EMPLOYMENT TRIBUNALS

Claimant: **Mr Irfan Hashmi**

Respondent: **HSBC Group Management Services Limited**

Heard at: **East London Hearing Centre**

On: **9, 10, 11, 12, 16 17, 18 & 19 January 2024 and (IN-CHAMBERS) 12 April 2024**

Before: **Employment Judge Povey**
Members: **Mr L O'Callaghan**
Mr J Webb

REPRESENTATION:

Claimant: **In Person**
Respondent: **Ms San Gupta Kc**

RESERVED JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The complaints of race discrimination which occurred before 30 March 2021 were brought out of time. It was not just and equitable to extend time and the Tribunal had no jurisdiction to consider and determine them.

2. The complaint of unfair dismissal is not made out and is dismissed.

3. The complaint of automatic unfair dismissal for making protected disclosures is not made out and is dismissed.

4. The complaint of direct discrimination on grounds of race is not made out and is dismissed.

REASONS

Introduction

1. This is a claim by Irfan Hashmi ('the Claimant') against his former employer, HSBC Group Management Services Limited ('the

Respondent'). The Claimant was employed from 11 March 2019 until 30 November 2021.

2. ACAS Early Conciliation began on 2 November 2021 and ended 25 November 2021. The Claimant presented his claim to the Tribunal on 20 November 2021, bringing complaints of unfair dismissal, discrimination on the grounds of race, discrimination and age, and detriment (including dismissal) for making protected disclosures.[1] The Respondent resisted the claim in its entirety.

3. The claim has had an extensive and, at times, protracted procedural history. However, reference need only be made to those procedural matters which arose in the course of the final hearing, with one notable exception.

4. At a Preliminary Hearing on 6 April 2023, Employment Judge Crossfill made deposit orders in respect of the Claimant's complaints of age and race discrimination, on the grounds that they had little reasonable prosects of success. The Claimant paid the requisite deposit in order to progress his race discrimination complaint (but not his age discrimination complaint).

The Final Hearing

5. The final hearing was conducted in person at the London East Hearing Centre.

6. Ahead of the final hearing, the parties requested permission (and the Tribunal agreed) for the the final hearing to be transcribed (in addition to the proceedings being recorded by the Tribunal).Transcription services were provided on each day of the final hearing by Epiq Europe Ltd, with the parties and the Tribunal being provided with a transcript shortly after the end of each day of the hearing.

7. We held the morning of the first day of the hearing (9 January 2024) in private, as there were a number of preliminary and case management issues to address. In particular, the Tribunal ruled that an email and attached documents were privileged and should be removed from the evidence, as should any reference to them in the Claimant's witness statement. The Tribunal then spent the rest of the first day reading in to the case.

8. At the conclusion of day three (11 January 2024), the Claimant was still giving evidence. He asked if the following day (12 January 2024) could be a non-sitting day as he reported not sleeping very well and said that he had not yet prepared his questions for the Respondent's witnesses. His request was refused as he was in the middle of giving his evidence.

[1] The claim also included an application for interim relief, which was refused by the Tribunal by a judgment dated 10 January 2022. The complaints of discrimination on grounds of disability, were withdrawn by the Claimant at the preliminary hearing of 20 June 2022.

However, the Tribunal indicated that they would re-visit whether or not to start hearing from the Respondent's witness after the conclusion of the Claimant's evidence the following day or to allow some time for the Claimant to finish preparing his questions.

9. The Claimant also asked that one of the remaining sitting days be a non-sitting day, so that he could prepare his closing submissions. The Tribunal informed the Claimant that we were unable, at that point in time, to agree to that request but would keep it under review as the hearing progressed.

10. On the evening of 11 January 2024, the Claimant emailed the Tribunal and the Respondent, to which the Respondent replied. Thereafter, the Claimant decided not to attend the hearing on 12 January 2024 and the Tribunal issued the orders (with reasons) at Appendix 1.

11. On the evening of 14 January 2024, the Claimant applied for an order for specific disclosure. On 15 January 2024, the Respondent replied, opposing the application. At the conclusion of day five of the hearing (16 January 2024), the parties agreed that the Tribunal should determine the application on the basis of the written application and response, with our decision being provided orally at the outset of day six (17 January 2024).

12. The Tribunal unanimously refused the Claimant's application for the following reasons:

    12.1. Some of the Claimant's requests were not for documents but for further information or answers to questions he posed. Much of the request was not a request for documents but a series of questions.

    12.2. One specific document sought was already in the Bundle (at [1550]).

    12.3. The application was made extremely late in the proceedings, midway through the final hearing in circumstance where the litigation had begun in 2021 and there had been numerous case management hearings. The Bundle already ran to almost 2,800 pages, The List of Issues had been agreed and set out. The Claimant was fully aware of what the case was about and had clearly understood and been able to engage in the disclosure process undertaken to date.

    12.4. It was prejudicial to the Respondent to require the production of additional documents at this late stage.

    12.5. It was not consistent with the overriding objective (which includes conducting litigation in a manner that was proportionate to the issues, that avoids delay and saves expense).

13. In the early hours of 17 January 2024, the Claimant sent allegations to the Tribunal that there was "*[H]ard evidence of tampering"* with evidence in the Bundle. On the morning of the hearing of 17 January 2024, the

Claimant reiterated his allegations and added to them. However, in the course of the hearing on 18 January 2024, the Claimant withdrew the allegations and confirmed that what he thought was tampering had in fact been changes to documents which he himself had made. However, he continued to maintain allegations that the Respondent's legal team had misled the Tribunal.

14. In respect of the Claimant's questioning of the Respondent's witnesses, the Claimant prepared written questions and asked that they be put to each witness by the judge. The Respondent and the Tribunal had no objections to this proposal. The judge asked the questions of each witness, as drafted by the Claimant, and also checked with the Claimant throughout whether he had any further questions for each witness. In addition, the Tribunal asked its own questions of the Respondent's witnesses.

15. At the conclusion of day six (17 January 2024), the Claimant indicated that whilst he wished to rely upon written submissions only, he did not believe he would be able to provide them in accordance with the timetable set out in our orders of 12 January 2024 (at Appendix 1). It was therefore agreed to permit the Claimant to provide his written submissions after the conclusion of the final hearing, with the time frame being varied at the Claimant's request at the conclusion of the final hearing on day eight (19 January 2024). Both the orders of 17 and 19 January 2024 are at Appendix 2.

16. We heard oral evidence from the Claimant. For the Respondent, we heard oral evidence from the following:

    16.1. James Yates, Global Head of Risk Management (within Global Trade and Receivables Finance);

    16.2. Simon Gordon, Global Head of Data Reporting & Compliance (within Risk & Compliance);

    16.3. Andrew Grisdale, Global Chief Operating Officer (within Risk & Compliance);

    16.4. Charlotte Tauszky, at the relevant time, Global Chief Operating Officer and Head of Transformation (within Wholesale Credit & Market Risk, Treasury Risk and Global Risk Analytics); and

    16.5. Aneeta Willmore, Senior Employee Relations Manager (within the Human Resources Advisory Team).

17. All of the witnesses provided and adopted written statements as their evidence in chief.

18. The Tribunal was also provided with a paginated bundle of documents to which we were referred throughout the hearing ('the Bundle'), a cast list, factual and procedural chronologies, a glossary of term and a schedule of

alleged protected disclosures. We were also provided with a bundle pertaining to remedy ('the Remedy Bundle').

19. The issues to be determined by the Tribunal were agreed over the course of a number of case management hearings and confirmed by the parties at the outset of the final hearing. So far as they related to liability, they are set out at Appendix 3. We utilised the numbering of the alleged protected disclosures contained in the List of Issues and incorporated them into our reasons. However, we have considered them chronologically, which placed the seventh protected disclosure ahead of the sixth.

20. We were able to conclude the Respondent's evidence by lunchtime on day seven (18 January 2024) and afforded the parties until 2pm on day eight (19 January 2024) to further prepare oral and written submissions.

21. The Tribunal received written and oral submissions from Ms San Gupta for the Respondent and written submissions for the Claimant. Ms San Gupta also provided us with a bundle of legal authorities and an opening note.

22. The Claimant is a litigant in person. The Tribunal explained the process and procedures to the Claimant, both at the outset of the hearing and at each procedural stage. We checked his understanding, encouraged him to ask questions and gave him guidance throughout. We were satisfied that Claimant was able to fully engage in the process and present his claim to the best of his abilities.

23. In addition, and by way of ensuring that the parties were on an equal footing, the Tribunal recalled Mr Yates after he had concluded his evidence, to specifically put the Claimant's allegation of race discrimination to him (as the same had not been included in the Claimant's prepared questions).

24. At the conclusion of the hearing, the Tribunal reserved its judgment. We reconvened in private to undertake our deliberations on 18 and 19 March 2024 and again on 12 April 2024. In reaching our decisions, the Tribunal had regard to all the evidence we saw and heard, as well as the submissions we received.

25. Having been though all of the evidence, made findings of fact and reached conclusions on the complaints pursued by the Claimant (which we set out in detail over the following pages), the Tribunal did not find any evidence to support any allegations against the Respondent or its legal team that any of them had misled the Tribunal, deliberately or otherwise, interfered in with the evidence before us or in any way undermined the integrity of these proceedings.

The Applicable Law

Protected Disclosures

26. So far as relevant, a protected disclosure is defined by sections 43A – 43C and 43F of the Employment Rights Act 1996 ('ERA 1996'), as follows:

> 43A Meaning of "protected disclosure"
>
> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.
>
> 43B Disclosures qualifying for protection
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
> (e) that the environment has been, is being or is likely to be damaged, or
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
>
> …
> (5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).]
>
> 43C Disclosure to employer or other responsible person
>
> (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure . . .—
>
> (a) to his employer,…
>
> …
>
> 43F Disclosure to prescribed person
>
> (1) A qualifying disclosure is made in accordance with this section if the worker—
>
> (a) makes the disclosure . . . to a person prescribed by an order made by the Secretary of State for the purposes of this section, and
> (b) reasonably believes—
> (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

27. In Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1346 Sales LJ said at [35] (with emphasis added):

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

28. A failure to identify a particular type of wrongdoing within a protected disclosure might provide evidence of what was or was not in the worker's mind at the time of the disclosure (per Twist DX Ltd v Armes UKEAT/0030/20).

29. Where a worker says that the information they conveyed tended to show the commission of a criminal offence or a breach or likely breach of a legal obligation, they do not have to be right either about the facts relayed or the existence or otherwise of the criminal offence or legal obligation. It is sufficient that the worker actually holds the belief and that objectively that belief is reasonable (per Babula v Waltham Forest College [2007] EWCA Civ 174; Eiger Securities LLP v Korshunova [2017] IRLR 115; Darnton v University of Surrey [2003] IRLR 133).

30. Any legal obligation should be identified and capable of verification. The worker must identify what legal obligation they had in their mind and that they believed had, was or was about to be breached (per Riley v Belmont Green Finance Ltd UKEAT/0133/19; Eiger Securities LLP v Korshunova [2017]).

