relation to the fiDEs_divProtected_StrikeRatio_v5 model validation for which Mr Abanda Bella was Peer Reviewer, this was a fair comment. Mr Abanda Bella was at least in part responsible for the delay in completing this validation. Mr Rienacker had provided detailed and specific feedback at the time. It was not necessary for that detailed feedback to be repeated in the annual performance review document. The Tribunal rejects the criticism that the

feedback in relation to the 'What' was unfounded, unsubstantiated or malicious.

b. In relation to the 'How', the document stated: "we will look to share the basis of these development areas with him". This was a recognition that specific examples of behavioural concerns were best discussed face-to-face rather than documented. In any event, they were recognised to be "potential conduct issues" which would be dealt with on his return. The Tribunal does not interpret this as a threat but rather as a reasonable warning that serious concerns needed to be resolved either informally or formally. Given the Tribunal's findings about Mr Abanda Bella's conduct and Mr Rienacker's feedback to him at the time; and given Mr Rienacker's promise that further details would be provided on his return, the Tribunal does not find that the comments on the 'How' were unfounded, unsubstantiated, vague or malicious.

c. In any event, there is no evidential basis for potentially inferring that the manner in which this feedback was written was influenced by any previous protected disclosures. The Tribunal accepts that it reflected Mr Rienacker's genuine view of Mr Abanda Bella's performance.

1557. The Tribunal rejects the allegation that Mr Rienacker made threats and unfounded, unsubstantiated, vague and malicious negative feedback comments in Mr Abanda Bella's annual appraisal form, including blaming him for delays in respect of the Tier 2 projects carried out during 2019. The Tribunal finds that Mr Rienacker's comments in his downwards appraisal of Mr Abanda Bella were fair comments that genuinely reflected his honest opinion of Mr Abanda Bella's performance. In any event, the content of Mr Rienacker's assessment was not influenced in any way by any previous protected disclosures.

1558. **[CAB Issue 1/3.22]** It is correct that Mr Abanda Bella was given 'Needs Improvement' ratings for both the 'What' and the 'How' for 2019 and he did not receive any bonus or pay rise. The 'Needs Improvement' ratings were Mr Kim's decisions in consultation with Mr Rienacker. The failure to be awarded a bonus or be given a pay rise was the result of the 'Needs Improvement' ratings. The ratings, and the lack of bonus or pay rise were all the result of genuine concerns about the standard of Mr Abanda Bella's performance. These were not influenced to any extent by the nature of his previous communications or specifically by any protected disclosures.

1559. **[CAB Issue 1/3.23]** Mr Haworth did not provide "evasive answers as to how the appraisal had been performed" in his response of 18 March 2020. He did not answer any of the questions asked by Mr Abanda Bella in his email of 22 February 2020. Samantha Linsley criticised him for this failure in her grievance outcome. The

Tribunal accepts Mr Haworth's evidence explaining why he did not provide a more detailed response. This was a particularly busy period for the ER Case Management team (which was already short-staffed) in the light of the Covid-19 Pandemic. His response was written on 18 March 2020. The Tribunal takes judicial notice that on 16 March 2020, two days earlier, the Prime Minister had advised everyone in the UK against "non-essential" travel and contact with others, as well as to work from home if possible. This Government advice would inevitably have prompted many questions for those in ER to address. Mr Haworth's reply was also addressing issues raised by Mr Abanda Bella on 9 March 2020 about his medical insurance cover. The failure to respond to each of Mr Abanda Bella's questions was not on the ground that Mr Abanda Bella had previously made any protected disclosures.

1560. **[CAB Issue 1/3.24]** It is correct that the Bank did not open whistleblowing cases and investigations into every complaint that Mr Abanda Bella considered amounted to a protected disclosure. Complaints were referred to the Raising Concerns team for triage. That team decided in each case whether or not particular concerns should be referred onto the Whistleblowing Team or referred back to ER complex cases team to be considered as a grievance or in some other way. The Schedule to Ms Bonniface's witness statement lists the referrals made by the Raising Concerns team for each of the matters raised by Mr Abanda Bella. It is not clear from the framing of this issue which particular complaints are the subject of this protected disclosure detriment complaint. This issue is dated 20 May 2020, rather than referring to correspondence spanning a particular period. Accordingly, the Tribunal regards it as specific to decisions made on or around 20 May 2020 as to whether to initiate whistleblowing investigations. In any event, insofar as it is alleged, the Tribunal rejects any contention that complaints not considered by the Tribunal to be protected disclosures should nonetheless have been referred to the Whistleblowing Team for further investigation.

1561. The Tribunal has found that **[CAB issue 1/1.26]** (the letter of 26 March 2020) did amount in law to a qualifying disclosure and, because it was made to the Bank as his employer, was therefore a protected disclosure. This was not a complaint that was referred to the Whistleblowing Team. It was not referred to that team because the genuine view of the Raising Concerns team was that the contents did not amount to protected disclosures. The Tribunal does not find that this decision was influenced by the protected disclosure that the Tribunal has upheld. Further any failure did not cause him any particular detriment. That is because an alternative solution had been found which resolved his concern more speedily than a whistleblowing investigation. This was that Mr Abanda Bella would be permitted to advance his appeal by communicating directly with Unum. That was providing him with the very solution to the issue he was raising. As a result, the content of the protected disclosure had no influence on the decision not to refer this particular complaint to the Whistleblowing Team.

1562. **[CAB Issue 2/3.1]** No longer maintained.

1563. **[CAB Issue 2/3.2]** At the point when Mr Haworth forwarded Mr Abanda Bella's letter of 26 March 2020 to Ms Watson, the Raising Concerns team had already decided that this letter did not need to be investigated by the Whistleblowing Team. As a result, Mr Haworth did not consider he needed to treat Mr Abanda Bella as having the confidential status normally afforded to a whistleblower. In any event, Mr Abanda Bella had initiated this particular complaint by emailing the ER Complex Cases team rather than the Whistleblowing Team. Therefore, it is incorrect to say that his identity was confidential until Mr Haworth revealed it to Ms Watson without his consent. Therefore, this allegation of protected disclosure detriment is factually misconceived.

1564. **[CAB Issue 2/3.3]** The Tribunal accepts that there was a gap of six and a half weeks between Mr Abanda Bella's email dated 26 March 2020 and the response sent on 11 May 2020. Mr Abanda Bella's email was 16 pages long, raising several issues. He was raising issues with wider ramifications for the Bank, in particular whether medical evidence had to be sent to Barclays when seeking to challenge a Unum decision. The gap is explained by a delay of just over a fortnight until 14 April 2020 in forwarding the letter to the Raising Concerns team for triage. By 30 April 2020 it had been decided that medical evidence need not be sent to Barclays to pass onto Unum and this decision was then relayed to Mr Abanda Bella on 11 May 2020. Slower responses to correspondence at this point are readily explicable by the onset of the national lockdown, which would have substantially increased the workload of those in the ER and HR teams. Even though the Tribunal has found that the email of 26 March 2020 was a protected disclosure, the Tribunal does not find that the response time was influenced by the particular information disclosed. The Tribunal accepts that the response on 11 May 2020 did not address all the issues raised in the 26 March 2020 letter. It specifically stated it was addressing the points regarding the appeals and complaints processes **[5301]**. It was not intended to be a comprehensive reply to all the points he was raising. The Tribunal accepts the explanation given by Mr Haworth in his evidence that the failure to deal with all of the points Mr Abanda Bella was making was an oversight by him on this particular occasion, given the volume of issues being raised by Mr Abanda Bella and by Mr Samnick at that point. Providing a comprehensive response was not within Ms Watson's remit, which was limited to income protection issues. The Tribunal does not accept that Mr Haworth or Ms Watson deliberately ignored the other issues he was raising in the 26 March 2020 letter. The protected disclosure in the letter of 26 March 2020 did not have any influence on the way the Bank, Mr Haworth or Ms Watson responded to this letter.

1565. **[CAB Issue 2/3.4]** The Bank did address Mr Abanda Bella's concerns about its processes for dealing with income protection claims and did make an adjustment to

those processes. It said "… addressing your concern about the disclosure of medical information, please feel free to send your appeal direct to Unum without sharing it with us" **[5302]**. Therefore, this allegation is factually incorrect and so fails on that ground.

1566. **[CAB Issue 2/3.5]** Mr Abanda Bella's letter dated 17 April 2020 was considered by the Raising Concerns team. They decided that it did not amount to a matter to be investigated by the Whistleblowing Team. Although the Tribunal has found its contents did amount to a protected disclosure **[CAB 1/1.29]**, the Tribunal does not find that this decision was influenced by this protected disclosure. The genuine view of the Raising Concerns team was that it did not raise whistleblowing concerns. It was also appropriate for the Bank to decide that complaints about AXA's processes were not suitable for consideration under Barclays' internal grievance processes. Mr Haworth did offer Mr Abanda Bella the option of seeking AXA's responses to his concerns if he provided his written consent.

1567. Despite Mr Abanda Bella's numerous allegations against Mr Haworth personally and his request that Mr Haworth should cease to be involved in Mr Abanda Bella's case (made in his letters sent on 7 and 15 April 2020 on the basis that he had a conflict of interest), Mr Haworth continued to be the principal point of contact for communications about his grievances until mid-June 2020 when Mr Abanda Bella issued proceedings naming Mr Haworth as a Respondent. Mr Haworth says he cannot recall discussing with his line manager on receipt of the 7 April 2020 letter whether he should stay involved; and assumes Mr Abanda Bella's concerns about him would have been considered by the Raising Concerns team and Legal teams. For whatever reason, Mr Haworth failed to send the 7 April 2020 letter to the Raising Concerns team. The 15 April 2020 letter was sent to the Raising Concerns team, but no documents have been disclosed as to any advice they provided as to whether Mr Haworth should remain involved. The 15 April 2020 letter was treated as suitable for a whistleblowing investigation. Therefore, it is likely the Raising Concerns team would have been communicating principally with the Whistleblowing Team about its contents rather than with Mr Haworth's ER Complex Cases Team.

1568. The Tribunal accepts Mr Haworth's explanation for continuing to correspond with Mr Abanda Bella despite the complaints made against him. He had not been told that he should refrain from further involvement in Mr Abanda Bella's case. The Tribunal accepts that, in Mr Haworth's mind, it made sense for him to continue supporting Mr Easdon until the conclusion of his investigations into the various grievances, given his prior involvement and the complexity of the matters being raised. He was not adjudicating on the grievance (which was Mr Easdon's role). Mr Abanda Bella has not identified any other person to whom Mr Haworth could readily hand over his responsibilities. The Tribunal finds that the wider HR function would have been particularly stretched because of the novel HR issues raised by the need to comply

with the national lockdown. Therefore picking up this responsibility at that time would have been a further burden on some other member of staff. Mr Haworth ought to have responded to explain to Mr Abanda Bella why he was continuing to correspond with him notwithstanding his complaints. The Tribunal has found that Mr Haworth was involved in helping to resolve issues raised by Mr Abanda Bella at this time. He had been involved in the decision to make him a lump sum payment for his accrued holiday entitlement; and had offered him the opportunity to set up a direct debit to fund ongoing Premier Plus health insurance. He had also been involved in the decision to permit him to submit medical documents directly to Unum (rather than via Barclays) in order to pursue an appeal. Therefore the Tribunal finds that his decision not to remove himself in response to Mr Abanda Bella's request had nothing to do with any previous protected disclosures.

1569. **[CAB Issue 2/3.6]** The Tribunal does not accept that Mr Haworth's email dated 3 June 2020 misrepresented the nature of Mr Abanda Bella's concerns raised in his 15 April 2020 letter or trivialised them. He divided the concerns into two categories. The first was those which were directly related to the 2019 PD rating and the supporting commentaries. These would be handled as grievances as part of the existing grievance investigation. Those allegations of victimisation and retaliation would be considered separately by a separate investigations team. That team then responded to Mr Abanda Bella on 8 June 2020. By 3 June 2020, no decision had been taken as to whether any of the concerns raised would be treated as whistleblowing cases. There was therefore no failure to explain such a decision. This allegation of protected disclosure detriment is therefore factually incorrect.

1570. **[CAB Issue 2/3.7]** Given that he was already investigating other grievances, it was appropriate to invite Mr Easdon to investigate Mr Abanda Bella's grievance about his 2019 performance review. Given his investigation of other matters concerning Mr Rienacker and Mr Kim, Mr Easdon's appointment to consider the 2019 annual appraisal enabled him to assess it in its context. The decision to appoint Mr Easdon and his failure to decline the appointment was not influenced by any protected disclosures.

1571. **[CAB Issue 2/3.8]** Mr Abanda Bella was not given any advance warning he would have insufficient income payable to him in his June 2020 payment in order to fund his chosen level of pension contribution. The Bank had not promised any of its employees that it would receive advance notification in these circumstances. It was obvious that if he did not have sufficient income, he would not be able to fund his employee pension contributions. There was no need for any explanation. The failure to provide an explanation was not influenced by any previous protected disclosure.

1572. **[CAB Issue 2/3.9.1]** The Tribunal accepts that neither the Bank nor Mr Haworth communicated with Mr Abanda Bella to warn him that his IT access was about to be disabled due to inaction. There is no evidence that such an advance warning would

have been given to others on long term sick leave. The reason why no communication was had with Mr Abanda Bella on this issue in advance was because it was not the Bank's practice to do so. It had nothing to do with any previous protected disclosures.

1573. **[CAB Issue 2/3.9.2]** This issue was withdrawn during the Final Hearing.

1574. **[CAB Issue 2/3.10]** It is correct that the Bank did not treat Mr Abanda Bella's letter of 7 April 2020 as a grievance or as raising a Whistleblowing Concern. It was not referred to the Raising Concerns team for triage. In his witness statement (paragraph 168), Mr Haworth says he thinks he inadvertently forgot to refer it to the Raising Concerns team, given the volume of correspondence he was receiving from Mr Abanda Bella and the difficulties he had in managing it. Although the letter was referred to as a grievance, it was not dealt with under the grievance procedure. Again, no explanation was given to Mr Abanda Bella at the time. Mr Haworth says that he struggles to recall the reasons why, suspecting that he thought all the issues in the letter had been dealt with in earlier correspondence and that a practical solution had been found. The result was that whilst the Bank did deal with certain matters raised by Mr Abanda Bella – specifically issues around enabling his Premier Plus cover to continue and an explanation for why he had not been given advance warning of the downgrading of his cover, there were other issues raised that were left unaddressed. Specifically, Mr Abanda Bella raised the issue of the risk of contracting Covid-19 as a result of receiving documents in the post; and this point was not addressed at the time. The Tribunal finds that Mr Haworth's failure to engage fully with this letter was a genuine oversight at a uniquely busy time, given that the national lockdown was barely two weeks old.

1575. **[CAB Issue 2/3.11]** Mr Haworth did not ignore Mr Abanda Bella's request that he be able to sacrifice vacation days to pay for Premier Plus medical cover. The request was first made on 25 March 2020 **[4383]**. Mr Haworth followed up with HR Operations to see if accrued holiday pay could be used to fund "Premier Plus" cover. HR Operations told him that the premiums had to be paid monthly and so could not be paid in one lump sum **[4458]**. However, as a result of further enquiries, Mr Haworth told Mr Abanda Bella that exceptionally the Bank was prepared to pay his accrued holiday entitlement as a lump sum from which he could fund ongoing Premier Plus insurance premiums. However, he would need to complete a Direct Debit form in order to achieve this **[4487]**. Therefore, Mr Haworth went to great lengths to find a solution which would address the concern Mr Abanda Bella was raising. This allegation is factually incorrect.

1576. **[CAB Issue 2/3.12]** The reason why Mr Abanda Bella continued to receive payslips sent by post rather than electronically is that this was the default method of providing payslips to employees. Whilst this could apparently be overridden for those

employees who were not on sick leave, there was no technical facility to do so for those who were on sick leave. Those responsible for sending out payslips did not know of any of the communications alleged to be protected disclosures. This method of communication was therefore not protected disclosure detriment.

1577. **[CAB Issue 2/4.1]** The Tribunal does not find that comments made in emails between Mr Kim and Mr Rood about Mr Abanda Bella were denigrating or belittling.

1578. **[CAB Issue 2/4.2]** The Tribunal does not find that the comments made in these emails between managers speaking about Mr Abanda Bella were denigrating or belittling.

1579. **[CAB Issue 2/4.3]** The reason why no response was made to the commentary inserted by Mr Abanda Bella following his 2018 appraisal meeting was because it did not come to the attention of Mr Rienacker, Mr Kim or anyone in HR. The failure to act on this commentary had nothing to do with any previous protected disclosures.

1580. **[CAB Issue 2/4.4]** The Tribunal deals with each aspect of this issue in turn:

a. **[Issue 2/4.4.1]** The fourteen allegations noted by Mr Rienacker about Mr Abanda Bella's conduct were not spurious. They reflected his genuine view that Mr Abanda Bella had repeatedly behaved inappropriately over a lengthy period. During the period from Autumn 2019 onwards, Mr Abanda Bella had walked out of the mid year informal discussion on 4 September 2018; tried to manipulate Mr Rienacker in relation to project allocation by pushing Mr Samnick forward for the XVA equity simulation validation in September 2018 and the IHC validation in January 2019; gone over Mr Rienacker's head to Mr Patrick Chen and Mr Canabarro in December 2018 and again to Mr Chen in January 2019 about insisting on being the Lead Validator on his own projects; and walked out of the Year End formal meeting on 31 January 2019. He had also reacted in an argumentative and unprofessional manner to emails from Mr Rienacker amounting to legitimate constructive criticism from his line manager. When Mr Rienacker raised his concerns about Mr Abanda Bella's conduct with ER Direct they had advised him to put together a fact-finding document listing all the examples he could recall and then to have an informal fact-finding discussion. Mr Rienacker's inclusion of the issues he did in a fact-finding document had nothing to do with any previous protected disclosures made by Mr Abanda Bella. It was compiled in response to ER Direct advice.

b. **[Issue 2/4.4.2]** The "honest feedback" provided by Mr Rienacker to Mr Abanda Bella in his email sent after 1am on 2 April 2019 did not amount to disciplinary proceedings. This was appropriate feedback for Mr Rienacker to provide to him and to Mr Moune Nkeng given his perception of the problems

with the final version of the validation. It was not in any way influenced by any previous protected disclosures.

c. **[Issue 2/4.4.3]** Mr Rienacker's wording of his email at 1:19AM on 28 April 2019 did not amount to raising disciplinary proceedings as Mr Abanda Bella alleges. It was appropriate detailed guidance on the correct approach to take on the Q/C/B validation.

d. **[Issue 2/4.4.4]** It is unclear what event Mr Abanda Bella is referring to as disciplinary proceedings instigated by Mr Rienacker and occurring around 24 April 2019, relating to Ms Li not keeping Mr Abanda Bella in the loop. It is clear from Mr Abanda Bella's witness statement that there was significant email correspondence on 24 April 2019 between himself and Ms Li. He described Ms Li's emails as "deeply disrespectful" and "ostracising me on purpose". There were no emails from Mr Rienacker himself. As Mr Abanda Bella himself states at paragraph 481, at the time Mr Rienacker was on vacation. He also alleges that she had been "given the green light by GR and JK". If this is the basis on which it is said that Mr Rienacker raised disciplinary proceedings, then this is rejected. There is no proper evidential basis for the Tribunal to find that Ms Li's stance was directed or encouraged by either Mr Rienacker or by Mr Kim. If this allegation relates to the suggestion that Mr Rienacker's reply on 25 April 2019 [1808] was raising disciplinary action then this is also rejected. All he said was that he was okay for Mr Moune Nkeng to run tests for the FiDEs payout project and did not consider it would be disruptive. The approach taken by Mr Rienacker did not amount to raising disciplinary proceedings and was not influenced by any previous protected disclosures.

e. **[Issue 2/4.4.5]** The approach taken by Mr Rienacker towards Mr Abanda Bella at the meeting on 14 May 2019 and in the subsequent email did not amount to belittling comments. Mr Rienacker was not raising disciplinary proceedings against him.

1581. **[CAB Issue 2/4.5]** Mr Rienacker did not forward the email dated 18 May 2019 to HR. This was because he did not regard it as a grievance. It was not expressed to be a grievance and he believed Mr Abanda Bella knew how to raise a grievance if he wanted to do so. This failure to forward the email to HR had nothing to do with any alleged protected disclosures.

1582. **[CAB Issue 2/4.6]** As with **2/4.5**, the reason why Mr Rienacker did not forward Mr Abanda Bella's email dated 25 July 2019 to HR was because he did not regard it as a grievance. It had nothing to do with any previous protected disclosures.

1583. **[CAB Issue 2/4.7]** The Tribunal does not find that there were any inaccurate, unjustified or misleading answers provided by Mr Rienacker to Mr Easdon's questions during his interview as part of the grievance proceedings.

1584. **[CAB Issue 2/4.8]** It was accurate for Mr Rienacker to deny that Mr Abanda Bella had raised grievances as part of his 2018 annual appraisal. He had not. Whilst he had entered a comment on the appraisal system, this was not a grievance and it was not seen by Mr Rienacker at the time.

Protected act

1585. **[CAB Issue 1/4.1]** The written communication with the Whistleblowing Team on 21 September 2017 made no reference to the Equality Act 2010 or to any obligations imposed by that legislation. It did not make any allegation (whether express or implied) that any person had contravened the Act nor did it do any other thing for the purposes of or in connection with the Act.

1586. **[CAB Issue 1/4.2]** Mr Abanda Bella's email of 25 October 2017 did not allege or imply there had been any contravention of the Equality Act 2010 in relation to the promotion criteria. His benchmark for criticising the Bank's approach to promotion criteria was not the standards set out in the Equality Act 2010 but those set out in Barclays' values.

1587. **[CAB Issue 1/4.3]** In what Mr Abanda Bella wrote to Mr Canabarro and in what he said to him at the meeting the following day, there was no reference to the Equality Act 2010 or any contravention of that Act's provisions. Mr Abanda Bella did not suggest Mr Canabarro's tweets were regarded by Mr Harrison as racist. Read in context, the reference to 'nepotism' was not to any discriminatory practices. The alleged victims of this nepotism were "more junior team members" but Mr Abanda Bella does not allege in his witness statement this was an allegation of age discrimination.

1588. **[CAB Issue 1/4.4]** There was no reference to any contravention of the Equality Act 2010 in what was said during the meeting on 21 March 2018 or in the subsequent email to Mr Patrick Chen on 22 March 2018. At the time, Mr Abanda Bella's concern was that the proposed swap with Mr Maouche was a breach of his employment contract. He did not regard the proposed move as amounting to discrimination and did not imply this in what he said or wrote.

1589. **[CAB Issue 1/4.5]** The Tribunal has been unable to make any factual findings as to what Mr Abanda Bella said during the Culture Focus Group meeting he attended. Therefore, he has not established that what he said was a protected act.

1590. **[CAB Issue 1/4.6]** Mr Abanda Bella's reference in his email to Mr Moune Nkeng being "overdue Vice President level projects such as validations with him as the main validator" did not imply that he had been overlooked for these opportunities because of his race. It was therefore not a protected act.

1591. **[CAB Issue 1/4.7]** There was no express or implied reference to any contravention of the Equality Act 2010 in Mr Abanda Bella's email dated 3 April 2019 or in his email of the previous day included within the email chain. The reference to 'harassment' was not reasonably to be understood as a reference to a breach of Section 26 of the Equality Act 2010, rather than to harassment in its colloquial meaning (as used, for instance, in the Bullying and Harassment policy) or under the Prevention from Harassment Act 1997. This was not a protected act.

1592. **[CAB Issue 1/4.8]** The Tribunal has carefully considered the various comments that Mr Abanda Bella inserted on 7 May 2019 into Mr Rienacker's earlier email. None of them amount to an allegation whether express or by implication that the Bank or its employees had contravened the Equality Act 2010. This was not a protected act.

1593. **[CAB Issue 1/4.9]** This short email dated 14 May 2019 did not make any allegation (whether or not express) that any person had failed to comply with the Equality Act 2010. Although the email referred to "constant harassment and bullying", it made no reference to any protected characteristic recognised by the Equality Act 2010. This was not an indirect or implicit reference to direct race discrimination or harassment related to race.

1594. **[CAB Issue 1/4.10]** Mr Abanda Bella's email of 12 June 2019 did not make an allegation (whether or not express) that any person had contravened the Equality Act 2010. The reference to bullying and harassment was not an implicit reference to direct race discrimination or harassment related to race.

1595. **[CAB Issue 1/4.11]** Mr Abanda Bella's email of 18 June 2019 complaining about Mr Rienacker attempting to look at his phone screen, did not make an allegation (whether or not express) that any person had contravened the Equality Act 2010. The reference to harassment and bullying was not an implicit reference to direct race discrimination or harassment related to race.

1596. **[CAB Issue 1/4.12]** Mr Abanda Bella did not make any specific allegation of discrimination when contacting the Raising Concerns team on 19 June 2019, or allege a breach of the Equality Act 2010. No such allegation can be implied from the language he used. This was not a protected act.

1597. **[CAB Issue 1/4.13]** Admitted to be a protected act.

1598. **[CAB Issue 1/4.13.1]** Admitted to be a protected act.

1599. **[CAB Issue 1/4.14]** Admitted to be a protected act.

1600. **[CAB Issue 1/4.15]** Admitted to be a protected act.

1601. **[CAB Issue 1/4.16]** Admitted to be a protected act.

1602. **[CAB Issue 1/4.17]** Admitted to be a protected act.

1603. **[CAB Issue 1/4.18]** Admitted to be a protected act.

1604. **[CAB Issue 1/4.19]** Admitted to be a protected act.

1605. **[CAB Issue 1/4.20]** Admitted to be a protected act.

1606. **[CAB Issue 1/4.21]** Admitted to be a protected act.

1607. **[CAB Issue 1/4.22]** Admitted to be a protected act.

1608. **[CAB Issue 1/4.23]** Admitted to be a protected act.

1609. **[CAB Issue 1/4.24]** Admitted to be a protected act.

1610. **[CAB Issue 2/5.2]** The letter of 8 January 2020 made no reference to the Equality Act 2010 nor to any allegation of discrimination. Whilst it referred to “my previous letter to you”, it did not incorporate that letter so as to take on a legal significance it did not otherwise have.

1611. **[CAB Issue 2/5.3]** Admitted to be a protected act.

1612. **[CAB Issue 2/5.4]** Admitted to be a protected act.

1613. **[CAB issue 2/5.5]** Admitted to be a protected act.

1614. **[CAB issue 2/5.6]** Admitted to be a protected act.

1615. **[CAB issue 2/5.7]** Admitted to be a protected act.

1616. **[CAB issue 2/5.8]** Admitted to be a protected act.

1617. **[CAB issue 2/5.9]** Admitted to be a protected act.

Victimisation (Detriment for doing protected acts)

1618. **[Issue 1/6.1]** Mr Abanda's allegation is factually incorrect. Mr Rienacker did not label Mr Abanda Bella as aggressive. Rather he described a specific email sent by Mr Abanda Bella as aggressive. He did so entirely because of the content and tone of the email rather than because of any previous protected acts.

1619. **[Issue 1/6.2]** The Tribunal rejects the allegation that Mr Rienacker tried to force him to swap teams with Mr Maouche. He asked him if he would be prepared to swap teams. When Mr Abanda Bella responded by questioning whether Mr Rienacker was asking him or instructing him, Mr Rienacker said he would have to check. He ended the meeting by asking Mr Abanda Bella to think about the proposed swap.

1620. **[Issue 1/6.3]** The Tribunal has rejected Mr Abanda Bella's contention that Mr Rienacker shouted at him on 22 March 2018 or on 26 April 2018; that he made "denigrating" comments about the concerns that Mr Abanda Bella had raised as to the technical soundness of the testing methodology; or that he produced baseless, untimely and unfounded feedback about Mr Abanda Bella's work on the LV MC validation.

1621. **[CAB Issue 1/6.4]** The Tribunal has found that Mr Kim and Mr Rood had decided not to respond given the inflammatory and unprofessional language used by Mr Abanda Bella, and the lack of specific examples of his particular concerns. Mr Abanda Bella did not chase for a response. It had nothing to do with any previous protected act.

1622. **[CAB Issue 1/6.5]** Mr Abanda Bella did not hand any piece of paper to Mrs Richardson during his Culture Focus Meeting. As a result, the Bank did not receive any written complaints that could conceivably form the basis of a formal grievance. There was no failure to recognise that Mr Abanda Bella was raising a grievance.

1623. **[CAB Issue 1/6.6]** Mr Abanda Bella's feedback on Mr Moune Nkeng was not a grievance. There is no legitimate basis for criticising the failure to treat it as a grievance.

1624. **[CAB Issue 1/6.7]** The Tribunal finds he was not invited to the meeting because this was not a meeting to which Vice Presidents were invited. The subject matter did not require his attendance. No other Vice Presidents attended this meeting. The failure to invite him had nothing to do with any previous protected acts.

1625. **[CAB Issue 1/6.8]** Mr Rienacker's comments recorded on the 2018 annual appraisal form reflected his genuine view that Mr Abanda Bella's conduct had been unsatisfactory and needed improvement. As his email to Mr Kim of 28 January 2019 enclosing his initial draft demonstrated, Mr Rienacker had examples to substantiate each of his criticisms. They were not influenced by any previous protected acts. Mr Rienacker did not verbally abuse Mr Abanda Bella during the 31 January 2019 annual appraisal meeting. This aspect of this allegation is therefore factually incorrect.

1626. **[CAB Issue 1/6.9]** The decisions taken by Mr Kim in February 2019 about Mr Abanda Bella's pay increase and bonus were not influenced by any previous protected acts. They were entirely based on Mr Abanda Bella's performance. In particular, they reflected Mr Abanda Bella's rating of 'Needs Improvement' for the 'How', and his ranking of 11th out of 12 in Mr Kim's team.

1627. **[CAB Issue 1/6.10]** The Tribunal rejects the factual basis of this allegation. Mr Kim was not involved in this project; and Mr Rienacker did provide sufficient guidance, clarity and support.

1628. **[CAB Issue 1/6.11]** The approach taken by Mr Rienacker at the meeting on 14 May 2019 and in his subsequent email was his attempt to progress the Q/C/B validation by encouraging dialogue and co-operation between QA and the validators about the type and extent of the testing required. It was reasonable for him to comment on the stage at which Mr Abanda Bella had raised his points, given the impending deadline. This was 'business as usual' project management. His approach was not influenced by any previous protected acts.

1629. **[CAB Issue 1/6.12]** The Tribunal has found Mr Rienacker chose to have these discussions with QA without involving Mr Abanda Bella in order to make swifter progress in resolving issues that had apparently not been solved when Mr Abanda Bella had taken the lead in communications with QA. There was no requirement that he involve Mr Abanda Bella in every communication and he had not promised to do so. His approach to this issue had nothing to do with any previous protected acts.

1630. **[CAB Issue 1/6.13]** This issue is no longer maintained.

1631. **[CAB Issue 1/6.14]** The only factual allegation forming part of this issue that the Tribunal has accepted is that the Q/C/B project was taken from him and assigned to Ms Li. Mr Rienacker did this to optimise the progress on priority projects. It had nothing to do with any previous protected acts.

1632. **[CAB Issue 1/6.15]** Mr Kim's letter to Mr Abanda Bella inviting him to attend a sickness absence meeting was not influenced to any extent by any previous protected acts. It was a standard letter sent as part of the Bank's sickness absence procedure. Mr Kim did not know that Mr Abanda Bella had asked to be separated from Mr Kim's line management. Therefore, there did not appear to be any reason why he should not continue with this aspect of his line management responsibilities. Furthermore, at this point, Mr Abanda Bella had not asked for any wellbeing meetings to be held away from the workplace; still less had there been any indication in any medical evidence that this would be appropriate. No Occupational Health report had yet been commissioned or obtained. In any event, the last line of the letter gave Mr Abanda Bella the opportunity to request any adjustment to the standard process.

1633. **[CAB Issue 1/6.16]** There is no evidential basis from which the Tribunal could reasonably infer that Mr Butler's refusal to permit Mr Abanda Bella to record his whistleblowing investigation meeting held on 15 November 2019 was influenced by previous protected acts. Therefore, the burden of proof does not transfer to the Bank to show that this refusal was not influenced by previous protected acts. In any event, the Tribunal finds that Mr Butler was applying the same general policy to Mr Abanda Bella that applied to all whistleblowers – that unless a specific medical justification had been established for a departure from the normal procedure, whistleblowers were not permitted to carry out an audio recording of the meeting. No medical justification for a different approach had been established in Mr Abanda Bella's case. The Bank did not want whistleblowers to have confidential data over which they had no control. It was nothing to do with any previous protected disclosures.

1634. **[CAB Issue 1/6.17]** This issue has been deleted.

1635. **[CAB Issue 1/6.18]** This issue essentially duplicates [**CAB Issue 1/3.21.4]**. Reference is made to the conclusions made on that issue above. For the reasons given there, Mr Abanda Bella's characterisation of the assessment of his performance on the 2019 annual appraisal form is rejected. Mr Rienacker did not make unfounded unsubstantiated or vague negative comments. Although he blamed Mr Abanda Bella for delays in completing validations this comment was justified given the Tribunal's factual findings. The contents of the annual appraisal form were not influenced by any previous protected acts.

1636. **[CAB Issue 1/6.19]** The decision to award Mr Abanda Bella a rating of 'Needs Improvement' was not influenced by any previous protected acts. There is no proper evidential basis for drawing such an inference in the absence of an innocent explanation. It was entirely the result of a negative assessment of his performance against the 'What' and the 'How'. That negative assessment was not influenced by previous alleged protected acts.

1637. **[CAB Issue 1/6.20]** The failure to grant Mr Abanda Bella any bonus and the failure to award him a pay rise was entirely the result of his rating of 'Needs Improvement' because of the negative assessment of his performance. It was not influenced by previous alleged protected acts.

1638. **[CAB Issue 1/6.21]** This allegation essentially duplicates [**CAB issue 1/3.23]**. The Tribunal repeats its conclusion to that issue. Although Ms Linsley criticised the level of detail in Mr Haworth's reply, there is no sufficient evidential basis for inferring in the absence of an innocent explanation that this level of explanation was influenced by previous alleged protected acts. In any event, the Tribunal has accepted Mr Haworth's explanation. This was not an act of victimisation because of any previous protected acts.

1639. **[CAB Issue 1/6.22]** In refusing to deal with Mr Abanda Bella's 9 March 2020 complaint as a grievance, the Bank was applying its standard practice that grievances were for complaints about individual treatment rather than for complaints about the impact of policies on the wider organisation. In so doing, it was not influenced by any previous alleged protected acts.