31. The worker has to believe at the time he was making the protected disclosure that the disclosure was in the public interest and that belief must be reasonable (per Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979).

Automatic Unfair Dismissal

32. An employee who is dismissed by reason (or if more than one, by the principle reason) of having made a protected disclosure is regarded as unfairly dismissed (per section 103A of the ERA 1996).

33. In Royal Mail Group Ltd v Jhuti [2019] UKSC 55, Lord Wilson held as follows (at [60]);

> In searching for the reason for a dismissal for the purposes of section 103A of the Act…, courts need generally look no further than at the reasons given by the appointed decision-maker.

34. The claim will not succeed unless the Tribunal concludes that at least the principle reason for the dismissal was that the worker had made protected disclosures. It will be for the worker to raise at least an evidential case before the burden passes to the employer to disprove that reason (per Kuzel v Roche Products Ltd [2008] EWCA Civ 380).

35. There can be a distinction between the making of a disclosure and an employee's conduct, such that an employer who dismisses on the genuinely separable grounds of conduct will not have unfairly dismissed an employee for making protected disclosures (per Panayiotou v Kernaghan [2014] IRLR 500; Parsons v Airplus International Ltd [2017] 10 WLUK 321). In Kong v Gulf International Bank (UK) Ltd [2022] EWCA Civ 941. Simler LJ summarised the approach to the so-called 'separability principle' (at [55] – [57]):

> 55. There was no challenge in this court to the proposition that, in an appropriate case, an employer can take action against a worker who makes a protected disclosure in what is regarded as an unreasonable or unacceptable manner, or who acts in an unacceptable way in relation to a protected disclosure; and in such cases it is legitimate for tribunals to find that although the reason for dismissal is related to the disclosure, it is not in fact because of the disclosure itself.
>
> 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…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. In such cases,…the protected disclosure is the context for the impugned treatment, but it is not the reason itself.
>
> 57. Thus the "separability principle" is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. 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. Were this exercise not permissible, the effect would be that whistle-blowers would have

> immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.

Ordinary Unfair Dismissal

36. By reason of section 94 of the Employment Rights Act 1996 ('ERA 1996'), an employee has the right not to be unfairly dismissed.

37. Section 98(1) of the ERA 1996 requires that in deciding whether a dismissal was unfair, it is for the employer to show the reason for that dismissal. That reason must fall within a list of potentially fair reasons to be found within section 98(2) of which 98(2)(c) states:

> A reason falls within this subsection if it –
> …
> (c) is that the employee was redundant…

38. Section 138 of the ERA 1996, so far as relevant, provides as follows:

> (1) Where—
>
> (a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and
>
> (b) the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment,
>
> the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.
>
> (2) Subsection (1) does not apply if—
>
> (a) the provisions of the contract as renewed, or of the new contract, as to—
>
> (i) the capacity and place in which the employee is employed, and
> (ii) the other terms and conditions of his employment,
>
> differ (wholly or in part) from the corresponding provisions of the previous contract…

39. Section 139 of the ERA 1996 contains the statutory definition of redundancy. It includes, at section 139(1)(b), the situation where a dismissal is wholly or mainly attributable to the requirements of the business for employees to carry out work of a particular kind having ceased or diminished or expected to cease or diminish (see also Safeway Stores v Burrell 1997 ICR 523; Murray v Foyle Meats Ltd [1999] ICR 827).

40. The Tribunal has no jurisdiction to take account of the economic or commercial reason for redundancy itself. It is not for the Tribunal to assess or comment upon how an employer runs its business. We are only concerned with whether the reason for dismissal was redundancy and whether a genuine redundancy situation (as defined by section 139 ERA 1996) existed (per James W Cook and Co (Wivenhoe) Ltd v Tipper [1990] ICR 716, CA).

41. Section 98(4) of the ERA 1996 also requires the Tribunal to consider whether the employer acted reasonably in dismissing the employee for one of the reasons in s.98(2). On the issue of fairness in a redundancy dismissal, the following questions are likely to be relevant (per Williams and others v Compare Maxam Ltd [1982] IRLR 83; Mogane v Bradford Teaching Hospitals NHS Foundation Trust [2022] EAT 139):

    41.1. Was there a genuine redundancy situation?

    41.2. Did the employer properly consult?

    41.3. Was the employee fairly selected for redundancy?

    41.4. Did the employer explore and consider alternative employment?

42. In addition, the Tribunal must consider the reasonableness of the employer's decision to dismiss and, in judging the reasonableness of that decision, the Tribunal must not substitute its own decision as to what was the right course to adopt for the employer. Rather, the Tribunal must consider whether there was a band of reasonable responses to the conduct within which one employer might reasonably take one view whilst another quite reasonably takes a different view. Our function is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted (per Williams v Compare Maxim [1982] ICR 156, EAT).

43. Section 98(4) also requires a consideration of whether the procedure by which an employer dismissed an employee is fair. If an unfair procedure has been followed the Tribunal is not allowed to ask itself, in determining whether a dismissal was fair, whether the same outcome (i.e. dismissal) would have resulted anyway even if the procedure adopted had been fair (per Polkey v AE Dayton Services Ltd [1987] IRLR 503 HL).

44. There is no general rule that a redundancy dismissal without a right of appeal will be unfair on that ground alone (per Gwynedd Council v Barratt & others [2020] UKEAT 0206/18/0306).

Discrimination

45. Direct discrimination is defined by section 13(1) of the Equality Act 2010 ('EqA 2010'), and states as follows:

> 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.

46. The "relevant protected characteristics" include race (per section 26(5) EqA 2010).

47. In comparing whether there has been less favourable treatment because of a protected characteristic, the comparator (B) can be actual or hypothetical but there must be no material difference the circumstances of A and B (per section 23 of the EqA 2010; Watt v Ahsan [2007] UKHL 51).

48. The standard of proof is the balance of probabilities. The burden of proof in discrimination complaints has two stages, as follows (per section 136 of the EqA 2010, Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC; Madarassy v Nomura International plc [2007] IRLR 246 and Igen Ltd (formerly Leeds Careers Guidance) v Wong 2005 ICR 931, CA):

    48.1. The Claimant has to prove facts from which the Tribunal could infer that discrimination has taken place;

    48.2. If so, the burden 'shifts' to the Respondent to prove that the treatment in question was in no way because of a protected characteristic.

49. Section 123 of the EqA 2010 requires that proceedings under the EqA 2010 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 or such other period as the Tribunal thinks just and equitable. By reason of section 123(3), conduct done over a period of time is treated as being done at the end of the period, for the purpose of calculating the three-month time limit for bringing proceedings.

Findings of fact

First role & redundancy

50. The Claimant's employment with the Respondent began on 11 March 2019 as Head of Financial Risk Management, within the Respondent's Global Trade and Receivables Finance division ('GTRF'). Under the Respondent's salary structure, the Claimant was employed at Global Career Plan ('GCB') 3. From January 2020, James Yates became the Claimant's line manager (upon his appointment as Global Head of Risk Management for GTRF).

51. At all material times, the Chief Operating Officer of GTRF was Adrian Rigby.

52. During 2019 and 2020, the Respondent experienced financial difficulties, resulting in a programme of widespread job cuts aimed at reducing costs. Those measures were reported in the press, with a figure of 35,000 job

losses being quoted (at [2052] – [2061] of the Bundle). A copy of the applicable Redeployment and Redundancy Policy was in evidence (at [70] – [86]). It included the following, under the section headed Redeployment (at [78]):

> Short-term assignments may also be considered where an employee agrees to go on a secondment in another business area for a period not exceeding 12 months. The consultation manager will explore this option with you under the individual consultation process. If you take up this option, your notice period will begin to run towards the end of your secondment, so that it finishes at the same time as the expiry of your secondment assignment.

53. In January 2020, the Claimant's post was included in those that were 'at risk' of being made redundant (at [2039] – [2041] of the Bundle). In an email exchange between Mr Yates and Hannah Walker (of the Respondent's HR function) on 23 and 24 March 2020, Mr Yates confirmed that the rationale for putting the Claimant's post at risk was "*[R]educed requirement for work of the type currently undertaken"* (at [2090] – [2092]).

54. On 23 March 2020, the country went into lockdown as a result of the Covid pandemic. As a result, the Respondent paused its redundancy programme, restarting it in August 2020.

55. On 13 August 2020, Mr Yates met with the Claimant and informed him that his role was at risk of redundancy (at [195] of the Bundle). There followed five separate consultation meetings with the Claimant between 17 August 2020 and 18 September 2020. Notes of the various meetings were in evidence (at [2129] – [2132]). Both during and after each meeting, the Claimant posed questions, which Mr Yates sought to answer (see, for example, [168] – [172]).

56. On 16 August 2020, the Claimant emailed the Respondent's "HSBC Confidential" service and alleged that, having been told that his role was at risk of redundancy, he "*was facing discriminatory action by the well-entrenched old guard who are protecting their own people from job loss"* and relied upon his status as a cancer survivor to "*qualify under the Disability Discrimination Act (DDA)/Equality Act"* (at [161] of the Bundle).

57. The complaint was managed by Laura Brown, Senior Employee Relations Manager in the Respondent's HR function.

58. The Claimant raised similar concerns with Mr Yates, who responded on 19 August 2020 after consulting with HR (at [191] – 192] of the Bundle). Mr Yates confirmed that "[*I]n any redundancy process, it is the job roles that are reviewed, not the individuals and the same is the case for your situation."*

59. On 2 September 2020, the Claimant emailed Ms Brown and alleged that putting his role at risk of redundancy was discriminatory, alleging that "*some of the other roles are being protected to protect some people who are connected with the management at the very senior levels"* (at [188]).

60. At the consultation meeting on 17 August 2020, Mr Yates explained that, upon evaluating the Claimant's current role, he had concluded that the "*only current deliverables of the role are two reports released each quarter, each of which is produced by a junior analyst and are semi-automated"* (at [2129] of the Bundle).

61. The Claimant was originally placed in a selection pool of two during the redundancy process. However, Mr Yates' evidence was that he reduced that to a pool of one, as the other staff member in the pool was not comparable. Indeed, Mr Yates' evidence in this regard was clear and unequivocal. He made the relevant decisions on the make-up of the pools and it was his decision to make the Claimant's role redundant.

62. In particular, both the documentary evidence and Mr Yates' evidence to the Tribunal were consistent that it was he, and not Mr Rigby, who had determined the pools for the redundancy process. In his written evidence, Mr Yates detailed how he disagreed with Mr Rigby's suggestions on pooling the Claimant with another employee, as not appropriate (at Paragraph 18) and how he explained his reasoning regarding the non-inclusion of two other employees suggested by the Claimant during the consultation process (at Paragraph 29).

63. The consultation process in respect of the Claimant culminated on 1 October 2022, when Mr Yates informed him both verbally and in writing that his role was to be made redundant with effect from 31 December 2020 (at [89] – [103] of the Bundle).

64. In light of the contemporaneous documents and the clear evidence of Mr Yates, the Tribunal found that it was Mr Yates who was tasked with making decisions regarding the Claimant's redundancy and that he made all the key decisions regarding the Claimant's redundancy process, including the decision to make the Claimant's role as Head of Financial Risk Management redundant.

65. This was relevant because, as part of his complaint which he had initially raised on 2 September 2020, the Claimant had emailed Ms Brown on 8 September 2020 and made the following specific allegation (at [186] of the Bundle, emphasis retained):

> Please focus on **Adrian T Rigby (COO GTRF) -** my boss James Yates reports into Adrian Rigby - the decision regarding my role have been driven by Adrian Rigby in order for him to protect some of his own people and the decision is driven by nepotism and not an objective assessment of business needs and roles.

66. For the reasons set out above, the redundancy decisions regarding the Claimant's role were not "*driven by Adrian Rigby"* but were solely the decisions of Mr Yates.

67. In addition, there was consistent and credible evidence that the reason for making the Claimant's role redundant was because, as Mr Yates informed

the Claimant and recounted in his witness statement (at Paragraph 29) "*his role, along with a number of others, had been evaluated for their continued need and were deemed no longer required…while his role had been recruited in 2018, business needs had since changed."*

68. For all those reasons, we concluded that:

68.1. There was a genuine redundancy situation.

68.2. The Respondent warned the Claimant that his role was at risk and then undertook a fair and proper consultation with him.

68.3. The Respondent adopted a fair, reasoned and cogent basis for selecting the Claimant's role for redundancy (including the decision to place him in a pool of one).

68.4. The Respondent actively explored and considered redeployment (explored in detail, below).

68.5. The reason for dismissing the Claimant from his role as Head of Financial Risk Management was because of redundancy.

69. The letter of 1 October 2020 included the following (at [89], emphasis added):

> This letter gives you formal notice, effective from today, that unless alternative employment is identified before your last day of employment with the Company, your employment will end on 31 December 2020.
> …
> As the work you are doing has come to an end, and also since we have nothing immediately suitable to offer you, you will be placed on garden leave for the duration of your notice period.
>
> While you are on garden leave you are still an employee of the bank and can continue to seek alternative opportunities within HSBC. You will receive pay and contractual benefits until the end of your notice period.
> …

70. It was not in dispute that the Claimant was not offered a specific right of appeal against the decision to make his role redundant within the letter of 1 October 2020. However, the Redeployment and Redundancy Policy did inform employees of the following (at [84] of the Bundle):

> …you may appeal against a decision of the Bank if you consider:
>
> …
>
> you have been unfairly selected for redundancy
> …
>
> Appendix four of the Security of Employment Policy tells you how to appeal...

71. Toward the end of November 2020, a temporary role of Senior Project Manager was identified within the Respondent's Wholesale Credit Risk function and offered to the Claimant, by way of a temporary redeployment ('the TR'). The offer was accepted by the Claimant on or around 30 November 2020. The terms and conditions of the TR were set out in a letter dated 10 December 2020 from Simon Penney, Head of Wholesale Credit Risk Transformation and the Claimant's new line manager (at [105] – [106]). Those terms included the following (at [105]):

    71.1. The TR was for a fixed term and scheduled to end on 31 December 2021.

    71.2. The TR constituted a variation of the Claimant's current terms and conditions of employment.

    71.3. The effect of the TR was to temporarily suspend the balance of the Claimant's redundancy notice (which stood at 18 days) and either party could terminate the TR before 31 December 2021 upon not less than 18 days' notice.

    71.4. Any extension to the TR (beyond 31 December 2021) had to be agreed in writing by the Respondent.

72. The TR had the effect of temporarily suspending the Claimant's dismissal by reason of redundancy and specifically included the following provisions (at [105]):

> 2 Suspension of Notice Period & Redundancy
>
> 2.1 Given your TR, your notice period has been suspended. Unless otherwise notified to you, the remainder of your notice period will be reinstated from 13 December 2021, and will expire on 31December 2021 when your TR comes to an end. At that time, your employment will end, unless you are successful in obtaining an alternative role within HSBC before your last day of employment.
>
> 2.2 In the event that your employment terminates by reason of redundancy at the end of the TR, you will retain the right to a severance payment as previously detailed to you. Additional time in employment on the TR will be taken into account.

73. The TR was also consistent with the definition of a short-term assignment in the Redeployment and Redundancy Policy, which similarly provided for the redundancy notice period to run in a manner that coincided with the end of the assignment (at [79] of the Bundle and reproduced, above).

74. It was not in dispute that, whilst the TR was a GCB4 role, the Respondent maintained the Claimant's salary for the duration of the TR at the higher band of GCB3 (consistent with his terms and conditions as Head of Financial Risk Management).

75. The Claimant indicated his agreement to those terms and conditions by signing the letter on 6 January 2021 (at [106] of the Bundle).

76. As noted above, on 16 August 2020, the Claimant had raised a complaint regarding, at that time, being at risk of redundancy. The complaint was being progressed by Ms Brown (see, for example, her email to the Claimant of 13 November 2020, at [222] – [223] of the Bundle).

77. On 8 December 2020, the Claimant emailed Ms Brown, simply stating "*Let's drop my complaint please"* (at [221] – [222] of the Bundle). In a follow up call with the Claimant, Ms Brown recorded his reason for withdrawing the complaint (in an email of 5 January 2021, at [218], emphasis added):

> Further to our conversation just now, I wanted to confirm that I will no longer continue the investigation into the HSBC Confidential case you raised as per your request. <u>The reason you gave to withdraw the concern is that you have now secured a 12 months assignment with the bank so no longer want to pursue the concern</u>.
>
> As mentioned on our call, if you change your mind at any point, please do not hesitate to contact me.

<u>The Temporary Redeployment</u>

78. The Claimant's Senior Project Manager role was within the Respondent's Streamlining Credit for the Customer ('SCC'), a project which combined a number of smaller initiatives intended to simplify risk processes (and sat within Risk 2025, the Respondent's strategic programme to improve its risk organisation, processes and systems).

79. The Claimant initially worked alongside Michael Soppitt, a consultant brought in by the Respondent as Programme Delivery Lead. The Claimant had a kick off meeting with Mr Soppitt on 13 January 2021, wherein the Claimant was asked by Mr Soppitt to undertake a 'time in motion study'. The Claimant's response was recalled by Mr Soppitt in an email to Mr Penney (the Claimant's line manager) in July 2021 (at [754] of the Bundle):

> It is also worth noting our first kick off meeting held on the 13th of January 10-11:30. In this session we walked through the scope of work and the activities we needed people to support with. This was the very first meeting we had with Irfan. During this session Irfan was asked to support in undertaking a 'time & motion' study of Approver activity. He flat out refused as he said it wouldn't be of any value. You may remember, we had to close the call early as the negative constant challenge meant it was not possible to make any progress.

80. On 18 January 2021, Mr Penney informed the Claimant that "*anything Michael [Soppitt] requires/states in terms of programme scope and priority, it comes from me also"* (at [227] of the Bundle).

81. The Claimant raised his own concerns regarding Mr Soppitt in an email to Mr Penney on 18 January 2021, including that he found Mr Soppitt to be defensive and unwilling to listen to other ideas (at [226] of the Bundle).

82. On 19 January 2021, the Claimant emailed Mr Soppitt and Mr Penney, seeking clarification as to his role {272] – [273] of the Bundle). Mr Soppitt replied the same day, setting out roles, initiatives and owners of various assessments (of which the Claimant was the owner of the Operational Metrics assessment). Mr Soppitt concluded his email (which was copied to Mr Penney) as follows (at [238] – [240]):

> As per Simon's note yesterday the direction on scope, prioritisation and the key activities we need to perform comes from me.
>
> We have agreed a set activities with our Senior Stakeholder, with deliverables, that need to be produced by March. This why I need you to focus on the Approver activities and scope in hand
>
> I hope this is clear, but if need be, I am happy to have a separate conversation about roles and responsibilities. I can also pull together an team structure diagram if helpful.
>
> If there is any confusion at all please let me know as we need to be very clear on our individual responsibilities if we are too successfully deliver the outcomes to which we have committed.

83. Following a further exchange of emails, on 20 January 2021, Mr Soppitt set out again what was expected of the Claimant in his new role (at [234] of the Bundle).

84. Things did not improve between the Claimant and Mr Soppitt. On 10 February 2021, the Claimant emailed the Respondent's Resourcing & Onboarding as follows (at [251] – [252] of the Bundle):

> As you may recall I have recently joined the Risk 2025 - SCC CTA - but it appears that this area has limited need for my Wholesale Credit Risk Expertise....
>
> Is it possible to discreetly move into the subject role or another better suited role in Financial Risk Enhancement Program (FREP)?

85. On 2 March 2021, Mr Soppitt chased the Claimant for a piece of work which was overdue and offered support and guidance on what was required (at [283] – [285] of the Bundle). The Claimant raised some issues regarding data but Mr Soppitt sought to reassure him that the "*primary ask"* was to complete the piece of work that was overdue (at [280] – [281]). On 3 March 2021, the Claimant informed Mr Soppitt that he did not agree with his approach and that he did not understand what he was being "*ordered"* to do, before emailing Mr Penney and asking if he could be reassigned (at [278] – [279]).

86. In his oral evidence, the Claimant repeatedly said that he did not understand what as being asked of him by Mr Soppitt. However, in our judgment, the overriding theme of the Claimant's email exchanges during this period was not that he did not understand what was being asked of him but that he simply did not agree with it. There were a string of emails, particularly during January 2021, where both Mr Soppitt and Mr Penney explained to the Claimant in clear terms what his role was. The Claimant's consistent response was not that he did not understand his role but that in his opinion things should be done differently.

87. This raised another challenge for the Respondent. It was made clear by Mr Penney as early as 18 January 2021 that, given the nature of the work the Claimant was tasked with, focus was imperative, as stated in his email of the same date (at [227] of the Bundle, emphasis added):

> Whilst we all want to do the right thing for the bank overall and in its entirety, the tasks set to me and Michael by Mark McKeown [Chief Credit Officer) are to support his [Capital Transitional Arrangement] budget reductions.
>
> …happy for you to be engaged, but <u>you need to ensure that you are keeping a laser focus on your goals</u> - to identify where [Functional Instruction Manual] simplification/elimination results in less work being done by Approvers (and also Policy or Reporting people if easily identified) so that savings and h/count can be freed up. <u>It's a real challenge to stay on message without distraction</u>, but this team has to maintain that focus for us to be successfully this year on [Capital Transitional Arrangement] for Mark.

88. This issue was not that the Claimant did not understand what was required of him (per his oral evidence) but that he did not agree with what he was being asked to do or the manner in which he was being asked to work. In the email exchanges at the time, the Claimant did not say, in terms, that he did not understand his role or its requirements. Rather, he consistently said that did not agree with the Respondent's approach and that Mr Soppitt, in particular, needed to take on board the Claimant's suggestions.