1640. **[CAB Issue 2/7.1]**:

a. **Re [2/3.1**] No longer maintained.

b. **Re [2/3.2]** As explained in relation to **[CAB issue 2/3.2]**, this allegation is factually incorrect.

c. **Re [2/3.3]** The Tribunal accepts that the time taken to respond to the letter of 26 March 2020 was not influenced by its contents. Rather it was a reflection of the length of the document together with its timing. It had been submitted very shortly after the imposition of the first national lockdown for Covid-19. The failure to deal with all of the points Mr Abanda Bella was making in his letter of 26 March 2020 was an oversight by Mr Haworth on this particular occasion, given the volume of issues that both Mr Abanda Bella and Mr Samnick were raising at this time. The Tribunal does not accept that Mr Haworth or Ms Watson deliberately ignored the issues Mr Abanda Bella was raising in the 26 March 2020 letter. The way Mr Haworth responded was not influenced by any protected acts.

d. **Re [2/3.4]** As explained in relation to **[CAB issue 2/3.4],** this allegation is factually incorrect.

e. **Re [2/3.5]** The Tribunal repeats its analysis in relation to **[CAB issue 2/3.5]**. The fact that the Raising Concerns team did not regard the letter of 17 April 2020 as a potential protected disclosure when the Tribunal has found that it was; and the fact that when it was referred back to the ER case management team it was not regarded as a grievance is sufficient to raise a potential inference that this was because of the protected acts in the letter itself. As a result, the burden shifts to the Respondents to show that the allegations of discrimination in the 17 April 2020 letter had no influence on how the letter was treated. The Tribunal finds that the Respondents have discharged the burden of proof. The Tribunal finds that the Raising Concerns team's genuine view was that it did not raise a protected disclosure. Having heard evidence about the role of the Raising Concerns team and the way that it operated, no persuasive reason has been identified why they would be influenced not to identify potential protected disclosures as a result of the presence of

discrimination allegations made against others working in different teams to their own. Furthermore, the Tribunal accepts that Mr Haworth overlooked the need to treat the letters contents as a grievance given the pressure of work he was facing at that time, not because of any protected acts in the letter. He was already assisting with arrangements for other grievance investigations where Mr Abanda Bella was already making equivalent discrimination allegations.

f. **Re [2/3.6]** As explained in relation to **[CAB issue 2/3.6]**, this allegation is factually incorrect.

g. **Re [2/3.7]** Given that he was already investigating other grievances, it was appropriate to invite Mr Easdon to investigate Mr Abanda Bella's grievance about his 2019 performance review. Given his investigation of other matters concerning Mr Rienacker and Mr Kim, Mr Easdon's appointment to consider the 2019 annual appraisal enabled him to assess it in its context. The decision to appoint Mr Easdon and his failure to decline the appointment was not influenced by any protected acts.

h. **Re [2/3.8]** Mr Abanda Bella was not given any advance warning he would have insufficient income payable to him in his June 2020 payment in order to fund his chosen level of pension contribution. The Bank had not promised any of its employees that it would receive advance notification in these circumstances. It was obvious that if he did not have sufficient income, he would not be able to fund his employee pension contributions. There was no need for any explanation. The failure to provide an explanation was not influenced by any previous protected acts.

i. **Re [2/3.9.1]** The Tribunal accepts that neither the Bank nor Mr Haworth communicated with Mr Abanda Bella to warn him that his IT access was about to be disabled due to inaction. There is no evidence that such an advance warning would have been given to others on long term sick leave. The reason why no communication was had with Mr Abanda Bella on this issue in advance was because it was not the Bank's practice to do so. It had nothing to do with any previous protected acts.

j. **Re [2/3.9.2]** This issue was withdrawn during the Final Hearing and will be dismissed upon withdrawal.

k. **Re [2/3.10]** The failure to investigate the matters raised in Mr Abanda Bella's letter dated 7 April 2020, which had made allegations of discrimination, is a sufficient basis for inferences to be drawn that this failure was because of those allegations in the absence of a satisfactory innocent explanation. The

allegations were directed against Mr Haworth, accusing him of victimisation for failing to investigate previous complaints Mr Abanda Bella had raised. The burden of proof therefore transfers to the Respondents to show that this failure had nothing to do with the discrimination allegations in the letter. Notwithstanding this burden on the Respondents, the Tribunal finds that this failure was a genuine oversight at a particularly busy time, given the recent introduction of a national lockdown and the extra workload that this would have caused. On the balance of probabilities, Mr Haworth did not read the letter, realise it was accusing him of victimisation for failing to investigate his previous complaints and then disregard this further complaint, thereby taking the very action of which he had been directly accused. His failure to respond was not influenced by the contents of the letter.

l. **Re [2/3.11]** As explained in relation to **[CAB issue 2/3.11]** this allegation is factually incorrect.

m. **Re [2/3.12]** The reason why Mr Abanda Bella continued to receive payslips sent by post rather than electronically is that this was the default method of providing payslips to employees. Whilst this could apparently be overridden for those employees who were not on sick leave, there was no technical facility to do so for those who were on sick leave. Those responsible for sending out payslips did not know of any of the communications alleged to be protected acts. This method of communication was therefore not because Mr Abanda Bella had done a protected act.

1641. **[CAB Issue 2/7.2]:**

a. **Re [2/4.1]** The alleged comments were not denigrating or belittling when speaking about Mr Abanda Bella.

b. **Re [2/4.2]** The Tribunal does not find that the comments made in these emails between managers on 18 September 2018 were denigrating or belittling. In any event, there is no evidential basis from which it could be inferred that the comments were influenced by previous protected acts.

c. **Re [2/4.3]** The reason why no response was made to the commentary inserted by Mr Abanda Bella following his 2018 appraisal meeting was because it did not come to the attention of Mr Rienacker, Mr Kim or anyone in HR. The failure to act on this commentary had nothing to do with any previous protected acts.

d. **Re [2/4.4]** The allegations noted by Mr Rienacker about Mr Abanda Bella's conduct were not spurious. They reflected his genuine view of how Mr Abanda

Bella had behaved inappropriately during the period from February to May 2019. The inclusion of these issues had nothing to do with any previous protected acts.

e. **Re [2/4.5]** Mr Rienacker did not forward the email dated 18 May 2019 to HR. He did not do so because he did not consider it was a grievance which therefore required HR's attention. It was not expressed to be a grievance and he believed Mr Abanda Bella knew how to raise a grievance if he wanted to do so. This failure to forward the email to HR had nothing to do with any previous protected acts.

f. **Re [2/4.6]** As with **2/4.5**, Mr Rienacker did not regard Mr Abanda Bella's email of 25 July 2019 as a grievance. His failure to forward it to HR was not because of any previous protected act.

g. **Re [2/4.7]** The Tribunal does not find that there were any inaccurate, unjustified or misleading answers provided by Mr Rienacker to Mr Easdon's questions during his interview as part of the grievance proceedings. Therefore this allegation is factually incorrect.

h. **Re [2/4.8]** It was accurate for Mr Rienacker to deny that Mr Abanda Bella had raised grievances as part of his 2018 annual appraisal. He had not. Whilst he had entered a comment on the appraisal system, this was not a grievance and it was not seen by Mr Rienacker at the time.

Direct race discrimination

1642. **[CAB Issue 1/11.1]** Mr Maouche and Ms Li are not actual comparators for the purposes of assessing whether Mr Abanda Bella has been treated unfavourably on grounds of race. There is no evidence that they had an equivalent discussion with Mr Rienacker about promotion criteria. At the meeting Mr Rienacker explained the promotion criteria to Mr Abanda Bella as these had been clarified to him by Mr Kim. What Mr Rienacker said about promotion had nothing to do with Mr Abanda Bella's race.

1643. **[CAB Issue 1/11.2]** In relation to comments made by Mr Rienacker in Mr Abanda Bella's 2017 annual appraisal about his communication style, Ms Li was not an appropriate actual comparator. She was not line managed by Mr Rienacker at the time, but rather by Mr Harrison. She had been in post throughout the 2017 calendar year. The Tribunal has seen no evidence suggesting potential concerns about her style of communication. Given the Tribunal's factual findings about Mr Abanda Bella's communications, it was entirely appropriate for Mr Rienacker in his written review to describe Mr Abanda Bella's communication style as "sometimes overly strong or

argumentative"; and to repeat that view during the annual appraisal meeting. It was not necessary for Mr Rienacker to give him specific examples in writing of this given that Mr Rienacker had repeatedly raised his concerns about the wording of Mr Abanda Bella's emails at the time. If Mr Abanda Bella needed examples these could be discussed during the annual review meeting – as was the case when in response to Mr Abanda Bella's request, Mr Rienacker gave the example of his email about Chinese walls. The content of Mr Rienacker's feedback had nothing to do with his race.

1644. **[CAB Issue 1/11.3]** The Tribunal has rejected Mr Abanda Bella's factual allegation that he was subjected to excessive micro-management by Mr Rood in respect of GMD3329. This was therefore not an act of direct race discrimination.

1645. **[CAB Issue 1/11.4]** The Tribunal rejects the allegation that Mr Rienacker tried to force him to swap teams with Mr Maouche. He asked him if he would be prepared to swap teams. When Mr Abanda Bella responded by questioning whether Mr Rienacker was asking him or instructing him, Mr Rienacker said he would have to check. He ended the meeting by asking Mr Abanda Bella to think about the proposed swap. In any event, the reason why he proposed the swap was to give Mr Abanda Bella the opportunity to forge a better working relationship with a different line manager, given the breakdown in his working relationship with Mr Rienacker. It was also to provide him with the opportunity to gain experience of working on different asset classes. It had nothing to do with Mr Abanda Bella's race. Mr Rienacker was not an actual comparator with his own situation in that it was Mr Rienacker who was suggesting the proposed swap rather than being the subject of the proposed swap. Whilst Mr Maouche was in a comparable situation to Mr Abanda Bella in that they were both potentially capable of being swapped, Mr Abanda Bella was not treated unfavourably in comparison. They were being treated equivalently. If the proposal had been implemented, both Mr Maouche and Mr Abanda Bella would have been transferred away from their current line manager and into a new asset class where they both would need to gain further experience. The absence of other examples of either Vice Presidents or Assistant Vice Presidents swapping roles is not a basis for inferring race discrimination in Mr Abanda Bella's case.

1646. [**CAB Issue 1/11.5**] The Tribunal rejects Mr Abanda Bella's allegation that Mr Rood failed to put an end to Mr Sareen's abusive behaviour at a meeting on 8 June 2018. Therefore this race discrimination allegation is based on an incorrect factual premise.

1647. **[CAB Issue 1/11.6]** The Tribunal has found that Mr Kim and Mr Rood had decided not to respond given the inflammatory and unprofessional language used by Mr Abanda Bella, and the lack of specific examples setting out his particular concerns. Mr Abanda Bella did not chase for a response. The lack of response had nothing to do with Mr Abanda Bella's race. In any event, Mr Rood is not an actual comparator.

He was not in an analogous situation, given he had not sent an identically worded email to that from Mr Abanda Bella.

1648. **[CAB Issue 1/11.7]** Mr Rienacker's feedback at the mid-year review meeting in September 2018 was appropriate both in terms of the areas that had gone well and the areas for improvement – insofar as these could be communicated before Mr Abanda Bella walked out of the meeting. It reflected Mr Rienacker's genuine view of Mr Abanda Bella's performance. There are no factual findings from which the Tribunal could infer that this feedback was influenced by Mr Abanda Bella's race.

1649. **[CAB Issue 1/11.8]** The Tribunal has found he was not invited to the meeting because this was not a meeting to which Vice Presidents were invited. The subject matter did not require his attendance. No other Vice Presidents attended this meeting. The failure to invite him had nothing to do with Mr Abanda Bella's race.

1650. **[CAB Issue 1/11.9.1]** and **[CAB Issue 1/11.9.2]** Mr Rienacker's comments recorded on the 2018 annual appraisal form reflected his genuine view that Mr Abanda Bella's conduct had been unsatisfactory and needed improvement. As his email to Mr Kim of 28 January 2019 enclosing his initial draft demonstrated, Mr Rienacker had examples to substantiate each of his criticisms. They were not influenced by Mr Abanda Bella's race.

1651. **[CAB Issue 1/11.9.3]** As set out in the Tribunal's factual findings Mr Rienacker started reading from his pre-prepared script during the short 2018 appraisal meeting conducted on 31 January 2019. It ended five minutes after it started when Mr Abanda Bella decided to leave. Mr Rienacker did not verbally abuse Mr Abanda Bella during the meeting as he now alleges. Therefore, this race discrimination allegation is factually incorrect.

1652. **[CAB Issue 1/11.9.4]** The reason for the reduction in his bonus was because of his low ranking and his 'Improvement Needed' rating for the 'How'. It was not influenced by his race.

1653. **[CAB Issue 1/11.9.5]** The reason why Mr Abanda Bella did not receive any explanation for the level of his bonus was that he chose to leave the meeting with Mr Kim on 21 February 2019 before any explanation could be given. It had nothing to do with race.

1654. **[CAB Issue 1/11.10]** The Tribunal rejects Mr Abanda Bella's contention that Mr Rienacker repeatedly ignored, criticised and mistreated him for expressing concerns about the testing approach to be adopted on the Q/C/B validation. As set out in the Tribunal's findings of fact, Mr Rienacker attempted to assist Mr Abanda Bella in reaching agreement with the model developer. Therefore, the factual basis of this allegation is incorrect.

1655. **[CAB Issue 1/11.11]** The Tribunal has found Mr Rienacker chose to have these discussions with QA in June 2019 without involving Mr Abanda Bella in order to make swifter progress in resolving issues that had apparently not been solved when Mr Abanda Bella had taken the lead in communications with QA. There was no requirement that he involve Mr Abanda Bella in every communication and he had not promised to do so. His approach to this issue had nothing to do with race.

1656. **[CAB Issue 1/11.12]** Mr Abanda Bella is correct that Mr Rienacker tried to look at his mobile phone screen. The reason he did this was because he thought Mr Abanda Bella was using the phone to record the meeting. This suspicion had nothing to do with race but was the result of how Mr Abanda Bella was conducting himself during the meeting. He did not forward this email onto HR as a "grievance" because he did not regard it as a grievance. It was not described as grievance. Had Mr Abanda Bella regarded it as a grievance and wanted it to be treated as a grievance he could have raised it with HR himself.

1657. **[CAB Issue 1/11.13]** This issue concerns the content of Mr Abanda Bella's 2019 annual appraisal. Mr Abanda Bella seeks to compare the approach to his appraisal with the approach to Ms Li's appraisal. Ms Li is not an appropriate actual comparator. She had been ranked in first place for the 2019 performance year in terms of usefulness and value added. Mr Abanda Bella had been ranked in 11th place. For much of the year she had been working on different projects to Mr Abanda Bella. He makes several different complaints as part of this issue which need to be addressed in turn:

    a. Conducting Mr Abanda Bella's 2019 annual appraisal without any input from or communication with him was the consequence of his failure to submit a self-review before the deadline in late October 2019; that the Bank's standard procedure did not provide for later self-reviews to be submitted; that no self-review was offered by Mr Abanda Bella at any later stage; and that there was no 2019 annual appraisal meeting with him given his absence on long-term sick leave. There was no specific decision made either by Mr Kim or by Mr Rienacker to exclude Mr Abanda Bella's view on his own performance. It was not influenced by Mr Abanda Bella's race or by racial considerations.

    b. Mr Kim and Mr Rienacker's joint decision to award Mr Abanda Bella a rating of 'Needs Improvement' was not influenced by racial considerations. There is no proper evidential basis for drawing such an inference in the absence of an innocent explanation. It was entirely the result of a negative assessment of his performance as explained by Mr Rienacker against the 'What' and the 'How'. That negative assessment was not influenced by Mr Abanda Bella's race or racial factors.

c. The Tribunal has already found that Mr Rienacker did not make unfounded, unsubstantiated or vague comments about Mr Abanda Bella's performance. Reference is made to the Tribunal's conclusions on **CAB issue 1/3.21.4** above.

1658. For these reasons, the Tribunal rejects these allegations of direct race discrimination.

1659. **[CAB Issue 1/11.14]** For the reasons given in relation to **CAB issue 1/11.13**, Ms Li is not an appropriate actual comparator in relation to the assessment of performance during 2019. Mr Abanda Bella has not proved facts from which it could be inferred in the absence of an innocent explanation that the reason his bonus was reduced to nil was influenced by race. The reason why he was not awarded a bonus was because he was given a rating of 'Needs Improvement' for both the 'What' and the 'How'.

Harassment related to race

1660. **[CAB Issue 1/14.1]** The Tribunal has rejected the factual basis on which this allegation is based.

1661. **[CAB Issue 1/14.2.1-2]** The approach taken by Mr Rienacker at the meeting on 14 May 2019 and in his subsequent email was his attempt to progress the Q/C/B validation by encouraging dialogue and co-operation between QA and the validators about the type and extent of the testing required. It was reasonable for him to comment on the stage at which Mr Abanda Bella had raised his points, given the impending deadline. This was 'business as usual' project management. His approach was not influenced at all by Mr Abanda Bella's race and did not amount to harassment. The email did not contain derogatory, unjustified or disingenuous remarks about Mr Abanda Bella's concerns he had raised before the meeting.

1662. **[CAB Issue 1/14.3]** The Tribunal has found Mr Rienacker chose to have these discussions with QA in June 2019 without involving Mr Abanda Bella in order to make swifter progress in resolving issues that had apparently not been solved when Mr Abanda Bella had taken the lead in communications with QA. There was no requirement that he involve Mr Abanda Bella in every communication. He had not promised to do so. His approach to this issue had nothing to do with Mr Abanda Bella's race and did not amount to harassment.

1663. **[CAB Issue 1/14.4]** The reason why Mr Rienacker looked at Mr Abanda Bella's screen was because he thought Mr Abanda Bella was using the phone to record the meeting. It was not in any way influenced by his race. In the immediate context of the meeting and the wider context of the state of the working relationship between Mr Rienacker and Mr Abanda Bella, the way Mr Rienacker looked towards Mr Abanda Bella's phone did not violate Mr Abanda Bella's dignity, nor did it have the purpose

or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for him. It was not harassment related to race.

Disability

1664. **[CAB issue 1/24]** The Respondents concede that Mr Abanda Bella was disabled from 21 June 2019. His disability was the result of symptoms from anxiety and depression.

Knowledge of disability

1665. The Tribunal needs to decide when the Respondents knew or ought reasonably to be expected to have known that Mr Abanda Bella was disabled.

1666. Mr Abanda Bella's case is that the Respondents had the required knowledge when he first went on sick leave with stress and certainly by the end of July 2019, at the start of his period of long-term sickness absence. The Tribunal does not accept this. At that point, the only information provided by Mr Abanda Bella as to the state of his health was what was contained in his Fit Note. There had been no Occupational Health assessment and resulting OH report. Although Mr Abanda Bella's GP had referred him to a psychotherapist in a letter dated 21 June 2019, that letter was not provided to the Bank until 15 October 2019, when it was attached to his grievance.

1667. Receipt of that letter dated 21 June 2019 on 15 October 2019 was not sufficient to fix the Bank with knowledge that Mr Abanda Bella was disabled. Whilst it noted he had "a large amount of stress", listed a range of symptoms and considered that therapy was appropriate, it did not indicate the duration of symptoms to that point or how long they were likely to last. There was no update from the GP or from the psychotherapist on symptoms since 21 June 2019. These gaps were not filled by the contents of the 15 October 2019 grievance itself. In it, he asserted he was disabled, but the grievance contained no specific update on his current day to day symptoms beyond cross referring to the 21 June 2019 letter. It asserted he had been diagnosed with anxiety and depression but contained no supporting evidence of such a diagnosis. The GP's letter contained no such diagnosis.

1668. The next potential date of actual or constructive knowledge of disability is the detailed grievance dated 11 November 2019. This referred again to "anxiety and depression" in general terms (for instance in paragraph 257 **[3119]**) without providing any further details about his current symptoms or attaching any updated medical evidence. It did not give the Respondents actual or constructive knowledge of his disability.

1669. Taken at face value, when the Occupational Health report was received on 17 December 2019, at that point the Bank did have knowledge that the statutory criteria

for disability were met. It indicated (wrongly) that the symptoms had already lasted for 18 months. These symptoms were at a sufficiently significant level that they had required 20 sessions of therapy. They were likely to continue until the perceived work concerns had been resolved. In practice this meant that they might only be resolved when the grievance or any grievance appeal had concluded. That was likely to be some months away, given the length and complexity of the issues raised in the various grievances lodged by that point. Even then, the outcome of the grievances was likely (in the sense of 'could well') to be unsatisfactory from Mr Abanda Bella's point of view. Therefore, even if in fact the symptoms had not lasted for 12 months at a level that had a substantial effect on normal day to day activities, they were 'likely to' do so in the future – in that this 'could well' happen.

1670. As a result, the earliest date on which the Bank could be liable for discrimination arising from disability or for a failure to make reasonable adjustments is 17 December 2019.

Discrimination arising from disability

1671. **[CAB Issue 1/26.1 to CAB Issue 1/26.4]** These allegations relate to the period between 19 September 2019 and 15 November 2019. During this period neither the Bank nor any of its employees knew or ought to have known that Mr Abanda Bella's health condition amounted to a disability. As a result, under Section 15(2) Equality Act 2010, these four allegations must fail.

1672. **[CAB Issue 1/26.5]** In suggesting two of the Bank's business locations for the grievance meeting in his email of 16 January 2020, Mr Haworth was not treating Mr Abanda Bella unfavourably. In offering two different options for where the grievance meeting could be held, he was conscious that Mr Abanda Bella might prefer to avoid attendance at his place of work (i.e. at the first suggested venue, 1 Churchill Place). He was not insisting it had to take place at either venue, if Mr Abanda Bella suggested a suitable alternative. In his email dated 20 December 2019 Mr Abanda Bella had said he was unable to state what specific adjustments were needed "until such time as he received the date and time for the grievance meeting" **[3576]**. He did not indicate that he would be unable to attend a meeting at any of the Bank's venues nor did he require an alternative venue.

1673. **[CAB Issue 1/26.6]** This allegation has been removed.

1674. **[CAB Issue 1/26.7.1]** The Tribunal rejects the contention that Mr Kim and Mr Rienacker committed an act of discrimination arising from disability in not accounting for Mr Abanda Bella's anxiety and depression as part of his annual appraisal, leading to a rating of 'Needs Improvement'. This rating was based on Mr Abanda Bella's performance in the period during 2019 up until the point when he was absent on sick

leave. There is no medical or other evidence that his performance whilst at work before he started his sickness absence was detrimentally impacted by anxiety or depression. The Tribunal does not so find. In any event, Mr Abanda Bella's 'Needs Improvement' ratings were decided in November 2019, at a point before the Bank knew or ought to have known that Mr Abanda Bella was disabled.

1675. **[CAB Issue 1/26.7.2]** Although worded slightly differently, this is an equivalent allegation to the allegation made by Mr Samnick at [**LS Issue 10.9]**. The essence of the allegation is that it was discrimination arising from disability to carry out his 2019 annual appraisal without his input (which would, it is argued, have been obtained if the Bank had communicated with him or sought his input). The Tribunal's conclusion is the same conclusion as has been reached in relation to Mr Samnick, albeit that the person responsible for carrying out Mr Abanda Bella's 2019 appraisal was Mr Rienacker rather than Mr Rood. Focusing on Mr Rienacker's 'mental processes,' the Tribunal asks whether any part of his thinking was influenced by something arising from Mr Abanda Bella's disability. Line managers, including Mr Rienacker, had been told to ensure that the annual performance review process and ratings had been concluded by 31 January 2020. This impending deadline was why Mr Rienacker completed the performance review when he did, based on the information he had available at the time. The review deadline was not something arising from Mr Abanda Bella's disability. As a result, this issue does not amount to a breach of Section 15 Equality Act 2010.

1676. **[CAB Issue 1/26.8]** The reason why the medical cover was downgraded from Premier Plus to Premier was because he did not have sufficient income to cover the additional premiums required for the Premier Plus cover by way of salary sacrifice. His income was insufficient because he had exhausted his entitlement to sick leave due to the extent of his sickness absence. His sickness absence was due to his ongoing mental health impairment, which amounted to a disability. Therefore, his medical cover was downgraded for a reason arising from his disability. The Tribunal finds that the downgrade of his medical cover was a proportionate means of achieving a legitimate aim. The legitimate aim was to treat all employees equally when it came to the funding of additional health benefits. If they were unable to afford the cost of those health benefits through their net pay, it was proportionate to stop the benefit that was purchased through the payroll mechanism until an alternative source of funding had been found.

1677. No advance notice of the decision to downgrade the medical cover was provided to any employees whose sick pay expired and who did not have any other sources of income through payroll (such as a tax rebate) to fund the premiums through salary sacrifice. This was the Bank's standard approach in this situation. The fact that the non-receipt of the premium was only communicated to Mr Abanda Bella only on 26

February (rather than in advance) was not an act arising from his disability. Rather it was the application of the Bank's standard approach.

1678. **[CAB Issue 1/26.9]** This complaint relates to correspondence sent to Mr Abanda Bella by post rather than by email in February 2020. The specific correspondence sent by post is twofold - a letter from HR Operations sending him the Unum decision on 24 February 2020 and a letter from the Healthcare Benefits Team about his Premier Plus cover on 26 February 2020. The reason correspondence was sent to him by post from HR Operations and from the Healthcare Benefits Team was because this was the default mode of communicating with those on long term sick leave.

1679. Mr Abanda Bella has not established that there was thought to be a risk in the UK in late February 2020 of catching Covid-19 from handling posted mail, that he was aware of such a risk and that this was increasing his anxiety. He did not make reference to this risk when objecting to postal communications in his correspondence with the Bank at this point. The first time he linked his objection to documents being sent by post to Covid-19 was in his letter of 26 March 2020, where he asked for documents to be emailed "as a precautionary measure against COVID-19" [4406]. Even at that point, he was not suggesting a particular personal vulnerability to Covid-19 arising from his physical health, or heightened anxiety given the state of his mental health. The same applies when he returned to the subject in his letter of 7 April 2020 (paragraph 39).

1680. In his letter of 18 July 2020 he alleged, for the first time, that the contamination risk from postal communication significantly influenced the frequency and intensity of my anxiety attacks and further exacerbated his depression (paragraph 25) [6809]. There is no medical evidence indicating he was suffering from particular anxiety about the risk of contracting Covid-19 in general or from the receipt of postal communications in particular. Rather, given the evolution of the reasons stated by Mr Abanda Bella's for wanting emailed correspondence rather than posted correspondence, the Tribunal does not accept he was treated unfavourably in continuing to receive payslips and other correspondence by post.

1681. Because there is no unfavourable treatment, this allegation of discrimination arising from disability in respect of posted correspondence fails.

1682. **[CAB Issue 2/19.1 – 19.2]** No longer maintained.

1683. **[CAB Issue 2/19.3]** The Raising Concerns team had decided that Mr Abanda Bella's letter of 26 March 2020 did not amount to a protected disclosure. Therefore when Mr Haworth forwarded it to the HR Operations team, he did not consider it attracted the protections that would be afforded to a whistleblower, such as confidentiality. That is the reason, considering Mr Haworth's mental processes, why he did not ask Mr

Abanda Bella for his prior consent before referring the letter of 26 March 2020 to the HR Operations team. The failure to seek prior consent was not for a reason arising from Mr Abanda Bella's disability.

1684. **[CAB Issue 2/19.4 – 19.6]** No longer maintained.

1685. **[CAB Issue 2/19.7]** Mr Abanda Bella had set his regular pension contributions at £1600, which were collected from his salary. In June 2020 his net pay was less than £1600. As a result, his pension contributions reduced to nil as he had insufficient income to fund the pension contributions. He had insufficient income given the expiry of his sick pay, which in turn was the result of the length of his sickness absence, caused by his ongoing disability. Therefore, the failure to collect his pension contributions was unfavourable treatment arising from disability. However, this treatment was a proportionate means of achieving a legitimate aim. The legitimate aim was to treat every employee equally in expecting all employees to provide the necessary financial amounts themselves to fund their specified monthly level of pension contributions. Where there was insufficient income due to the employee and no other source of funds had been provided, there was no mechanism for making employee pension contributions. Therefore this allegation fails.

1686. **[CAB Issue 2/19.8]** The reason why Mr Abanda Bella was not given advance notice that his IT account was about to disabled due to inaction is because the general practice in the Bank is to not provide this advance notice. There was no policy that someone would be notified a few days before a planned disconnection to give them advance warning it was about to take place. This was because it was assumed that if someone had not been using the IT system for a substantial period, there was no imminent need to inform them of the impending disconnection. Therefore, the failure to provide this advance notice in Mr Abanda Bella's case was because the Bank was following its standard practice. It was not for a reason arising from his disability.

1687. **[CAB Issue 2/19.9 - 19.10]** No longer maintained.

1688. **[CAB Issue 2/19.11]** The refusal to continue paying his sick pay was caused by the fact that his entitlement to sick pay had expired. That had expired because he was still on long term sick leave at the end of the period of sick leave permitted by the terms of his employment contract. His sick leave was caused by his disability. The refusal to continue paying his sick leave was therefore unfavourable treatment arising from disability. The legitimate aim was to treat employees consistently in relation to the payment of sick leave, by paying them sick pay only for the period to which they were entitled under their employment contracts.

1689. **[CAB Issue 2/19.12]** Continuing to receive correspondence by post rather than only by email was not unfavourable treatment. Whilst Mr Abanda Bella may have developed a preference for email correspondence over posted correspondence,

failing to grant his request not to receive posted communications did not amount to unfavourable treatment. The Tribunal refers to the Reasons given below at paragraphs 1709 and 1816.

1690. The reason why Mr Abanda Bella continued to receive payslips sent by post rather than electronically (on 21 July 2020, 22 August 2020 and 19 September 2020) was because this was the default method of providing payslips to employees and this default provision could not be overridden for those employees who were on long term sick leave as this was not technically possible. As he was off on sick leave, Mr Abanda Bella was not able to raise a request to Helpdesk for each month **[6253]**. Furthermore, it does not appear that there was a mechanism for putting in place a monthly reminder so they could be issued to him directly by email [6253]. His sick leave was caused by his disability. The fact that he continued to receive payslips by post was therefore a consequence of his sick leave and so for a reason arising from Mr Abanda Bella's disability. Therefore, if Mr Abanda Bella receiving correspondence by post was unfavourable treatment (which the Tribunal has been rejected) then the Tribunal would have found it was because of something arising in consequence of his disability. At that point, it would have been for the Bank to show that this inability to override the system was a proportionate means of achieving a legitimate aim. The Bank would have failed to do so. No plausible justification has been provided to explain why the Bank's system required payslips to continue to be sent to those on sick leave; and why it could not be overridden in particular cases so that they were sent by email instead. Therefore, had the Tribunal found that sending postal communications to Mr Abanda Bella whilst on sick leave was unfavourable treatment, it would have found that this was an act of Section 15 discrimination arising from disability.

<u>Failure to make reasonable adjustments</u>

1691. Although each of the legal issues to be addressed in relation to each alleged failure to make reasonable adjustments in Mr Abanda Bella's first claims are split across paragraphs 30-32 of the List of Issues, the Tribunal's conclusions are set out alongside each of the PCPs in turn.

1692. **[CAB Issue 1/30.1 PCP1 'management arrangements PCP']** The Tribunal does not accept that the alleged PCP existed. Mr Abanda Bella's particular line management arrangements were not a sufficiently general practice or capable of being a general practice to amount to a PCP. They were unique to Mr Abanda Bella. In any event, insofar as he is arguing that a reasonable adjustment would have been to allow him to liaise directly with HR and/or Employee Relations, he was doing so throughout the time he was corresponding with Mr Haworth in the ER Case Management Team.

1693. **[CAB Issue 1/30.2 PCP2 'wellbeing meetings PCP']** This issue is dated 16 October 2019. It relates to a point in time before the Bank knew or ought to have known that Mr Abanda Bella was disabled. For that reason, there is no liability for any failure to make reasonable adjustments at that point in time. So far as the detail of this issue is concerned, there was a general practice that wellbeing meetings for employees on long term sickness would be scheduled to take place at the employee's place of work and would be conducted with the employee's line manager. However, the Bank did not have a general practice that these meetings would be conducted "with Mr Kim (notwithstanding his request to be separated from Mr Kim)". There is no evidence that Mr Kim generally conducted wellbeing meetings for those who were not his direct reports. The only reason why Mr Kim had proposed a wellbeing meeting with Mr Abanda Bella was that he had stepped into Mr Rienacker's role of managing Mr Abanda Bella's sickness absence, given Mr Abanda Bella's express objection to Mr Rienacker's continued involvement. As a result, given the way in which the PCP has been formulated, the Tribunal does not find that there was a PCP of this kind.

1694. **[CAB Issue 1.30.3 PCP3 'recording of meetings PCP']** This issue is dated 15 November 2019. It relates to the whistleblowing investigation meeting on that date. This took place before the Bank knew or ought to have known that Mr Abanda Bella was disabled. For that reason, there can be no liability for failing to make reasonable adjustments at that point in time. So far as the detail of this issue is concerned, the Tribunal accepts that the Bank had a general practice that whistleblowing meetings should not be recorded. Mr Abanda Bella alleges this put him at a substantial disadvantage in comparison to persons who are not disabled in that he "struggled to remember what was said during the meeting once the meeting was over". The Tribunal does not accept this was the case in mid November 2019, even though he was absent on sick leave at this point. He was able to take notes during the meeting on 15 November 2019. He chose to make notes straight after the meeting. As he himself said in a subsequent grievance: "Thankfully I noted the minutes of the meeting straight after the call, so that the statements were fresh in my mind" **[3420]**. The notes he produced demonstrated he had a good recollection of the meeting when he prepared his notes. Therefore, he was not at a substantial disadvantage.

1695. **[CAB Issue 1/30.4 PCP4 'grievance meeting PCP']** – The Tribunal agrees that the Bank's practice was that grievance meetings would take place at the Bank's premises. This was the default position, which is how the Tribunal understands the phrase "had to" in the wording of PCP4. He was offered two potential locations, one of which was in a different building from the one where he was based. He says that this would leave him more prone to suffering from or anticipating a panic attack or breakdown. The Tribunal does not accept that by choosing one or other venue offered would have put Mr Abanda Bella at a substantial disadvantage in comparison to non-disabled persons from January 2020 onwards, given his state of health at that point as revealed in the Occupational Health reports and in his medical records.

There is no specific medical evidence indicating that the particular location of a grievance meeting (as opposed to discussing the subject matter of the grievance) would have the effect Mr Abanda Bella asserts. Furthermore, although the Bank knew or ought to have known that Mr Abanda Bella was a disabled person by January 2020, it did not know nor ought it to have known that the particular venues offered for the meeting would place Mr Abanda Bella at a substantial disadvantage. The Occupational Health report received on 17 December 2019 had not raised the issue of venues, nor had Mr Abanda Bella himself mentioned this in his email of 20 December 2019. In any event, when Mr Abanda Bella first asked for the grievance to be conducted in writing, this request was readily granted. That is the very adjustment that he alleges should have been made. At that point, it was no longer necessary to find an alternative venue.

1696. The Tribunal accepts that the Bank's practice was only to allow employees to be accompanied by a colleague or trade union representative at a grievance meeting. This was consistent with the statutory position in Section 10(3) Employment Relations Act 1999. The Tribunal does not accept that this practice would have placed Mr Abanda Bella at a substantial disadvantage if there was to be a meeting. There is no medical evidence supporting this. Mr Abanda Bella could have chosen any employee to accompany him; or been accompanied by his trade union representative. As the grievance process was modified by agreement so it was conducted in writing, it was no longer necessary or reasonable to offer him the option of being accompanied by "a person of his choice".

1697. **[CAB Issue 1/30.5 PCP5 'investigation delays PCP']** - The Tribunal rejects the contention that the Bank had a practice of taking "a significant time to complete workplace investigations and/or Mr Abanda Bella's grievance". The standard time period for whistleblowing investigations was six months. The Tribunal do not accept that this was a significant time in the context of the typical subject matter of a whistleblowing investigation. The standard time period for completing a grievance was 20 days following the grievance meeting "in normal circumstances" **[1/1147]**. The complexity and number of grievances raised by Mr Abanda Bella at a time when there was a national pandemic meant that the circumstances were far from normal.

1698. It is not possible to generalise about the typical time that the Bank took to deal with grievances from the actual time taken to investigate the lengthy and unique complaints raised by each of the three Claimants. Furthermore, responding to their complaints was inevitably delayed by the onset and the evolution of the national Covid-19 pandemic with its widespread implications for working practices. This PCP is therefore rejected.

1699. Given the Occupational Health advice that the grievance process should be conducted in a timely manner **[4415]**, the Tribunal accepts that a lengthy process

would put him at a substantial disadvantage in comparison with persons who are not disabled; and that this was known by the Bank.

1700. The Tribunal does not consider that the proposed reasonable adjustments would have been reasonable. It would not have been reasonable to assign "several investigators" or prioritising the most urgent concerns. The latter had not been suggested by Mr Abanda Bella. It would have been invidious for the Bank to have decided which of his concerns were most urgent. Taking time to discuss and agree this with him is likely to have led to further delay rather than speeded up the process. Given Mr Easdon's senior role, it would not have been reasonable to have removed him completely from all other responsibilities so he could devote himself to Mr Abanda Bella's grievance.

1701. **[CAB Issue 1/30.6 PCP6 'performance appraisal PCP']** As framed in the list of issues, the Tribunal rejects Mr Abanda Bella's contention in PCP6 that the Bank had a practice of excluding employees on long term sickness leave from their own performance appraisals. Those on long-term sickness absence (such as Mr Abanda Bella and Mr Samnick) were invited by email to submit a self-review. This is what happened in both Mr Abanda Bella and Mr Samnick's cases by automated emails in October 2019. As a result, they were invited to participate rather than excluded from this process.

1702. However, Mr Samnick has successfully advanced a substantially similar failure to make reasonable adjustments complaint by formulating the PCP in different terms. Mr Samnick and Mr Abanda Bella were in an equivalent position so far as the 2019 appraisal process was concerned. The Tribunal does not consider it would do justice between the parties to require Mr Abanda Bella to stick rigidly to the formulation of PCP6 as worded in the list of issues, rather than reframe his PCP in equivalent terms to Mr Samnick. That is, unless established legal principle requires that the Tribunal does not depart from the PCP as formulated.

1703. The Tribunal reminds itself that an agreed List of Issues is not a pleading. Furthermore, as was noted in *D v E* at paragraph 24 it is open to a Tribunal to reformulate the way that a PCP has been expressed by a litigant in person. The Tribunal considers it would be appropriate to reformulate Mr Abanda Bella's PCP to equate to the PCP relied upon by Mr Samnick in **LS issue 14.8**, namely that the Bank had a practice of carrying out the end of year performance review without Mr Abanda Bella's input. The Respondent cannot credibly argue that it is prejudiced by such a reformulation, given that it equates to the formulation in Mr Samnick's case.

1704. The Tribunal next considers whether that reformulated PCP placed Mr Abanda Bella at a substantial disadvantage in comparison with persons who are not disabled at a point at which the Bank knew or ought to have known that he was disabled. That is from 17 December 2019 onwards, when the Bank received his Occupational Health

report. Unlike Mr Samnick's report, the advice in Mr Abanda Bella's case did not say in terms that he was unfit to attend a grievance meeting. However, it did say that his anxiety was particularly prevalent when leaving the house; that the psychological symptoms were reported to be attributable to the work concerns; that the grievance proceedings should be conducted in a timely manner; and that the business should "discuss this further with the employee at the appropriate time". It is implicit in what was written about his health that he would struggle to meet with Mr Rienacker at an appraisal meeting to discuss his performance in the first half of 2019. Therefore, the Tribunal finds that the reformulated PCP put Mr Abanda Bella at a substantial disadvantage in comparison to non-disabled employees in the same way as it did for Mr Samnick.

1705. It would have been a reasonable adjustment in Mr Abanda Bella's case to have taken some of the steps contended in the List of Issues at CAB issue 1/32.6 – namely communicated further with him to seek his input on his performance during the appraisal period in an appropriate manner given his health issues. This is likely to have involved communicating with someone other than Mr Rienacker such as Mr Patel or another manager. The Reasons at paragraph 1458 above in relation to Mr Samnick's equivalent allegation are repeated as also applicable in Mr Abanda Bella's case. There was therefore a failure to make reasonable adjustments in these respects.

1706. However, it was not a reasonable adjustment to "take account of the effects of CAB's anxiety and depression as mitigation". This is because there was no evidence to indicate that he had been anxious and depressed during the first half of 2019, which was the only part of that performance year on which his performance was being assessed.

1707. **[CAB Issue 1/30.7 PCP7 'medical cover PCP']** – The Tribunal agrees that there was a policy not to use accrued holiday to fund shortfalls in premiums for medical cover. It also accepts that no bespoke letter would be sent out to employees shortly before the downgrade in medical cover took effect. Mr Abanda Bella asserts this "significantly influenced and exacerbated [my] anxiety and depression and compromised [my] ability to receive full treatment" **[CAB issue 30.7.1]** and repeats a similar assertion in his witness statement (at paragraph 918ff). However, his witness statement does not cross refer to any documents to support this assertion – nor even claim in terms that the change in his cover affected the frequency of medical appointments. There is no medical evidence indicating that failing to use accrued holiday to fund shortfalls in premiums thereby leading to his medical cover being downgraded had an impact on his health. Mr Abanda Bella has not shown that the reduction in his cover required him to withdraw from scheduled appointments and that this compromised his ability to receive full treatment. In addition, he was offered the option to reinstate his medical cover by setting up a Direct Debit but chose not to

do so. Therefore, the alleged PCP did not put him at a substantial disadvantage in comparison to non-disabled employees.

1708. **[CAB Issue 1/30.8 PCP8 'Unum communications PCP']** The Tribunal accepts that there was a practice that Unum decisions would be conveyed via the Bank. This was because the Bank was Unum's client who had a contractual relationship with Unum. Furthermore, the Bank had a practice that its communications with Unum would not be disclosed as a matter of course to employees. The Tribunal does not accept that these practices put Mr Abanda Bella at a substantial disadvantage in comparison to those who were not disabled as he alleges – namely that it significantly influenced and exacerbated his anxiety and depression. By **11 May 2020 [5301]**, Mr Abanda Bella had been told he could send his appeal directly to Unum. Further, he has not adequately explained why he needed to see all communications between the Bank and Unum in relation to the operation of the income protection policy; and why this failure to provide these communications put him at a substantial disadvantage in relation to non-disabled employees. There was no failure to make reasonable adjustments in relation to this particular PCP.

1709. **[CAB Issue 1/30.9 PCP9 'postal correspondence PCP']** The Bank did have a policy of sending out correspondence by post rather than by email. This applied to their payroll function in relation to payslips. It also applied to the HR Operations team sending him the Unum decision on 24 February 2020. Mr Abanda Bella alleges he was "less able to handle, process, file and retrieve paper files in comparison to emails due to his mental impairments and due to the risk and fear of death from contracting Covid-19, which significantly exacerbated his symptoms". When Mr Abanda Bella had received a letter by post from HR Operations on 7 January 2020, he had not replied to ask HR Operations to correspond by email **[3607]**. His first request for communications to be by email (17 January 2020) related specifically to communications in relation to his grievance. When he addressed the topic again in his grievance dated 9 March 2020, he asked for all correspondence to be by email irrespective of whether it was also sent by post (paragraph 19) **[4294]**. It was only on 26 March 2020 that for the first time he raised the risk of contracting Covid-19 through posted documents. Even then, he asked for this to stop "on a precautionary basis". He did not state that receiving such postal communications was making him anxious. He has not adduced any supporting medical evidence for his contention. This PCP did not put him at a substantial disadvantage. In any event, as he had not raised it in correspondence at the time, the Tribunal does not accept that the Bank knew or ought to have known that he was at the alleged substantial disadvantage.

1710. **[CAB Issue 1/30.10 PCP10 'universal policies grievance PCP']** As confirmed in Mr Haworth's email dated **18 March 2020 [5486]**, the Bank did have a policy that concerns raised about the application of current policy and procedures applicable to all colleagues on a universal basis were not to be treated as grievances. However,

this did not put Mr Abanda Bella at the substantial disadvantage he alleges in comparison with non-disabled persons, namely "additional delay to resolution of CAB's grievances and whistleblowing concerns; failure to treat 9.3.20 email/letter as a grievance; and significantly exacerbated CAB's anxiety and depression". Mr Abanda Bella had raised his concern about his medical cover defaulting to Premier cover (rather than remaining at Premier Plus) in his email of 9 March 2020. By 18 March 2020, Mr Haworth had investigated the position with HR Operations and had identified a solution – Mr Abanda Bella could set up a direct debit to maintain his monthly premiums, thereby continuing with Premier Plus cover. This response, within ten days, was far quicker than if the issue had been dealt with as a formal grievance. Furthermore, there is no medical evidence that the way this issue was dealt with significantly exacerbated Mr Abanda Bella's anxiety and depression. Finally, even if it did cause him a substantial disadvantage, that disadvantage was not known nor ought it to have been known by the Bank.

1711. **[CAB Issue 2/23.1 'Unum mishandling PCP']** The Tribunal accepts that the Bank had a practice in which it required communications with Unum to go through the Bank. This is exemplified by the Bank's letter to Mr Abanda Bella dated 24 February 2020 giving him two options if he was unhappy with the decision. Both options required communications to be sent to the Bank before being passed to Unum. However, the Tribunal rejects the contention that this put him at a substantial disadvantage in comparison with non-disabled employees by "significantly exacerbating his anxiety and depression". There is no medical evidence that his health was actually impacted by receiving notification of the outcome indirectly through the Bank rather than directly from Unum. Although Mr Abanda Bella complained about this practice at the time, claiming it was impacting on his health, this is not a matter that the Tribunal can accept at face value in the absence of medical evidence. This is particularly so, given that shortly after raising the point, the Bank agreed he could communicate directly with Unum in relation to any appeal.

1712. **[CAB Issue 2/23.2 'Accompanying person PCP']** The Tribunal accepts that the Bank had a practice of only permitting employees to be accompanied to grievance meetings by a work colleague or trade union representative. However, this practice did not put Mr Abanda Bella at a substantial disadvantage in comparison with non-disabled employees because by 3 June 2020 he had already elected for his grievance to be dealt with in writing.

1713. **[CAB Issue 2/23.3 'IT access PCP']** The Bank did have a practice of not informing employees in advance that their IT access would be disabled. Mr Abanda Bella raised this issue on 24 June 2020, which was when he first discovered that his IT access had been disabled. The matter was investigated and his IT access was restored on 4 September 2020. There is no factual evidence as to the practical implications for Mr Abanda Bella of not having IT access; there is no medical evidence that not being

informed in advance that his IT access would be disabled significantly exacerbated his anxiety and depression. The Tribunal does not accept Mr Abanda Bella's assertion in this respect without supporting evidence. In any event, the Tribunal does not accept that the Bank knew or ought to have known that his practice would substantially disadvantage him.

1714. **[CAB Issue 2/23.4 'Grievance evidence PCP']** The Tribunal accepts that the Bank did have a practice that the person who had lodged a grievance was not permitted to have sight of and be able to challenge the Q&A transcripts of grievance interviews. The only evidence that they were able to see was the notes of their own interviews. However, it is denied that failing to provide the transcripts of grievance interviews put him at a substantial disadvantage as a disabled person in comparison to non-disabled persons. All employees suffer the disadvantage equally and it does not particularly disadvantage Mr Abanda Bella as a disabled employee. As a result of submitting a data subject access request, Mr Abanda Bella obtained records of grievance interviews, albeit in redacted form.

1715. **[CAB Issue 2/23.5 'medical cover PCP']** The Bank did have a practice of refusing to permit employees to fund Premier Plus medical cover upgrade with unused holiday in circumstances where paid sick leave had expired. This was a practice that was not generally communicated to employees. The reason for this practice was that the default starting position is that holiday accrued during long term sick leave should be deferred and taken when employees are well again. There is no medical or financial evidence that this practice put Mr Abanda Bella at a substantial disadvantage by comparison with non-disabled employees who were also on long term sick leave and their sick pay had expired.

1716. **[CAB Issue 2/23.6 'Postal correspondence PCP']** The Tribunal accepts that the Bank did have a policy of sending certain correspondence to employees by post when they were absent from work. This applied to payslips, correspondence from HR Operations and from the Healthcare Team. The Tribunal does not accept that this placed him at a substantial disadvantage in comparison with persons who are not disabled on the first of the two bases alleged, namely that "he is less able to handle, process, file and retrieve paper files in comparison to emails due to his mental impairments". Such an alleged disadvantage has not been sufficiently established either by medical evidence or by reason of Mr Abanda Bella's own witness evidence. Mere assertion is insufficient. So far as the second basis is concerned, namely "the risk and fear of death from Covid-19", the Tribunal does not accept that his mental health condition made him anxious about the risk of contracting Covid-19 from postal communications. Reference is made to the Tribunal's conclusions at paragraph 1709 above.

1717. **[CAB Issue 2/23.7 'Lengthy investigation PCP']** The Tribunal refers to its conclusions in relation to the very similar issue in the first claim – **[CAB Issue 1/30.5]** to explain why it does not accept that such a PCP existed.

1718. **[CAB Issue 2/23.8 'Sick pay PCP']** The Bank's sick pay policy provided that those employees with Mr Abanda Bella's length of service should be entitled to a maximum of sixteen weeks sick pay. It did not provide a discretion to extend this entitlement to sick pay in certain circumstances. There is no medical evidence that this sick pay policy put him at a substantial disadvantage in comparison to non-disabled workers in that "financial woes significantly exacerbated his anxiety and depression". In any event, it would not have been a reasonable adjustment to have extended his sick pay. In itself, such an extension would not have been a reasonable step to take to avoid the disadvantage. As was said in *O'Hanlon v Inland Revenue Commissioners* [2007] IRLR 404 (at paragraph 67), "it would be a very rare case indeed where merely giving higher sick pay beyond the end of the contractual entitlement would be considered necessary as a reasonable adjustment". This case does not fall into that rare category. Paying Mr Abanda Bella further sick pay after 16 weeks would not have assisted, facilitated or encouraged him to return to work, in circumstances where he was pursuing an appeal against Unum's decision not to grant him income protection payments.

1719. **[CAB Issue 2/23.9 'Withholding Unum policy details PCP']** The Bank's practice was not to share the full details with its employees of its income protection policy arrangements with Unum. These would be confidential documents setting out the nature of its commercial relationship with Unum. It was also their practice not to indicate whether there was any automated decision making in processing employee's applications. However, the Tribunal does not find that this practice put Mr Abanda Bella at a substantial disadvantage in comparison to non-disabled persons. Mr Abanda Bella has not proved that either practice significantly exacerbated his symptoms, as he asserts in the list of issues. The Bank does not have a policy of indicating or not indicating whether Unum uses automated decision-making when processing income protection applications.

1720. **[CAB Issue 2/23.10 'Pension PCP']** The Bank did not have a specific policy, criteria or practice in relation to employee pension contributions where an employee was on long term sick leave and had exhausted their entitlement to sick pay. As occurred in Mr Abanda Bella's case, employee pension contributions continued for some months even though sick pay had been exhausted because there was sufficient income from tax rebates or from a lump sum payment of accrued holiday. They restarted again once income protection payments were made. It was only in those months where there were insufficient funds to deduct the agreed pension contributions that no employee pension contributions were made. The failure to make employee pension contributions was the result of insufficient monthly pay. Mr Abanda Bella's suggested

adjustment was not reasonable – it is said that the Bank should not have stopped his pension contributions. Mr Abanda Bella is in effect arguing that the Bank should have been funding his employee contributions as he did not have replacement income to fund them himself. This is a wholly unreasonable suggestion.

Indirect disability discrimination

1721. **[CAB Issue 1/33.1]** The Tribunal finds that the Bank did have a general practice that wellbeing meetings were held at the Bank's premises. As this issue is framed, it alleges that there was a general practice that wellbeing meetings "were held with Mr Kim notwithstanding Mr Abanda Bella's request to be separated from Mr Kim". Such a contention is far too specific to Mr Abanda Bella to amount to a general practice.

1722. **[CAB Issue 1/33.2]** The Bank had a general practice that employees were not permitted to record whistleblowing meetings. The Tribunal has found that this practice did not put Mr Abanda Bella at a substantial disadvantage in comparison with non-disabled persons. For the same reason, it did not put him at a particular disadvantage.

1723. **[CAB Issue 1/33.3]** The Bank had a practice that grievance meetings would be held at work sites/locations and employees generally could only be accompanied by a work colleague or trade union representative. The Tribunal has already found that this practice did not put Mr Abanda Bella at a substantial disadvantage in comparison with non-disabled persons. For the same reason it did not put him at a particular disadvantage.

1724. **[CAB Issue 1/33.4]** The Tribunal rejects the contention that the Bank had a policy of permitting AXA to share OH reports with the Bank without an employee's consent. If an employee indicated that they wanted to see a medical advisor's response to an employee's comments before the report was sent to the Bank, the policy provided that consent for the report to be shared with the Bank would be deemed to have been withdrawn.

1725. **[CAB Issue 1/33.5**] The Tribunal does not accept that there was a general practice of carrying out performance appraisals without communicating with or getting input from or making adjustment for, the employee on long-term sick leave. Those on long-term sick leave received the same emails sent to those in work, inviting them to submit their self-reviews. Although these were sent to work email addresses, employees still had access to those email addresses whilst away from the office – until their accounts were disabled due to lack of use. The Tribunal does not accept that those on long-term sick leave were generally not invited to attend an annual appraisal meeting to discuss their performance. Although no meeting was held with Mr Samnick or with Mr Abanda Bella, they were in unique situations. In both cases, they had requested alternative line managers because of the breakdown in their

working relationship with their managers. Line managers were the individuals who would ordinarily conduct the annual appraisal meeting.

1726. **[CAB Issue 1/33.6]** As discussed in relation to **[CAB issue 1/30.9]** there was a policy that certain types of correspondence (payroll, Healthcare Team, HR Operations) were sent by post rather than by email. This policy did not put Mr Abanda Bella at a particular disadvantage.

1727. **[CAB Issue 1/33.7]** The Tribunal accepts that the Bank did have a practice of notifying employees on sick leave that medical cover had been downgraded sometime after the downgrade had occurred. There is no evidence that this practice put or would put persons with whom Mr Abanda Bella shares the same disability at a particular disadvantage when compared with persons who do not have that disability.

1728. **[CAB Issue 1/33.8]** The Tribunal accepts that the Bank had a practice that Unum's communications would be conveyed via the Bank and of not disclosing Unum's policies to employees upfront (specifically its policy concerning the two potential options if an employee was unhappy with an Unum decision). The latter was explained with Unum's decision to reject the BIPS claim. Insofar as Unum's policies were unclear (on which the Tribunal reaches no conclusion) this was not a practice of the Bank. The Bank took its own steps to explain the benefit and the eligibility under the BIPS in a two-page information sheet **[1/1237]**, and in the letter addressed to him dated 4 November 2019. The Tribunal does not find that this practice put Mr Abanda Bella at a particular disadvantage.

1729. **[CAB Issue 1/33.9]** This replicates **[CAB Issue 1/30.10]** which is addressed above. For the same reasons, the Tribunal finds that Mr Abanda Bella was not put at a particular disadvantage.

1730. **[CAB Issue 2/26.1]** The Tribunal does not accept that the Bank had a general policy or practice of ignoring grievances and whistleblowing complaints. Mr Abanda Bella has not established that the treatment of his own grievances and whistleblowing complaints (to the extent upheld in the Tribunal's findings of fact and conclusions of which Mr Abanda Bella only cites one instance in the List of Issues, namely his letter of 26 March 2020) was sufficiently widespread to amount to a general practice.

1731. **[CAB Issue 2/26.2]** The Tribunal accepts that the Bank had a policy that employees attending grievance hearings should be accompanied by a work colleague or a trade union official. However, the policy did not put Mr Abanda Bella at a particular disadvantage because the grievance process in his case was conducted in writing.

1732. **[CAB Issue 2/26.3]** This replicates issue **[CAB Issue 2/23.9]** discussed above. Just as the practice did not put Mr Abanda Bella at a substantial disadvantage in comparison to non-disabled persons, it did not put him at a particular disadvantage.

1733. As a result, all of the indirect discrimination allegations do not succeed.

Harassment related to disability

1734. **[CAB Issue 1/38.1]** Mr Kim's letter of 16 October 2019 inviting Mr Abanda Bella to a wellbeing meeting was not an act of harassment related to disability. Mr Kim was adapting a standard template letter on advice from ER Direct. He did not know at the time it was sent that Mr Abanda Bella had asked to have no further contact with Mr Kim. Even though the Bank had received Mr Abanda Bella's request to be separated from Mr Kim the previous day, it cannot fairly be criticised for failing to notice this and draw it to Mr Kim's attention before the 16 October 2019 letter was dispatched. The request was made in a 10 page long grievance raising several other points that would have required careful analysis and consideration. In any event, receiving the letter did not violate Mr Abanda Bella's dignity, nor did it have the purpose or effect of creating the environment proscribed by Section 26(1)(b)(ii) Equality Act 2010. In any event, at this point, neither Mr Kim nor the Bank knew or to have known that Mr Abanda Bella was a disabled person. Accordingly, sending this letter was not related to disability.

1735. **[CAB Issue 1/38.2.1]** The decision to award Mr Abanda Bella a performance rating of "Needs Improvement" was not related to his disability. It was entirely dependent on an assessment of his performance during the part of 2019 when he was not absent from work on sick leave. This was during a period before he was disabled when there was no evidence that his performance had been impacted by his health. In any event, receiving such a rating did not violate his dignity or have the purpose or effect of creating a proscribed environment. It was not an act of harassment related to disability.

1736. **[CAB Issue 1/38.2.2]** This allegation is factually incorrect. Mr Rienacker's comments in Mr Abanda Bella's downward appraisal were not threats nor were they "unfounded, unsubstantiated, vague and malicious negative feedback".

1737. **[CAB Issue 1/38.2.3]** It was appropriate for the 2019 annual appraisal to be based on Mr Rienacker's comments. Although Mr Abanda Bella had asked for a different line manager to Mr Rienacker or Mr Kim going forward, Mr Rienacker was best placed to assess the standard of Mr Abanda Bella's work during the relevant part of 2019. He had been his line manager throughout the relevant period. Although Mr Rienacker had been criticised in Mr Abanda Bella's grievance, this alone did not create a conflict of interest. Mr Rienacker's interest was in providing appropriate

performance management for past performance of team members, so that all team members deliver on the team's objectives. Even if someone else had stepped in to write Mr Abanda Bella's annual review, it would inevitably have had to have been largely based on input from Mr Rienacker. The decision as to who should provide the comments for the annual appraisal was not related to disability. It did not violate Mr Abanda Bella's dignity, nor did it have the purpose or effect of creating the proscribed environment.

1738. **[CAB Issue 1/38.2.4]** The 2019 annual appraisal was performed without input from Mr Abanda Bella. He had been asked for his input in two emails sent to his work address in October 2019. This was done because the Bank was following its standard practice that those employees who do not submit their self-reviews by late October 2019 are not permitted to put in a self-review at a later date. There was no decision by Mr Kim or by Mr Rienacker or by Mr Haworth that there should be any departure from the standard practice. It was nothing to do with Mr Easdon who was solely involved to decide the grievance. There was no appraisal meeting because Mr Abanda Bella was on long term sick leave and so was not available to attend a meeting. It was not relating to his status as a disabled person. Furthermore, continuing to follow the standard practice in Mr Abanda Bella's case did not violate his dignity, nor did it have the purpose or the effect of creating the proscribed environment.

1739. **[CAB Issue 1/38.2.5]** It is correct that the Bank (whether Mr Kim, Mr Rienacker or Mr Haworth) did not account for or mitigate for his anxiety and depression and his absence from work as part of Mr Abanda Bella's 2019 appraisal. This was because the appraisal was based on those months in 2019 when he had been at work and when he was apparently not suffering from depression or anxiety. Mr Easdon had no involvement whatsoever with the assessment of his 2019 appraisal. There was no assertion at the time let alone any persuasive evidence that his performance during this period had been impacted by the state of his mental health. It was therefore not relevant to take anxiety and depression into account or to take account of his sickness absence. Assessing an employee's annual performance based on their performance during the period when they were not absent on sick leave was standard practice for the Bank in these situations. The failure to take account of the matters referred to in this particular issue, did not violate his dignity nor did it have the purpose or effect of creating the proscribed environment. It was not related to his disability.

1740. **[CAB Issue 1/38.2.6]** It is correct that the Bank froze his salary and did not award him a bonus in relation to his performance for 2019. This was entirely because of his unsatisfactory performance and was not related to his disability.

1741. **[CAB Issue 1/38.3]** The Tribunal repeats its conclusions in relation to the equivalent allegation at **[CAB issue 1/3.23]**. As accepted by Ms Linsley, Mr Haworth did not provide detailed responses to the points made by Mr Abanda Bella. In that sense, Mr

Abanda Bella is correct to characterise the response as "vague". However the lack of detail in addressing Mr Abanda Bella's questions did not violate Mr Abanda Bella's dignity, nor did it have the purpose or effect of creating the environment proscribed by Section 26(1)(b)(ii) Equality Act 2010. The Tribunal has accepted Mr Haworth's explanation for not responding to Mr Abanda Bella's specific questions. Accordingly, it was not related to disability.

Health and safety detriment

1742. **[CAB issue 2/33]** Mr Abanda Bella alleges he has suffered a detriment for bringing to the Bank's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety. The health and safety matter was the risk of death from contracting Covid-19 from receiving his payslips and letters from Barclays in the post rather than by email. This claim is advanced under Section 44(1)(c) Employment Rights Act 1996. He argues the detriment he suffered was that he continued to be sent postal correspondence, thereby subject him to additional risk and/or fear of death from contracting Covid-19.

1743. As a precondition of successfully advance such a claim, Mr Abanda Bella must show that at the time he raised the issue directly with his employer either that there was no health and safety representative or safety committee, or that it was not reasonably practicable for him to raise the matter by raising it with that representative or safety committee.

1744. Mr Abanda Bella cannot satisfy the first such requirement. Barclays had safety representatives. Unite was Barclays' recognized trade union. It had dedicated health and safety representatives whose role was to review health and safety risks across Barclays. They made recommendations for enhanced controls. They would meet quarterly with management to raise thematic issues and concerns [8462]. Mr Abanda Bella could easily have found them on the intranet.

1745. Mr Abanda Bella was a member of Unite. He would readily have been able to raise a relevant health and safety matter with the relevant safety representative. Therefore, he has not shown it was not reasonably practicable for him to raise the issue with them.

1746. Therefore, this complaint must fail.

Jurisdiction

1747. Mr Abanda Bella's failure to make reasonable adjustments claim has succeeded in one respect – failing to adjust the performance review process so that he had an

effective opportunity of inputting into the process of assessment and review. The limitation period starts to run from the "expiry of the period in which the person might reasonably have been expected to do it" (Section 123(4)(b)). Interpreting the performance review period from Mr Abanda Bella's point of view, the last date by which any self-review from Mr Abanda Bella could have been considered by the Bank as part of the overall process was the end of January 2020. Therefore, the three-month limitation period started to run on 31 January 2020 and expired on 30 April 2020.

1748. Mr Abanda Bella contacted ACAS to initiate Early Conciliation in his dispute with Barclays on 12 May 2020. As a result, any complaints about events occurring before 13 February 2020 fall outside the primary limitation period.

1749. As a result, Mr Abanda Bella is around a fortnight out of time to bring this complaint. He has not succeeded on any of his other complaints. The result is that he cannot rely on any later incidents occurring within the primary limitation period to establish that this failure to make reasonable adjustments was part of a continuing act.

1750. The Tribunal needs to assess whether it would be just and equitable to disapply the primary limitation period so that the Tribunal has the jurisdiction to award Mr Abanda Bella a remedy for this act of discrimination. All relevant circumstances need to be considered, applying the legal principles set out above.

1751. The most relevant factors are the state of Mr Abanda Bella's knowledge of relevant time limits; the state of his health and its impact on his ability to progress litigation in the employment tribunal; the extent to which that or anything else provides a good reason for his delay; and the extent of any prejudice caused to the Respondents.

1752. The Tribunal deals with each in turn.

1753. So far as Mr Abanda Bella's knowledge of relevant time limits, the Tribunal notes that he referred to Section 123 Equality Act 2010 in his lengthy grievance email of 11 November 2019 (at paragraph 275 **[3122]**); and again, on 8 January 2020 in an email to Mr Haworth. He had been a member of a trade union since late 2019 and had taken legal advice in relation to his ongoing disputes with Barclays in late October 2019. In circumstances where Mr Abanda Bella does not specifically complain about the legal advice or allege it was negligent, it is a reasonable inference there would have been some discussion with his legal adviser about the operation of statutory time limits. At no point in Mr Abanda Bella's witness statement does he claim ignorance of the statutory time limits. Indeed, he told a consultant psychiatrist on 7 May 2020 that "his application for an employment tribunal has to be in by 10 May 2020".

1754. So far as his state of health is concerned, he had been off work on sick leave since July 2019 and receiving regular counselling shortly thereafter. However, he has not adduced any medical evidence from his GP or from treating doctors to show that he was unable to organise his thoughts so as to instigate legal proceedings. The Tribunal has found that there was an element of exaggeration in what he told Occupational Health on 28 November 2019 about the duration of his symptoms. As at November 2019, he was able to lodge a very substantial grievance making reference to caselaw. Thereafter he continued to lodge several further grievances. He did not visit his GP for two and a half months between 22 October 2019 and 10 January. It appears from the entries in his GP notes between 10 January 2020 and 10 March 2020 that his health symptoms were physical as well as psychological. He started on Escitalopram on 25 March 2020 and is recorded as experiencing problems with short term memory and symptoms of paranoia. By 19 May 2020 he had stopped the antidepressant and discharged himself from the care of a consultant psychiatrist, Dr Brener.

1755. On 2 June 2020 the notes record he responded “not great” when asked how he was, He felt like everything was a big effort. He was putting together his tribunal claim and was suffering sleep disturbance, IBS symptoms and his anxiety was back.

1756. By 22 June 2020, the notes recorded both that he had started tribunal proceedings (which he had done on 18 June 2020) and notes the following about his health:

> “He feels that his health has significantly worsened. At present he is unsure what is reality and what is in his head. He is trying to defend himself and “uncovering more mistreatment” and it is difficult to process and believe. Wanted me to alter his medical note to remove possible paranoid psychosis – agreed and changed this to “anxiety and depression” without the second part.”

1757. The Tribunal infers from his GP notes that there were times during the general period from January 2020 to June 2020 when his ability to think clearly and rationally was significantly challenged. He was inevitably distracted by his various physical ailments and was on occasions lacking in energy and focus as a result of symptoms of anxiety and depression.

1758. There is no specific evidence from the Respondent that it is at a forensic disadvantage as a result of the relatively short delay of two weeks in complaining that his lack of personal input into the 2019 performance review process amounts to a failure to make a reasonable adjustment.

1759. The medical evidence as to Mr Abanda Bella’s state of health is sufficiently significant such that it would be just and equitable to disapply the primary limitation period and allow Mr Abanda Bella to obtain a remedy for this act of discrimination.

1760. The Tribunal does not find that the treatment he experienced before this date formed part of conduct extending over a period such that it is to be treated as done at the end of the period (Section 123(3)(a) Equality Act 2010). The earlier treatment did not amount to discriminatory acts or omissions.

1761. Because all of Mr Abanda Bella's other complaints fail the Tribunal does not need to consider whether it would be just and equitable to extend time in relation to earlier discrimination complaints and does not need to consider whether it would have been reasonably practicable to bring whistleblowing detriment complaints within three months of the date of those events.

1762. For the sake of completeness, the Tribunal finds:

a. That in relation to Equality Act 2010 complaints, it would not have been just and equitable to extend the primary time limit in relation to any events occurring before the start of his period of sick leave on 26 July 2019. This is because he would not have had a sufficient medical explanation for failing to bring Tribunal proceedings at an earlier point. Even if he was not sufficiently well to attend work, the evidence indicates he was sufficiently well to prepare lengthy documents, including his 57-page grievance on 11 November 2019.

b. That in relation to Employment Rights Act 1996 complaints, it would have been reasonably practicable to have issued proceedings within three months of any incidents occurring before the start of his period of sick leave on 26 July 2019.

1763. Therefore, the Tribunal lacks jurisdiction to consider any complaints in relation to events before 26 July 2019.

Next steps

1764. All of Mr Moune Nkeng's complaints have failed for the reasons given. As a result, the Tribunal need take no further action in relation to his claims.

1765. Mr Samnick and Mr Abanda Bella have each succeeded in one respect. That relates to the failure to make a reasonable adjustment, namely failing to specifically seek their input by way of a self-appraisal or other appropriate engagement before finalising their 2019 performance reviews. If the remedy for this single failure to make a reasonable adjustment cannot be agreed, then there will need to be a Remedy Hearing to determine the appropriate remedy.

1766. To allow the parties time to discuss whether a remedy can be agreed, the parties will have 28 days from the date of the formal promulgation of this Judgment to provide

the Tribunal with their availability dates for a half day Remedy Hearing and to suggest any appropriate prior directions. They are to write to the Tribunal before the end of the period of 28 days indicating whether they are asking for a Remedy Hearing to be listed and suggesting any relevant directions that need to be issued to enable the parties to be ready for such a hearing.