89. In response, Mr Penney and Mr Soppitt were consistently and continually reminding the Claimant of his role and asking him to remain focused and deliver what was being asked of him. From as early as January 2021, there was concern that the Claimant was not "*keeping a laser focus"* on his goals or his role.

90. By March 2021, Mr Penney was sharing his concerns as to the Claimant's approach, performance and attitude with his own line manager, Charlie Tauszky (at the time, Chief Operating Officer and Head of Transformation). In her witness statement (at Paragraph 17), Ms Tauszky recalled Mr Penney informing her that "*the Claimant had not made as much headway on his task as expected"* and his *"reluctance to carry out tasks as he did not agree with the approach taken by the project (including the fact that it involved external consultants taking the lead on programme delivery)."* This caused Ms Tauszky concern as the Claimant's role related to the Risk 2025 strategy and "*there was not scope for the Claimant to*

unilaterally dictate how HSBC managed its transformation processes" (also at Paragraph 17 of her statement).

91. Such was the concern surrounding the Claimant's attitude and performance to a role which had been created to meet specific targets and deliverables, on or around 22 March 2021, Ms Tauszky and Mr Penney were exploring how much notice would be required to terminate the TR. There were also discussions about transferring the Claimant to a different project, in the hope of improving his performance (per Paragraph 18 of Ms Tauszky's statement).

92. Mr Penney subsequent recorded that the Claimant "*was being so disruptive that we needed to understand what our options were to terminate the temporary role*" (per the case he raised with HR of 25 June 2021, at [1588] of the Bundle, and considered further, below).

93. We reminded ourselves that these discussion were occurring after only three months of the Claimant starting in the TR and, on the Claimant's own case, before he made any purported protected disclosures.

94. However, at this juncture, Ms Tauszky decided to give the Claimant an opportunity to improve his performance and behaviour, not least because the role was, by definition, temporary and there were time implications in recruiting a replacement (per Paragraph 19 of her statement).

95. From the end of April 2021, the Claimant was moved to a different project to deliver a Credit Risk Decision System ('CRDS'). From June 2021, Barry Bagirathan (Senior Programme Manager) became the Claimant's line manager.

96. Despite the change of project and change of line manager, concerns were raised almost immediately regarding the Claimant's behaviour. On 16 June 2021, Mr Bagirathan emailed Mr Penney to report "*increasingly erratic behaviour"* from the Claimant, including refusing to attend one to one meetings, rejecting work and the Claimant asking a new team member to provide him with his job description, CV and role within the team before setting up a meeting with him (at [331] – 332] of the Bundle).

97. On 22 June 2021, the Claimant emailed Mr Bagirathan, criticised Mr Soppitt for, amongst other things, not taking up the Claimant's ideas, and therefore decided to "*speak-up and take-up my ideas and thoughts up through the parallel channels"* (at [359] – [360] of the Bundle).

98. Later the same day, Mr Bagirathan shared the Claimant's email with Mr Penney and Tom Hudson (Head of Transformation) and again raised issues with the Claimant's performance and behaviour (at [358] – [359] of the Bundle):

> …it doesn't seem [the Claimant] is in a happy place in Transformation, nor has been before the recent re-org. He's not been turning up to 1:1s, team

> meetings, demos, refused to take on activities I've been pitching to him, and recently spun off his own tangent of work in silo.
>
> I'll try and speak with him today, to understand what he would like to do, but I strongly suspect it doesn't involve working in Transformation.

99. Mr Hudson shared Mr Bagirathan's email with Ms Tauszky, whose response, also on 21 June 2021, was to again revisit terminating the Claimant's TR and replacing him with someone else, which Mr Hudson indicated was what was being taken forward by Mr Penney and Mr Bagirathan (per [357] – [358] of the Bundle).

100. On 23 June 2021:

    100.1. The Claimant informed Mr Bagirathan that he (the Claimant) was "*cancelling our 1:1s for now – I don't believe in the direction we are on…"* and asked to meet with Mr Penney "*for a reassignment into a project set that better suits me"* (at [371] of the Bundle);

    100.2. Mr Bagirathan emailed the Claimant about his failure to attend the 1:1 meeting, to which the Claimant responded, restating his opinions as to where his expertise should be deployed and his intention to seek another redeployment (at [369] – [371] of the Bundle); and

    100.3. Mr Penney intervened, informed Mr Bagirathan that he would deal with the Claimant and noted that the Claimant continued to "*struggle with the role in a Transformation manager"* (at 368]).

101. On 24 June 2021:

    101.1. In an email to Mr Soppitt, Mr Bagirathan and Mr Penney, the Claimant accused Mr Soppitt of ignoring his input, alleged that Mr Soppitt, instead, "*tried to sell consultant hogwash with no substance"* and that the Claimant would be taking his thoughts on the "*serious re-think of policy and process streamlining"* he believed was required "*up to the next level"* (at [379] – [380] of the Bundle);

    101.2. That email was shared by Mr Soppitt with Ms Tauszky and Mr Hudson, concerned as he was about the unprofessional manner with which the Claimant had expressed himself (at [378] of the Bundle);

    101.3. Ms Tauszky replied to Mr Soppitt (copying Mr Penney and Mr Hudson), confirmed that Mr Soppitt was appreciated and seen as an equal within the team and indicated that she would deal with it. Mr Penney responded to Ms Tauszky and Mr Hudson that the shared emails were "[*M]ore reason as to why we need to act"* (at [381]; and

101.4. Ms Tauszky forwarded the email chain to Joanna Thomson (Head of HR), with the comment "*[I]t's really not a case of speaking up, it's almost bullying"* (at [377]).

102. On 25 June 2021, Mr Penney raised a case with HR regarding the Claimant's behaviour and attitude (under the category "*Performance Capability"*). In it, Mr Penney summarised the Claimant's performance and behaviour in the six months of the TR to date, including (at [1588] of the Bundle):

102.1. The performance issues raised and discussed in March and April 2021 and the discussions around terminating the TR because the Claimant was being "*so disruptive";*

102.2. That the decision to move the Claimant to a different team instead had seen "*little improvement";*

102.3. Detailed the on-going issues with the Claimant's performance, including his difficulties working with different line managers, "*where he challenges the way of working, wants to do his own work and does not agree with the management style adopted"*;

102.4. That the support and close management he had received from those line managers (including Mr Penney) had delivered "*no visible change in his attitude towards the approach to work and work content needed for his role";*

102.5. The Claimant's work output was below both expectations and that of his peers;

102.6. The Claimant had stated that he wanted to "*speak up"* about his ideas and, as such, "*we will hear [the Claimant] out fully but given previous issues we are understandably wanting to make sure this is all done correctly".*

103. Also on 25 June 2021, the Claimant sent another email to Mr Penney, copying in Mr Soppitt, Mr Bagirathan and Ms Thomson, where he was again critical of Mr Soppitt, inviting him, in effect, to prove his strategy and approach towards the task being proposed (at 405] – [406] of the Bundle). This led Mr Soppitt to email both Mr Penney and Ms Tauszky, imploring that "*[T]his has to stop"* (at [405]).

104. By this time, Ms Tauszky had arranged to meet with the Claimant later the same day and asked for forbearance (at [404] – [405] of the Bundle).

105. The Claimant had been in the TR for six months. He was already into his second role, having been redeployed from the original role he was tasked with and was seeking to be moved, in circumstances which were strikingly similar to those which presaged his move in April 2021.

106. In addition, the on-going concerns about the Claimant's performance and attitude, and the open discussions about terminating the TR, were all taking place, on the Claimant's own case, before he had made any purported protected disclosures.

107. The meeting with the Claimant on 25 June 2021 was attended by Ms Tauszky and Mr Hudson. In advance of the meeting, the Claimant shared a presentation he had written, setting out his thoughts and ideas on Credit Risk Transformation (at [390] and [395] – [398] of the Bundle). Ms Tauszky circulated a summary of what was discussed at the meeting shortly after it concluded (at [425] – [429]).

108. In his presentation and throughout subsequent correspondence and interactions, reference was made variously to BCBC and Basel. So far as relevant, these were a reference to the following:

    108.1. Basel was a reference to Basel III, the latest iteration of the Basel Framework, aimed at ensuring banks held sufficient levels of liquid assets and avoided a repeat of the 2008/9 global financial crisis.

    108.2. BCBS was the Basel Committee on Banking Supervision, based at the Bank for International Settlements and which published standards and guidelines for the prudential regulation and supervision of banks, including the following:

        108.2.1. BCBS 239 - Principles for effective risk data aggregation and risk reporting; and

        108.2.2. BCBS 294 - Corporate governance principles for banks.

109. In the meeting, the Claimant gave his presentation. He was informed that his presentation had been understood and much of it agreed with by the Respondent. However, the Claimant disagreed with the Respondent's organisational structure, how it was managing credit, it's use of external consultants and the programme deliverables. Time was taken by Ms Tauszky to explain and answer the Claimant's concerns and views. The Claimant was reminded of the need to express any disagreement in a respectful way and that if he was unable to appreciate the benefit of the work he was currently undertaking, he was under no obligation to remain in that role or with the Respondent until the end of December 2021.

110. Ms Tauszky also took time to explain to the Claimant that his observations were already known to, and being addressed by, the Respondent. It was also noted and agreed that there were, at times, differences of opinion, with Ms Tauszky expressing the following (at [429] of the Bundle):

> I advised that speaking up and being heard does sometimes still result in a difference of opinion - I still believe that [the Respondent] and Management

> are doing the right thing and [the Claimant] does not - that is ok and we both have a different view.

111. The following exchange regarding financial regulators was also recorded by Ms Tauszky (also at [429] of the Bundle):

> [The Claimant] was also of the view that if the Regulators knew what we were doing that they wouldn't be happy; I have informed [the Claimant] of the regular engagement with the PRA [Prudential Regulatory Authority] on the work we are doing in the Credit space, particularly in respect to the PSM [Periodic Summary Meeting] letter and confirmed that they have full visibility and are in contact with us on their views regularly.

112. Ms Tauszky also offered the Claimant an opportunity to speak with Mr McKeown (Chief Credit Officer). After the meeting, the Claimant sent his presentation to Pam Kaur (Group Chief Risk & Compliance Officer) and Andy Grisdale (Global Chief Operating Officer for Risk & Compliance). In his oral evidence, the Claimant expressed his regret in effectively going above the heads of both Ms Tauszky and Mr McKeown and directly contacting Ms Kaur and Mr Grisdale. He acknowledged that, with hindsight, he should have waited to meet with Mr McKeown first.

113. On 29 June 2021, a meeting is held between Mr Penney and Jhona Aguiler-Malipot (Manager, HR Advisory) about the case raised by Mr Penney regarding the Claimant's behaviour and performance to date. There followed internal communications within the Respondent's HR function, which once again reflected that consideration was being given to ending the TR early (at [479] – [480] of the Bundle).

114. On 22 June 2021, and in keeping with his intention to take his thoughts up via "*parallel channels"*, the Claimant had emailed Sadaat Mubashar, (Head of Risk Foundation & Monitoring Transformation, Wholesale Credit and Lending). In it, the Claimant suggested that, in terms of streamlining wholesale credit policy, he was preferable to using a consultancy firm (at [374] of the Bundle).