Employment Judge Gardiner
Date: 27 February 2024

SCHEDULE 1 – INDIVIDUAL RESPONDENTS TO EACH CLAIM

Mr Moune Nkeng's first claim (3202090/2020)

- Mr Jeong Kim (R2)
- Mr Götz Rienäcker (R3)
- Ms Huayi Li (R4)
- Mr Ron Rood (R5)
- Mrs Faye Richardson (R6)

Mr Moune Nkeng's second claim (3200325/2021)

- Mr Jeong Kim (R2)
- Mr Götz Rienäcker (R3)
- Ms Huayi Li (R4)
- Ms Elyse Gonzalez (R8)
- Ms Melanie Phillips (R9)

There are no longer individual claims against Ms Konstantina Armata (R5), Ms Claire Fordham (R6) and Ms Sonya Bonniface (R7)

Mr Samnick's claim (32017006/2020)

- Mr Christopher Easdon (R7)

Mr Abanda Bella's first claim (3201626/2020)

- Mr Jeremy Haworth (R4)
- Mr Christopher Easdon (R6)

There are no longer individual claims against Mr Jeong Kim (R2), Mr Gotz Rienacker (R3) and Ms Octavia Knox Cartright (R5)

Mr Abanda Bella's second claim (3202576/2020)

- Mr Jeremy Haworth (R4)
- Ms Emily Watson (R5)
- Mr Christopher Easdon (R6)

There are no longer individual claims against Mr Jeong Kim (R2), Mr Gotz Rienacker (R3) and Mr Ron Rood (R5)

SCHEDULE 2 – WITNESSES WHO GAVE LIVE EVIDENCE

For the Claimants

- Mr Henry Moune Nkeng
- Mr Louis Samnick
- Mr Abanda Bella

For the Respondents

- Mr Raphael Albrecht
- Ms Konstantina Armata
- Ms Sonya Bonniface
- Mr Andrew Butler
- Mr Christopher Easdon
- Ms Claire Fordham
- Mr Lawrence Gibson
- Ms Elyse Gonzalez
- Mr Jeremy Haworth
- Mr Jeong Kim
- Ms Octavia Knox Cartright
- Ms Huayi Li
- Mr Graham McNeil-Watson
- Ms Melanie Phillips
- Mrs Faye Richardson
- Mr Götz Rienäcker
- Mr Ron Rood
- Mr Luke Saxton
- Ms Ruth Surendran
- Ms Emily Watson

SCHEDULE 3 – LIST OF ISSUES

MR HENRY-SERGE MOUNE NKENG – First claim (3202090/2020)

PUBLIC INTEREST DISCLOSURE DETRIMENT CLAIM (s47B ERA 1996)

Protected disclosures (s43B ERA 1996):

3. Did HSMN make any protected disclosures, as follows:

3.1. **24 August 2018 (PoC, §135)**: verbally to R6 and Adrian Vitcu, at a "Culture Focus Group" meeting, by raising issues about harassment within the Model Risk Management Team and a lack of support for developing talent, in breach of FED SR11-7 guidelines and the EqA 2010.

3.2. **31 July 2019 (PoC, §192)**: in writing to R1's Whistleblowing Team, regarding the "ostracization of Christian Abanda Bella" (in breach of obligations under the EqA 2010 and health and safety duties) by R3 and R4 for raising material concerns about key models' validation.

3.3. **3 October 2019 (PoC, §196):** verbally to R3 and in writing to R1's IT Department that HSMN's work emails (from February 2016 to July 2018) had disappeared from R1's IT system in breach of the Sarbanes Oxley Act (which requires retention of electronic communications for 5 years).

3.4. **4 May 2020 (PoC, §226)**: in writing to R1's IT department that HSMN's work emails (from February 2016 to July 2018) had disappeared, in breach of the Sarbanes Oxley Act (which requires retention of electronic communications for 5 years).

3.5. **21 June 2020 (PoC, §254)**: by email to Claire Fordham, raising a grievance about the discriminatory conduct of R3 and the failure by R6 to act upon and address written complaints by R1's employees relating to their health, safety and welfare at work being endangered, contrary to the Health & Safety at Work Act 1974.

3.6. **15 July 2020 (PoC, §256)**: by email to Kate Henry (of the Raising Concerns Team), complaining that his email of 21 June 2020 had been referred to R1's Employee Relations Team and that it had not been treated as a whistleblowing disclosure.

3.7. **25 July 2020 (PoC, §258)**: in writing, by email to R1's IT department, complaining that HSMN's work emails (from February 2016 to July 2018) had disappeared, in breach of the Sarbanes Oxley Act (which requires retention of electronic communications for 5 years).

3.8. **29 July 2020 (PoC, §263)**: in writing, in a grievance letter sent to Claire Fordham, complaining about the harassment, discrimination and victimisation by R3 and R4 and that their conduct endangered the health and safety of employees in the workplace.

4. As regards the alleged protected disclosures ("PDs") at 3.1 to 3.8 above:

4.1. Did HSMN disclose information which, in his reasonable belief, tended to show that:

(i) In respect of the PDs at paragraph 3.1:

R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, FED SR11-7 guidelines3) – s43B(1)(b) ERA 1996.

(ii) In respect of the PDs at paragraph 3.3, 3.4 & 3.7:

R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, the Sarbanes Oxley Act4) – s43B(1)(b) ERA 1996.

(iii) In respect of the PDs at paragraph 3.1, 3.2, 3.5, 3.6 & 3.8:

R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, the obligations not to subject employees to discrimination, harassment or victimisation and/or to make reasonable adjustments under the EqA 2010 and/or not to subject employees to public interest disclosure detriment by virtue of s47B ERA 1996) – s43B(1)(b) ERA 1996.

(iv) In respect of the PDs at paragraph 3.2, 3.5 & 3.8:

R1 had failed, was failing or would be likely to fail to comply with its legal obligation and/or that a person's health and safety had been, was being or was likely to be endangered (namely, ss1 & 2 HSWA 1974) – s43B(1)(b) and/or (d) ERA 1996.

4.2. Did HSMN have a reasonable belief that each of PD 3.1 to 3.8 was in the public interest (per s43B(1) ERA 1996)?

Detriments on the ground of protected disclosures (s47B ERA 1996):

5. Was HSMN subjected to any detriment by any of the following acts or deliberate failures to act on the ground that he had made any of the above alleged protected disclosures?

5.1. **23 October 2019 (PoC, §209)**: R6 failed to treat HSMN's email of 22.10.19 as a formal grievance, on the ground of PDs 3.1 to 3.3.

5.2. **23 October 2019 (PoC, §210-211)**: At a meeting with R3, HSMN was again placed under pressure to work on traded risk space (under R5's supervision), on the grounds of PDs 3.1 to 3.3.

5.3. **23 October 2019 – 23 February 2020 (PoC, §213)**: R3 ostracized HSMN by excluding him from communications between himself, R4 and the stakeholders on the equity swap validation that was assigned to HSMN, because of PDs 3.1 to 3.3.

5.4. **31 January 2020 (PoC, §220)**: R3 made aggressive comments to HSMN during his appraisal meeting ("we are going to deal with you later anyway") and made contradictory

comments about HSMN's work on documentation and his testing skills, on the ground of PDs 3.1 to 3.3.

5.5. **27 April 2020 and 6 May 2020 (PoC, §224 and 228)** HSMN was placed under further pressure to work on traded Risk models validation (under R5's supervision), on the grounds of PDs 3.1 to 3.4

5.6. **7 May 2020 (PoC, §229)** R3 included HSMN's name in an email regarding the validation model allocation and allocated HSMN a task, despite HSMN having reasonably declined to take on this additional task, on the grounds of PDs 3.1 to 3.4

5.7. **14 May 2020 (PoC, §230)** HSMN was placed under undue pressure by R3 to take on the task of traded Risk model validation (under R5's supervision), including being threatened that HSMN may be excluded from any equity work he had been assigned to in this respect, on the grounds of PDs 3.1 to 3.4.

5.8. **27 April 2020 – 14 May 2020 (PoC, §233)**: R3 continued to insist that HSMN should work on risk traded model validations under the supervision of R5, on the ground of PDs 3.1 to 3.4.

5.9. **9 – 11 June 2020 (PoC, §240)**: R4 sent an email to the Model Control Officer about issues on the tests she had run, without discussing this with HSMN in advance and when he was assigned as the sole validator, on the ground of PDs 3.1 to 3.4.

5.10. **12 – 15 June 2020 (PoC, §251)**: R2 and/or R3 failed to address properly or at all HSMN's concerns about R4's conduct in sending emails to the Model Control Officer about the LSV/MC testing plan (when he was the sole validator assigned to that project), on the ground of PDs 3.1 to 3.4.

5.11. **24 July 2020 (PoC, §261)**: R2 and R3 added HSMN's name as the "validator" to the validation documents of the European Options & Forward Curve Models for IHC/CCAR 2020 usage, when HSMN had not conducted the validations and the documents were filled with errors, on the ground of PDs 3.1 to 3.6.

VICTIMISATION CLAIM (s27 EqA 2010)

Protected Acts (s27(2) EqA 2010):

6. Did HSMN do the following protected acts within the meaning of s27(2) EqA 2010?

6.1. **Around 30 August 2018 (PoC, §135)**: verbally to R6 and Adrian Vitcu, at a "Culture Focus Group" meeting, by raising issues about harassment within the Model Risk Management Team and a lack of support for developing talent, in breach of the EqA 2010.

6.2. **31 July 2019 (PoC, §192)**: in writing to R1's Whistleblowing Team, regarding the "ostracization of Christian Abanda Bella" (in breach of obligations under the EqA 2010 and health and safety duties) by R3 and R4 for raising material concerns about key models' validation.

6.3. **22 October 2019 (PoC, §§207-209):** in writing, to R6, complaining about R3's "mistreatment" (whereby R3 had insisted that HSMN should work on traded risk space under R5's supervision), contrary to the EqA 2010.

6.4. **10 June 2020 (PoC, §237)**: by email to R3, complaining about R4's harassing and discriminatory conduct (in her email to the Model Control Officer) in which she raised issues about tests she had run without discussing these with HSMN beforehand, when he was assigned as the sole validator.

6.5. **12 June 2020 (PoC, §241)**: by email to R3 and R4, complaining about their harassing and discriminatory conduct in allowing R4 to raise issues with the Model Control Officer stakeholders without discussing these with HSMN beforehand and when the project had not been assigned to R4.

6.6. **21 June 2020 (PoC, §254)**: by email to Claire Fordham, raising a grievance about the discriminatory conduct of R3 and the failure by R6 to act upon and address written complaints by R1's employees relating to their health, safety and welfare at work being endangered, contrary to the Health & Safety at Work Act 1974.

6.7. **15 July 2020 (PoC, §256)**: by email to Kate Henry (of the Raising Concerns Team), complaining that his email of 21 June 2020 had been referred to R1's Employee Relations Team and that it had not been treated as a whistleblowing disclosure.

6.8. **29 July 2020 (PoC, §263)**: in writing, in a grievance letter sent to Claire Fordham, complaining about the harassment, discrimination and victimisation by R3 and R4 and that their conduct endangered the health and safety of employees in the workplace.

Detriments because of any protected acts (s27(1) EqA 2010):

8. Was HSMN subjected to detriments because he had done any of the alleged protected acts, as follows:

8.1. **30 August 2018 (PoC, §139)**: R3 disagreed with Christian Abanda Bella's ("CAB") positive comments about HSMN's performance, because of P.A. 6.1.

8.2. **20 – 26 September 2018 (PoC, §§140-147)**: R3 required HSMN to work under Nadir Maouche's supervision for an XVA Simulation Model, without discussing this with HSMN in advance, because of P.A. 6.1.

8.3. **8 – 12 October 2018 (PoC, §151)**: R3 emailed HSMN (on 8.10.18) seeking to require HSMN to agree a list of feedback providers with R3 for the purposes of HSMN's performance appraisal, because of P.A. 6.1.

8.4. **9 January 2019 (PoC, §155)**: R3 assigned HSMN to an important Tier 1 validation outside his area of expertise, under R2's leadership (described as "toxic") in order to set him up to fail, because of P.A. 6.1.

8.4.1 **29 January 2019 (PoC, §156.1)**: R2 instructed R3 to cancel a 1-to-1 meeting with CAB or HSMN, in case they behaved like LS and brought a third party to an appraisal meeting, because of P.A 6.1.

8.5. **12 February 2019 (PoC, §158)**: R3 gave HSMN a "strong" performance rating but made negative comments on his 2018 Appraisal Form about his refusal to work under Nadir Maouche and R5's supervision, because of P.A. 6.1.

8.6. **15 February 2019 (PoC, §160)**: R1, R2, R3 & R5 reduced HSMN's bonus by 38%, because of P.A. 6.1.

8.7**. 2 April 2019 (PoC, §166):** in an email to HSMN and CAB, R3 criticised them for not making "the best impression with the desk, QA and MCO" (even though the payoff validation had been signed off), because of P.A. 6.1.

8.8. **24 – 25 April 2019 (PoC, §175)**: On R3's instruction, R4 emailed HSMN (without copying in CAB), requesting HSMN to perform work for the "FiDEs payout", despite HSMN having pointed out that he had his own deadlines to meet and was facing IT issues, because of P.A. 6.1.

8.9. **9 – 17 June 2019 (PoC, §176)**: R3 deliberately excluded HSMN (and CAB) from communications and decisions about the Asian Option Validation project, because of P.A. 6.1.

8.10. **23 – 27 July 2019 (PoC, §189)**: R4 gave feedback to the project stakeholders in relation to the Equity Swap Validation project, when R4 was not assigned to that project (the project having been assigned to HSMN and CAB), because of P.A. 6.1.

8.11. **17 – 21 October 2019 (PoC, §206)**: R3 insisted that HSMN work on traded risk under R5's supervision so as to set him up to fail and remove him from the Equity space, because of P.A.s 6.1 and 6.2.

8.12. **23 October 2019 (PoC, §209)**: R6 refused to treat HSMN's written complaint as a grievance because of P.A.s 6.1 to 6.3.

8.13. **23 October 2019 (PoC 210-211)**: At a meeting with R3 being again placed under pressure to work on traded risk space (under R5 supervision) and stated "we're going to deal with you later Henry", because of P.A.s 6.1 to 6.3.

8.14. **23 October 2019 – 23 February 2020 (PoC, §213)**: R3 ostracized HSMN by excluding him from communications between himself, R4 and the stakeholders, on the equity swap validation that was assigned to HSMN, because of P.A.s 6.1 to 6.3.

8.15. **31 January 2020 (PoC, §220)**: R3 made aggressive comments to HSMN during his appraisal meeting ("we are going to deal with you later anyway" and made contradictory comments about HSMN's work on documentation and his testing skills, because of P.A.s 6.1 to 6.3.

8.16. [Intentionally left blank]

8.17. **27 April 2020 and 6 May 2020 (PoC, §224 and 228)** HSMN was placed under further pressure to work on traded Risk models validation (under R5's supervision), because of P.A.s 6.1 to 6.3.

8.18. **7 May 2020 (PoC, §229)** R3 included HSMN's name in an email regarding the validation model allocation and allocated HSMN a task, despite HSMN having reasonably declined to take on this additional task, because of P.A.s 6.1 to 6.3.

8.19. **14 May 2020 (PoC, §230)** HSMN was placed under undue pressure by R3 to take on the task of traded Risk model validation (under R5's supervision), including being threatened that HSMN may be excluded from any equity work he had been assigned to in this respect, because of P.A.s 6.1 to 6.3.

8.20. **27 April 2020 – 14 May 2020 (PoC, §234)**: R3 continued to insist that HSMN should work on risk traded model validations under the supervision of R5, because of P.A.s 6.1 to 6.3.

8.21. **9 – 11 June 2020 (PoC, §240)**: R4 sent an email to MCO about issues on the tests she had run, without discussing this with HSMN in advance and when he was assigned as the sole validator, because of P.A.s 6.1 to 6.3.

8.22. **12 – 15 June 2020 (PoC, §251)**: R2 and/or R3 failed to address properly or at all HSMN's concerns about R4's conduct in sending emails to MCO about the LSV/MC testing plan (when he was the sole validator assigned to that project), because of P.A.s 6.1 to 6.5.

8.23. **24 July 2020 (PoC, §261)**: R2 and R3 added HSMN's name as the "validator" to the validation documents of the European Options & Forward Curve Models for IHC/CCAR 2020 usage, when HSMN had not conducted the validations and the documents were filled with errors, because of P.A.s 6.1 to 6.6.

DIRECT RACE DISCRIMINATION (s13 EqA 2010):

9. Was HSMN subjected to less favourable treatment because of his race (which he describes as black African, with Cameroonian national origins), as set out below:

9.01. **11 February 2016 (PoC, §88.1)**: Despite receiving multiple pieces of medical information and evidence about HSMN's knee impairment, R3 sent an email to HSMN forcing him to work from the office at least one day per week.

Comparator: hypothetical.

9.02. **31 May 2016 (PoC, §101.2)**: Despite receiving multiple pieces of medical information and evidence about HSMN's knee impairment, R3 sent another email to HSMN forcing him to work from the office at least one day per week (outside of rush hour) so that he would not lose touch with the office and team.

Comparator: hypothetical.

9.1. **Mid-January 2017 (PoC, §116)**: R2 gave HSMN a performance rating of "needs improvement" when stakeholder feedback was very good, such that HSMN would/could not be promoted.

Comparator: hypothetical.

9.2. **June 2017 (PoC, §125)**: HSMN was not included in, nor informed of, the promotion process, whilst Marta Karpowicz was promoted to Vice President.

Comparator: Marta Karpowicz; and/or hypothetical.

9.2.1. **8 September 2017 (PoC, §128.2)** During a weekly meeting, R3 questioned HSMN's motivation for seeking promotion and enrolling in the IRM certificate programme.

Comparator: hypothetical.

9.2.2. **11 September 2017 (PoC, §128.3)** In an email sent to HSMN, R3 questioned HSMN's motivation for seeking promotion and enrolling in the IRM certificate programme and disregarded any further conversation about HSMN's career progression.

Comparator: hypothetical.

9.3. **31 January 2018 (PoC, §133)**: R3 gave HSMN a "strong" performance rating but made negative comments on his 2017 Appraisal Form about his understanding of pricing models, his communications skills and his write-ups.

Comparator: hypothetical.

9.4. **30 August 2018 (PoC, §139)**: R3 disagreed with CAB's positive comments about HSMN's performance.

Comparator: hypothetical.

9.5. **20 – 26 September 2018 (PoC, §§140-147)**: R3 required HSMN to work under Nadir Maouche's supervision for an XVA Simulation Model, without discussing this with HSMN in advance.

Comparator: hypothetical.

9.6. **8 – 12 October 2018 (PoC, §151)**: R3 emailed HSMN (on 8.10.18) seeking to require HSMN to agree a list of feedback providers with R3 for the purposes of HSMN's performance appraisal.

Comparator: hypothetical.

9.7. **9 January 2019 (PoC, §155)**: R3 assigned HSMN to an important Tier 1 validation outside his area of expertise, under R2's leadership (described as "toxic") in order to set him up to fail.

Comparator: hypothetical.

9.7.1 **29 January 2019 (PoC, §156.1)**: R2 instructed R3 to cancel a 1-to-1 meeting with CAB or HSMN, in case they behaved like LS and brought a third party to an appraisal meeting.

Comparator: hypothetical.

9.8. **12 February 2019 (PoC, §158)**: R3 gave HSMN a "strong" performance rating but made negative comments on his 2018 Appraisal Form about his refusal to work under Nadir Maouche and R5's supervision.

Comparator: hypothetical.

9.9. **15 February 2019** (PoC, §160): HSMN's bonus was reduced by 38%.

Comparator: hypothetical.

9.10. **2 April 2019 (PoC, §166)**: in an email to HSMN and CAB, R3 criticised them for not making "the best impression with the desk, QA and MCO" (even though the payoff validation had been signed off).

Comparator: hypothetical.

9.11. **24 – 25 April 2019 (PoC, §175)**: On R3's instruction, R4 emailed HSMN (without copying in CAB), requesting HSMN to perform work for the "FiDEs payout", despite HSMN having pointed out that he had his own deadlines to meet and was facing IT issues.

Comparator: hypothetical.

9.12. **9 – 17 June 2019 (PoC, §176)**: R3 deliberately excluded HSMN (and CAB) from communications and decisions about the Asian Option Validation project.

Comparator: hypothetical.

9.13. **18 – 21 October 2019 (PoC, §197-205)** R3 insisted that HSMN should work on traded risk space under R5's supervision, thereby disregarding HSMN's career aspirations.

Comparator: hypothetical.

9.14. **31 January 2020 (PoC, §220)**: R3 made aggressive comments to HSMN during his appraisal meeting ("we are going to deal with you later anyway") and made contradictory comments about HSMN's work on documentation and his testing skills.

Comparator: hypothetical.

9.15. **27 April 2020 – 14 May 2020 (PoC, §233)**: R3 continued to insist that HSMN should work on risk traded model validations under the supervision of R5.

Comparator: hypothetical.

9.16. **11 May 2020 (PoC, §230)**: HSMN was placed under undue pressure by R3 to work on traded risk model validation (under R5), including R3 threatening to remove and/or reduce HSMN's access to work on equity projects (by stating "I cannot guarantee you [HSMN], that you [HSMN] will have other equities project this year!").

Comparator: hypothetical.

9.17. **9 – 11 June 2020 (PoC, §240)**: R4 sent an email to MCO about issues on the tests she had run, without discussing this with HSMN in advance and when he was assigned as the sole validator.

Comparator: hypothetical.

9.18. **12 – 15 June 2020 (PoC, §251)**: R2 and/or R3 failed to address properly or at all HSMN's concerns about R4's conduct in sending emails to MCO about the LSV/MC testing plan (when he was the sole validator assigned to that project).

Comparator: hypothetical.

9.19. **24 July 2020 (PoC, §261)**: R2 and R3 added HSMN's name as the "validator" to the validation documents of the European Options & Forward Curve Models for IHC/CCAR 2020 usage, when HSMN had not conducted the validations and the documents were filled with errors.

Comparator: hypothetical.

10. If so, in respect of each allegation, was this treatment less favourable, in comparison to a hypothetical comparator (namely, an Assistant Vice President in the Equity Independent Valuation Unit but not of black African/Cameroonian origins)?

12. If so, was such treatment "because of" race?

HARASSMENT RELATING TO RACE (s26 EqA 2010)

12. Did any of the Respondents engage in unwanted conduct relating to race? HSMN relies on the following alleged conduct:

12.1. **10 September 2015 (PoC, §63-64)**: R3 suggested that he and HSMN should have a catch up in the office in relation to the multi FiDEs project, two weeks after HSMN sustained a severe right knee injury.

12.2. **25 September 2015 (PoC, §69):** R3 suggested that he and HSMN should have a catch up in the office, just four weeks after HSMN sustained a severe right knee injury.

12.3. **15 December 2015 (PoC, §82):** R3 shared feedback/comments with Sam Dickson for the purposes of HSMN's appraisal meeting on 15.12.15.

12.4. **5 January 2016 (PoC, §86):** R3 reassigned the "multi asset FiDE's validation" to Jiangchun Bi without discussing this with HSMN beforehand.

12.4.1. **11 February 2016 (PoC, §88.1):** Despite receiving multiple pieces of medical information and evidence about HSMN's knee impairment, R3 sent an email to HSMN forcing him to work from the office at least one day per week.

12.5. [Intentionally left blank]

12.6. **23 February 2016 (PoC, §96):** R2 and R3 failed to make HSMN aware of R1's Flexible Working Policy/process.

12.6.1 **31 May 2016 (PoC, §101.2):** Despite receiving multiple pieces of medical information and evidence about HSMN's knee impairment, R3 sent another email to HSMN forcing him to work from the office at least one day per week (outside of rush hour) so that he would not lose touch with the office and team.

12.7. **6 June 2016 (PoC, §103):** After HSMN's second knee surgery (on 18.5.16), he was required by R2 and R3 to return to work in the office full-time without any adjustments being implemented by R2 and/or R3.

12.8. **28 December 2016 (PoC, §112):** After HSMN's third knee surgery (on 8.12.16), he was required by R2 and R3 to return to work in the office full-time without any adjustments being implemented by R2 and/or R3.

12.9**. Mid-January 2017 (PoC, §116):** R2 gave HSMN a performance rating of "needs improvement" when stakeholder feedback was very good, such that HSMN would/could not be promoted.

12.10. **10 July 2017 (PoC, §127)**: After HSMN's fourth knee surgery (on 21.6.17), he was required by R2 and R3 to return to work in the office full-time without any adjustments being implemented by R2 and/or R3.

12.10.1. **8 September 2017** (PoC, §128.2) During a weekly meeting, R3 questioned HSMN's motivation for seeking promotion and enrolling in the IRM certificate programme.

12.10.2. **11 September 2017** (PoC, §128.3) In an email sent to HSMN, R3 questioned HSMN's motivation for seeking promotion and enrolling in the IRM certificate programme, and disregarded any further conversation about HSMN's career progression.

12.11. **31 January 2018** (PoC, §133): R3 gave HSMN a "strong" performance rating but made negative comments on his 2017 Appraisal Form about his understanding of pricing models, his communications skills and his write-ups.

12.12. **30 August 2018 (PoC, §139)**: R3 disagreed with CAB's positive comments about HSMN's performance.

12.13. **20 – 26 September 2018 (PoC, §§140-147)**: R3 required HSMN to work under Nadir Maouche's supervision for an XVA Simulation Model, without discussing this with HSMN in advance.

12.14. **8 – 12 October 2018 (PoC, §151)**: R3 emailed HSMN (on 8.10.18) seeking to require HSMN to agree a list of feedback providers with R3 for the purposes of HSMN's performance appraisal.

12.14.1 **29 January 2019 (PoC, §156.1)**: R2 instructed R3 to cancel a 1-to-1 meeting with AB or HSMN, in case they behaved like LS and brought a third party to an appraisal meeting.

12.15. **12 February 2019 (PoC, §158)**: R3 gave HSMN a "strong" performance rating but made negative comments on his 2018 Appraisal Form about his refusal to work under Nadir Maouche and R5's supervision.

12.16. **2 April 2019 (PoC, §166)**: in an email to HSMN and CAB, R3 criticised them for not making "the best impression with the desk, QA and MCO" (even though the payoff validation had been signed off).

12.17. **24 – 25 April 2019 (PoC, §175)**: On R3's instruction, R4 emailed HSMN (without copying in CAB), requesting HSMN to perform work for the "FiDEs payout", despite HSMN having pointed out that he had his own deadlines to meet and was facing IT issues.

12.18. **9 – 17 June 2019 (PoC, §176)**: R3 deliberately excluded HSMN (and CAB) from communications and decisions about the Asian Option Validation project.

12.19. **23 – 27 July 2019 (PoC, §189)**: R4 gave feedback to the project stakeholders in relation to the Equity Swap Validation project, when R4 was not assigned to that project (the project having been assigned to HSMN and CAB).

12.20. **17 – 21 October 2019 (PoC, §206)**: R3 insisted that HSMN work on traded risk under R5's supervision so as to set him up to fail and remove him from the Equity space.

12.21. **31 January 2020 (PoC, §220)**: R3 made aggressive comments to HSMN during his appraisal meeting ("we are going to deal with you later anyway") and made contradictory comments about HSMN's work on documentation and his testing skills; and continued to insist that HSMN should work on risk traded models under R5's supervision, thereby disregarding HSMN's career aspirations.

12.22. **27 April 2020 – 14 May 2020 (PoC, §233):** R3 continued to insist that HSMN should work on risk traded model validations under the supervision of R5.

12.23**. 9 – 11 June 2020 (PoC, §240)**: R4 sent an email to MCO about issues on the tests

she had run, without discussing this with HSMN in advance and when he was assigned as the sole validator; and, when HSMN complained, R3 failed to indicate that R4 had done anything wrong.

12.24. **12 – 15 June 2020 (PoC, §251)**: R2 and/or R3 failed to address properly or at all HSMN's concerns about R4's conduct in sending emails to MCO about the LSV/MC testing plan (when he was the sole validator assigned to that project).

12.25**. 24 July 2020 (PoC, §261):** R2 and R3 added HSMN's name as the "validator" to the validation documents of the European Options & Forward Curve Models for IHC/CCAR 2020 usage, when HSMN had not conducted the validations and the documents were filled with errors.

13. If so, did such conduct have the purpose or effect of: (i) violating HSMN's dignity; and/or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for HSMN (having regard to each of the factors listed in s26(4) EqA 2010)?

INSTRUCTING, CAUSING OR INDUCING BASIC CONTRAVENTIONS (s111 EqA 2020)

16. Did a person ("Person A") instruct, cause or induce any other person ("Person B") to do anything which contravened Part 5 of the EqA 2010? HSMN asserts the following by way of instructing, causing or inducing:

16.1. **17 – 21 October 2019 (PoC, §206)**: R2 instructed/caused/induced R3 and R5 to require HSMN to work on traded risk under R5's supervision.

16.2. **31 January 2020 (PoC, §220)**: R2 instructed/caused/induced R3 to make aggressive comments to HSMN during his appraisal meeting ("we are going to deal with you later anyway") and to make contradictory comments about HSMN's work on documentation and his testing skills.

16.3. **27 April 2020 – 14 May 2020 (PoC, §233)**: R2 instructed/caused/induced R3 to continue to insist that HSMN should work on risk traded model validations under the supervision of R5.

16.4. **9 – 11 June 2020 (PoC, §240)**: R2 instructed/caused/induced R3 and/or R4 to send an email to MCO about issues on the tests she had run, without discussing this with HSMN in advance and when he was assigned as the sole validator.

16.5. **12 – 15 June 2020 (PoC, §251)**: R2 instructed/caused/induced R3 not to address properly or at all HSMN's concerns about R4's conduct in sending emails to MCO about the LSV/MC testing plan (when he was the sole validator assigned to that project).

17. Was HSMN subjected to a detriment because of the conduct set out at paragraph 14 above (per s111(5)(b) EqA 2010)? HSMN alleges the following detriments:

17.1. **17 – 21 October 2019 (PoC, §206)**: HSMN was required to work on traded risk under R5's supervision so as to set him up to fail and remove him from the Equity space.

17.2. **31 January 2020 (PoC, §218)**: During HSMN's 2019 appraisal meeting, R3 made unfounded negative comments about HSMN's 2019 performance.

17.3. **27 April 2020 – 14 May 2020 (PoC, §226 - 234)**: R3 insisted HSMN work under R5's supervision on traded Risk models validations.

17.4. **9 – 11 June 2020 (PoC, §240)**: R3 provided explanations for R4 contacting stakeholders on a project to which she was not assigned.

17.5. **12 – 15 June 2020 (PoC, §251)**: R3 requested to use the video meetings which had been earmarked to discuss the LSV model, to instead discuss HSMN's concerns regarding R4 contacting HSMN's stakeholders.

AIDING CONTRAVENTIONS (s112 EqA 2010)

18. Did a person ("Person A") knowingly help another person ("Person B") to do anything which contravened Part 5 EqA 2010? HSMN asserts that:

18.1. On **23 October 2019**, R6 aided R2 by failing adequately or at all to address HSMN's complaint on 22 October 2019 about R3's "mistreatment" (where R3 had insisted that HSMN should work on traded risk under R5's supervision) (PoC, §206A).

18.2. On **31 January 2020**, R3 and R5 knowingly helped R2 to harass HSMN in commenting "we are going to deal with you, later anyway" and insisting that HSMN work under R5's supervision on risk traded models (PoC, §220).

18.3. On **27 April 2020 – 14 May 2020**, R3 and R5 knowingly helped R2 to harass HSMN in continuing to insist that HSMN work in the traded risk space under R5's supervision (PoC, §233).

18.4. On **9 – 11 June 2020**, R3 and R4 knowingly helped R2 to harass HSMN by failing to indicate that R4 had done anything wrong and provided an explanation for R4 contacting stakeholders on validations to which she was not assigned (PoC, §240).

18.5. On **12 – 15 June 2020**, R3 and R4 knowingly helped R2 to continue to have verbal discussions with HSMN about his complaint against R4, rather than in writing, as requested by HSMN (PoC, §251).

JURISDICTION (s123 EqA 2010)

As regards HSMN's claims under the EqA 2010:

28. Was HSMN's ET1 presented within the period of three months starting with the date of the act to which the complaint relates (within the meaning of s123(1)(a) EqA 2010)?

29. In so determining, do any of the acts to which the complaint relates constitute conduct "extending over a period" such that the three-month time period only starts at the end of that period (per s123(3)(a) EqA 2010)?

30. In considering what date any alleged failure(s) to act was/were done:

30.1. When did the Respondent(s) decide not to do the thing alleged (per s123(3)(b) EqA 2010)?

30.2. In so determining:

(i) when did the Respondent(s) do an act inconsistent with doing that thing (s123(4)(a) EqA 2010), or

(ii) if the Respondent(s) did not do any inconsistent act, when is the expiry of the period in which the Respondent(s) might reasonably have been expected to do that thing?

31. If any act or failure to act is prima facie out of time, did HSMN present his complaint within such other period as the tribunal thinks just and equitable, so as to afford it jurisdiction to determine that complaint (per s123(1)(b) EqA 2010)?

JURISDICTION (s48(3) ERA 1996)

As regards HSMN's claim for public interest disclosure detriment (presented under s48 ERA 1996):

32. Did HSMN present his complaint before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or – where the act/failure to act is part of a series of similar acts/failures – the last of them (per s48(3)(a) ERA 1996)?

33. If not, was it reasonably practicable for HSMN to present his complaint within the prescribed time limit (per s48(3)(b) ERA 1996)?

34. If so, did HSMN present the complaint within such further period as the tribunal considers reasonable (per s48(3)(b) ERA 1996)?

REMEDY

35. To what remedy/remedies is HSMN entitled, if any? HSMN seeks the following:

(1) Declarations;

(2) Compensation for:

i. Loss of earnings (including bonus);

ii. Loss of pension contributions;

iii. Injury to feelings (including aggravated damages); and

iv. Damages for personal injury caused by the breaches of the EqA 2010;

(3) Recommendations;

(4) Uplift of 25% to any compensation awarded (for failures to comply with the ACAS Code of Practice); and

(5) Interest.

MR HENRY-SERGE MOUNE NKENG – Second claim (3200325/2021)

VICTIMISATION CLAIM (s27 EqA 2010)

Protected Acts (s27(2) EqA 2010):

1. Did HSMN do the following protected acts within the meaning of s27(2) EqA 2010?

1.1 HSMN relies on all the protected acts asserted in "Claim 1" (at paragraphs 6.1 to 6.8) and as set out below.

1.2 **18 September 2020 (PoC2, §57)**: a grievance letter to R7, complaining that she had dismissed disclosures of information and passed the buck to Employee Relations.

1.3 **30 November 2020 (PoC2, §72-74)**: The Claimant sent an email to R8 and R9 rejecting Bill Chen's appointment as his interim line manager. In his email, the Claimant rejected Mr Chen's appointment on a number of grounds, including: (i) concerns about Mr Chen's lack of impartiality when managing black colleagues, especially since Louis Samnick had raised a grievance against Mr Chen for both unlawful victimisation and detrimental treatment; (ii) concerns regarding the lack of impartiality from Mr Chen in independently setting the Claimant's objectives and assisting the Claimant with his career progression and promotion opportunities since he was still reporting to R2; and (iii) other grounds demonstrating bad faith by R3, R8 and R9.

1.4 **17 December 2020 (PoC2, §102)**: a further grievance letter to R6 about R2's, R3's and R4's ongoing actions and also complaining of alleged failures to act on the part of R5, R6 and R8.

1.5 **22 December 2020 (PoC2, §109)**: in an email to R6, the Claimant highlighted discrepancies in relation to his reporting line and the conduct of R2, R4 and R3 in the preceding three weeks.

1.6 **27 December 2020 (PoC2, §110)**: in an email to R6, the Claimant enquired about his missing emails, and complained about Vishal Sawant's conduct.

1.7 **14 January 2021 (PoC2, §123)**: a grievance letter sent to R6 complaining about R3's and R4's conduct, and R6's and R9's failures to act and suggesting reasonable adjustments.

2. [Intentionally left blank]

Detriments because of any protected acts (s27(1) EqA 2010):

3. Was HSMN subjected to any detriments because he had done any of the alleged protected acts, as follows:

3.1 [Intentionally left blank]

3.2 **12 November 2020 (PoC2, §60-61)**: R3 sent the Claimant an outlook invite that purported there had been appointments between them on 11 May 2020 and 25 August 2020 when there were no records of the Claimant and R3 having a consistent weekly meeting.

3.3 **19 November 2020 (PoC2, §66):** it was announced that R4 and Nadir Maouche were promoted to director level. The Claimant was not informed or included in the promotion process and was not promoted.

3.4 **27 November 2020 (PoC2, §67-68):** R3 told the Claimant that he would report to R4, that he would move out of the Claimant's reporting line and that Arnav Prakash would be acting as Vice President on Equity asset class.

3.5 **23 November 2020 (PoC2, §67, 73 & 75)**: R8 sent an email stating that the Claimant's key accountabilities would remain the same if he shifted asset class and that the proposal, therefore, did not prompt a change to his terms and conditions of employment.

3.6 **1 December 2020 (PoC2, §76-80):** R2, R5 and R6 endorsed the decision for the Claimant to report to R4.

3.7 **2 December 2020 (PoC2, §81):** R3 sent the Claimant an outlook invite to meet with himself and R4. The invite stated that there had been meetings starting from 12 November 2020 when there had not.

3.8 **2 December 2020 (PoC2, §82 & 85):** R3 sent a further email to the Claimant stating that the Claimant would be reporting to R4 going forwards but that there was some transition period during which he and R4 planned to have a catch up with him. This showed that they had been liaising about the Claimant without keeping him in the loop. R3 then sent a further email stating that there should be a weekly meeting between them and R4.

3.9 **2 December 2020 (PoC2, §84):** R4 did not communicate/enquire appropriately with the Claimant to familiarise herself with his projects or in relation to separating him from R3.

3.10 **4 December 2020 (PoC2, §87-90):** R9 sent an email regarding R3 moving roles, R4 moving to the role of Director heading up the Equities asset class team, and stating that the Claimant did not want to move to a different asset class and that one option was for him to remain in R4's reporting line.

3.11 **5 December 2020 (PoC2, §91-92):** R3 sent an email that demonstrated he was still the Claimant's line manager as he was instructing him to perform a task. This was at odds with him supposedly moving out of the Claimant's reporting line.

3.12 **9 December 2020 onwards (PoC2, §92-94):** R4 sent the Claimant an email requesting updates regarding his work and copied R3. She subsequently copied R3 into all her emails. This was at odds with R3 supposedly moving out of the Claimant's reporting line.

3.13 **14 December 2020 (PoC2, §95):** R3 cancelled a weekly invite called "Henry-Serge + Huayi" and then sent another invite called "Weekly Henry-Serge" with R4 as a guest.

3.14 **16 December 2020 (PoC2, §99):** R3 sought to allocate additional work to the Claimant with a very short deadline (1.5 days) and without any discussion to assess whether the request was feasible given HSMN's other duties/workload. The Claimant contends that he was set up to fail so that R3 and R4 could draw adverse inferences on the Claimant's performance.

3.15 **17 December 2020 (PoC2, §100):** R3 sent the Claimant an email that showed he had redistributed the Claimant's workload to R4 and Arnav Prakash, just one day after allocating the same workload to the Claimant. R4 sent the Claimant a further email shortly afterwards that confirmed the same.

3.16 **18 December 2020 (PoC2, §103-104):** R9's email of 18 December 2020 in which she said that the Claimant did not want to move to a different asset class. This was misleading as R9's email to the Claimant failed to have due regard to HSMN's request not to be line managed by Bill Chen for the specific reasons detailed in his email of 30 November 2020 as opposed to refusing any move to a suitable position/supervision.

3.17 **22 December 2020 (PoC2, §106-108)**: the email from IT stating that "If there are specific emails missing, then it is possible that those might have been deleted inadvertently by you" which was clearly at odds with their own email sent in July 2020 confirming IT issues with the Claimant's emails.

3.18 **8 January 2021 (PoC2, §112):** R9 sent an email to HSMN confirming that R3 and R4 would remain as part of his reporting/line management and would hold meetings with him and remain a point of contact, despite HSMN's multiple requests to be separated from R3 and R4.

3.19 **11 January 2021 (PoC, §113-118, 122-123)**: R4 sent an email to HSMN inviting him to attend weekly meetings with R3 and R4, further evidencing that R3 and R4 would remain in HSMN's reporting line even though he had raised grievances against R3 and R4 and had requested that R3 and R4 be removed from his reporting line.

3.20 **14 January 2021 (PoC2, §119, 120 & 122):** R3 sent the Claimant an email indicating that he and R4 would be conducting his end of year review, evidencing that R3 and R4 would remain in HSMN's reporting line even though he had raised grievances against R3 and R4 had requested that R3 and R4 be removed from his reporting line.

3.21 [Intentionally left blank]

DIRECT RACE DISCRIMINATION (s13 EqA 2010):

4. Was HSMN subjected to less favourable treatment because of his race (which he describes as Black African, with Cameroonian national origins), as set out below.

5. Was HSMN subjected to the following alleged treatment?

5.1 **July 2020 to 9 September 2020 (PoC2, §33, 47-53)**: the Claimant discovered that he was named as the validator inside the validation documents of European options and Forward curve models for IHC/CCAR 2020 usage. In fact, he had done some editorial work but was not informed that he was a validator for the CCAR 2020 exercise (contrary to the CCAR 2021 in which he was informed). He contends that his name was added to the document by R2/R3 without telling him on purpose and to set him up to fail. This had the further effect of tarnishing his reputation and giving a negative and misleading impression of his performance. As per R1's model validation policies, it was also incumbent on R2 to review the documents and flag up the errors/discrepancies (incorrect identification of the Claimant as validator) but he did not do so.

5.2 **12 November 2020 (PoC2, §60-61)**: R3 sent the Claimant an outlook invite that purported there had been appointments between them on 11 May 2020 and 25 August 2020 when there were no records of the Claimant and R3 having a consistent weekly meeting.

5.3 **19 November 2020 (PoC2, §62 - 66)**: it was announced that R4 and Nadir Maouche were promoted to director level. The Claimant was not informed or included in the promotion process and was not promoted.

5.3.1 **1 December 2020 (PoC2, §80.1):** R2 requested the Claimant's transfer from the non-traded cost centre to the traded IVU (formerly IB model validation) population cost centre. R2 never aligned the Claimant's employment contract with his peers.

5.4 **2 December 2020 (PoC2, §81):** R3 sent the Claimant an outlook invite to meet with himself and R4. The invite purported that there had been meetings starting from 12 November 2020 when there had not.

5.5 **2 December 2020 (PoC2, §82, 85):** R3 sent a further email to the Claimant stating that the Claimant would be reporting to R4 going forwards but that there was some transition period during which he and R4 planned to have a catch up with him. This showed they had been liaising about the Claimant without keeping him in the loop. R3 then sent a further email stating there should be a weekly meeting between them and R4, despite the Claimant's multiple requests to be separated from R3 and R4 sent to Employee Relations (ER).

5.6 **2 December 2020 (PoC2, §84):** R4 did not communicate/enquire appropriately with the Claimant to familiarise herself with his projects or in relation to separating him from R3.

5.7 **16-17 December 2020 (PoC2, §99-100):** R3 sent the Claimant an email that showed he had redistributed the Claimant's workload to R4 and Arnav Prakash, just one day after allocating the same workload to the Claimant. R4 sent the Claimant a further shortly afterwards that confirmed the same.

5.8 [Intentionally left blank]

6. HSMN relies on either actual comparator(s), Marta Karpowicz (White, Analyst then AVP then VP then Director) and R4 (Asian, AVP then VP and then Director), or a hypothetical comparator.

7. If HSMN was subjected to the treatment set out above, was this "because of" race?

HARASSMENT RELATING TO RACE (s26 EqA 2010)

8. Did any of the Respondents engage in unwanted conduct relating to race? HSMN relies on the alleged conduct set out at paragraphs 3.2-3.16, 3.18, 3.20 and 5.2-5.7 above.

9. If so, did such conduct have the purpose or effect of: (i) violating HSMN's dignity; and/or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for HSMN (having regard to each of the factors listed in s26(4) EqA 2010)?

AIDING CONTRAVENTIONS (s112 EqA 2010)

24. Did a person ("Person A") knowingly help another person ("Person B") to do anything which contravened Part 5 EqA 2010? HSMN asserts that:

24.1 **July 2020 to 9 September 2020 (PoC2, §33, 47-53):** the Claimant discovered that he was named as the validator inside the validation documents of European options and Forward curve models for IHC/CCAR 2020 usage. In fact, he had done some editorial work but was not informed that he was a validator for the CCAR 2020 exercise contrary to the CCAR 2021 in which he was informed). He contends that his name was added to the document by R2/R3 without telling him on purpose and to set him up to fail. This had the further effect of tarnishing his reputation and giving a negative and misleading impression of his performance. R3 (Person A) aided R2 (Person B) to racially harass him.

JURISDICTION (s123 EqA 2010)

As regards HSMN's claims under the EqA 2010:

25. Was HSMN's ET1 presented within the period of three months5 starting with the date of the act to which the complaint relates (within the meaning of s123(1)(a) EqA 2010)?

26. In so determining, do any of the acts to which the complaint relates constitute conduct "extending over a period" such that the three-month time period only starts at the end of that period (per s123(3)(a) EqA 2010)?

27. In considering what date any alleged failure(s) to act was/were done:

27.1 When did the Respondent(s) decide not to do the thing alleged (per s123(3)(b) EqA 2010)?

27.2 In so determining:

(i) when did the Respondent(s) do an act inconsistent with doing that thing (s123(4)(a) EqA 2010), or

(ii) if the Respondent(s) did not do any inconsistent act, when is the expiry of the period in which the Respondent(s) might reasonably have been expected to do that thing?

28. If any act or failure to act is prima facie out of time, did HSMN present his complaint within such other period as the tribunal thinks just and equitable, so as to afford it jurisdiction to determine that complaint (per s123(1)(b) EqA 2010)?

REMEDY

29. To what remedy/remedies is HSMN entitled, if any? HSMN seeks the following:

(1) Declarations;

(2) Compensation for:

i. Loss of earnings (including bonus);

ii. Loss of pension contributions;

iii. Injury to feelings (including aggravated damages); and

iv. Damages for personal injury caused by the breaches of the EqA 2010;

(3) Recommendations;

(4) Uplift of 25% to any compensation awarded (for failures to comply with the ACAS Code of Practice); and

(5) Interest.

MR LOUIS SAMNICK

Note: at an earlier stage, Mr Samnick had named eight individual respondents. As a result of previous orders, the only remaining individual respondent is Christopher Easdon (R7). In order to understand the individuals identified below, although they are not parties to Mr Samnick's claim, the Tribunal identifies them as follows:

R2 – Mr Jeong Kim

R3 – Mr Ron Rood

R4 – Ms Konstantina Armata

R5 – Ms Claire Fordham

R6 – Mrs Faye Richardson

R7 – Mr Christopher Easdon

R8 – Ms Ruth Surendran

R9 – Mr Jeremy Haworth

1. Did each Respondent know, or could they reasonably have been expected to know, that LS was disabled? If yes, at what point in time?

Note: LS alleges that the Respondents knew (or could reasonably be expected to have known) that he was disabled from 29 July 20192.

PUBLIC INTEREST DISCLOSURE DETRIMENT CLAIM (s47B ERA 1996)

Protected disclosures (s43B ERA 1996):

2. Did LS make any protected disclosures, as follows:

2.1. **Late 2012/early 2013 (PoC, §15)**: verbally, to all attendees at a Trading Book Model Committee meeting by stating that the Basel 3 Backtesting – Representative Portfolio Model was structurally flawed due to its circular nature. Attendees included Inmark Sareen, Graham McNeil-Watson, Lie Ping Chan, Richard Stout, Jamie Glynn, Adrian Vitcu, Patrick Gillen, Sarah Rehman, Ed Duncan, Claudia Yastermitz, Chris Holliman, Adam Sticpewich, Claire Jackson, Hans Lotter, Yadong Li and Duncan MacDonald.

2.2. **23 May 2014 (PoC, §30)**: by email, to Imran Sidiqui, Graham McNeil-Watson, Charles Chukukwa and Marcos Protopapas, in which LS presented his test results and stated that they exhibited large differences between representative portfolio and real portfolio market risk factor sensitivities, in breach of the FSA/PRA Regulation (BIPRU, 13.6.67(7) & (8)).

2.3. **12 September 2014 (PoC, §32)**: by email to Imran Sidiqui, Graham McNeil- Watson, David Hassine, Raphael Albrecht, Sergey Yakubov and Neha Sood, in which LS presented further test results showing large differences between the representative and real portfolio, in breach of BIPRU 13.6.67(7) & (8) and article 294.1(h)(i) of EU regulation No 575/2013.

2.4. **22 June 2017 (PoC, §67):** verbally, in a telephone call to Aman Bhandal (a member of R1's Raising Concerns Team) regarding the sabotage of the Comprehensive Capital Analysis Review ("CCAR") exam preparation by London directors in the Traded Risk IVU team (namely, R2, R3, Duncan Harrison and Götz Rienäcker).

2.5. **18 October 2017 (PoC, §72)**: by email to R3, disclosing the inadequacy of the new 'Value-at-Risk' ("VaR") methodology proposal to compute non-linear equity single stocks products and the lack of justification for the consequent considerable VaR reduction.

2.6. **7 November 2017 (PoC, §§74 & 75)**: in an email to R3, within his Mid-Year Performance Review Minutes, LS stated that the Credit Default Swap ("CDS") final validation document that R3 submitted to the PRA (without seeking LS's approval of its content) had been stripped of three-quarters of the issues raised.

2.7. **13 November 2017 (PoC, §77):** in writing to R1, via his 2017 Performance Review document, LS disclosed the inappropriate removal by R3 of three-quarters of the issues raised in respect of the CDS final validation (in particular, no check/correction for non-arbitrage volatility surface and no supporting evidence of its appropriateness).

2.8. **15 January 2018 (PoC, §82):** by email, to Patrick Chen, LS disclosed that the revision of the Post Model Adjustment for all the counterparty Credit Risk Model limitations which had been agreed between Inmark Sareen and R3 was being inappropriately decreased from £2BN to £800M.

2.9. **25 January 2018 (PoC, §84)**: verbally, in a meeting with Eduardo Canabarro, LS disclosed the sabotage of the CCAR exam preparation by London directors in the Traded Risk IVU team (namely, R2, R3, Duncan Harrison and Götz Rienäcker).

2.10. **8 March 2018 (PoC, §95):** by email, to Patrick Chen, LS disclosed that Jack Rapley had refused to send LS the "Stress VaR" impact analysis on the basis that the numbers requested by LS were outside the regulator's scope and Mr Rapley did not have these to hand.

2.11. **7 May 2019 (PoC, §125)**: in writing, LS complained about the "rampant culture of bullying, harassment, discrimination, victimisation and detrimental treatment" perpetrated by R2, R3, Götz Rienäcker and that the HR department (R5 & R6) "unlawfully aided" their conduct.

2.12. **4 July 2019 (PoC, §135)**: in an email to R1's Whistleblowing Team, disclosing R3's deliberate failure to disclose the updated validation document (for the Multifactor Interest Rate ("MFIR") Simulation Model) to the Audit team.

2.13. **17 October 2019 (PoC, §160)**: in writing, by way of LS's further grievance against R2 and R3 for failing to comply with their duties under the EqA 2010 (in particular, in relation to their failure to make reasonable adjustments).

2.14. **25 October 2019 (PoC, §164)**: in writing, by way of LS's further grievance letter sent to R2, R4, R5 and R6, stating that he wished to put an end to race discrimination, bullying, harassment, victimisation and detrimental treatment which both he and Christian Abanda-Bella ("CAB") were being subjected to; and that race discrimination was more widespread than just the individuals identified within the grievance letter.

2.15. **20 November 2019 (PoC, §167)**: in writing, by way of a letter to R1 and R9, disclosing the risk of harm to his health and safety and to others caused by having to attend face-to-face meeting at R1's offices in breach of the EqA 2010 and the Health and Safety at Work Act 1974.

2.16. **14 April 2020 (PoC, §180**): in an email to R9, complaining that R1 was seeking to implement a different PHI complaint process than that conveyed to him by Unum (which permitted LS to complain directly to Unum); and about R1 having informed R3 about his PHI application, in breach of his privacy rights under Article 8 of HRA 1998 and GDPR 2018, and R1's duties under the EqA 2010 and HSAWA 1974.

2.17. **20 April 2020 (PoC, §§181 & 182)**: in writing, by way of a letter sent to R9, disclosing that R3 had made malicious comments in LS's 2019 End of Year performance review and that the review was undertaken without input from LS; and that R1, R2, R4, R5, R6, R7 and R8 had failed to prevent the review from taking place due to the fact that LS had done protected acts (i.e. victimisation).

3. As regards the alleged protected disclosures ("PDs") at 2.1 to 2.17 above:

3.1. Did LS disclose information which, in his reasonable belief, tended to show that:

3.1.1. In respect of the PDs at paragraph 2.1, 2.2 & 2.3 R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, FSA/PRA Regulation BIRPU 13.6.67 (7) and (8) &/or Article 294.1(h) and (i) of EU Regulation No.575/2013) - s43B(1)(b) ERA 1996.

3.1.2. In respect of the PDs at paragraph 2.4 & 2.9 R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, Fed/OCC SR11-7 guidelines and/or CCAR requirements regarding prudential and other regulatory prescriptions– s43B(1)(b) ERA 1996.

3.1.3. In respect of the PDs at paragraph 2.5 & 2.10 R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, PRA/FCA BIRPU 7.10 Regulation and Market Risks Rules of FED/OCC) – s43B(1)(b) ERA 1996.

3.1.4. In respect of the PDs at paragraph 2.6, 2.7 & 2.8 R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, Article 369(1)(a) of EU Regulation No. 575/2013 and/or Fed/OCC guidelines for sound Model Risk Management (SR1107, OCC 2001-12, 1)) – s43B(1)(b) ERA 1996

3.1.5. In respect of the PDs at paragraph 2.12 R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, R1's Model Risk Policies & Standards and R3's fiduciary duties as a director– s43B(1)(b) ERA 1996.

3.1.6. In respect of the PDs at paragraph 2.11, 2.13, 2.14, 2.15, 2.16 & 2.17 R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, the obligations not to subject employees to discrimination, harassment or victimisation and/or to make reasonable adjustments under the EqA 2010 and/or not to subject employees to public interest disclosure detriment by virtue of s47B ERA 1996) – s43B(1)(b) ERA 1996.

3.1.7. In respect of the PDs at paragraph 2.15 R1 had failed, was failing or would be likely to fail to comply with its legal obligation and/or that a person's health and safety had been, was being or was likely to be endangered (namely, ss1 & 2 HSWA 1974) – s43B(1)(b) and/or (d) ERA 1996.

3.1.8. In respect of the PDs at paragraph 2.16 R1 had failed, was failing or would be likely to fail to comply with its legal obligations under the GDPR – s43B(1)(b) ERA 1996.

3.2. Did LS make PD 2.1 in good faith (per s43C(1) ERA 1996)? [Prior to the statutory section's amendment by the Enterprise and Regulatory Reform Act 2013, as from 25 June 2013].

3.3. Did LS have a reasonable belief that each of PD 2.2 to 2.17 was in the public interest (per s43B(1) ERA 1996)?

Detriments on the grounds of protected disclosures (s47B ERA 1996):

4. Was LS subjected to any detriment by any of the following alleged acts or deliberate failures to act on the grounds that he had made any of the above alleged protected disclosures?

4.1. **24 July 2013 (PoC, §22)**: Graham McNeil-Watson deliberately failed to provide LS with the required information for the model validation LS had been requested to carry out (as set out in the Trading Book Model Committee meeting minutes of 24 July 2013), on the grounds of PD 2.1.

4.2. **October 2014 (PoC, §33 & 36):** Raphael Albrecht supported the CCR QA team to put the burden of proving the model appropriateness on LS (instead of on CCR QA), on the grounds of PDs 2.1 to 2.3.

4.3. **31 December 2014** (PoC, §34): R2 failed to:

4.3.1. inform LS about the promotions process to Director,

4.3.2. include LS in the promotions process to Director,

4.3.3. promote LS to Director

on the grounds of PDs 2.1 to 2.3.

4.4. [Intentionally left blank]

4.5. **10 July 2015** (PoC, §§38, 39 - 46): Raphael Albrecht included negative comments on LS's mid-year performance appraisal, about his behaviours and writing skills, on the grounds of PDs 2.1 to 2.3.

4.6. **9 December 2015** (PoC, §§49 & 50): R2 did not:

4.6.1. inform LS about the opportunity to apply for the Director role - Head of Traded Risk Model Validation,

4.6.2. include LS in the promotions process to the Director role - Head of Traded Risk Model Validation,

4.6.3. promote LS to the Director role - Head of Traded Risk Model Validation - which was instead given to R3, despite the fact that LS had more experience than R3, on the grounds of PDs 2.1 to 2.3.

4.7. [Intentionally left blank]

4.8. **1 February 2016 (PoC, §54):** R3 did not invite LS for lunch on his first day (instead inviting Bill Chen – who is Asian – for lunch and coffee, even though Mr Chen did not even report to R3); and LS was then excluded from all meetings and committees which he used to attend previously (either alone or with his previous managers, including R2), on the grounds of PDs 2.1 to 2.3.

4.9. **22 June 2016 (PoC, §58)**: R3 excluded LS from a meeting between the London Model Validators sub teams and Eduardo Canabarro, on the grounds of PDs 2.1 to 2.3.

4.10. [Intentionally left blank]

4.11. [Intentionally left blank]

4.12. [Intentionally left blank]

4.13. **11 October 2017 (PoC, §71):** During LS's mid-year review meeting, R3 made unfair, unspecific and unjustified negative comments about LS's writing skills, yet refused to permit LS to attend relevant training (saying, "writing more is the best way to progress"), on the grounds of PDs 2.1 to 2.4.

4.14. 2 **November 2017 (PoC, §73)**: R3 side-lined LS by allocating validations in the high profile IHC CCAR exam project to all team members (including himself) but not to LS; and then later reallocating his own validation activity to Flavia Gianmarino (who was a newly hired junior VP), on the grounds of PDs 2.1 to 2.5.

4.15. **30 November 2017 (PoC, §79):** R2 failed to promote LS to Director, despite his performance ratings, whilst Bill Chen was promoted; and LS was neither informed of nor included in the promotion process, on the grounds of PDs 2.1 to 2.7.

4.16. **8 December 2017 (PoC, §80):** Toby Larkin refused to provide LS with a transcript of the protected disclosures which LS had made over the phone and during meetings, on the grounds of PDs 2.1 to 2.7.

4.17. **12 & 24 January 2018 (PoC, §§81 & 83)**: R3 allocated Flavia Giammarino to four validation projects, Aneesh Venkatraman to two high profile active projects and Georgios Mavros to one high profile active project; whilst LS was only assigned to one "off the record" active project, on the grounds of PDs 2.1 to 2.7.

4.18. [Intentionally left blank]

4.19. **21 February 2018 (PoC, §93)**: Kate Henry emailed LS to advise that the investigation into LS's disclosure on 22.6.17 (PD 2.4) had been closed without any evidence of wrongdoing having been found (but without LS having been asked to provide any further information), on the grounds of PDs 2.1 to 2.9.

4.20. **27 April 2018 (PoC, §96)**: R3 reallocated the IRC model away from LS to Marta Karpowicz on the grounds of PDs 2.1 to 2.10.

4.21. **8 May 2018 (PoC, §97)**: LS applied by email to Patrick Chen for a Director position in the Large Model Framework team (advertised on the internal job board); but an external candidate (Daniel Mayenberger) was appointed, in October 2018. LS was overlooked on the grounds of PDs 2.1 to 2.10.

4.22. **22 May 2018 (PoC, §99)**: R3 asked LS if he was happy for the new Basel 3 Representative Portfolio model to be allocated to Flavia Gianmarino as she had "nothing to do" (even though there was plenty of other work for her to do; and LS had worked on the Basel 3 project in 2013-15), on the grounds of PDs 2.1 to 2.10.

4.23. **14 September 2018 (PoC, §102)**: R3 confirmed that he was going to place LS on a performance improvement plan (PIP) as his performance "needs improvement" and that he would not approve LS's request to enrol on the International Risk Management (IRM) Certificate programme unless LS agreed to the PIP, on the grounds of PDs 2.1 to 2.10.

4.24. **17 September 2018 (PoC, §103):** R3 refused to approve LS's enrolment onto the IRM Certificate programme via email, on the grounds of PDs 2.1 to 2.10.

4.25. [Intentionally left blank]

4.26. [Intentionally left blank]

4.27. **20 November 2018 (PoC, §109):** Patrick Chen offered to transfer LS to the Large Model Framework team as a VP (reporting to Daniel Mayenberger); but LS was then required to attend an interview and was then rejected for the role, on the grounds of PDs 2.1 to 2.10.

4.28. **9 January 2019 (PoC, §117):** R1, R2, R3 and Götz Rienäcker failed to assign LS to the review of the IHC VaR model (continuation of previous exclusion/removal from this project), despite the fact that LS was the only individual with the requisite experience, on the grounds of PDs 2.1 to 2.10.

4.29. **31 January 2019 (PoC, §119)**: During LS's end-of-year performance meeting, R3 confirmed that LS's performance rating for 2018 was 'Strong' for "the how" and 'Improvement needed' for "the what", on the grounds of PDs 2.1 to 2.10.

4.30. **Mid-February 2019 (PoC, §120):** LS's total compensation for the 2018 fiscal year decreased by 5% to £98k (comprised of a base salary of £95.5k, and a decreased bonus of £2.5k) and LS received a base salary increase of approximately 1% to £96.5k for 2019, on the grounds of PDs 2.1 to 2.10.

4.31. **2 July 2019 (PoC, §134)**: R1 and Julia Brown (HR/Employee Relations) informed LS that the Whistleblowing Team had not investigated LS's disclosure of 7.5.19 (PD 2.11); and that LS's identity had been disclosed to HR and management, without his consent, on the grounds of PDs 2.1 to 2.11.

4.32. **19 July 2019 (PoC, §138)**: R3 informed LS that the PIP requirements had not been met and that a formal capability procedure would be commenced (chaired by Marco Bastianic), because of PDs 2.1 to 2.12.

4.33. **17 October 2019 (PoC, §161)**: R1 and R2 refused LS's request to be removed from R2 and R3's line management during his sickness absence, on the grounds of PDs 2.1 to 2.12.

4.34. **1 November 2019 (PoC, §165):** R1 and Lawrence Gibson informed LS that his disclosure (in his grievance dated 25.10.19 – PD 2.14) was not appropriate for investigation by R1's Whistleblowing Team and the matter would be transferred to R1's HR team to address, on the grounds of PDs 2.1 to 2.14.

4.35. **5 December 2019 (PoC, §169):** R1 and Lawrence Gibson informed LS via email that his disclosures (in his letters dated 25.10.19 (PD 2.14) and 20.11.19 (PD 2.15) were not appropriate for investigation by R1's Whistleblowing Team and would be referred to R1's HR team to address, on the grounds of PDs 2.1 to 2.15.

4.36. **4 February 2020 (PoC, §176):** R1 withdrew LS's sick pay due to R3 having entered incorrect sick leave dates for LS into R1's systems (saying his leave started on 12 August rather than 4 September 2019), on the grounds of PDs 2.1 to 2.15.

4.37. **24 February 2020 (PoC, §178):** R9 sent LS his 2019 End-of-Year Performance Rating and confirmation of zero bonus and salary increase, the performance review having been conducted by R3 without LS's input and this was allowed by R2, R4, R5, R7 and R9, on the grounds of PDs 2.1 to 2.15.

4.38. [Not pursued].

4.39. **11 May 2020 (PoC, §185):** R7 failed to consider a number of concerns raised by LS in his grievances, on the ground of PDs 2.1 to 2.17.

VICTIMISATION CLAIM (s27 EqA 2010)

Protected acts (s27(2) EqA 2010)

5. Did LS do the following protected acts within the meaning of s27(2) EqA 2010?

5.1. **13 November 2017 (PoC, §76):** in writing to R3, in his 2017 mid- year appraisal performance review document, LS outlined his concerns that he was being subjected to bullying, harassment and discrimination.

5.2. **17 November 2017 (PoC, §78):** verbally, in a meeting with R2, LS complained about discrimination, harassment and bullying by R3.

5.3. **31 January 2018 & 6 February 2018 (PoC, §87)**: in an email to Gabrielle Roberts, LS stated that he wished to make a formal complaint about discrimination against R3. Ms Roberts referred the matter to R6 and LS repeated his complaint about R3 in a meeting with R6 on 6.2.18.

5.4. **9 February 2018 (PoC, §91)**: LS told Patrick Chen that he was being prevented from moving to the newly formed Large Model Framework team (led by Mr Chen, and which opportunity LS had been told about by Mr Canabarro at their meeting on 25.1.18) and that R3 had failed to mention the opportunity to LS and that this exclusion may be referable to the Claimant's race and/or the fact that he had previously made protected disclosures as set out above.

5.5. **Late 2018 (PoC, §110)**: LS submitted his 2018 Performance Self-Assessment and reiterated complaints of bullying, harassment and discrimination by R3 since LS joined his team in 2016.

5.6. **7 May 2019 (PoC, §125)**: in writing, LS complained about the "rampant culture of bullying, harassment, discrimination, victimisation and detrimental treatment" perpetrated by R2, R3, Götz Rienäcker and that the HR department (R5 & R6) "unlawfully aided" their conduct.

5.7. **23 September 2019 (PoC, §154)**: in an email to R1's Employee Relations team, LS requested to be transferred away from the line management of R2 and R3 during his sickness absence as a reasonable adjustment under s39(5) EqA 2010.

5.8. **14 October 2019 (PoC, §158):** LS sent a formal grievance letter in which he complained about the conduct of R2 and R3 for unlawful harassment related to his disability and unfavourable treatment because of something arising from his disability, i.e. anxiety.

5.9. **17 October 2019 (PoC, §§160 & 161)**: LS submitted a further grievance against R2 and R3 for failing to comply with their duties under the EqA 2010 (in particular, in relation to their failure to make reasonable adjustments.

5.10. **25 October 2019 (PoC, §164)**: LS submitted a further grievance letter to R2, R4, R5 and R6, stating that he wished to put an end to the race discrimination, bullying, harassment, victimisation and detrimental treatment which both he and CAB were being subjected to; and that race discrimination was more widespread than just the individuals identified within the grievance.

5.11. **20 November 2019 (PoC, §167)**: in writing, by way of a letter to R1 and R9, disclosing the risk of harm to his health and safety and to others caused by having to attend face-

to-face meeting at R1's offices in breach of the EqA 2010.

5.12. **4 February 2020 (PoC, §175)**: in an email to MRM Admin Management team and R4, LS complained about R1's treatment of his annual leave and sick leave and related sick pay and about the reduction of his gross salary and pension contributions, alleging that these matters breached R1's obligations under the EqA 2010.

5.13. **14 April 2020 (PoC, §180):** in an email to R9, LS complained that R1 was seeking to implement a different PHI complaint process than that conveyed to him by Unum (which permitted LS to complain directly to Unum); and about R1 having informed R3 about his PHI application, in breach of his privacy rights.

5.14**. 20 April 2020 (PoC, §§181 & 182)**: LS submitted a grievance letter sent to R9, complaining about R3's malicious comments in LS's 2019 End of Year performance review and that the review was undertaken without input from LS; and that R1, R2, R4, R5, R6, R7 and R8 had failed to prevent the review from taking place due to the fact that LS had done protected acts (i.e. victimisation).

5.15. **22 May 2020 (PoC, §184):** LS appealed the grievance outcome (in a letter sent to R1 and R7) on the basis that R7's grievance investigation had been defective and constituted victimisation.

Detriments because of any protected acts (s27(1) EqA 2010):

6. Was LS subjected to detriments because he had done any of the alleged protected acts, as follows:

6.1. [Intentionally left blank]

6.2. [Intentionally left blank]

6.3. **8 May 2018 (PoC, §97):** LS applied by email to Patrick Chen for a Director position in the Large Model Framework team (advertised on the internal job board); but an external candidate (Daniel Mayenberger) was appointed, in October 2018. LS was overlooked because of PAs 5.1 to 5.4.

6.4. **14 September 2018 (PoC, §102):** R3 confirmed that he was going to place LS on a performance improvement plan (PIP) alleging his performance "needs improvement" and that he would not approve LS's request to enrol on the International Risk Management Certificate programme unless LS agreed to the PIP, because of PAs 5.1 to 5.4.

6.5. **17 September 2018 (PoC, §103):** R3 refused to approve LS's enrolment on the IRM certificate programme, because of PAs 5.1 to 5.4.

6.6. **20 September 2018 (PoC, §105):** R3 confirmed via email that he had opened a capability case with Employee Relations following advice received from HR and officially placed LS on a PIP, because of PAs 5.1 to 5.4.

6.7. **20 November 2018 (PoC, §109):** Patrick Chen offered to transfer LS to the Large Model Framework team as a VP (reporting to Daniel Mayenberger); but LS was then required to attend an interview and was then rejected for the role, because of PAs 5.1 to 5.4.