115. In an email to Mr Hudson on 23 June 2021, Mr Mubashar provided some initial feedback regarding the Claimant's suggestion and approach (including that the Claimant appeared to misunderstand that the Respondent used consultancy firms when the project required a team of people and that it was not appropriate for staff to volunteer to work on full time projects outside of their scope and without speaking to their line manager first). Notwithstanding those reservations, Mr Mubashar had arranged a Zoom meeting with the Claimant to allow him *"to outline his rationale for why he can do a better job than a Top Tier consultancy firm of experts. Happy to understand and change tact if what he is saying resonates"* (at [373] of the Bundle).

116. That Zoom meeting took place on 2 July 2021 and was also attended by Penelope Bower, who made a note of the meeting (at [594] of the

Bundle). After the meeting finished, Mr Mubashar raised a case with HR regarding the Claimant's conduct (at [513] – [515] of the Bundle).

117. Mr Mubashar had never met the Claimant before and described how he "*offered to have the call as he was adamant that he wanted to speak to me."* In his email to Ms Thomson (of HR) of 2 July 2021, Mr Mubashar summarised his call with the Claimant as follows (at [514] of the Bundle):

> I have just got off a call with [the Claimant] who through the call raised his voice, said I was being pedantic, suggested that I was bullying him and threatened to escalate to Pam Kaur and Mark Tucker. He suggested the firm is acting as a mafia.

118. Mr Mubashar recorded that he was shocked by the Claimant's behaviour and informed the Claimant of his shock during the meeting.

119. On 5 July 2021, the Claimant emailed Mr Mubashar with his view of the their meeting (at [614] – [616] of the Bundle). The Claimant indicated that he had "*volunteered to rewrite the WCMR [Wholesale Credit & Market Risk] policy framework document",* for which needed "*a team of 2/3 people*". However, in the Claimant's opinion, Mr Mubashar had "*not come to the meeting with an open mind"*, had had "*background discussions intended to steer [the Claimant] away from this initiative"* and had an attitude which was *"patronising, condensing [sic] and intended to intimidate and discourage [the Claimant] from taking up this project."*

120. Mr Mubashar's record of the meeting with the Claimant was provided immediately after it had occurred and was consistent with the notes made by Ms Bowers. It was clear that the meeting had not gone well and the Tribunal preferred Mr Mubashar's record that the Claimant had reacted badly to Mr Mubashar's questioning of what he was proposing, his understanding of what was being proposed and that the Claimant might wish to speak with his own line manager. Given the note of the meeting made by Ms Bowers, the Tribunal understood why Mr Mubashar, who had never met the Claimant but was prepared to afford him time to discuss his proposals, found the Claimant's conduct in the meeting "*unacceptable and deeply painful"* (per his email of 2 July 2021 [514] of the Bundle).

121. In response, Mr Mubashar's manager, Richard Wright (Global Head of Wholesale Credit & Lending) informed him that he and HR would take matters forward and that he should not engage directly with the Claimant (per Mr Wright's email of 2 July 2021, at [1378] of the Bundle).

122. On 7 July 2021, the Claimant informed Ms Tauszky that he had "*capacity"* and "*taken the initiative to self-assign the WCMR [Wholesale Credit & Market Risk] policy rewrite project*", notwithstanding that he had not been asked to undertake the work and there were on-going concerns about his performance in the role to which he was assigned (at [614] of the Bundle). The Claimant's actual role and outstanding tasks were not lost on Ms Tauszky, who in her response on 9 July 2021 reminded the

Claimant that he was in fact proposing "*to do a different piece of work to that which you were originally assigned to"* and that the sort of policy work the Claimant was proposing to undertake fell under the budget of Wholesale Credit and Lending, not SCC, the project to which the Claimant had been assigned (at [612] – [613]).

123. On 14 July 2021, the Claimant sent an email to the Respondent's Wholesale Credit Risk & Analytics Transformation Committee, the body responsible for managing the transformation of the Wholesale Credit Risk function (at [672] – [676] of the Bundle). The email set out the Claimant's thoughts and ideas regarding credit risk policy and his view that "*it appears that we will spend millions on external consultants but not provide a straight forward opportunity to a volunteer for a highly complex job"* (the 'volunteer' being the Claimant).

124. Attached to the email was a presentation, titled "Credit Risk Transformation Re-Think…Challenges & Solutions?", which listed a page of challenges and a page of solutions (at [641] – [645] of the Bundle).

125. The email of 14 July 2021 and attachment were the first alleged protected disclosure ('PD1').

126. On 14 and 15 July 2021, there were a number of emails between the recipients of the Claimant's prestation, including the following from Ms Tauszky to Ms Thomson on 14 July 2021 (at [672] of the Bundle):

> Am I at liberty to contact these people and advise his concerns are being dealt with? Getting lots of emails from stressed people asking what they need to do...
>
> I am also aware that complaints have been raised against [the Claimant] as he continues with this approach and so we have a duty of care to others as well as him.

127. Also on 14 July 2021, a plan was proposed for responding to the Claimant's email to the Wholesale Credit Risk & Analytics Transformation Committee by Daniel Harris, UK Head of HR (per his email at [695] of the Bundle). In summary, Andrew Grisdale (as Global Chief Operating Officer within Risk & Compliance) had agreed to pick the matter up with the Claimant and the Claimant's own manager would "*provide feedback re tone and content of email, inappropriate manner of how he gone about this."*

128. In accordance with that plan, Mr Grisdale emailed the Claimant, the members of the Wholesale Credit Risk & Analytics Transformation Committee and others on 15 July 2021, confirmed that he was picking up the matter and referred to a meeting he was having with the Claimant later in the week (at [719] of the Bundle).

129. There also followed an email exchange between Mr Penney, Ms Thomson and Mr Hudson, in light of Mr Grisdale email on 15 July 2021.

This concluded with Mr Hudson setting out the following, ahead of a meeting the three had arranged to discuss the on-going issues with the Claimant (at [707] of the Bundle):

> I am thinking there are a number of issues at play here.
>
> 1. End of the TR - Can we progress with this independently.
>
> 2. Opportunity to speak up - agree we pick up post Andy G call.
>
> 3. Behavioural issues raised - these could/should be dealt with separately - probably need to hold investigative meetings on these?
>
> 4. Others?

130. Later on 15 July 2021, the Claimant replied to Mr Grisdale's email of earlier that day. However, the Claimant also copied his email to numerous other senior managers including Ms Tauszky, Ms Kaur, Natalie Blyth (Global Head of Global Trade and Receivables), Hussain Baig (Global Technology Chief Operating Officer), Mark Lewis (Chief Information Officer of Global Risk) and Steve Van Wyk (Group Chief Information Officer).

131. The Claimant noted "*a few points"* within the email and attached a copy of the presentation he had sent to the Wholesale Credit Risk & Analytics Transformation Committee the previous day (at [717]- [718] of the Bundle).

132. The email of 15 July 2021 was the second alleged protected disclosure ('PD2').

133. On 16 July 2021, the Claimant met with Mr Grisdale. The meeting was also attended by Ms Kaur, Mr Van Wyk, Mr Baig and Mr Lewis (although Ms Kaur, Mr Van Wyk and Mr Baig had to leave after 30 minutes). The meeting was minuted (at [744] – [748]) and lasted an hour in total.

134. During the meeting, the Claimant:

134.1. Asked to be allocated a team of two to four people and a period of four to five months to prepare counter proposals to the Respondent's current approach to credit risk transformation;

134.2. Asked to be reassigned into a data or policy area;

134.3. Was asked, in the first instance, for more detail and prescription on his ideas and proposals.

135. The meeting on 16 July 2021 was the third alleged protected disclosure ('PD3').

136. In the follow days, the Claimant requested additional to staff to help him prepare the further detail requested (at [815] – [816] of the Bundle),

before agreeing to work on the proposal in his own time whilst asking Mr Penney to revisit his current goals and deliverables for the remainder of the year (at [823] – [824]). The response was unequivocal. First Ms Tauszky, then Mr Grisdale and finally Mr Penney informed the Claimant that:

136.1. His goals and deliverables remained as they had been when he was redeployed into the SCC team (per Ms Tauszky's email of 3 August 2021, at [2182]);

136.2. All future communications regarding the Claimant's proposals should be routed through Mr Grisdale and that no further support or resources would be made available at this stage (per his email of 4 August 2021, at [2209]); and

136.3. It was agreed that the Claimant would be "*holding off for now"* from working on his proposal and that if it re-started, it would be in the background, whilst the Claimant undertook the work he was assigned to in SCC (per Mr Penney's email of 5 August 2021, at [829] – [831]).

137. Mr Penney's email of 5 August 2021 went on to detail the tasks he required the Claimant to work on in SCC, including being the single point of contact for the US SCC Programme (at [830] of the Bundle).

138. On 9 August 2021, the Claimant emailed Mr Grisdale, complaining of a "*contradiction"*, in that he was being asked to be prescriptive regarding his proposal whilst at the same time "*management is practically blocking development of alternative detail level proposal on the core issues raised."* (at [898] of the Bundle).

139. This email was the fourth alleged protected disclosure ('PD4').

140. Mr Grisdale responded on 13 August 2021 and reiterated that the Respondent was "*not seeking nor asking for detail alternate proposals but some prescription on the headline issues and challenges that you believe we have across the respective work streams to then determine if alternate proposals are indeed required"* (at [898] of the Bundle).

141. In other words, the Respondent was still seeking to understand what the Claimant believed was wrong with their approach, before committing to exploring alternatives and solutions.

142. Further concerns arose regarding the Claimant's attitude and approach to the tasks asked of him in SCC. On 3 September 2021, Anastasia Ivanova of the Respondent's US SCC Programme emailed Mr Bagirathan and Mr Penney to report the following regarding the Claimant's work on the US Policy & Process Automation (at [944] of the Bundle):

> To be honest, I have not seen progress with [the Claimant] so would appreciate if you can allocate Paul or anyone with relevant background and energy to help…

143. The Claimant was continuing to ignore reasonable instructions, failing to apply himself to the tasks allocated to him and instead choosing to spend his time on his own project, notwithstanding the clear guidance being given to him from different senior managers.

144. The fifth alleged protected disclosure ('PD5') had three elements to it (per Paragraph 1.1(e) of the List of Issues, at Appendix 3), as follows:

    144.1. The Claimant's revised presentation dated 7 September 2021 (at [954] – [972] of the Bundle);

    144.2. The Claimant's additional presentation dated 20 September 2021 (at [1004] – [1014]); and

    144.3. The Claimant's meeting with Mr Grisdale, Mr Lewis, Mr Mubashar, Simon Gordon (Global Head of Risk Transformation), Anne Lavandon (Global head of Wholesale Portfolio Management) Geoff Ford (Chief Risk Architect, Enterprise Technology) and Krishnan Ramadurai (head of Capital Management) on 22 September 2021.

145. The minutes of the meeting were in evidence (at [1015] – [1017] of the Bundle). Mr Ramadurai had been specifically invited to the meeting by the Claimant "*given his prior experience from a data perspective on the Trade Transformation programme*" (at [1015]). The Claimant worked through his "*observations and concerns across 4 core components*" of the Respondent's credit risk transformation programme, by way of his two presentations (dated 7 and 20 September 2021).

146. The minutes recorded those present explaining the Respondent's rationale for how and why it was progressing its credit risk transformation programme in the manner that it was and the Claimant expressing his disagreement. Mr Lewis explained how and why the Respondent managed data in the way that it did and offered "*to walk [the Claimant] through the proposed data architecture."* Mr Gordon offered to further meet with the Claimant to share understanding. There was also a renewed request from Mr Grisdale for more prescription on the headlines being raised by the Claimant in his presentation.

147. The Claimant appeared to misunderstand that the second line (that is, those working in Risk and Compliance, who ensured that those who were customer facing, the so-called first line, were working within the risk parameters set by the Respondent) did in fact own the credit data, not the first line (at [1015] of the Bundle and confirmed by Mr Gordon in his oral evidence).

148. At the conclusion of the meeting, Mr Ramadurai "*suggested to [the Claimant] that he listen to Mark [Lewis] and Andy [Grisdale] and take on board what was said. He informed what Mark [Lewis] had said made a lot of sense and what Andy [Grisdale] had said is that [the Claimant] needed to come to the table with specifics*" (at [1017 of the Bundle).

149. On 30 September 2021, in response to a query from HR as to whether the Claimant's TR was to be extended in 2022, Mr Penney responded as follows (at [2235], emphasis retained):

> To Confirm, [the Claimant] is NOT to be extended.

150. On the same day, the Claimant sent an email and his presentations to Jackson Tai, Independent Non-executive Director and Chair of Risk Committee (at [1020] – [1021]), asking to meet so that the Claimant could run thought his proposals. Mr Tai agreed to be a meeting with the Claimant, which was arranged for 4 October 2021. In his written evidence, the Claimant explained that he had in fact contacted the Respondent's chairman, who had directed him to Mr Tai.

151. On 3 October 2021, the Claimant sent an email from his work account to his home email address, which triggered the Respondent's Data Loss Prevention Control (at [1032] of the Bundle). This was alerted to Mr Bagirathan via Mr Penney, who also alerted the Claimant (at [1031] – [1032]). On 6 October 2021, Mr Bagirathan emailed the Claimant, asking for more information about materials he sent to his home email address and why there may have been a beach of the Functional Instructional Manual, including possible reputational damage (at [1031]).

152. The Claimant's response was curt, flippant and somewhat hostile. Over two emails in reply, sent 10 minutes after receiving Mr Bagirathan's apparently reasonable and clearly explained request for information, the Claimant said the following (at [1030] of the Bundle);

> If there is a breach Barry - then please take the necessary steps...!
>
> More specifically please sue me for what you call "reputational damage"....

153. For understandable reasons, Mr Bagirathan shared the Claimant's responses with Mr Penney (at [1030] of the Bundle).

154. On 4 October 2021, the Claimant asked Mr Penney if there was any news about his contract being renewed (at [2242] – [2243] of the Bundle). As detailed above, Mr Penney had, by this time, decided not to renew the TR beyond 31 December 2021. He forwarded the Claimant's query to Ms Tauszky, who emailed Mr Penney, Mr Grisdale, Mr Hudson and Ms Thomson as follows (at [2241]):

> I know that there has been confirmation of renewals going out to people and so we will need to address this with [the Claimant] quickly.

> Andy [Grisdale], Joanna [Thomason], how would you like us to handle the comms that we will not be extending [the Claimant]? I would imagine that this should not be simply sent over email and should be a more formal meeting with HR present in case [the Claimant] has any questions or concerns.

155. Around the same time on 4 October 2021, and unbeknownst to the Respondent, the Claimant sent an email to the Bank of England ('BoE'), via its whistleblowing email service (at [1132] – [1133] of the Bundle). He again shared his view that the Respondent were "*getting the credit risk and data risk transformation very wrong and at considerable cost in time and resources*" and some of the initiatives being adopted breached regulatory guidelines.

156. The email of 4 October 2021 to the BoE was the seventh alleged protected disclosure ('PD7').

157. At Paragraphs M.4.c. and N.1. of his written evidence (at [24] of the Witness Bundle), the Claimant alleged that he had first contacted the BoE later on the afternoon of 4 October 2021, after he had met with Mr Tai, (discussed further, below). In cross-examination, the Claimant's attention was drawn to the time stamp on his email to the BoE, which recorded it being sent at 08:50. His response was that the time stamp could be wrong, before going on to allege that the email had been tampered with (in his email to the Tribunal on 17 January 2024, the day after he was cross-examined on the topic and again at the outset of the hearing on the same day).

158. The Claimant provided no corroborative evidence to support his allegations of evidence tampering. In reality, it was far more probable that the Claimant had simply misremembered the chronology of the events of 4 October 2021. For those reasons, the Tribunal preferred the documentary evidence and found that the email to the BoE was sent on the morning of 4 October 2021 and before the Claimant met with Mr Tai.

159. The Claimant also sent to Ian Cockerill (newly appointed Chief Credit Officer, replacing Mr McKeown) an email similar to the one he sent to Mr Tai, with the same presentation attached.

160. Later the same day, the Claimant emailed Mr Penney, Mr Hudson, Ms Tauszky and Mr Grisdale to inform them that he had "*a next level meeting set-up for later this afternoon with Jackson Tai (HSBC Board Chair of Risk Committee)"* (at [1026] – [1027] of the Bundle). In response, Mr Grisdale emailed Ms Thomson as follows (at [1026]):

> Hi Joanna - need to speak with you about [the Claimant]. Is all getting out of hand and we need to shut this down somehow!!

161. In his oral evidence, Mr Grisdale explained that he was referring to the Claimant's continual habit of emailing his ideas and presentations to senior management. That was what needed to be shut down. In contrast, the Claimant alleged that Mr Grisdale's email was evidence that the

Respondent wanted to silence him because of what he was raising and the regulatory and legal breaches he was exposing.

162. The Tribunal preferred Mr Grisdale's explanation of his email of 4 October 2021 to Ms Thomson. In so doing, we were mindful of the context and history of events to date. First, there was clear and consistent evidence of the Respondent initially engaging with the Claimant and his ideas, not of shutting him down. However, the Claimant had failed to provide the detail which had been requested of him on more than one occasion. Instead of providing what was asked of him, the Claimant's usual response was to send his ideas and presentations to another layer of senior management. He did not take on board or listen to the feedback he was receiving. Instead, he continually escalated his views to another audience.

163. This was also against the backdrop of being asked by Mr Grisdale on 4 August 2021 to route all future communication regarding his ideas and proposals through him (at [2209] of the Bundle), which the Claimant ignored, and the on-going concerns about the Claimant's performance, attitude and behaviour regarding the tasks and role he was actually employed to do in SCC.

164. At 4pm on 4 October 2021, the Claimant met with Mr Tai. There were no records or minutes of the meeting but the Claimant relied upon the same presentations he had used at his meeting on 22 September 2021 (per PD5, above).

165. That meeting was the sixth alleged protected disclosure ('PD6').

166. In his oral evidence, Mr Grisdale confirmed that, following the Claimant's meeting with Mr Tai and his email to the BoE, both of which occurred on 4 October 2021, neither the BoE nor the Respondent's board asked for any changes to the polices and procedures being adopted and followed in how credit risk was managed.

167. On 6 October 2021 (in addition to the email exchanges regarding the Claimant's behaviour towards Mr Bagirathan, detailed above), Paul Collins (Risk 2025 Programme Assurance) emailed Mr Yates and Mr Penney as follows (at [1056] of the Bundle):

> Risk2025 are reviewing all temp roles at the moment and whether they are to be extended. We are confirming that [the Claimant's] current temporary role will not be extended beyond his current end date. You should be receiving or may have already received [the Claimant's] notice reinstatement letter and will subsequently receive his exit documents, both via the HR team who support you.

168. The above was the culmination of a process which had begun some months earlier by reason of concerns with the Claimant's conduct, behaviour and performance (and detailed, above).

169. On 7 October 2021, the Claimant met with Mr Lewis and Mr Ford, a meeting which had arisen from the previous meeting of 22 September 2021. Mr Lewis and Mr Ford used the meeting to explain to the Claimant how the Respondent was complying with the Basel III Framework, with specific reference to the Wholesale Credit and Lending Transformation programme (per Mr Lewis' email of 7 October 2021, which summarised the meeting, at [1066] – [1069] of the Bundle). Later the same day, the Claimant thanked them for their time and shared some further observations (at [127] – [1228]).

170. In the Tribunal's judgment, the fact that Mr Lewis and Mr Ford were prepared to meet with the Claimant and discuss such issues was at odds with the Claimant's allegation that, by this time, the Respondent was attempting to silence him or get rid of him for blowing the whistle.

171. On 8 October 2021, Mr Penney informed the Claimant that the TR would not be extended beyond 31 December 2021. In response, the Claimant asked why he was being let go and again shared his view that the Respondent's transformation plans needed to be re-thought, as follows (at [1291] – [1292] of the Bundle):

> What you and my current chain needs to recognise is that I have put in significant extra effort into proposing a prescriptive level of re-think solutions as a one man team over a several months period - what I have proposed will save the bank from repeating the past mistakes over and over again and save a lot of extra cost and efforts. I maintain that the bank's transformation is on the wrong path and needs to be rethought...!

172. When Mr Penney informed the Claimant that the termination of his TR would be referred back to "*your prior Consultation manager"* (namely, Mr Yates), the Claimant sent a further email to Mr Penney (at [1288] – [1290]), wherein he alleged that " *I am being asked to leave for speaking-up."*

173. The Claimant also raised a case with HR that the ending of the TR was retaliation for whistleblowing (referred to at [1263]) and emailed the Group Chief Executive (Noel Quinn), the Group Chief Financial Officer (Ewan Stevenson) and the Group Chief Human Resources Officer (Elaine Arden), also alleging that he was "*being asked to leave the bank for speaking-up"* (at [1226] – [1227]). The Claimant attached his presentation to that email and invited them to contact him to discuss it further.

174. The Claimant was informed that his email would be directed to an appropriate colleague to review (at [1224] – [1225] of the Bundle).

175. On 10 October 2021, the Claimant sent a further email to the BoE, to which he also attached his presentations of 7 and 20 September 2021 (at [1126] – [1128] of the Bundle). He also sent a copy of that email to the Financial Conduct Authority (at [1125] – [1126]).

176. The Claimant's email of 10 October 2021 to the BoE, with attachments, was the additional seventh alleged protected disclosure ('PD7A').

177. There followed a number of emails and meetings between Ms Tauszky, Mr Grisdale, Mr Penney and Ms Thomson about the practicalities of bringing the TR to an end, given the terms of the TR and the notice requirements contained therein.