6.8. **9 January 2019 (PoC, §117):** R1, R2, R3 and Götz Rienäcker failed to assign LS to the review of the IHC VaR model, despite the fact that LS was the only individual with the requisite experience, because of PAs 5.1 to 5.5.

6.9. **12 April 2019 (PoC, §123):** In a meeting with R2 to discuss R3's behaviour, R2 threatened LS with a "conduct issue" if he continued not to engage with R3, commenting that he found nothing wrong with R3's behaviour, because of PAs 5.1 to 5.5.

6.10. **16 July 2019 (PoC, §137):** Julia Brown (HR/Employee Relations) confirmed that LS's written complaint of 7.5.19 would not trigger the grievance process and instructed LS to formalise his concerns, including dates, times and witnesses, because of PAs 5.1 to 5.6.

6.11. **19 July 2019 (PoC, §138):** R3 informed LS that the PIP requirements had not been met and that a formal capability procedure would be commenced (chaired by Marco Bastianic), because of PAs 5.1 to 5.6.

6.12. **11 October 2019 (PoC, §157):** LS received a letter from R2 dated 10.10.19 threatening disciplinary action and withdrawal of pay if LS did not make contact by 14.10.19, because of PAs 5.1 to 5.7.

6.13. **17 October 2019 (PoC, §161):** R1 and R2 refused LS's request to be removed from R2 and R3's line management during his sickness absence, because of PAs 5.1 to 5.8.

6.14. **18 November 2019 (PoC, §166):** R7, R8 and R9 invited LS to attend a grievance meeting at R1's office; failing to ask LS what adjustments he needed to get to, from and/or during the grievance meeting, because of PAs 5.1 to 5.10.

6.15**. 6 December 2019 (PoC, §170):** In an email to LS, R8 stated that she would not address as grievances LS's complaints about R7's appointment as the grievance manager or about the alleged failure to make reasonable adjustments to the proposed grievance meeting, because of PAs 5.1 to 5.11.

6.16. **4 February 2020 (PoC, §176):** R1 withdrew LS's sick pay due to R3 having entered incorrect sick leave dates for LS into R1's systems (saying his leave started on 12 August 2019 rather than 4 September 2019), because of PAs 5.1 to 5.11.

6.17. **24 February 2020 (PoC, §178):** R9 sent LS his 2019 End-of-Year Performance Rating and confirmation of zero bonus and salary increase, the performance review having been conducted by R3 without LS's input and this was allowed by R2, R4, R5, R7 and R9, because of PAs 5.1 to 5.12.

6.18. **11 May 2020 (PoC, §183):** R7 emailed LS with the outcome of his grievances (with the exception of the grievance sent on 20.4.20 – namely, PD 2.17/PA 5.14): none of LS's grievances were upheld and the grievance investigation was defective, because of PAs 5.1 to 5.14.

DIRECT RACE DISCRIMINATION (s13 EqA 2010):

7. Was LS subjected to less favourable treatment because of his race (which he describes as Black African, with Cameroonian national origins)? Specifically, was LS subjected to the following alleged treatment:

7.1. **24 July 2013 (PoC, §22)**: Graham McNeil-Watson deliberately failed to provide LS with the required information for the model validation he had been requested to carry out (as set out in the Trading Book Model Committee meeting minutes of 24 July 2013).

Comparator: LS compares his treatment with that of Christer Goranson and Marta Karpovicz and/or a hypothetical comparator.

7.2. **October 2014 (PoC, §33)**: Raphael Albrecht supported the CCR QA team to put the burden of proving the model appropriateness on LS (instead of on CCR QA).

Comparator: LS compares his treatment with that of Graham McNeil-Watson, Nonas Bereshad and David Hassine and/or a hypothetical comparator.

7.3. **31 December 2014 (PoC, §34):** R2 failed to include or inform LS about the promotions process.

Comparator: Duncan Harrison, Bill Chen, Huayi Li and/or hypothetical.

7.4. **July 2015 (PoC, §44):** Raphael Albrecht (LS's then dotted line manager) omitted to inform LS of his expectations for written work, in advance of the Mid-Year performance appraisal.

Comparator: LS compares his treatment with that of Duncan Harrison (white/European) who did receive a copy of R1's "writing standards"; and/or a hypothetical comparator.

7.5. **9 December 2015 (PoC, §49):** R2 did not give LS the opportunity to apply for the role given to R3 (Head of Traded Risk Model Validation), despite the fact that LS had more experience than R3.

Comparator: LS compares his treatment with that of R3, who was given the role.

7.6. **2 May 2016 to 14 June 2016 (PoC, §57)**: R3's planning spreadsheets demonstrated that R3 had no plan to have LS in the team for the long term, as LS was allocated only two small projects, whilst R3 allocated himself three projects (and LS had previously been assigned four or more projects).

Comparator: LS compares his treatment with R3, Flavia Gianmarino, Aneesh Venkatraman; and Georgios Mavros, who were all allocated work and treated as members of the team with greater responsibility, despite LS having similar and/or greater experience; and/or a hypothetical comparator.

7.7. **5 September 2017 (PoC, §69)**: R1 and R3 assigned Georgios Mavros to the Market Risk Stress Test Model for the CCAR Exam project; and assigned LS to the new VaR Methodology proposal for non-linear equity single stocks products (previously assigned to Mr Mavros).

Comparator: LS compares his treatment with that of Georgios Mavros and/or a hypothetical comparator.

7.8. **2 October 2017 (PoC, §70)**: R3 called a "secret" team meeting about the CCAR IHC VaR Model validation to which all team members but LS were invited.

Comparator: LS compares his treatment with that of R3, Aneesh Venkatraman, Flavia Gianmarino, Georgios Mavros (who were all invited and attended the meeting while LS was excluded) and/or a hypothetical comparator.

7.9. **11 October 2017 (PoC, §71):** During LS's Mid-Year Review meeting, R3 made unfair, unspecific and unjustified negative comments about LS's writing skills, yet refused to permit LS to attend relevant training (saying, "writing more is the best way to progress").

Comparator: Hypothetical.

7.10. **30 November 2017 (PoC, §79):** R2 failed to promote LS to Director, despite his performance ratings, whilst Bill Chen was promoted; and LS was neither informed of nor included in the promotion process.

Comparator: Bill Chen; and/or a hypothetical comparator.

7.11. **12 & 24 January 2018 (PoC, §§81 & 83):** R3 allocated Flavia Gianmarino to four validation projects, Aneesh Venkatraman to two high profile active projects and Georgios Mavros to one high profile active project; whilst LS was only assigned to one active project.

Comparators: Flavia Gianmarino, Aneesh Venkatraman and Georgios Mavros; and/or hypothetical comparator.

7.12. **27 April 2018 (PoC, §96)**: R3 reallocated the IRC model away from LS to Marta Karpovitz because he was worried that the deadline would be missed. The deadline was missed due to issues previously raised by LS.

Comparator: Marta Karpovitz, Duncan Harrison; and/or a hypothetical comparator.

7.13. **8 May 2018 (PoC, §97)**: LS applied by email to Patrick Chen for a Director position in the Large Model Framework team (advertised on the internal job board); but a white colleague (Richard Johnson) was interviewed and an external candidate (Daniel Mayenberger) was appointed, in October 2018. LS was overlooked because of his race.

Comparator: Richard Johnson and Daniel Mayenberger; and/or a hypothetical comparator.

7.14. **22 May 2018 (PoC, §99)**: R3 asked LS if he was happy for the new Basel 3 Representative Portfolio model to be allocated to Flavia Gianmarino as she had "nothing to

do" (even though there was plenty of other work for her to do; and LS had worked on the Basel 3 project in 2013-15).

Comparator: Flavia Gianmarino.

7.15. **17 September 2018 (PoC, §103)**: R3 refused to approve LS's enrolment onto the IRM Certificate programme via email.

Comparator: Hypothetical.

7.16. **9 January 2019 (PoC, §117)**: R1, R2, R3 and Götz Rienäcker failed to assign LS to the review of the IHC VaR model, despite the fact that LS was the only individual with the requisite experience.

Comparator: Marta Karpovitz, Flavia Gianmarino, Aneesh Venkatraman, Myriam Rastergard, Laurent Lefort (these individuals were allocated work commensurate with their skills and experience); and/or a hypothetical comparator.

7.17. **12 April 2019 (PoC, §123)**: In a meeting with R2 to discuss R3's behaviour, R2 threatened LS with a "conduct issue" if he continued not to engage with R3, commenting that he found nothing wrong with R3's behaviour, on grounds of race.

Comparator: Hypothetical.

7.18. **19 July 2019 (PoC, §138):** R3 informed LS that the PIP requirements had not been met and that a formal capability procedure would be commenced (chaired by Marco Bastianic), on grounds of race.

Comparator: Hypothetical.

7.19. **17 October 2019 (PoC, §161)**: R1 and R2 refused LS's request to be removed from R2's and R3's line management during his sickness absence, on grounds of race.

Comparator: Hypothetical.

7.20. **4 February 2020 (PoC, §176)**: R1 withdrew LS's sick pay due to R3 having entered incorrect sick leave dates for LS into R1's systems (saying his leave started on 12 August rather than 4 September 2019), on grounds of race.

Comparator: Hypothetical.

7.21. [Intentionally left blank]

8. If so, in respect of each allegation, was this treatment less favourable, in comparison to a hypothetical comparator (namely, a Vice President in the Traded Risk Model Independent Validation Unit but who is not of Black African, with Cameroonian national origin)?

9. If so, was such treatment "because of" race?

DISCRIMINATION ARISING FROM DISABILITY (s15 EqA 2010)

10. Did any of the Respondents treat LS unfavourably because of "something" which arose in consequence of LS's disability, as follows:

10.1. **5 September 2019** (PoC, §150): R3 emailed LS alleging that he was in breach of contract by refusing to engage with Occupational Health and thereby placing LS under excessive pressure (LS only saw this in early 2020).

10.1.1. Was R3's email because of R3's failure to acknowledge that LS's disability prevented him from engaging as requested?

10.1.2. Did this arise in consequence of LS's disability, due to the excessive pressure that R3 placed LS under?

10.1.3. Was this due to the excessive pressure that LS had been placed under by R3 and the symptoms manifest by reason of LS suffering anxiety and depression?

10.2. **19 & 28 September 2019 (PoC, §§153 & 155):** LS received letters (on a blank sheet f paper with no Barclays' letterhead) from R3 dated 13.9.19 and 25.9.19 (via recorded delivery) alleging that LS had failed to maintain contact with R3 and threatened disciplinary action and withdrawal of pay.

10.2.1. Was this because of R1, R2, R3 and R4's failure to acknowledge that LS's disability prevented him from engaging as requested? This arose in consequence of the symptoms, which were manifested due to anxiety and depression.

10.3. [Intentionally left blank]

10.4. **11 October 2019 (PoC, §157)**: LS received a letter (on a blank piece of paper with no Barclays' letterhead) from R2 dated 10.10.19 threatening disciplinary action and withdrawal of pay if LS did not make contact by 14.10.19.

10.4.1. Was this because of as above and in addition the failure of R2 to act on the specific request made by LS to limit contact with R3 as such contact was a trigger for symptoms related to his disability?

10.4.2. R2 failed to manage his contact with LS so as to not exacerbate his symptoms arising from his disability.

10.5. **16 October 2019 (PoC, §159)**: by letter (on a blank piece of paper with no Barclays' letterhead) dated 15.10.19, R2 requested LS to attend a meeting on 21.10.19 with Chris Parker and R2 at R1's head office to discuss LS's sickness absence.

10.5.1. Was this because of as above and in addition the failure of R2 to act on the specific request made by LS to limit contact with R3 as such contact was a trigger for symptoms related to his disability, as above?

10.5.2. R2 failed to manage his contact with LS so as to not exacerbate his symptoms arising from his disability, as above.

10.6. **17 October 2019 (PoC, §161)**: R1 and R2 refused LS's request to be removed from R2 and R3's line management during his sickness absence.

10.6.1. Was this because of as above and in addition the failure of R2 to act on the specific request made by LS to limit contact with R3 as such contact was a trigger for symptoms related to his disability?

10.6.2. R2 failed to manage his contact with LS so to as not exacerbate his symptoms arising from his disability, as above.

10.7. **18 November 2019 (PoC, §166)**: R7, R8 and R9 invited LS to attend a grievance meeting at R1's office; failing to ask what adjustments he needed in order to get to, from and/or during the grievance meeting.

10.7.1. Was this because of the failure of R2 to act on the specific request made by LS to manage contact due to the risk that such contact was a trigger for symptoms related to his disability?

10.7.2. R2 failed to manage his contact with LS so to as not exacerbate his symptoms arising from is disability, as above.

10.8. **4 February 2020 (PoC, §176)**: R1 withdrew LS's sick pay due to R3 having entered incorrect sick leave dates for LS into R1's systems (saying his leave started on 12 August 2019 rather than 4 September 2019).

10.8.1. Was this because R2 had failed to make reasonable adjustments which arose because of the previous failings to make reasonable adjustments in assisting LS to manage the symptoms manifest due to his disability in his requests for direct contact with LS?

10.8.2. R2 failed to manage his contact with LS so to as not exacerbate his symptoms arising from is disability, as above.

10.9. **24 February 2020 (PoC, §181):** R3 carried out LS's 2019 End-of Year Performance Review without LS's input.

10.9.1. Was this because R2 had failed to make reasonable adjustments in its process for assessing LS performance?

10.9.2. R2 assessed LS's performance without due regard to the impact of his disability.

11. If LS was subjected to any unfavourable treatment, was this because of "something" arising in consequence of his disability?

12. If so, was this a proportionate means of achieving a legitimate aim?

13. Did the relevant Respondent know (or should they reasonably have been expected to know) that LS had a disability (s15(2) EqA 2010)?

FAILURE BY R1 TO MAKE REASONABLE ADJUSTMENTS (ss20 & 21 EqA 2010)

14. Were there any provisions, criteria or practices ("PCPs") of R1's which put LS as a disabled person at a substantial disadvantage in comparison to those who are not disabled (s20(3) EqA 2010)? Did R1 have the following PCPs which put LS at a substantial disadvantage as compared with non-disabled employees?

14.1. [Intentionally left blank]

14.2. [Intentionally left blank]

14.3. **11 & 15 October 2019 (PoC, §157)**: in a letter dated 10.10.19 and 15.10.19, R2 successively threatened LS with disciplinary action and withdrawal of pay if he did not contact them ("Disciplinary Threat PCP").

14.3.1. Did the 'Disciplinary Threat PCP' cause LS a substantial disadvantage (he relies on the following: By reason his disability such threats exacerbated his symptoms and caused distress and worry).

14.4. **16 October 2019 (PoC, §159)**: by letter dated 15.10.19, R2 requested LS to attend a meeting on 21.10.19 with Chris Parker and R2 at R1's head office to discuss LS's sickness absence ("Absence Meeting PCP").

14.4.1. Did the 'Absence Meeting PCP' cause LS a substantial disadvantage (he relies on the following: by reason of his disability the insistence on a meeting exacerbated his symptoms and caused worry and distress that R2 was not listening in response to the efforts LS had made to explain why such meetings would be difficult for him).

14.5. **17 October 2019 (PoC, §161):** R1 and R2 required LS to continue to be line managed by R2 and R3 (despite LS's request to be "separated" from them) ("Line Management PCP").

14.5.1. Did the 'Line Management PCP' cause LS a substantial disadvantage (he relies on the following: by reason of his disability the insistence on maintaining the line management arrangement exacerbated his symptoms and caused worry and distress that R2 was not listening in response to the efforts LS had made to explain why such arrangements would be difficult for him).

14.6. **18 November 2019 (PoC, §166):** R7, R8 and R9 invited LS to attend a grievance meeting at R1's office ("Grievance Meeting PCP").

14.6.1. Did the 'Grievance Meeting PCP' cause LS a substantial disadvantage (he relies on the following: by reason of his disability the insistence on attending a grievance meeting exacerbated his symptoms and caused worry and distress that R2 was not listening in response to the efforts LS had made to explain why such arrangements would be difficult for him.

14.7. **4 February 2020 (PoC, §176)**: R1 withdrew LS's sick pay due to R3 having entered incorrect sick leave dates for LS into R1's systems (saying his leave started on 12 August rather than 4 September 2019) ("Sick Pay PCP").

14.7.1. Did the 'Sick Pay PCP' cause LS a substantial disadvantage (he relies on the following: LS would suffer financial hardship due to R2's failure to make reasonable adjustments to have enabled LS to maintain his attendance at work and not be absent on sick leave).

14.8. **February 2020 (PoC, §181):** R3 carried out LS's 2019 End-of Year Performance Review without LS's input ("Performance Review PCP").

14.8.1. Did the 'Performance Review PCP' cause LS a substantial disadvantage (he relies on the following: He was denied the opportunity to input into the process of assessment and review).

14.9. If so, did R1 know (or ought it reasonably to have known) that each PCP put LS at the substantial disadvantage alleged?

14.10. If so, in respect of each PCP, were there any adjustments which R1 should reasonably have made to avoid the disadvantage? LS alleges as follows:

14.10.1. 'Disciplinary Threat PCP' (§14.1, 14.2 and 14.3): Not made the threat.

14.10.2. 'Absence Meeting PCP' (§14.4): Not required him to attend a grievance meeting.

14.10.3. 'Line Management PCP' (§14.5): LS should have been allocated a different line manager and/or had his absence managed by an HR/Employee Relations adviser.

14.10.4. 'Grievance Meeting PCP' (§14.6): LS should have been offered a meeting off-site at a neutral venue and/or via telephone or video.

14.10.5. 'Sick Pay PCP' (§14.7): Should have got the dates correct and made a reasonable adjustment to the scheme.

14.10.6. 'Performance Review PCP' (§14.8): LS should have been asked for his input into the End-of-Year performance review.

HARASSMENT RELATING TO DISABILITY (s26 EqA 2010)

15. Did any of the Respondents engage in unwanted conduct relating to disability? LS relies on the following alleged conduct:

15.1. **5 September 2019 (PoC, §150):** R3 emailed LS alleging that he was in breach of contract by refusing to engage with Occupational Health and thereby placing LS under excessive pressure.

15.2. **19 & 28 September 2019 (PoC, §§153 & 155):** LS received letters from R3 dated 13.9.19 and 25.9.19 (via recorded delivery) alleging that LS had failed to maintain contact with R3 and threatened disciplinary action and withdrawal of pay.

16. If so, did such conduct have the purpose or effect of (i) violating LS's dignity; and/or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for LS (having regard to each of the factors listed in s26(4) EqA 2010)?

HARASSMENT RELATED TO RACE

21. Did any of the Respondents engage in unwanted conduct relating to race? LS relies on the following alleged conduct:

21.1. [Claimant to confirm date] (PoC, §90A): R2 would frequently refer to LS and HSMN and CAB as 'the French Legion' this was a disparaging term which was used to highlight LS as part of a 'foreign' contingent.

21.2. **9 December 2015 (PoC, §51)**: R3 snubbed and did not talk to LS at a team lunch while LS was sitting in front of R3.

21.3. **15 May 2017 (PoC, §64):** On LS' return from paternity leave, LS found out that R3 had unfairly removed him from all his validations and LS had nothing to do. In particular:

• the CCR FX Option Pricing Model validation was unfairly allocated to Martha Karpowicz and Duncan Harrison; and

• the IHC VaR validation was unfairly allocated to Aneesh Venkatraman,

on the grounds of LS's race. Removing LS from his allocated projects (high profile) implied that LS was not managing his workload and is unfair.

21.4. **2 October 2017 (PoC, §70)**: R3 called a secret team meeting about CCAR IHC VaR Model validation, in which all team members were invited, but LS.

21.5. [Intentionally left blank]

21.6. **12 April 2019 (PoC, §123):** R2 told LS that he did not find any wrongdoing in R3's behaviour and threatened LS with a "conduct issue" if LS "continue[d] to refuse to engage with Ron [R3]".

21.7. [Intentionally left blank]

22. If so, did such conduct have the purpose or effect of (i) violating LS's dignity; and/or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for LS (having regard to each of the factors listed in s26(4) EqA 2010)?

INSTRUCTING, CAUSING OR INDUCING BASIC CONTRAVENTIONS (s111 EqA 2010)

23. Did "Person A" instruct, cause or induce any other person ("Person B") to do anything which contravened Part 5 of the EqA 2010? LS asserts the following by way of instructing, causing or inducing:

23.1. 2 October 2017 (PoC, §70): R2 instructed/caused/induced R3 not to invite LS to a "secret" team meeting about the CCAR IHC VaR Model validation to which all other team members were invited.

23.2. [Intentionally left blank]

24. Was LS subjected to a detriment because of the conduct set out at paragraph 23 above (per s111(5)(b) EqA 2010)? LS alleges the following detriments:

24.1. 2 October 2017 (PoC, §70): LS was ignored and made to feel embarrassed and humiliated in front of the entire team.

24.2. [Intentionally left blank]

AIDING CONTRAVENTIONS (s112 EqA 2010)

25. Did a person ("Person A") knowingly help another person ("Person B") to do anything which contravened Part 5 EqA 2010? LS asserts that:

25.1. On 2 October 2017 (PoC, §70): R2 knowingly helped R3 to hold a "secret" team meeting about the CCAR IHC VaR Model validation to which all team members other than LS were invited. LS contends that R2 and R3 would have been aware that this behaviour was detrimental to LS on grounds of race and/or by reason of his having made PDs.

25.2. [Intentionally left blank]

JURISDICTION (s123 EqA 2010)

As regards LS's claims under the EqA 2010:

29. Was LS's ET1 presented within the period of three months7 starting with the date of the act to which the complaint relates (within the meaning of s123(1)(a) EqA 2010)?

30. In so determining, do any of the acts to which the complaint relates constitute conduct "extending over a period" such that the three-month time period only starts at the end of that period (per s123(3)(a) EqA 2010)?

31. In considering what date any alleged failure(s) to act was/were done:

31.1. When did the Respondent(s) decide not to do the thing alleged (per s123(3)(b) EqA 2010)?

31.2. In so determining:

(i) when did the Respondent(s) do an act inconsistent with doing that thing (s123(4)(a) EqA 2010), or

(ii) if the Respondent(s) did not do any inconsistent act, when is the expiry of the period in which the Respondent(s) might reasonably have been expected to do that thing?

31.3. If any act or failure to act is prima facie out of time, did LS present his complaint within such other period as the tribunal thinks just and equitable, so as to afford it jurisdiction to determine that complaint (per s123(1)(b) EqA 2010)?

JURISDICTION (s.44 and s.48(3) ERA 1996)

As regards LS's claims for public interest disclosure detriment and health and safety detriment (presented under s.44 and s.48 ERA 1996):

32. Did LS present his complaint before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or – where the act/failure to act is part of a series of similar acts/failures – the last of them (per s48(3)(a) ERA 1996)?

33. If not, was it reasonably practicable for LS to present his complaint within the prescribed time limit (per s48(3)(b) ERA 1996)?

34. If so, did LS present the complaint within such further period as the tribunal considers reasonable (per s48(3)(b) ERA 1996)?

REMEDY

35. To what remedy/remedies is LS entitled, if any? LS seeks the following:

(1) Declarations;

(2) Compensation for:

i. Loss of earnings (including bonus);

ii. Loss of pension contributions;

iii. Injury to feelings (including aggravated damages);

iv. Damages for personal injury caused by the breaches of the EqA 2010

(3) Recommendations;

(4) Uplift of 25% to any compensation awarded (for failures to comply with the ACAS Code of Practice); and

(5) Interest.

MR CHRISTIAN ABANDA BELLA – First claim (3201626/2020)

PUBLIC INTEREST DISCLOSURE DETRIMENT CLAIM (S47B ERA 1996)

Protected disclosures (s43B ERA 1996):

1. Did the Claimant ("CAB") make any protected disclosures, as follows:

1.1. **8 August 2017 (PoC, §15)**: in writing, to R1's Global Compliance Whistleblowing Team, asserting that R2, R3, Ron Rood, Bill Chen, Duncan Harrison and Sam Dixon had disregarded a CCAR -related instruction by R1's governance team to follow an SR11-7 based template for validation documents (WB REF01239).

1.2. **7 September 2017 (PoC, §§19 & 20):** by email to R3, stating that R3 had failed to provide guidance to CAB on which IVU template should be used for CCAR-related projects.

1.3. **18 September 2017 (PoC, §22)**: by email to R1's Whistleblowing Team regarding concerted efforts by Directors in R2's team to derail R1's 2018 CCAR submission.

1.4. **20 September 2017 (PoC, §17 & §18)**: in writing, to R1's Whistleblowing Team, asserting that R2 and R3 (amongst others within R1's management) had spread projects unevenly around the team and in a way that was discriminatory.

1.5. **25 October 2017 (PoC, §§27 & 28)**: by email to R3, referring to R1's promotion mechanisms and stating that he did not believe that they reflected R1's values of promoting respect, diversity and performance.

1.6. **24 January 2018 (PoC, §§29, 30 & 31)**: in writing and verbally in a meeting, to Eduardo Canabarro (Head of Model Risk Management), and in CAB's 2017 annual appraisal form (dated 1 February 2018), that R2's team repeatedly rubbishing Mr Canabarro's approach, suffered from nepotism and a toxic work environment and that work opportunities, support and advice were selectively directed to a small number of team members by R2 and R3.

1.7. **21 March 2018 (PoC, §36)**: verbally in a meeting to R3 that R3's attempt to make CAB swap teams with Nadir Maouche to work under Duncan Harrison was illegal.

1.8. **22 March 2018 (PoC, §36)**: in writing to R1, that R3 had attempted to make CAB swap teams with Nadir Maouche to work under Duncan Harrison.

1.9. **22 March 2018 (PoC, §37 §38)**: by email (and at a meeting, via presentations), to R2 and R3, regarding a gap in the LV model due to lack of technical soundness of their preferred choice of testing methodology for the LV MC validation, with CAB suggesting an alternative ('density testing').

1.9.1. On **10 May 2018 ((PoC, §36)** reiterated in an email to R3 that attempt to make CAB swap teams with Nadir Maouche to work under Duncan Harrison was illegal.

1.10. Around **1 July 2018 (PoC, §41 & §42)**: by email to R2 and Ron Rood, about Mr Rood having substituted the report drafted by CAB and Louis Samnick (regarding GMD3329) with his own flawed report and uploading that onto R1's risk framework database (GMD).

1.11. **28 August 2018 (PoC, §47)**: by handing a piece of paper to Faye Richardson (HR manager) at a 'culture focus meeting' listing issues in R2's team.

1.12. **3 September 2018 (PoC, §50)**: by email to R2, about a lack of inception pricing control in R1's risk framework.

1.13. **28 November 2018 (PoC, §59)**: by email to R3 and the project stakeholders, challenging the use of a methodology (having exposed a material flaw in it) which had been suggested by the MCO team for the Equity Swap Validation.

1.14. **2 April 2019 (PoC, §68):** in writing to R3 that there were shortcomings in operating practices.

1.15. **3 April 2019 (PoC, §69)**: in writing to R2, that R3 had bullied and harassed him.

1.16. **7 May 2019 (PoC, §76)**: by e-mail to R3 about his ongoing harassment, ostracism, and victimisation of CAB for speaking up about issues.

1.17. **7 & 14 May 2019 and 22 July 2019 (PoC, §72, §78 & §94)**: by email to R3 (7.5.19), verbally in a meeting with project stakeholders (14.5.19) and in a team meeting with R3 (22.7.19) in which CAB referred to gaps within the new testing approach agreed by R3 with the Quantitative Analytics team for the validation of the Q/C/B models.

1.18. **19 June 2019 (PoC, §88)**: in writing to R1's Whistleblowing Team about retaliation against CAB for speaking up, including unfounded comments about his work, deliberate exclusion, setting CAB up to fail (by withholding information), derogatory comments and violation of CAB's privacy.

1.18.1. **16 July 2019 (PoC, §92)** in a meeting to R3 that Asian Option validation review had not been completed fully.

1.19. **11 October 2019 (PoC, §105):** by email to R1's HR Team referring to an ongoing alleged failure to make reasonable adjustments in respect of CAB's request to be "separated" from R2 and R3 as his manager; and to allow CAB to liaise directly with HR / Employee Relations.

1.20. **15 October 2019 (PoC, §108 §109):** in writing to R1 by way of a formal grievance about discrimination, harassment and health and safety breaches and failure to act in accordance with the ACAS Code.

1.21. **18 October 2019 (PoC, §113 §114)**: by email to R2, about R2 contacting CAB about his sickness absence despite the request for no contact from R2; and asserting that R2's conduct amounted to discrimination, harassment and victimisation and breached the HSWA 1974.

1.22. **11 November 2019 (PoC, §119):** in writing by way of a formal grievance to R1 about race discrimination and disability discrimination and victimisation.

1.23. **26 & 27 November 2019 (PoC, §121):** by email to Andrew Butler (from R1's Whistleblowing team), about R1 and R6 perverting the course of justice by deliberately

concealing information (namely, by withholding the Minutes of the Whistleblowing Meeting on 15.11.19, which CAB had asked to record).

1.24. **17 December 2019 (PoC, §124):** by email to R5, about the defective investigation by R5 into CAB's grievances and public interest disclosures raised on 26 and 27 November 2019.

1.25. **17 January 2020 (PoC, §127):** in writing to R4 (by letter dated 17 January but sent on 20 January 2020) about failures in respect of R1's grievance investigation processes, including the appointment of R6 as the investigating officer, failures to make reasonable adjustments to the procedures (such as attendance at 'face-to-face' grievance meetings and the right to be accompanied) and the risk of employees' health and safety being endangered.

1.25.1. **27 January 2020 (PoC , §129)** in writing to R4 raising concerns about health and safety.

1.26. **26 March 2020 (PoC, §145 , §146):** by email to R4, by way of submission of a further grievance raising complaints about discrimination (in relation to R1's grievance and appeal/complaint processes), health and safety breaches and GDPR breaches (in respect of the UNUM decision and other correspondence in respect of CAB's application for income protection).

1.27. **7 April 2020 (PoC, §152):** by email to R4, by way of a grievance about R1's policies and processes with regards to grievance which constitute indirect disability discrimination.

1.28. **15 April 2020 (PoC, §154):** by email to R4, by way of a further grievance about evasive answers (on 18 March 2020) as to how CAB had been given a "needs improvement" rating (for his 2019 performance appraisal) alleging that this constituted victimisation and public interest disclosure detriment.

1.29. **17 April 2020 (PoC, §163):** by email to R1's Employee Relations Complex Cases team about the sharing of CAB's amended OH Report (dated 28.1.20) by AXA (OH provider) with R1 without CAB's consent, in breach of various legislative measures.

2. As regards the alleged protected disclosures ("PDs") at 1.1 to 1.29 above:

2.1. Did CAB disclose information which, in his reasonable belief, tended to show that:

(i) In respect of the PDs at paragraph 1.1 to 1.5, 1.7 to 1.10, 1.12 and 1.16:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, Fed/OCC guidelines for sound Model Risk Management (SR11-7, OCC 2011-12, 1) and ss172 & 174 Companies Act 2006) – s43B(1)(b) ERA 1996.

(ii) In respect of the PDs at paragraphs 1.4 to 1.6, 1.8, 1.11, 1.15, 1.18 to 1.22 and 1.24 to 1.29:
R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, provisions of the EqA 2010) – s43B(1)(b) ERA 1996.

(iii) In respect of the PDs at paragraphs 1.7 & 1.8 1.9.1.:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations pertaining to CAB's contract of employment – s43B(1)(b) ERA 1996.

(iv) In respect of the PDs at paragraphs 1.9, 1.10, 1.12, 1.13, 1.14, 1.17 and 1.18.1:
R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, Art 369.1(a), (b) & (c) of EU Regulation No.575/2013) – s43B(1)(b) ERA 1996.

(v) In respect of the PDs at paragraphs 1.16, 1.18, 1.21 and 1.22:
R1 had failed, was failing or would be likely to fail to comply with its legal obligation (namely, the obligations not to subject employees to victimisation by virtue of s27 EqA 2010 and public interest disclosure detriment by virtue of s47B ERA 1996) – s43B(1)(b) ERA 1996.

(vi) In respect of the PDs at paragraphs 1.20, 1.21, 1.22, 1.25, 1.26, 1.25.1 and 1.29:
R1 had failed, was failing or would be likely to fail to comply with its legal obligation and/or that a person's health and safety had been, was being or was likely to be endangered (namely, ss1 & 2 HSWA 1974 and MHSWR 1999) – s43B(1)(b) and/or (d) ERA 1996.

(vii) In respect of the PDs at paragraph 1.23:
A miscarriage of justice had occurred, was occurring or was likely to occur – s43B(1)I ERA 1996.

(viii) In respect of the PDs at paragraphs 1.26 and 1.29:
R1 and/or AXA had failed, was failing or would be likely to fail to comply with its legal obligations under GDPR and/or Access to Medical Reports Act – s43B(1)(b) ERA 1996

(ix) In respect of the PD at paragraph 1.20:
R1 had failed, or was failing, to comply with its obligations under the ACAS Code.

2.2. Did CAB have a reasonable belief that each of the PDs was in the public interest (per s43B(1) ERA 1996)?

Detriments on the ground of protected disclosures (s47B ERA 1996):

3. Was CAB subjected to any detriment by any of the following acts or deliberate failures to act on the ground that he had made any of the above alleged protected disclosures? (In respect of each detriment, CAB relies on all prior protected disclosures)

3.1. **7 & 12 September 2017 (PoC, §21)**: R3 implied that CAB was intolerant and disrespectful and not perceived as a 'team player' and failed to treat CAB's concerns as grievances or qualifying protected disclosures on, the ground of PDs 1.1 and 1.2.

3.2. **5 October 2017 (PoC, §23)**: without any justification, R3 labelled CAB as "aggressive" in CAB's 2017 mid-year objectives meeting, on the ground of PDs 1.1 to 1.4.

3.3. **19 October 2017 (PoC, §26)**: at a meeting on 19 October 2017, R3 informed CAB that no formal promotion process was in place and that it was R2 who decided who got promoted; and, as such, CAB believed that he was being overlooked for promotion, on the ground of PDs 1.1 to 1.4.

3.4. **26 January 2018 & February 2018 (PoC, §32)**: without providing any examples, at CAB's performance appraisal meeting and in the appraisal document itself, R3 labelled CAB's communication style as sometimes "overly strong and argumentative", on the ground of PDs 1.1 to 1.6.

3.5. **21 March 2018 (PoC, §36)**: R3 tried to force CAB to swap teams with Nadir Maouche (to work under Duncan Harrison), on the ground of PDs 1.1 to 1.6.

3.6. **22 March 2018 (PoC, §36)**: Patrick Chen failed to treat CAB's email (of 22.3.18) about the proposed team swap as a grievance, on the ground of PDs 1.1 to 1.7.