178. On 14 October 2021, Amanda Willmore contacted the Claimant and explained that she had been asked to investigate the case he had raised with HR that his TR was not being extended in retaliation for speaking up (at [1182] – [1183] of the Bundle). It was clear that, despite the decision having already been taken not to extend the TR, the Claimant's complaint to HR was not being ignored. Indeed, the opposite was true. It was being actively investigated.

179. Also on 14 October 2021, the Claimant sent an email to Mr Lewis and Mr Ford (copied to various other senior managers and blind copied to the BoE and Financial Conduct Authority), wherein, having considered "*the presentations and the concept"* shared during his meeting with them on 7 October 2021, the Claimant stated that he had "*re-thought the whole thing"* (at [1064] of the Bundle). The Claimant did not contend that this was a protected disclosure.

180. On 15 October 2021, the Claimant emailed the Financial Conduct Authority (at [1095] - [1096] of the Bundle), raising further concerns that "*[T]he management are not amicable - they are simply stonewalling - this conflict of interest is against the spirit of all regulations and is very detrimental to the interest of the depositors and shareholders of the bank*." The Claimant did not contend that this was a protected disclosure.

181. On 16 October 2021, the Claimant emailed various senior managers, including Mr Penney, Mr Grisdale, Mr Mubashar and Ms Tauszky, asked for a re-think of the credit transformation plans and set out his thinking (at [1153] – [1156] of the Bundle).

182. This was the eighth alleged protected disclosure ('PD8').

183. There followed an exchange of emails between Mr Wright (Global Head of Wholesale Credit & Lending), Richard Blackburn (Chief Risk Officer) and Mr Grisdale (at [1150] – [1152] of the Bundle), which included the following:

    183.1. *"I think we need to step in here somehow and make it clear to [the Claimant] that whilst he has a right to be heard, he does not have a right to unilaterally dictate how the company proceeds with projects. There is appropriate governance to challenge and shape such things"* (per Mr Blackburn at [1152]);

    183.2. *"A lot going on in this space and will give you a call Monday to update - will look to meet with [the Claimant] early next week with*

a view to closing off HSBC capability discussions and controlling his distributions" (per Mr Grisdale, at [1151]); and

183.3. *"Personally, I think he's crossed a line here. His contributions are not helping anyone's cause"* (per Mr Blackburn, at [1150]).

184. On 17 October 2021, Mark Hershey (Global Head of Wholesale Credit Risk) replied to the Claimant (at [1173] of the Bundle). Mr Hershey acknowledged that the Claimant had "*raised these points before",* explained how and why the Respondent was approaching the matter in the manner that it was and concluded as follows:

> I appreciate that you have articulated a contrary view, but for the reasons outlined above, we intend to continue on the path we are on.

185. On the same day, Mr Blackburn emailed Mr Hershey, copied to the Claimant and others as follows (at [1171] of the Bundle):

> I fully endorse your comments. I am sure there are many views on how things could be done differently but this is a complex area and we have a v strong team engaged on this with very experienced leadership and governance around the project.

186. In response, also on 17 October 2021, the Claimant sent a further email to the same senior managers (at [1169] – [1170] of the Bundle). He again registered his disagreement, before outlining two options for how the Respondent could deal with his views. The Claimant criticised the Resppndent for "*failing to provide any regulatory references that supports the senior management views versus what I have proposed*."

187. This email was the ninth alleged protected disclosure ('PD9').

188. Mr Grisdale then emailed the Claimant (again copied to the wider senior management), confirmed that the Claimant's "*issues and observations*" had been widely listened to and considered and again asked that "*all communications are please routed through me, your concerns have and are being heard and there is no benefit in repeatedly covering the same ground within the same teams"* (at [1168] – [1169] of the Bundle).

189. The Claimant again ignored Mr Grisdale's request and immediately responded to the same wide, senior management audience, and explained why, in effect, he was refusing to limit his communications to Mr Grisdale [at [1167] – [1168] of the Bundle).

190. The Claimant met with Mr Grisdale on 20 October 2021 (per the minutes at [1274] – 1278] of the Bundle). Mr Grisdale spent the first part of the meeting confirming that the Claimant's observations and views had been considered and explaining why they were not agreed to. This was further evidence of the Respondent engaging with the Claimant's views and opinions and providing clear and cogent explanations for why the Claimant's proposals were not ones which the Respondent wanted to

follow. Mr Grisdale asked the Claimant to respect that decision, focus on his own role and deliverables and cease sending emails on the matter to the wider management (at [1274] – [1275]).

191. Mr Grisdale then explained why the TR was ending and reiterated that it had nothing to do with the Claimant speaking up as he had. Again, the Respondent was expending time and resources to explain its decision and reasoning and to reassure the Claimant. In addition, Mr Grisdale suggested that, even though the TR would not be extended, the Claimant should apply for any advertised roles that he was interested in (at [1275] – [1276] of the Bundle).

192. In response, the Claimant re-visited a host of complaints and allegations about what he believed was the Respondent's true motivation for ending the TR. He alleged that the Respondent was "*the last stand of the British Raj and Empire*" and suggested that Mr Grisdale was close to Mr Rigby and that Mr Rigby "*had organised this"* (who, as recounted above, the Claimant had in the past blamed for the decision to make his original role redundant). The Claimant again demanded regulatory references from the Respondent to justify the position it was taking and raised a number of other criticisms and grievances (at [1276] – [1278] of the Bundle).

193. Whilst the Respondent, via Mr Grisdale, took time to explain why the TR was not being extended beyond 31 December 2021, it was under no obligation to do so. The terms of the TR agreement were clear. It came to an end automatically on 31 December 2021, with both parties entitled to end it on notice at any time beforehand. The fact that the Respondent explained why it was not extending the TR was above and beyond what was required under TR agreement itself (at [136] – [137] of the Bundle).

194. Later on 20 October 2021 (and after their meeting), the Claimant emailed Mr Grisdale (at [1286] – [1288] of the Bundle). That email included the following:

    194.1. Contrary to the clear and unambiguous request to stop sending emails to the wider senior management, the Claimant copied his email to a number of senior managers;

    194.2. The Claimant referred to the Risk 2025 transformation plans as "*hog wash"*; and

    194.3. The Claimant concluded his email by calling for Mr Grisdale's resignation ("*It is time for old guard to leave i.e. your resignation and allow new thought and ideas to flow*").

195. Despite making a number of allegations and referring to alleged "*disregard and mocking of BIS [Bank of International Settlements] and regulatory guidelines"* (at [1287] of the Bundle), the Claimant did not contend that this email constituted a protected disclosure.

196. Also on 20 October 2021, in an email by Lucy Williams (Group Head of Conduct Policy and Whistleblowing Oversight), it was recorded that the Claimant had decided not to pursue his complaint against the decision not to extend the TR as whistleblowing but rather "*pursue it through executive escalation"* (at [1262] of the Bundle).

197. The consequences of the meeting, his subsequent email and the experiences of the previous few months led Mr Grisdale to decide, on or around 22 October 2021, to bring forward the termination of the TR to 30 November 2021 and place the Claimant on garden leave in the interim. Mr Grisdale set out his reasoning in his witness statement (at Paragraph 90):

> I was concerned that the Claimant would spend the remaining three months of his temporary redeployment not contributing to the programme or carrying out his day-to-day responsibilities, as he was hired to do. While he was entitled to contribute ideas about how [the Respondent] could manage its transformation programme, he was still expected to perform his role (even if he disagreed with the approach [the Respondent] was taking). As I had learnt from Charlie [Tauszky] and her colleagues, the Claimant had not been performing for a number of months, and my meeting with him on 20 October 2021 (in which he "*confirmed that he challenges what SCC is delivering*"…), did not persuade me that he had any intention of meaningfully engaging with the responsibilities of his role and performing the tasks needed to progress the project. For these reasons, I made the decision on or around 22 October 2021 to terminate the Claimant's temporary redeployment early (namely, for it to end on 30 November 2021 instead of 31 December 2021) and place him on garden leave…

198. Prior to being notified that the TR was being ended early (but after the decision to end early had been made), the Claimant sent another email to senior management on 26 October 2021. In it the Claimant posed a number of questions.

199. The email of 26 October 2021 was the tenth alleged protected disclosure ('PD10').

200. In response, on 27 October 2021, Mr Grisdale asked Mr Gordon (Global Head of Risk Transformation) to provide a short response, as, in Mr Grisdale's view, the questions related to data reporting (at [1325] of the Bundle and Paragraph 91 of Mr Grisdale's witness statement). The answers to the questions posed by the Claimant were provided to him by Mr Grisdale later on 27 October 2021 (at [1344] – [1347], which was, in effect, a copy of the Claimant's email of 26 October 2021, with the answers added directly below each question).

201. The Claimant responded to Mr Grisdale on 28 October 2021 (at [1343] – [1344] of the Bundle). In his response, the Claimant referred to BCBS 239 and alleged that "*our representations to the PRA [Prudential Regulatory Authority] have been materially misleading."*

202. This was the eleventh, and final, alleged protected disclosure ('PD11').

203. The decision to ended the TR early was communicated to the Claimant by email on 1 November 2021 (at [1421] of the Bundle). In it, Mr Grisdale set out his reasons, which included the following ((variously at [1421] – [1422]):

> … in the round I do not feel the communication is either professional or respectful…
>
> Having further considered matters and carefully reflected on where we find ourselves I would again reiterate that the organisation has listened to you and considered your challenges. I do understand your disappointment that we have not been able to agree with you and regrettably it is very evident you have no belief in any component of our programme of works, or the management running the same…

204. Mr Grisdale informed the Claimant that he was being placed on garden leave and that the TR would be ending on 30 November 2021. The Claimant was also told that all future communications should be with HR and it was agreed to pay him an additional months' pay in addition his enhanced redundancy payment (at [1422] of the Bundle).

205. By a letter also dated 1 November 2021, My Yates reinstated the Claimant's notice period, as required by and consistent with the terms of the TR (at [140] of the Bundle). That letter reiterated the availability of the Redeployment Talent Pool, where the Claimant could find out about internal vacancies.

206. On 2 November 2021, the Claimant commenced ACAS Early Conciliation. On 3 November 2021, the Claimant replied to Mr Grisdale's email of 1 November 2021 and notified him that he had commenced Early Conciliation (at [1436] of the Bundle).

207. On 4 November 2021, Ms Willmore met with Mr Penney to understand why the TR was not being extended (a note of the meeting was at [1440] – [1441] of the Bundle). Mr Penney explained the concerns which had arisen regarding the Claimant's performance and attitude toward the tasks allocated to him. He also detailed the Claimant's disagreements with the work being undertaken and the direction being followed and the access he was given to senior executives. In conclusion, the decision on extending TRs was "*[R]anked on capability and [the Claimant] came bottom due to failure to complete tasks he was given."*

208. It was noteworthy that, despite the TR not being extended, the Respondent's HR function still wanted to understand the reasons why. This was part of Ms Willmore's investigation into the complaint raised by the Claimant on 8 October 2021. Again, notwithstanding the decision to not only not extend the TR but to bring it to a premature end, the Respondent was still actively investigating the Claimant's concerns.