3.7. **22 March 2018 to 26 April 2018 (PoC, §37, §37A & §39)**: R3 shouted at CAB and wrote "denigrating" comments about the concerns CAB had raised as to the technical soundness of the testing methodology preferred by R2 and R3 for the LV MC validation; and R3 produced baseless, untimely and unfounded feedback about CAB's work on the LV MC validation, on the ground of PDs 1.1 to 1.7 and 1.9.

3.8. **1 July 2018 (PoC, §43)**: both R2 and Ron Rood failed to respond to C's complaint that Mr Rood had amended the report written by CAB and Louis Samnick about GMD3329, causing it to contain material inaccuracies, and Mr Rood forwarded his version to colleagues in the team for peer review, on the ground of PDs 1.1 to 1.10.

3.9. **28 August 2018 (PoC, §46 §47)**: R1 failed to treat the "list of issues" (about R2's team) given by CAB to Faye Richardson as a grievance, on the ground of PDs 1.1 to 1.11.

3.10. **30 August 2018 (PoC, §46)**: R1 and R3 failed to treat CAB's complaints and greivances (including on 30 August 2018) as grievances, on the ground of PDs 1.1 to 1.11.

3.11. **4 & 12 September 2018 (PoC, §51)**: at the mid-year appraisal meeting, R3 accused CAB of raising concerns in a "confrontational and unhelpful manner", without providing any examples, and then provided Minutes of the meeting which contained misrepresentations, on the grounds of PDs 1.1 to 1.12.

3.12. **18 September 2018 (PoC, §§53 & 54)**: R3 refused to permit CAB to participate in discussions with Rachel Sandrovic Feuer about a template she was working on (which CAB had specifically asked R3 and Bill Chen to be allowed to do), on the grounds of PDs 1.1 to 1.12.

3.13. **On or around 15 February 2019 (PoC, §§63 & 64 & 65**): in CAB's appraisal meeting, R3 verbally abused CAB and made unfounded and negative comments in CAB's 2018 annual appraisal form on the grounds of PDs 1.1 to 1.13.

3.14. **On or around 21 February 2019** (PoC, §65): R1 reduced CAB's bonus by 75% and R2 did not provide an explanation on the grounds of PDs 1.11 to 1.13.

3.15. **In April, including on 11 & 12 April 2019 (PoC, §71 §72 and §73)**: R1, R2 and R3 failed to provide guidance, clarity and support to assist CAB with the Q/C/B validation, did not consult and ignored the Claimant's request for clarification on the grounds of PDs 1.1 to 1.15.

3.16. In **April & May 2019 (PoC, §§ 72 73 – 81)**: R3 repeatedly ignored, criticised and mistreated CAB for expressing concerns about the testing approach adopted by R3 and the QA Team for the Q/C/B validation, on the grounds of PDs 1.1 to 1.16.

3.17. From **9 to 17 June 2019 (PoC, §§83 & 84)**: R3 wilfully excluded CAB from communications and decisions between R3 and the project stakeholders for the Asian Option validation, on the grounds of PDs 1.1 to 1.16 and on the ground of the 7&14 May 2019 part of PD 1.17.

3.18. No longer maintained.

3.19. On **23 and 24 July 2019 (PoC, §94)**: R3 ignored CAB's concerns and requests for clarification about the Q/C/B project, and excluded him from a "secret" meeting (on 23.7.19) and then removed him from the project (in favour of Huayi Li), assigning him instead to the Equity Swap project from 23.7.19, on the grounds of PDs 1.1 to 1.18.1.

3.20. Not permitted.

3.21. **19 February 2020 (PoC, §§62, 62A, 139 and 161I & J)**:

3.21.1. R1, R2 and R3 performed CAB's annual appraisal without input from CAB;

3.21.2. R1, R2, R3 and R4 did not communicate with CAB about, or implement, reasonable adjustments as part of his 2019 annual appraisal;

3.21.3. R1, R2 R3 and R6 failed to prevent CAB's 2019 annual appraisal from being based solely on R3's comments;

3.21.4. R3 made threats and unfounded, unsubstantiated, vague and malicious negative feedback comments in CAB's 2019 annual appraisal form, including blaming him for delays in respect of the Tier 2 projects carried out during 2019 (even though the Asian Option validation had sat with R2 and R3 for two months).

This was on the grounds of PDs 1.1 to 1.25.1:

3.22. **19 February 2020** (PoC, §139 & 161i): R2 and R3 gave CAB bad performance ratings for 2019 ('Needs Improvement'); and R1 failed to grant CAB any bonus and failed to award him a pay rise, on the grounds of PDs 1.1 to 1.25.1.

3.23. **18 March 2020 (PoC, §§144 & 154 & 161i)**: R4 emailed CAB with evasive answers as to how the appraisal had been performed, on the grounds of PDs 1.1 to 1.25.1.

3.24. **20 May 2020 (PoC, §166)**: R1 failed to open whistleblowing cases/investigations into CAB's various complaints and there was a lack of communication with him about them, except for those dated 19.6.19 and 11.11.19, on the grounds of PDs 1.1 to 1.29.

VICTIMISATION CLAIM (S27 EQA 2010)

Protected Acts (s27(2) EqA 2010):

4. Did CAB do the following protected acts within the meaning of s27(2) EqA 2010?

4.1. **On or around 20 September 2017 (PoC, §17 & §18)**: in writing, to R1's Whistleblowing Team, regarding attempts by R2 and R3 (amongst others within R1's management) to delay validation of R1's pricing models by spreading projects unevenly around the team and in a way that was discriminatory.

4.2. **25 October 2017 (PoC, §§27 & 28):** by email to R3, regarding the lack of transparent promotion criteria which did not reflect R1's values (of respect, diversity and performance).

4.3. **24 January 2018 (PoC, §§29, 30 & 31)**: in writing and verbally in a meeting, to Eduardo Canabarro (Head of Model Risk Management), and in CAB's 2017 annual appraisal form, that R2's team suffered from nepotism and a toxic work environment and that work opportunities, support and advice were selectively directed to a small number of team members by R2 and R3 and R1.

4.4. **22 March 2018 (PoC, §36)**: verbally to R3 and in writing to R1, that R3 had attempted to make CAB – because of race – swap teams with Nadir Maouche to work under Duncan Harrison.

4.5. **28 August 2018 (PoC, §47):** by handing a piece of paper to Faye Richardson (HR manager) at a 'culture focus meeting' listing issues in R2's team.

4.6. **30 August 2018 (PoC, §48):** by email to R3, about Henry-Serge Moune Nkeng being overlooked for opportunities which would assist him with promotion because of his race.

4.7. **3 April 2019 (PoC, §69):** in writing to R2, that R3 had bullied and harassed him.

4.8. **7 May 2019 (PoC, §76)** by e-mail to R3 about his ongoing harassment, ostracism, and victimisation of CAB for speaking up about issues.

4.9. **14 May 2019 (PoC, §78 & 80):** by email to R3 (in respect of the Q/C/B catch-up meeting that day), in which CAB complained about bullying and harassment.

4.10. **12 June 2019 (PoC, §84):** by email to R3 in respect of the Asian Option validation, in which CAB complained about bullying and harassment.

4.11. **18 June 2019 (PoC, §86):** by email to R3, by which CAB complained about a violation of privacy in respect of R3 attempting to look at his mobile phone screen, which CAB complained as harassment and bullying.

4.12. **19 June 2019 (PoC, §88):** in writing to R1's Whistleblowing Team about retaliation against CAB for speaking up, including unfounded comments about his work, deliberate exclusion, setting CAB up to fail (by withholding information), derogatory comments and violation of CAB's privacy.

4.13. **19 September (PoC, §§102 & 103)** by email to R1's HR Team requesting to be "separated" from R3 as his line manager and, instead, to liaise directly with the HR and/or ER teams during his sick leave, as a reasonable adjustment.

4.13.1. **7 October 2019 (PoC, §§102 & 103):** by email to R1's HR Team requesting to be "separated" from R3 as his line manager and, instead, to liaise directly with the HR and/or ER teams during his sick leave, as a reasonable adjustment.

4.14. **11 October 2019 (PoC, §105):** by email to R1's HR Team referring to an ongoing alleged failure to make reasonable adjustments in respect of CAB's request to be "separated" from R2 and to allow CAB to liaise directly with HR and/or Employee Relations.

4.15. **15 October 2019 (PoC, §108)**: in writing by way of a formal grievance about discrimination and harassment.

4.16. **18 October 2019 (PoC, §114):** by email to R2, about ongoing race discrimination, harassment and victimisation perpetrated against CAB and Louis Samnick and the detrimental effects on their mental health.

4.17. **11 November 2019 (PoC, §119):** in writing by way of a formal grievance to R1 about race discrimination and disability discrimination and victimisation.

4.18. **17 December 2019 (PoC, §124):** by email to R5, about the defective investigation by R5 into CAB's grievances and public interest disclosures raised on 26 and 27 November 2019.

4.19. **17 January 2020 (PoC, §127):** in writing by email to R4 about failures to make reasonable adjustments to R1's grievance procedures.

4.20. **9 March 2020 (PoC, §143):** in writing, by way of a grievance to R1, which included complaints about ongoing disability discrimination (particularly in relation to CAB's request that all correspondence should be sent via email; and the delays in conveying the income protection insurance decision from UNUM).

4.21. **26 March 2020 (PoC, §145):** by email to R4, by way of submission of a further grievance, including raising complaints about discrimination (in relation to R1's grievance and appeal/complaint processes), health and safety breaches and GDPR breaches (in respect of the UNUM decision and other correspondence in respect of CAB's application for income protection).

4.22. **7 April 2020 (PoC, §152):** by email to R4, by way of a grievance about R1's policies and processes with regards to grievance which constitute indirect disability discrimination.

4.23. **15 April 2020 (PoC, §154):** by email to R4, by way of a further grievance, including about CAB's rating as "needs improvement" (for his 2019 performance appraisal), alleging that this constituted victimisation and public interest disclosure detriment and about R4's evasive answers as to how CAB had been given a "needs improvement" rating.

4.24. **17 April 2020 (PoC, §163):** by email to R's Employee Relations Complex Cases team, including about the sharing of CAB's amended OH Report (dated 28.1.20) by AXA (OH provider) with R1 without CAB's consent, in breach of various legislative measures.

5. Did CAB act in bad faith in giving false information and/or making false allegations, such that the act relied on is not protected, by virtue of s27(3) EqA?

Detriments because of any protected acts (s27(1) EqA 2010):

In respect of each detriment, CAB relies on all prior protected acts.

6. Was CAB subjected to detriments because he had done any of the alleged protected acts, as follows:

6.1. **5 October 2017 (PoC, §23)**: without any justification, R3 labelled CAB as "aggressive" in his 2017 mid-year objectives meeting, because of PA 4.1.

6.2. **21 March 2018 (PoC, §36)**: R3 tried to force CAB to swap teams with Nadir Maouche (to work under Duncan Harrison), because of PAs 4.1 to 4.3.

6.3. **22 March to 26 April 2018 (PoC, §37)**: R3 shouted at CAB and wrote "denigrating" comments about the concerns CAB had raised as to the technical soundness of the testing methodology preferred by R2 and R3 for the LV MC validation, because of PAs 4.1 to 4.4.

6.4. **1 July 2018 (PoC, §43):** both R3 R2 and Ron Rood failed to respond to C's complaint that Mr Rood had amended the report written by CAB and Louis Samnick about GMD3329, causing it to contain material inaccuracies, and Mr Rood forwarded his version to colleagues in the team for peer review, because of PAs 4.1 to 4.4.

6.5. **28 August 2018 (PoC, §47):** R1 failed to treat the "list of issues" (about R2's team) given by CAB to Faye Richardson as a grievance, because of PAs 4.1 to 4.5.

6.6. **30 August 2018 (PoC, §46):** R3 failed to treat CAB's complaints and grievances (including on 30 August 2018) as grievances, because of PAs 4.1 to 4.5.

6.7. **18 September 2018 (PoC, §§53 & 54):** R3 refused to permit CAB to participate in discussions with Rachel Sandrovic Feuer about a template she was working on (which CAB had specifically asked R3 and Patrick Chen to be allowed to do), because of PAs 4.1 to 4.6.

6.8. **15 February 2019 (PoC, §§63 & 64 & 65)**: in CAB's appraisal form, R3 made a number of unfounded and negative comments about CAB including about his "unproductive" raising of concerns; his "emotional and confrontational style" and that CAB was "manipulating" his colleagues; and R3 verbally abused CAB in CAB's appraisal meeting, because of PAs 4.1 to 4.6.

6.9. **On or around 21 February 2019 (PoC, §65):** R1 and R2 reduced CAB's bonus by 75%, on the grounds of PDs 4.1 to 4.6.

6.10. **In April, including on 11 & 12 April 2019 (PoC, §71)**: R2 and R3 failed to provide guidance, clarity and support to assist CAB with the Q/C/B validation, because of Pas 4.1 to 4.7.

6.11. **14 May 2019 (PoC, §§78 - 81)**: at a meeting on 14 May 2019 with stakeholders on the Q/C/B project and in an email to the participants later that day, R3 made derogatory

remarks about CAB's list of concerns about the new testing approach agreed between R3 and the Quantitative Analytics team, because of PAs 4.1 to 4.8.

6.12. **From 9 to 17 June 2019 (PoC, §§83 & 84):** R3 wilfully excluded CAB from communications and decisions between R3 and the project stakeholders for the Asian Option validation, because of PAs 4.1 to 4.9.

6.13. No longer maintained.

6.14. **From 22 to 24 July 2019 (PoC, §94):** R3 ignored CAB's concerns and requests for clarification about the Q/C/B project, and excluded him from a "secret" meeting (on 23.7.19) and then removed him from the project (in favour of Huayi Li), assigning him instead to the Equity Swap project from 23.7.19, because of PAs 4.1 to 4.12.

6.15. **16 October 2019 (PoC, §112):** R1 and R2 failed to make reasonable adjustments to the sickness absence procedures by failing to appoint an HR adviser as CAB's point of contact; failing to hold wellbeing meetings away from the workplace (or remotely) and by someone other than R2; by failing to make an OH referral and by failing to ask CAB what adjustments he needed, because of PAs 4.1 to 4.15.

6.16. **15 November 2019 (PoC, §120):** Andrew Butler (from R1's Whistleblowing Team) refused to permit CAB to record the meeting and then sent inaccurate Minutes 10 days later, because of PAs 4.1 to 4.16.

6.17. Deleted reference to PoC124

6.18. **19 February 2020 (PoC, §§62 & 62A & §156)**: in CAB's 2019 annual appraisal form, R3 made unfounded unsubstantiated and vague negative comments in CAB's 2019 appraisal form, and blamed CAB for the delays with Tier 2 projects), because of PAs 4.1 to 4.19.

6.19. **19 February 2020 (PoC, §139)**: R2 and R3 rated CAB as "needs improvement" in his 2019 performance appraisal, because of PAs 4.1 to 4.19.

6.20. **19 February 2020 (PoC, §139):** R1 failed to grant CAB any bonus and failed to award him a pay rise, because of PAs 4.1 to 4.19.

6.21. **18 March 2020 (PoC, §§144 & 154):** R4 emailed CAB with evasive answers as to how he had been rated "needs improvement" in his 2019 performance appraisal, because of PAs 4.1 to 4.20.

6.22. **18 March 2020 (PoC, §149 and 150)**: R1 and R4 refused to deal with CAB's complaint dated 9.3.20 as a grievance, because of PAs 4.1 to 4.20.

DIRECT RACE DISCRIMINATION (S13 EQA 2010):

Was CAB subjected to less favourable treatment because of his race (which he describes as black African, with Cameroonian national origins), as set out below.

11. Was CAB subjected to the following alleged treatment?

11.1. **19 October 2017 (PoC, §§26 & 28)**: information conveyed to CAB at the meeting on 19 October 2017 by R3 regarding promotion.

CAB relies on Nadir Maouche and Huayi Li as actual comparators; or a hypothetical comparator.

11.2. **26 January 2018 & February 2018 (PoC, §32)**: R3 referred to CAB's communication style as "sometimes "overly strong and argumentative".

CAB relies on Huayi Li as an actual comparator; or a hypothetical comparator.

11.3. **13 March 2018 (PoC, §34)**: Ron Rood subjected CAB to excessive micro-management in respect of GMD3329.

CAB relies on a hypothetical comparator.

11.4. **21 March 2018 (PoC, §36)**: R3 tried to force CAB to swap teams with Nadir Maouche (who is Algerian), to work under Duncan Harrison.

CAB relies on Nadir Maouche and Götz Rienäcker as actual comparators; or a hypothetical comparator.

11.5. **8 June 2018 (PoC, §40)**: Ron Rood omitted to put an end to the abusive behaviour from Inmark Sareen at a meeting at which Louis Samnick and others were also present (in respect of the validation of GMD3329).

CAB relies on a hypothetical comparator.

11.6. **1 July 2018 (PoC, §42 and 43):** both R2 and Ron Rood failed to respond to C's complaint that Mr Rood had amended the report written by CAB and Louis Samnick about GMD3329, causing it to contain material inaccuracies and Mr Rood forwarded his version to colleagues in the team for peer review.

CAB relies on Ron Rood as an actual comparator; or a hypothetical comparator.

11.7. **4 & 12 September 2018 (PoC, §51 &51A):** at the mid-year appraisal meeting, R3 accused CAB of raising concerns in a "confrontational and unhelpful manner", without providing any examples, and then provided Minutes of the meeting which contained misrepresentations.

CAB relies on a hypothetical comparator.

11.8. **18 September 2018 (PoC, §54A):** R3 rejected CAB's request to be part of discussions with Rachel Sandrovic Feuer about a template she was developing.

CAB relies on a hypothetical comparator.

11.9. **15 and 21 February 2019 (PoC, §65A)**:

11.9.1. R3 wrote unsubstantiated, unfounded, untrue, disingenuous, untimely and vague negative feedback comments on CAB's 2018 annual appraisal form.

11.9.2. R3 assigned a negative rating to CAB for the year 2018;

11.9.3. R3 verbally abused CAB during the 2018 annual appraisal meeting;

11.9.4. R1 reduced CAB's bonus by 75%;

11.9.5. R2 did not provide any explanation to CAB for the 75% reduction in his bonus.

CAB relies on a hypothetical comparator.

11.10. In **April & May 2019 (PoC, §§73)**: R3 repeatedly ignored, criticised and mistreated CAB for expressing concerns about the testing approach for the Q/C/B project.

CAB relies on a hypothetical comparator.

11.11. **From 9 to 17 June 2019 (PoC, §§83 & 84)**: R3 wilfully excluded CAB from communications and decisions between R3 and the project stakeholders for the Asian Option validation.

CAB relies on a hypothetical comparator.

11.12. **18 June 2019 (PoC, §§86 & 87):** R3 attempted to look at CAB's mobile phone screen and, when CAB complained by email, R3 failed to forward this onto HR as a "grievance" (instead asking CAB for a "quick catch up").

CAB relies on a hypothetical comparator.

11.13. **19 February 2020 (PoC, §§139, 155, 156, 157, 161, 161E &161H)**: R2 and R3 conducted CAB's 2019 annual appraisal, based solely on R3's comments, and without any input from or communication with CAB and without giving him the opportunity to get feedback; and they rated CAB as "needs improvement", with R3 making unfounded, unsubstantiated and vague negative comments about CAB's performance.

CAB relies on Huayi Li as an actual comparator; or a hypothetical comparator.

12.14. **19 February 2020 (PoC, §161G):** CAB's bonus for 2019 was reduced to nil.

CAB relies on Huayi Li as an actual comparator; or a hypothetical comparator.

12. If so, in respect of each allegation, was this treatment less favourable, in comparison to the actual comparator relied on or a hypothetical comparator (namely, a Vice President of Price Modelling Validation not of black African/Cameroonian origins)?

13. If so, was such treatment "because of" race?

HARASSMENT RELATING TO RACE (S26 EQA 2010)

14. Did any of the Respondents engage in unwanted conduct which related to race? CAB relies on the following alleged conduct:

14.1. **8 June 2018** (PoC, §40): Ron Rood omitted to put an end to allegedly abusive behaviour from Inmark Sareen at a meeting at which Louis Samnick and others were also present (in respect of the validation of GMD3329).

14.2. **14 May 2019 (PoC, §81A)**:

14.2.1. R3 stated in a meeting with stakeholders of the Q/C/B projects that CAB was making "philosophical points";

14.2.2. R3 wrote an email containing derogatory, unjustified and disingenuous remarks about CAB's list of technical concerns circulated prior to the meeting.

14.3. **From 9 to 17 June 2019 (PoC, §§83 & 84)**: R3 wilfully excluded CAB from communications and decisions between R3 and the project stakeholders for the Asian Option validation.

14.4. **18 June 2019 (PoC, §§86 & 87)**: R3 attempted to look at CAB's mobile phone screen and, when CAB complained by email, R3 failed to forward this onto HR as a "grievance" (instead asking CAB for a "quick catch up").

15. If so, did such conduct have the purpose or effect of (i) violating CAB's dignity; and/or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for CAB (having regard to each of the factors listed in s26(4) EqA 2010)?

Paragraphs 14.1, 14.3 and 14.4 will first be considered for race harassment, and if they do not meet the threshold for that, they will be considered to see if they are direct race discrimination.

DISABILTY DISCRIMINATION CLAIMS

Disability (s6 EqA 2010)

24. The Respondents concede that CAB was disabled from 21 June 2019 by way of anxiety and depression [CAB1/Further GOR, §17].

Knowledge of disability

25. Did the Respondents know or ought they reasonably be expected to have known that CAB was disabled at each of the material times (that is, on each date of alleged disability discrimination)?

DISCRMINATION ARISING FROM DISABILITY (S15 EQA 2010)

26. Did any of the Respondents treat CAB unfavourably because of "something" which arose in consequence of CAB's disability, as follows:

26.1. **From 19 September 2019 including 11 October 2019 (PoC, §102 - 107)**: In emails from members of the HR team a HR Team member told CAB that R2 and R3 continued to line manage CAB (including the management of his sickness absence).

26.2. **16 October 2019 (PoC, §§111 & 112)**: R1 and R2 requested CAB to attend a wellbeing meeting with R2 at R1's premises.

26.3. **22 October 2019 (PoC, §115)**: R1 wrote to CAB to inform him that he would be moved to nil sick pay as of 31.10.19.

26.4. **15 November 2019 (PoC, §120):** Andrew Butler (of R1's Whistleblowing Team) refused to permit CAB to record the meeting on 15.11.19.

26.5. **16 January 2020 (PoC, §126)**: R1, R4 and R6 suggested two of R1's business locations for CAB's grievance meeting and; and did not permit CAB to be accompanied by someone other than a work colleague or Trade Union Representative.

26.6. **28 January 2020 (PoC, §§132 & 165)**: R1's OH provider (AXA) shared CAB's OH report with R1 without CAB's consent.

26.7. **19 February 2020 (PoC, §139 §159 and §161C & D)**:

26.7.1. R1, R2 and R3 did not account for CAB's anxiety and depression as part of CAB's 2019 annual appraisal and rated him as 'Needs Improvement'.

26.7.2. R1, R2, R3, R4 & R6 did not communicate with or seek input from CAB as part of CAB's 2019 annual appraisal or in relation to reasonable adjustments.

26.8. **26 February 2020 (PoC, §140 & §143):** R1 downgraded CAB's medical cover from Premier Plus to Premier and waited 4 weeks to inform CAB.

26.9. **February & March 2020 (PoC, §146 147):** R1 sent files to CAB by post (despite his requests to be sent all correspondence via email).

27. By each of the matters set out above, did the relevant Respondent subject CAB to unfavourable treatment because of "something arising" in consequence of his disability?

27.1. The Claimant had difficulty expressing how allegation 26.1 was something arising in consequence of his disability as opposed to being a separate failure to make reasonable adjustments claim. The Claimant mentioned long-term sickness as "the something arising".

27.2. The Claimant contends that his absence from work due to long term ill health absence was a consequence of his disability for allegations 26.2, 26.3, 26.8 and 26.9.

27.3. The Claimant had difficulty expressing how allegation 26.4 was something arising in consequence of his disability as opposed to being a separate failure to make reasonable adjustments claim.

27.4. The Claimant contends that inability to travel due to long term ill health absence was a consequence of his disability for allegations 26.5.

27.5. The Claimant had difficulty expressing how allegation 26.7 was something arising in consequence of his disability as opposed to being a separate failure to make reasonable adjustments claim.

28. If so, was this treatment a proportionate means of achieving a legitimate aim? The Respondent refers to the following paragraphs of its ET3 in this respect:

28.1. In respect of 26.1 above - ET3 §87;

28.2. In respect of paragraphs 26.2 and 26.5 above ET3 § 88 – 90 and 107;

28.3. In respect of paragraph 26.3 above ET3 §91

28.4. In respect of paragraph 26.4 above ET3 §86

28.5. In respect of paragraph 26.7 above ET3 §86 107

28.6. In respect of paragraph 26.8 above §101 - 104

28.7. In respect of paragraph 26.9 above §92.3 and 92.4 (and email 16 December 2022 @14.01)

29. Did the relevant Respondent know (or should they reasonably have been expected to know) that CAB had a disability (s15(2) EqA 2010)? The Respondent denies that it knew of disability at any material time to prior to March 2020.

FAILURE BY R1 TO MAKE REASONABLE ADJUSTMENTS (SS20 & 21 & 39(5) EQA 2010)

30. Were there any provisions, criteria or practices ("PCPs") of R1's which put CAB as a disabled person at a substantial disadvantage in comparison to those who are not disabled (s20(3) EqA 2010)? CAB relies on the following:

30.1. **PCP1: From 26 July 2019 to 29 February 2020 (PoC, §§100, 102, 103, 105, 107 & 113):** R1's line management arrangements by which CAB continued to be line managed by R2 and R3, despite requesting to be "separated" from them and asking to liaise directly with HR and/or Employee Relations ('management arrangements PCP'). This could be extended to 18 March 2020 following decision of EJ Crosfill on the matter.

30.1.1. Did the 'line management PCP' cause CAB a substantial disadvantage (he relies on the following: that it significantly influenced and exacerbated his anxiety and depression)?

30.2. **PCP2: 16 October 2019 (PoC, §§111 & 112)**: R1's policy that absence management wellbeing meetings should take place at the employee's place of work and with R2 (notwithstanding CAB's request to be separated from R2). ('wellbeing meetings PCP') 30.2.1. Did the Wellbeing meetings PCP' cause CAB a substantial disadvantage (he relies

on the following: that it significantly influenced and exacerbated his anxiety and depression)?

30.3. **PCP3: 15 November 2019 (PoC, §120)**: R1's policy that whistleblowing meetings should not be recorded. ('the recording of meetings PCP').

30.3.1. Did the 'recording of meetings PCP' cause CAB a substantial disadvantage (he relies on the following: he struggled to remember what was said during the meeting once the meeting was over due to his mental impairments and that significantly influenced or exacerbated his anxiety and depression?).

30.4. **PCP4: 16 January 2020 (PoC, §126):** R1's policy that grievance meetings had to take place at R1's premises and that employees should only be accompanied to grievance meetings by a workplace colleague or Trade Union representative. ('grievance meeting PCP')

30.4.1. Did the 'grievance meeting PCP' cause CAB a substantial disadvantage (he relies on the following: attending a grievance meeting at his place of work without the assistance of a friend or relative would leave him more prone to suffering from or anticipating a panic attack or breakdown)?

30.5. **PCP5: 27 January 2020 to 18 June 2020 (PoC, §§130, 133 & 169 170):** R1's practice of taking a significant time to complete workplace investigations grievances and/or CAB's grievance. ('investigation delays PCP').

30.5.1. Did the 'investigation delays PCP' cause CAB a substantial disadvantage (he relies on the following: the lengthy time frame has had significant, profound and detrimental effects on his mental health and has prevented him from returning to work)?

30.6. **PCP6: 19 February 2020 (PoC, §§144 & 157 158 159)**: R1's practice of excluding employees on long term sickness leave from their own performance appraisals. ('performance appraisal PCP')

30.6.1. Did the 'performance appraisal PCP' cause CAB a substantial disadvantage (he relies on the following: the appraisal did not account for the adverse effects of CAB's disability on his day-to-day activities and CAB was not given the opportunity to provide input into the appraisal and his anxiety and depression were significantly exacerbated)?

30.7. **PCP 7: 26 February 2020 and 3 April 2020 (PoC, §§140, 143 & 148)**: R1's policy of notifying employees on sick leave of the downgrade of their medical cover weeks after the downgrade and refusing to fund a medical cover upgrade with unused holiday. ('medical cover PCP')

30.7.1. Did the 'downgrading medical cover PCP' cause CAB a substantial disadvantage (he relies on the following: the downgrading of the cover significantly influenced and exacerbated his anxiety and depression and compromised the Claimant's ability to receive full treatment)?

30.8. **PCP8: 29 February 2020 (PoC, §§141, 146(a), (b), (c) & (g), 146, 147 & 148)**: R1's practice of UNUM's decisions (with regard to income protection cover) being conveyed via

R1 and of Unum's policies regarding communications between UNUM and R1, complaints and appeals were not disclosed upfront by R1. ('UNUM communications PCP')

30.8.1. Did the 'UNUM communications PCP' cause CAB a substantial disadvantage (he relies on the following: the PCP significantly influenced and exacerbated his anxiety and depression and significantly affected the Claimant's ability to challenge the decisions made by UNUM and R1 regarding income protection)?

30.9. **PCP9: February & March 2020 (PoC, §§146(e) & 147):** R1's policy or practice of sending paper files/correspondence to CAB by post rather than email. ('postal correspondence PCP')

30.9.1. Did the 'postal correspondence PCP' cause CAB a substantial disadvantage (he relies on the following: CAB is less able to handle, process, file and retrieve paper files in comparison to e-mails due to his mental impairments and due to the risk and fear of death from contracting Covid-19, which significantly exacerbated CAB's symptoms)?

30.10. **PCP10 18 March 2020 (PoC, §151)**: R1's practice of not treating complaints which concerned policies applicable to all colleagues as grievances ('universal policies grievance PCP').

30.10.1. Did the universal policies grievance PCP cause CAB a substantial disadvantage in comparison with persons who are not disabled (he relies on the following: additional delay to resolution of CAB's grievances and whistleblowing concerns; failure to treat 9.3.20 email/letter as a grievance; and significant exacerbated CAB's anxiety and depression)?

31. If so, did R1 know (or ought it reasonably to have known) that each PCP put CAB at the substantial disadvantage alleged?

32. If so, in respect of each PCP, were there any adjustments which R1 should reasonably have made to avoid the disadvantage? CAB alleges as follows:

32.1. Management arrangements PCP (§30.1): R1 should have ensured that neither R2 nor R3 contacted CAB; and should have assigned all matters pertaining to the Claimant to a neutral and independent person (neutral being defined as someone who was not subject to grievance by the Claimant or who had not had a grievance against the Claimant) and the Claimant should have allowed to liaise directly with HR and/or Employee Relations.

32.2. 'Wellbeing meeting PCP' (§30.2): R1 should have ensured that absence management meetings took place at a neutral venue and/or by video link or telephone; and CAB should have been referred first to OH to determine CAB's fitness to attend; and/or should have had a neutral and independent person, other than R2, to undertake the wellbeing meeting (and R2 should have refrained from contacting CAB).

32.3. 'Recording of meetings PCP' (§30.3): R1 and Andrew Butler should have permitted CAB to record the Whistleblowing meeting and provided accurate minutes of the meeting immediately after it.

32.4. 'Grievance meeting PCP' (§30.4): R1 should have permitted CAB to be accompanied

by a person of his choice (not limited to a work colleague or trade union representative) and should have provided the option of conducting the meeting at a neutral venue or in CAB's home; or conducting the grievance process in writing; and should have sought OH consent from CAB before referring CAB to OH prior to the grievance meeting.

32.5. 'Investigation delays PCP' (§30.5): R1 should have expedited the investigation process into CAB's concerns (including, if necessary, by assigning several investigators and/or prioritising the most urgent concerns first and/or ensuring the investigator(s) had time to deal with CAB's concerns; and/or communicating with CAB promptly) and should have followed the ACAS code.

32.6. 'Performance appraisal PCP' (§30.6): R1 should communicated with CAB during the appraisal process; consulted with him about adjustments and allowed him to provide input; and appointed a neutral and independent to conduct the appraisal; and taken account of the effects of CAB's anxiety and depression as mitigation.

32.7. 'Medical cover PCP' (§30.7): R1 should have notified CAB in advance of the downgrade of his medical cover; and permitted CAB to sacrifice his outstanding 2019 and 2020 holiday pay to top up the premiums to enable the higher grade medical cover to continue.

32.8. 'UNUM communications PCP' (§30.8): R1 should have asked UNUM to communicate directly with CAB; and should have disclosed the Unum's policies regarding communications between UNUM and R1, complaints and appeals upfront.

32.9. 'Postal correspondence PCP' (§30.9): R1 should have ensured that all correspondence with CAB was via email.

32.10. 'Universal policies grievance PCP' (§30.10): R1 should have treated CAB's grievance as such under R1's Grievance Procedure and the ACAS Code; and assigned a trained neutral and independent investigator.

INDIRECT DISABILITY DISCRIMINATION (S19 EQA 2010)

33. Did R1 apply to CAB any provision, criterion or practice ("PCP") which was discriminatory in relation to CAB's disability. CAB asserts the following alleged PCPs:

33.1. **July to October 2019 (PoC, §112)**: R1's sickness absence policy of holding wellbeing meetings at R1's premises and with R2 notwithstanding CAB's requests to be separated from R2).

33.2. **15 November 2019 (PoC, §120)**: R1's policy of not permitting employees to record whistleblowing meetings.

33.3. **16 January 2020 (PoC, §126):** R1's grievance procedure and practice of holding grievance meetings at work sites/locations and only allowing employees to be accompanied by a work colleague or trade union representative.

33.4. **5 February 2020 (PoC, §§132 & 165):** R1's policy of permitting AXA to share OH reports with R1 without an employee's consent.
33.5. **19 February 2020 (PoC, §§157, 158 159)**: R1's practice of carrying out performance appraisals without communicating with or getting input from or making adjustment for, the employee on long-term sick leave.

33.6. **26 February 2020 (PoC, §§140, 146(e) & 147)**: R1's correspondence policy whereby letters are sent via post (not email).

33.7. **26 February 2020 (PoC, §143):** R1's practice of notifying employees on sick leave of the downgrade of their medical cover weeks after the downgrade has occurred.

33.8. **29 February 2020 (PoC, §§141, 146(a), (b), (c), (g) &147, 151):** R1's practice of Unum's communications being conveyed via R1 and of Unum's policies being unclear and not disclosed to employees upfront.

33.9. **18 March 2020 (PoC, §§149 – 150)**: R1's practice of not treating complaints relating to policies applicable on a universal basis as grievances.

34. If so, was any PCP also applied or would it apply, to persons without CAB's disability?

35. If yes, did any of the alleged PCPs put, or would put, persons with CAB's disability at a particular disadvantage when compared with persons without CAB's disability?

36. If so, did any of the alleged PCPs put CAB at that disadvantage?

37. If yes, can R1 show that the PCP was a proportionate means of achieving a legitimate aim?

HARASSMENT RELATING TO DISABILITY (S26 EQA 2010)

38. Did any of the Respondents engage in unwanted conduct relating to disability? CAB relies on the following alleged conduct:

38.1. **16 October 2019 (PoC, §§111 & 112)**: R1 and R2 scheduled a wellbeing meeting with R2 on R1's premises and did not appoint an alternative person from HR as a point of contact to liaise with CAB.

38.2. **19 February 2020 (PoC, §§161I, J and K):**

38.2.1. R3 awarded a performance rating of "Needs Improvement" to CAB for 2019 (PoC, §161I);

38.2.2. R3 made threats and unfounded, unsubstantiated, vague and malicious negative feedback comments in CAB's 2019 annual appraisal form (PoC, §161I);

38.2.3. R1, R2, and R3 omitted to prevent CAB's 2019 annual appraisal from being based solely on R3's comments despite R2&R3's palpable conflicts of interest) (PoC, §161I);

38.2.4. R1, R2, R3 and R6 omitted to prevent CAB's 2019 annual appraisal from being performed without any input from CAB and without any communication with CAB prior to the performance rating being given (PoC, §161J);

38.2.5. R1, R2, R3, R4 & R6 failed to account for and/or attempt to mitigate for CAB's anxiety and depression and his absence from work as part of CAB's 2019 appraisal, whilst allowing CAB's appraisal to be based solely on R3's comments (PoC, §161K);

38.2.6. R1 froze CAB's salary and provided CAB with no bonus for 2019.

38.3. On **18 March 2020** R4 provided vague and evasive answers to CAB's request for clarification about how his 2019 negative performance ratings and his 2019 annual appraisal had been performed. **(PoC to §144 & §161I)**.

39. If so, did such conduct have the purpose or effect of (i) violating CAB's dignity; and/or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for CAB (having regard to each of the factors listed in s26(4) EqA 2010)?

JURISDICTION (S123 EQA 2010)

As regards CAB's claims under the EqA 2010:

40. Was CAB's ET1 presented within the period of three months5 starting with the date of the act to which the complaint relates (within the meaning of s123(1)(a) EqA 2010)?

41. In so-determining, do any of the acts to which the complaint relates constitute conduct "extending over a period" such that the three month time period only starts at the end of that period (per s123(3)(a) EqA 2010)?

42. In considering what date any alleged failure(s) to act was/were done:

42.1. When did the Respondent decide not to do the thing alleged (per s123(3)(b) EqA 2010)?

42.2. In so-determining:

(i) when did the Respondent(s) do an act inconsistent with doing that thing (s123(4)(a) EqA 2010), or

(ii) if the Respondent(s) did not do any inconsistent act, when is the expiry of the period in which the Respondent might reasonably have been expected to do that thing?

43. If any act or failure to act is prima facie out of time, did CAB present his complaint within uch other period as the tribunal thinks just and equitable, so as to afford it jurisdiction to determine that complaint (per s123(1)(b) EqA 2010)?

JURISDICTION (S48(3) ERA 1996)

As regards CAB's claims for public interest disclosure detriment (presented under s48 ERA 1996):

44. Did CAB present his complaint before the end of the period of three months6 beginning with the date of the act or failure to act to which the complaint relates or – where the act/failure to act is part of a series of similar acts/failures – the last of them (per s48(3)(a) ERA 1996)?

45. If not, was it reasonably practicable for CAB to present his complaint within the prescribed time limit (per s48(3)(b) ERA 1996)?

46. If so, did CAB present the complaint within such further period as the tribunal considers reasonable (per s48(3)(b) ERA 1996)?

REMEDY

47. To what remedy/remedies is CAB entitled, if any? CAB seeks the following:

(1) Declarations

(2) Compensation for:

i. Loss of earnings (including bonus)

ii. Loss of pension contributions

iii. Injury to feelings (including aggravated damages)

iv. Damages for personal injury caused by the breaches of the EqA 2010

(3) Recommendations

(4) Uplift of 25% to any compensation awarded (for failures to comply with the ACAS Code of Practice)

(5)Interest

MR CHRISTIAN ABANDA BELLA – SECOND CLAIM

PUBLIC INTEREST DISCLOSURE DETRIMENT CLAIM (s47B ERA 1996)

Protected disclosures (s43B ERA 1996):

1. Did CAB make any protected disclosures ("PDs"), as follows:

1.1. CAB relies on all the PDs asserted in "Claim 1" (at paragraphs 1.1 to 1.29 inclusive) and the ones alleged below

1.2. **8 January 2020 (POC2, §23(b))**: by letter, CAB raised concerns about a defective investigation into complaints against R1's whistleblowing team.

1.3. **26 June 2020 (PoC2, §44):** by email to R4 raising complaints partly about R4's involvement in the grievance/whistleblowing investigation processes despite CAB's request that he should remove himself due to a conflict of interest.

1.4. Withdrawn

1.5. **7 July 2020 (PoC2, §46)**: in writing to R1 regarding the mishandling of CAB's income protection insurance claim by UNUM and R1.

1.6. **9 July 2020 (PoC2, §47)**: in an email to R4, regarding alleged contraventions by R1, R4 and R6 of the EqA 2010 and the ERA 1996, including about delays with and mishandling of the grievance investigation.

1.7. **18 July 2020 (PoC2, §49)**: in an email to R4 and to R1's Whistleblowing Team regarding various matters (including that CAB's letter of 7.4.20 and requests for reasonable adjustments had been ignored, his IT access had been disabled, his pension contributions had been reduced to nil and R1 had continued to send his payslips by post; CAB asserting that these matters contravened the EqA 2010 and the ERA 1996.

1.8. **21 August 2020 (PoC2, §§53 & 55)**: in writing to R1 (the ER Team and the Whistleblowing Team) in respect of various alleged contraventions of the EqA 2010 and ERA 1996, including about: the information received on 25.6.20 in response to CAB's DSAR; the mishandling by UNUM of CAB's income protection claim; CAB's remote IT access being disabled; R1 continuing to send correspondence by post.

1.9. **27 August 2020 (PoC, §§57 & 58)**: in writing to R1's Data Protection Team about the failure to provide CAB with full details of the UNUM income protection policy.

1.10. **25 July 2019 (PoC, §§41.e & 53.b)**: by email to R3, Huayi Li (HL) and HSMN; about R3 bringing discredit to the IVU function and harassing CAB.

2. As regards the alleged protected disclosures ("PDs") at paragraph 1.2 to 1.10 above:

2.1. Did CAB disclose information which, in his reasonable belief, tended to show that:

(i) In respect of the PD at paragraph 1.2, 1.3 and 1.5:

R1 had failed, was failing or would be likely to fail to comply with its legal obligations – namely, the implied term of mutual trust and confidence in CAB's own contract of employment – s43B(1)(b) ERA 1996.

(ii) In respect of the PDs at paragraph 1.3 to 1.9:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, provisions of the EqA 2010) – s43B(1)(b) ERA 1996.

(iii) In respect of the PDs at paragraph 1.3 to 1.8:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, the obligations not to subject employees to victimisation by virtue of s27 EqA 2010 and public interest disclosure detriment by virtue of s47B ERA 1996) – s43B(1)(b) ERA 1996.

(iv) In respect of the PD at paragraph 1.5:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, an obligation not to violate CAB's right to respect for private and family life under Article 8 European Convention on Human Rights / Human Rights Act 1998) – s 43B(1)(b) ERA 1996.

(v) In respect of the PD at paragraph 1.3, 1.5 and 1.9:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, obligations under the GDPR) – s43B(1)(b) ERA 1996.

(vi) In respect of the PDs at paragraph 1.2, 1.3, 1.5, 1.6, 1.7, 1.8:
R1 had failed, was failing or would be likely to fail to comply with their legal obligations (namely, obligations under the ACAS code) – s43B(1)(b) ERA 1996.

(vii) In respect of the PDs at paragraph 1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9 and 1.10:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, obligations under s(1)(2) HSAWA 1974) – s43B(1)(b) ERA 1996.

(viii) In respect of the PDs at paragraph 1.10:
R1 had failed, was failing or would be likely to fail to comply with its legal obligations (namely, obligations under Article 369.1(a)(b)(c) of REGULATION (EU) No 575/2013 and under Fed/OCC guidelines for sound Model Risk Management (SR11-7, OCC 2011-12, 1)) – s43B(1)(b) ERA 1996.

2.2. Did CAB have a reasonable belief that each of the PDs was in the public interest (per s43B(1) ERA 1996)?

Detriments on the ground of protected disclosures (s47B ERA 1996):

3. Was CAB subjected to any detriment by any of the following acts or deliberate failures to act on the ground that he had made any of the above alleged protected disclosures? In respect of each detriment, CAB relies on all prior protected disclosures.

3.1. No longer maintained.

3.2. **Between 26 March 2020 and 11 May 2020 (PoC2, §§25 & 27)**: R4 forwarded CAB's

grievance letter of 26.3.20 (PD 1.25 in “Claim 1”) to R1’s HR Operations team, thereby revealing CAB’s identity as a whistleblower without his consent, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.3. **From 26 March 2020 to 11 May 2020 (PoC2, §28)**: R1, R4 and R5 ignored CAB’s complaints (grievances and whistleblowing) in his letter of 26.3.20, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.4. **20 May 2020 (PoC2, §32)**: R1 failed to address CAB’s concerns about its processes for dealing with income protection claims and failed to make adjustments to those processes, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.5. **2 June 2020 (PoC2, §36)**: R1 and R4 refused to treat CAB’s letter of 17.4.20 as a grievance or as a whistleblowing complaint and R4 failed to remove himself from the decision-making (despite the conflict of interest arising from CAB having raised complaints about him, including via his letters of 7 & 15.4.20), on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.6. **3 June 2020 (PoC2, §37(a) & (b))**: in R4’s reply to CAB’s 15.4.20 letter raising complaints mainly related to his 2019 performance appraisal, R4 misrepresented the nature of CAB’s concerns and trivialised them; and R4 and R1 did not explain clearly which concerns were treated as whistleblowing cases and why, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.7. **3 June 2020 (PoC2, §37(c)):** R1’s appointment of R6 as the investigating manager (even though CAB had raised complaints about R6 in his letter of complaint dated 15.4.20); and R6 failed to decline the appointment, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.8. **23 June 2020 (PoC2, §§49(e) & 50)**: R1 reduced CAB’s pension contributions to nil without any explanation, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in "Claim 2".

3.9. **24 June 2020 & from 29 June 2020 onwards (PoC2, §§39, 45 & 55(c)):**

3.9.1. R1 and R4 failed to communicate with CAB prior to 24.6.20 when he discovered that his IT access had been disabled; and,

3.9.2. thereafter, from 29 June 2020 onwards, R1 and R4 refused to reinstate CAB’s IT access, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 to 1.3 and 1.10 in “Claim 2” for 3.9.2, but only PDs 1.2 and 1.10 for 3.9.1.

3.10. **By 18 July 2020 (PoC2, §49(a) & (c))**: R1 and R4 had failed to treat CAB’s letter of 7.4.20 as a grievance or whistleblowing complaint and had failed to commission an investigation, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 to 1.6 and 1.10 in “Claim 2”.

3.11. **By 18 July 2020 (PoC2, §49(b)):** R1 and R4 had ignored CAB’s reasonable adjustment request (in his letter of 7.4.20) to sacrifice vacation days to pay for the benefit

of Premier Plus medical cover, on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 to 1.6 and 1.10 in “Claim 2”.

3.12. **By 21 August 2020 (PoC2, §§49(d) & 55(d))**: R1’s HR was continuing to send payslips to CAB by post, despite his multiple reasonable adjustment requests to the contrary detailing the resulting risks and detriment to his health and his mental health (including the risk of contracting Covid-19), on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 to 1.7 and 1.10 in “Claim 2”.

4. On **25 June 2020 (PoC2, §§40 – 42)**: CAB received the response to his DSAR, as a result of which he discovered the following, which he relies on as further detriments:

4.1. **2 July 2018 (PoC2, §42(a))**: R2 & R7 exchanged denigrating and belittling comments about CAB, on the ground of PDs 1.1 to 1.10 in “Claim 1”.

4.2. **18 September 2018 (PoC2, §42(b))**: R2 & R3 exchanged denigrating and belittling comments about CAB, on the ground of PDs 1.1 to 1.12 in “Claim 1”.

4.3. **15 February 2019 (PoC2, §41(f))**: R2 & R3 failed to treat CAB’s concerns set out in his 2018 performance appraisal form (on 15.2.19) as grievances and R3 did not forward CAB’s 15.2.19 annual appraisal form (in which CAB asserts that he raised grievances) to HR, on the ground of PDs 1.1 to 1.13 in “Claim 1”.

4.4. **21 March 2019 to 24 May 2019 (PoC2, §41(a) & §§61-85)**: R3 raised 14 spurious disciplinary allegations against CAB, including 5 headline accusations, in respect of events in the period February 2018 to May 2019, on the ground of PDs 1.1 to 1.17 in “Claim 1”. Specifically:

4.4.1. **21 March 2019**: R3 raised disciplinary proceedings against CAB:

(i) (PoC2, §§63): for "interference with manager decision" in relation to attempting "to bring other team members - himself or another senior risk model validator - in our XVA sub-team" around Feb & Sep 2018.

(ii) (PoC2, §§64): for "lack of transparency, confrontational style", "late delivery" and "aggressive, over-generalised critique of the lead validator of the CCR Credit Simulation project" (GMD3329) around 1.7.18.

(iii) (PoC2, §66): for "unconstructive response to feedback" in relation to CAB's 2018 mid-year conversation around 4.9.18.

(iv) (PoC2, §67): for "unconstructive, interference with management decision" in relation to CAB requesting evidence about R3's 2018 mid-year conversation feedback for Henry-Serge Moune Nkeng, around 5.9.18.

(v) (PoC2, §71): for "unconstructive behaviour" in relation to CAB's 18.9.18 e-mail titled "communication warning".

(vi) (PoC2, §72): for "manipulation, undermining authority" in relation to CAB asking another IVU director and R3, around September 2018, for the aforementioned director to make a presentation in R3's team meeting.

(vii) (PoC2, §73): for "interference with manager decision" in relation to R3 trying to get Henry-Serge Moune Nkeng to work under Nadir Maouche (NM) around 20.9.18.

(viii) (PoC2, §74): for "unsolicited email to senior mgmt, attempt to undermine authority" in relation to CAB's 14.12.18 request for lead validator credentials.

(ix) (PoC2, §77): for "lack of support and unhelpful attitude" and declining to "give information about certain modelling errors" in relation to the Equity Swap model validation around 28.12.18.

(x) (PoC2, §79): R3 initiated spurious disciplinary proceedings against CAB in relation to the 2018 appraisal meeting for "unconstructive response to feedback".

on the ground of PDs 1.1 to 1.13 in “Claim 1”.

4.4.2. **1 April 2019 (PoC2, §82)**: R3 raised disciplinary proceedings against CAB for "unconstructive response to critique" in relation to CAB's grievances and PDs germane to a payout validation around 1.4.19, on the ground of PDs 1.1 to 1.13 in "Claim 1".

4.4.3. **Around 28 April 2019 (PoC2, §83)**: R3 raised disciplinary proceedings against CAB for "unconstructive, obstructive behaviour" in relation to a 28.4.19 request for a status update on the Q/C/B (quanto/compo/basket) project by R3, on the ground of PDs 1.1 to 1.15 in "Claim 1".

4.4.4. **Around 24 April 2019 (PoC2, §84)**: R3 raised disciplinary proceedings against CAB for "unhelpful behaviour, discouraging team member to ask for support" and for "various unreasonable complaints" in relation to CAB's grievances and PDs germane to Huayi Li not keeping CAB in the loop around 24.4.19, on the ground of PDs 1.1 to 1.15 in "Claim 1".

4.4.5. **14 May 2019 (PoC2, §85)**: R3 raised disciplinary proceedings against CAB for "disproportionate response" in relation to CAB's grievances germane to R3's belittling comments against CAB during a meeting on 14.5.19, on the ground of PDs 1.1 to 1.17 in "Claim 1".

4.5. **18 June 2019 (PoC2, §§41(d) & 53(a))**: R3 failed to forward CAB’s written grievances about R3 (dated 18.6.19) to R1’s HR department, on the ground of PDs 1.1 to 1.17 in “Claim 1”.

4.6. **25 July 2019 (PoC2), §§41(e) & 53(b))**: R3 failed to forward CAB’s written grievance about R3 (dated 25.7.19) to R1’s HR department, on the ground of PDs 1.1 to 1.18.1 in “Claim 1”.

4.7. **Around 7 May 2020 (PoC2, §41(g))**: R3 provided inaccurate, unjustified and misleading answers to R6’s questions (in the grievance investigation), on the ground of PDs 1.1 to 1.29 in “Claim 1” and PDs 1.2 and 1.10 in “Claim 2”.

4.8. Around 7 May 2020 (PoC2, §§80 & 81): R3 denied that CAB had raised any grievances as part of CAB's 2018 annual appraisal, on the ground of PDs 1.1 to 1.29 in "Claim 1" and PDs 1.2 and 1.10 in "Claim 2".

VICTIMISATION CLAIM (s27 EqA 2010)

Protected Acts (s27(2) EqA 2010):

5. Did CAB do the following protected acts within the meaning of s27(2) EqA 2010?

5.1. CAB relies on all the protected acts asserted in "Claim 1" (at paragraphs 4.1 to 4.24) and as set out below.

5.2. **8 January 2020 (POC2, §23(b))**: by letter, CAB raised concerns about a defective investigation into complaints against R1's whistleblowing team.

5.3. **26 June 2020 (PoC2, §44)**: by email to R4 raising complaints partly about R4's involvement in the grievance/whistleblowing investigation processes despite CAB's request that he should remove himself due to a conflict of interest.

5.4. **29 June 2020 (PoC2, §45)**: in writing to R1 and R4 partly about their failure to communicate with CAB prior to disabling his access to R1's IT, which CAB alleged was victimisation and discrimination because of something arising in consequence of CAB's disability.

5.5. **7 July 2020 (PoC2, §46)**: in writing to R1 regarding the mishandling of CAB's income protection insurance claim by UNUM and R1.

5.6. **9 July 2020 (PoC2, §47)**: in an email to R4, regarding alleged contraventions by R1, R4 and R6 of the EqA 2010 and the ERA 1996, including about delays with and mishandling of the grievance investigation.

5.7. **18 July 2020 (PoC2, §49)**: in an email to R4 and to R1's Whistleblowing Team regarding various matters (including that CAB's letter of 7.4.20 and requests for reasonable adjustments had been ignored, his IT access had been disabled, his pension contributions had been reduced to nil and R1 had continued to send his payslips by post; CAB asserting that these matters contravened the EqA 2010 and the ERA 1996.

5.8. **21 August 2020 (PoC2, §§53 & 55)**: in writing to R1 (the ER Team and the Whistleblowing Team) in respect of various alleged contraventions of the EqA 2010 and ERA 1996, including about: the information received on 25.6.20 in response to CAB's DSAR; the mishandling by UNUM of CAB's income protection claim; CAB's remote IT access being disabled; R1 continuing to send correspondence by post.

5.9. **27 August 2020 (PoC, §§57 & 58)**: in writing to R1's Data Protection Team about the failure to provide CAB with full details of the UNUM income protection policy.

6. Did CAB act in bad faith in giving false information and/or making false allegations, such that the act relied on is not protected, by virtue of s27(3) EqA?

Detriments because of any protected acts (s27(1) EqA 2010):

7. Was CAB subjected to detriments, as follows (in respect of each detriment, CAB relies on all prior protected acts):

7.1. CAB relies on the detriments set out at paragraph 3.1 to 3.12 (above).

7.2. CAB relies on the detriments set out at paragraphs 4.1 to 4.8 (above)

8. If CAB was subjected to any such detriments, was this because he had done any protected acts?

Note: In respect of each detriment, CAB relies on all the protected acts which he asserts that he had done prior to that detriment.

DISABILTY DISCRIMINATION

Disability (s6 EqA 2010)

17. It is agreed that the Claimant was disabled by way of depression and anxiety from 21 June 2019.

Knowledge of disability

18. Did the Respondents know, or ought they reasonably be expected to have known, that CAB was disabled at each of the material times (that is, on each date of alleged disability discrimination)?

DISCRIMINATION ARISING FROM DISABILITY (s15 EqA 2010)

19. Did any of the Respondents treat CAB unfavourably because of "something arising" in consequence of CAB's disability, as follows:

19.1. No longer maintained.

19.2. No longer maintained.

19.3. **Between 26 March 2020 and 11 May 2020 (PoC2, §§25 & 27)**: R4 forwarded CAB's letter of 26.3.20 to R1's HR Operations team, thereby revealing CAB's identity as a whistleblower without his consent.

19.3.1. Was the refusal to obtain consent for the referral arising from the Claimant's disability. The Claimant asserts that the income protection claim related to his disability and therefore formed the basis for a claim of discrimination arising from disability.

19.4. No longer maintained.

19.5. No longer maintained.

19.6. No longer maintained.

19.7. **23 June 2020 (PoC2, §§49(e) & 50)**: R1 reduced CAB's pension contributions to nil without any explanation.

19.7.1. Was this because of CAB's disability-related long-term sickness absence from work?

19.8. **24 June 2020 & 29 June to 21 August 2020 (PoC2, §§39, 45 & 55(c))**: R1 and R4 failed to give CAB any advance warning that his IT access would be disabled; and refused to reinstate his IT access.

19.8.1. Was this because of CAB's disability-related long-term sickness absence from work?

19.9. No longer maintained.

19.10. No longer maintained.

19.11. **21 August 2020 (PoC2, §§53(e) & 54)**: R1 refused to extend CAB's sick pay entitlement by the length of R1's investigation into CAB's grievances / whistleblowing concerns.

19.11.1. Was this because of CAB's disability-related long-term sickness absence from work?

19.12. **From February 2020 to 29 September 2020 (PoC2, §§49(d), 50, 55(d) & 56)**: R1 continued to send correspondence to CAB by post despite his repeated requests that all correspondence should be via email.

19.12.1. Was this because of CAB's disability-related long-term sickness absence from work?

20. By each of the matters set out above, did the relevant Respondent(s) subject CAB to unfavourable treatment because of "something" arising in consequence of his disability?

21. If so, was this treatment a proportionate means of achieving a legitimate aim?

22. Did the relevant Respondent know (or should they reasonably have been expected to know) that CAB had a disability (s15(2) EqA 2010)?

FAILURE BY R1 TO MAKE REASONABLE ADJUSTMENTS (ss20 & 21 & 39(5) EqA 2010)

23. Were there any provisions, criteria or practices ("PCPs") of R1's which put CAB as a disabled person at a substantial disadvantage in comparison to those who are not disabled (s20(3) EqA 2010)? CAB relies on the following:

23.1. Between around March to May 2020 (PoC2, §§31, 32 &55(b)): R1's processes for handling employee's income protection insurance claims and related employee's concerns, whereby it requires communications with Unum (including medical information) to go through R1 (as per CAB's 26.3.20 letter), and related employee's concerns (which are not taken seriously) ('UNUM mishandling PCP').

23.1.1. Did the 'UNUM mishandling PCP' cause CAB a substantial disadvantage (he relies on the following: It significantly exacerbated CAB's anxiety and depression?

23.2. **3 June 2020 (PoC2, §37(d))**: R1's practice of only permitting employees to be accompanied to grievance meetings by a work colleague or trade union representative (notwithstanding employees' prior grievances to the contrary) ('Accompanying person PCP').

23.2.1. Did the 'Accompanying person PCP' cause CAB a substantial disadvantage (he relies on the following: attending a grievance meeting at his place of work without the assistance of a friend or relative would leave him more prone to suffering from or anticipating a panic attack or breakdown; and it significantly exacerbated CAB's anxiety and depression)?

23.3. **24 June 2020 (PoC2, §§39, 45)**: R1's practice of not informing employees (who are absent from work and have ongoing grievances and whistleblowing investigations) in advance of their IT access being disabled. ('IT access PCP').

23.3.1. Did the 'IT access PCP' cause CAB a substantial disadvantage (he relies on the following: It significantly exacerbated CAB's anxiety and depression)?

23.4. **9 July 2020 (PoC2, §§47(c) & 48)**: R1's practice of not permitting employees to have sight of and be able to challenge the Q&A transcripts of grievance interviews and other evidence gathered. ('Grievance evidence PCP').

23.4.1. Did the 'Grievance evidence PCP' cause CAB a substantial disadvantage (he relies on the following: that, unlike non-disabled employees in a standard grievance meeting, CAB could not ask questions and challenge evidence; and the PCP significantly exacerbated CAB's anxiety and depression)?

23.5. **7 April 2020 to 18 July 2020 (PoC2, §§49(a) & (b) & 50)**: R1's practice of refusing to permit employees to fund Premier Plus medical cover upgrade with unused holiday and of not communicating with the employee about it ('medical cover PCP').

23.5.1. Did the 'medical cover PCP' cause CAB a substantial disadvantage (he relies on the following: it significantly exacerbated CAB's anxiety and depression).

23.6. **From February 2020 to 29 September 2020 (PoC2, §§55(d) & 56)**: R1's practice of sending correspondence to employees by post when they are absent from work. ('Postal correspondence PCP').

23.6.1. Did the 'Postal correspondence PCP' cause CAB a substantial disadvantage (he relies on the following: (1) He is less able to handle, process, file and retrieve paper files in comparison to emails due to his mental impairments;

and (2) the risk and fear of death from contracting Covid-19, both of which significantly exacerbated CAB's symptoms)?

23.7. **From 21 June 2019 (PoC2, §53(d):** R1's practice with regard to the length of time taken to investigate grievances and whistleblowing concerns and/or CAB's grievances and whistleblowing concerns ('Lengthy Investigation PCP').

23.7.1. Did the 'Lengthy Investigation PCP' cause CAB a substantial disadvantage (he relies on the following: It significantly exacerbated CAB's anxiety and depression; it has prevented CAB from returning to work)?

23.8. **21 August 2020 (PoC2, §§53(d), 53(e) & 54):** R1's sick pay policy which only provides for time-limited sick pay entitlement without any extension. ('Sick pay PCP').

23.8.1. Did the 'Sick pay PCP' cause CAB a substantial disadvantage (he relies on the following: The financial woes significantly exacerbated CAB's anxiety and depression)?

23.9. **19 August & 27 August 2020 (PoC2, §§52(b) & 59)**: R1's policy or practice of withholding the full details of the UNUM income protection policy and of not indicating whether any automated decision-making was involved in processing employees' applications. ('Withholding UNUM policy details PCP').

23.9.1. Did the 'Withholding UNUM policy details PCP' cause CAB a substantial disadvantage (he relies on the following: due to his mental impairments, CAB is less able to navigate the income protection insurance claim process without knowledge of the full details of the Unum income protection policy, in comparison to non-disabled persons; and the PCP significantly exacerbated CAB's symptoms)?

23.10. **23 June 2020 (PoC2, §§49(e) & 50):** 'Pension PCP': R1 policy pertaining to the pension of employees on long-term sick leave (whereby they are reduced to nil without explanation).

23.10.1. Did the 'Sick pay PCP' cause CAB a substantial disadvantage (he relies on the following: The PCP significantly exacerbated CAB's anxiety and depression)?

24. If so, did R1 know (or ought it reasonably to have known) that each PCP put CAB at the substantial disadvantage alleged)?

25. If so, in respect of each PCP, were there any adjustments which R1 should reasonably have made to avoid the disadvantage? CAB alleges as follows:

25.1. UNUM mishandling PCP' (§23.1): R1 and R4 should have arranged for CAB to correspond directly with Unum and disclosed all relevant policies upfront; and should have disapplied R1's usual data-sharing practices with UNUM.

25.2. 'Accompanying person PCP' (§23.2): R1 and R4 should have permitted CAB to be accompanied to any grievance meeting by an accompanying person of his choice (not limited to a work colleague or trade union representative); and/or allowed CAB the option of undertaking a grievance meeting via written form (including by allowing CAB to have sight of, and be able to challenge, all relevant evidence).

25.3. 'IT access PCP' (§23.3): R1 and R4 should have given CAB advance warning that his IT access was to be disabled; and/or asked CAB if he wished to have remote access before disabling his IT access; and/or should not have disabled CAB's remote IT access; and should have updated R1's policies to systematically notify the employee prior to disabling their remote IT access.

25.4. 'Grievance evidence PCP' (§23.4): R1 and R6 should have permitted CAB as well as a colleagues and/or trade union representative to have full sight of and to be able to challenge all the grievance investigation evidence, including the Q&A transcripts of grievance interviews.

25.5. 'Medical cover PCP (§23.5): R1 should have notified CAB in advance of the downgrade of his medical cover; and permitted CAB to sacrifice his outstanding 2019 and 2020 holiday pay to top up the premiums to enable the higher grade medical cover to continue.

25.6. 'Postal correspondence PCP' (§23.6): R1 should have ensured that all correspondence with CAB was sent via email.

25.7. 'Lengthy Investigation PCP' (§23.7): R1, R4 and R6 should have expedited its grievance and whistleblowing investigations (including, if necessary, by assigning several investigators and/or prioritising the most urgent grievances and whistleblowing first and/or ensuring the investigator(s) had time to deal with CAB's concerns/complaints; and/or communicating with CAB promptly).

25.8. 'Sick pay PCP' (§23.8): R1 should have extended CAB's entitlement to sick pay by the length of the investigations by R1 into the omission by R1, R4 & R6 to have expedited CAB's grievances and whistleblowing concerns.

25.9. 'Withholding UNUM policy details PCP' (§23.9): R1 should have disclosed the full details of UNUM's income protection policy to CAB; and whether any automated decision-making was involved in processing CAB's application.

25.10. 'Pension PCP' (§23.10): R1 should have communicated with CAB by email in advance about the pension contribution reduction and/or R1 should not have stopped CAB's pension contributions.

INDIRECT DISABILITY DISCRIMINATION (s19 EqA 2010)

26. Did R1 apply to CAB any provision, criterion or practice ("PCP") which was discriminatory in relation to CAB's disability? CAB asserts the following alleged PCPs:

26.1. **From 26 March 2020 and including 11 May 2020 (PoC2, §§26 & 28)**: R1's policy of ignoring grievances and whistleblowing complaints (as applied by R4 and R5 in respect of the grievances and whistleblowing complaints in CAB's letter of 26.3.20).

26.2. **3 June 2020 (PoC2, §37(d))**: R1's practice of only permitting employees to be accompanied to grievance meetings by a work colleague or trade union representative (as applied by R4 on 3.6.20).

26.3. **Between 19 August 2020 and 29 September 2020 (PoC2, §§59 & 52(b))**: R1's policy or practice of withholding the full details of the UNUM income protection policy and its policy or practice of not indicating whether any automated decision-making is involved in the processing of employees 'income protection applications.

27. If so, was any such PCP also applied or would it apply, to persons without CAB's disability?

28. If yes, did any of the alleged PCPs put, or would put, persons with CAB's disability at a particular disadvantage when compared with persons without CAB's disability?

29. If so, did any of the alleged PCPs put CAB at that disadvantage?

30. If yes, can R1 show that the PCP was a proportionate means of achieving a legitimate aim?

HEALTH & SAFETY DETRIMENT (s44 ERA 1996)

31. Was CAB an employee at a place where there was no health and safety representative or safety committee (per s44(1)(c)(i) ERA 1996)?

32. If there was such a representative or safety committee, was it reasonably practicable for CAB to raise his "health and safety matter" with that representative or committee (per s44(1)(c)(ii) ERA 1996)?

33. If not, did CAB bring to R1's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety ("health and safety matter") – namely, on 26.3.20, 7.4.20 & 18.7.20 (PoC2, §56): the risk of death from contracting Covid-19 from CAB's payslips and letters which R1 continued to send by post, instead of by email?

34. If so, was CAB subjected to any detriment by any act, or any deliberate failure to act, done on the ground that he had brought this "health and safety matter" to R1's attention? CAB contends that R1, R4 & R5 ignored his letters of 26.3.20, 7.4.20, 18.7.20 and continued to send files through the post to CAB (including on 21.7.20, 22.8.20 and 19.9.20) needlessly subjecting CAB to significant additional risk and/or fear of death from contracting Covid-19, which risk and fear significantly exacerbated CAB's disability (anxiety and depression) (PoC2, §49d & §55.d).

JURISDICTION (s123 EqA 2010)

As regards CAB's claims under the EqA 2010:

35. Was CAB's ET1 presented within the period of three months (extended, as required, for any ACAS early conciliation period) starting with the date of the act to which the complaint relates (within the meaning of s123(1)(a) EqA 2010)?

36. In so-determining, do any of the acts to which the complaint relates constitute conduct

"extending over a period" such that the three month time period only starts at the end of that period (per s123(3)(a) EqA 2010)?

37. In considering what date any alleged failure(s) to act was/were done:

37.1. When did the Respondent decide not to do the thing alleged (per s123(3)(b) EqA 2010)?

37.2. In so-determining:

(i) when did the Respondent(s) do an act inconsistent with doing that thing (s123(4)(a) EqA 2010), or

(ii) if the Respondent(s) did not do any inconsistent act, when is the expiry of the period in which the Respondent might reasonably have been expected to do that thing?

38. If any act or failure to act is prima facie out of time, did CAB present his complaint within such other period as the tribunal thinks just and equitable, so as to afford it jurisdiction to determine that complaint (per s123(1)(b) EqA 2010)?

JURISDICTION (s48(3) ERA 1996)

As regards CAB's claims for public interest disclosure detriment and health & safety detriment (presented under s48 ERA 1996):

39. Did CAB present his complaint before the end of the period of three months (extended, as required, for any ACAS early conciliation period) beginning with the date of the act or failure to act to which the complaint relates or – where the act/failure to act is part of a series of similar acts/failures – the last of them (per s48(3)(a) ERA 1996)?

40. If not, was it reasonably practicable for CAB to present his complaint within the prescribed time limit (per s48(3)(b) ERA 1996)?

41. If so, did CAB present the complaint within such further period as the tribunal considers reasonable (per s48(3)(b) ERA 1996)?

REMEDY

42. To what remedy/remedies is CAB entitled, if any? CAB seeks the following:

(1) Declarations

(2) Compensation for:

i. Loss of earnings (including bonus)

ii. Loss of pension contributions

iii. Injury to feelings (including aggravated damages)

iv. Damages for personal injury caused by the breaches of the EqA 2010

v. Damages for personal injury caused by breaches of s47B ERA 1996)

(3) Recommendations

(4) Uplift of 25% to any compensation awarded (for failures to comply with the ACAS Code of Practice)

(5) Interest