209. The scope of Ms Willmore's investigations into the complaint of 8 October 2021 were set out in detail in her witness statement (at Paragraphs 15 – 30).

210. As part of the process, Ms Willmore met with Mr Penney, Mr Bagirathan and Mr Grisdale on 25 November 2021 (per her email at [1513] – [1515] of the Bundle). Those discussions again focussed on the Claimant's performance issues and specifically his failure to complete the work and tasks assigned to him. It was agreed to (yet again) assist the Claimant with finding another role (whether with the Respondent or elsewhere) by keeping his TR end date as 31 December 2021 (at [1515]).

211. Later on 25 November 2021, Ms Willmore emailed the Claimant and informed him that his allegation that the TR was not being extended was an act of retaliation had not been upheld (at [1520] – 1521] of the Bundle). Rather, the reasons it had not been extended "*included performance in role, engagement in role and cost."* Although the email did not inform the Claimant that the TR would in fact continue until 31 December 2021 (albeit on garden leave), it was not in dispute that the Claimant was paid in lieu of wages until 31 December 2021 and the applicable HR records cited the employment termination date as 31 December 2021 (at [436]).

212. Whilst Ms Willmore was undertaking her investigation, on 20 November 2021, the Claimant presented his claim to the Tribunal (at [1] – [14] of the Bundle).

213. On 2 December 2021, the Claimant emailed a whole host of senior managers (including Mr Grisdale, Mr Penney, Mr Hudson, Ms Tauszky, Ms Kaur, Mr Yates and Mr Tai), alleging that his dismissal was unlawful and demanding his immediate reinstatement and the provision of certain documents (at [1531] of the Bundle). Mr Grisdale responded later the same day, as follows (at [1552]):

> Thank you for your email of 2 December 2021. Dealing with the points you raise in order:-
>
> 1. We have previously confirmed that we have brought your temporary working assignment to an end, subject to a period on garden leave, and this position has not changed.
>
> 2. As I stated in my email to you of 1st November 'the organisation has listened to you and considered your challenges but we do not agree with you and regrettably it is very evident you have no belief in any component of our programme of works, or the management running the same'.
>
> 3. & 4. If you wish to access personal documents, please raise a Data Subject Access Request by emailing GDPR.RightsUK@hsbc.com

214. On 13 December 2021, the Claimant sent another email to the BoE, which he copied to Mr Grisdale, Mr Tai, Mr Tucker, Ms Kaur, Mr Penney and Ms Wilmore (at [1550] – [1551] of the Bundle). It contained a number

of allegations and assertions about the Respondent's ability to comply with its regulatory obligations. The Claimant did not rely on this email as one of his alleged protected disclosures.

215. The Claimant was paid in lieu of wages up to 31 December 2021 (per [22] of the Remedey Bundle). In addition, on 20 January 2022, the Respondent paid the Claimant a statutory redundancy payment (calculated on the basis of the applicable capped weekly wage of £544 and a multiplier of three) and the balance of his holiday pay entitlement (at [24] of the Remedy Bundle).

Analysis & Discussion

216. Having made our findings of fact, the Tribunal went on to determine the issues contained within the List of Issues (at Appendix 3).

Protected Disclosures

217. The Claimant alleged that he made 12 protected disclosures (accounting for the additional amendment of PD7A).

218. In general terms, what the Claimant was sharing (and sharing repeatedly) were his opinions, assertions and conjecture. We considered each disclosure in turn (as they occurred chronologically, as opposed to numerically).

PD1 – the email of 14 July 2021 (at [672] – [676] of the Bundle).

219. In his Further Information document (provided on or around 6 February 2022, in the course of the litigation), the Claimant detailed what he alleged to be protected disclosures within this email and attachment (at [22] – [23] of the Bundle). In our judgment, neither the email nor the attachment disclosed any information. Rather, the Claimant was sharing his opinions and criticism of what he believed the Respondent was doing, saying why he thought what was being done was the wrong approach and sharing his thoughts on what believed the Respondent should be doing instead.

220. The Claimant was making a number of allegations but did not provide sufficient information at that time to support those allegations. In addition, the Claimant made numerous assertions without ever providing information to support his conclusions.

221. In essence, the Claimant was presenting his generalised views and opinions. At most, they were criticisms of plans that were being proposed or were already in place. For those reasons, we concluded that there was not a disclosure of information, to the extent required for protection.

222. In addition, the email and the presentation also failed to show or explain how or why the regulatory obligations (whether by virtue of the BCBS standards or otherwise) created any legal obligation on the Respondent.

They did not, therefore, tend to show any breach by the Respondent (whether actual or anticipatory) of a legal obligation to which it was subject.

PD2 – the email of 15 July 2021 (at [716] – [718] of the Bundle)

223. The Claimant sent the same presentation and comments to a different audience. In his Further Information document, the Claimant detailed what he alleged to be protected disclosures within this email and attachment (at [24] of the Bundle). On his own case, the Claimant was highlighting "*key issues and challenges and proposed solutions"* and claimed to have developed "*the initial headline idea into details of issues and prescriptive and well researched recommendations*".

224. Again, we concluded that the email and presentation did not contain disclosures of information. They were, to borrow the Claimant's own descriptors, ideas, issues, challenges, solutions and recommendations. They also again failed to identify how or why any legal obligations to which the Respondent was subject had been (or were about to be) breached.

PD3 – the meeting of 16 July 2021 (at [744] – [748] of the Bundle)

225. On 16 July 2021, the Claimant met with Mr Grisdale, Ms Kaur and others and walked them though his presentation. In his Further Information document, the Claimant detailed what he alleged to be protected disclosures from within the notes of that meeting (at [24] of the Bundle).

226. Again, the Claimant was sharing his views and opinions (in this case, as to where credit data integrity ownership should reside and as to the Respondent's credit policy). There were, in our judgment, no disclosures of information sufficient to meet the threshold for protection.

PD4 – the email of 9 August 2021 (at [898] of the Bundle)

227. This was the Claimant's email to Mr Grisdale, in response to the request for more prescription on the headline issues and challenges alluded to in the Claimant's presentation. The Claimant complained in this email that he was being asked to be more prescriptive but not being giving the resources or time to provide the required level of detail.

228. Once more, the Claimant was setting out his views and opinions, this time on what he considered to be the Respondent's flawed understanding of regulatory guidance on credit risk management and erroneous approach to credit risk systems and portfolio data management. He did not cite detail nor give examples of where these alleged flaws and errors had either occurred or, more importantly, how they placed the Respondent in breach of any of its legal obligations. They were not disclosures of information.

229. Similarly, the email also failed to show or explain how or why the "*regulatory guidance and practitioner and market best practice"* created any legal obligation on the Respondent. They did not, therefore, tend to show any breach by the Respondent (whether actual or anticipatory) of a legal obligation to which it was subject.

PD5 – the presentations of 7 September 2021 (at [954] – [972] of the Bundle) & 20 September 2021 (at [1004] – [1014]) and the meeting of 22 September 2021 (at [1015] – [1017])

230. In his Further Information document, the Claimant detailed what he alleged to be protected disclosures from within the presentations and the meeting (at [24] – [25] of the Bundle). This was the only alleged protected disclosure which the Claimant said also tended to show the commission of a criminal offence (per Paragraph 7.d. of the Further Information document).

231. Despite that, the presentations, the note of the meeting and the Further information document continued to refer, at their highest, to regulatory breaches (and specifically BCBS 239). There was no further explanation or detail as to what the purported criminal offences were that the Claimant reasonably believed were being committed (or about to be committed), either at the time of the presentations or when he compiled his Further Information document in or around February 2022.

232. The presentations and the note of the meeting also followed a similar pattern, of the Claimant sharing his views and opinions on how the Respondent managed risk. Once again, there were allegations by the Claimant which lacked the detail and specificity to constitute disclosures of information entitled to protection.

233. The presentations and note of the meeting also failed to show or explain how or why the Respondent's "*poor understanding and material non-compliance with essential regulatory requirements"* (per Paragraph 7.a. of the Further Information document at [25] of the Bundle) created any legal obligation on the Respondent. They did not, therefore, tend to show any breach by the Respondent (whether actual or anticipatory) of a legal obligation to which it was subject.

PD7 – the email of 4 October 2021to the BoE (at [1132] – [1133] of the Bundle)

234. In his email on 4 October 2021, the Claimant informed the BoE that he "*sincerely believe that we are getting the credit risk and data risk transformation very wrong and at considerable cost in time and resources… there is the risk of institutionalizing conflict-of-interest because some key initiatives on credit policy and risk data are being led by the first line - this is contrary to OCC [Office for the Comptroller of Currency], BIS & PRA guidelines.."*

235. In our judgment, the email to the BoE did not contain any disclosures of information. As he had done before, the Claimant alleged that the

Respondent had breached regulatory requirements and principles without providing sufficient information which enabled him to reasonably believe that what he was sharing with the BoE tended to show such breaches.

236. In addition, neither the email nor any further evidence relied upon by the Claimant showed or explained how or why the "*OCC, BIS & PRA guidelines*" created any legal obligation on the Respondent. They did not, therefore, tend to show any breach by the Respondent (whether actual or anticipatory) of a legal obligation to which it was subject nor could the Claimant have reasonably believed that they did.

PD6 – the meeting with Jackson Tai of 4 October 2021

237. The Claimant used the same slides in his meeting with Mr Tai as he had during his meeting on 22 September 2021 (per PD5, above). Whilst there were no minutes of the meeting with Mr Tai, the Claimant recorded in his Further Information document that he "*took Mr. Tai through my presentation decks dated 7th Sep 21 and 20th Sep 21"* (at Paragraph 8.a., at [25] of the Bundle).

238. We reached the same conclusions about PD6 as we had about PD5 and repeat our reasoning. The change of audience did not change the nature or content of the allegations being made by the Claimant and, more importantly, did not transform them into protected disclosures.

PD7A – the email of 10 October 2021 to the BoE (at [1126] – [1128] of the Bundle)

239. As reflected in our findings of fact, the Claimant was informed on 8 October 2021 that the TR was not being extended. It followed that the alleged protected disclosures made after that date could not have had any bearing on the decision to not to extend the TR.

240. The first of those post-8 October alleged protected disclosures was the Claimant's further email to the BoE on 10 October 2021 (which he also sent to FSA on 12 October 2021, at [1025] of the Bundle).

241. In his email to the BoE on 10 October 2021, the Claimant alleged that the Respondent was not following BIS (Bank for International Standards) principles, which allegedly resulted in its risk calculations (including its Risk Weighted Assets and Capital Adequacy Calculations) being "*approximations at best and cannot be relied upon."* The Claimant also criticised the Respondent's transformation plans.

242. In our judgment, the email to the BoE did not contain any disclosures of information. The Claimant again made allegations that the Respondent had breached regulatory requirements and principles without providing sufficient information which enabled him to reasonably believe that what he was sharing with the BoE tended to show such breaches.

243. Similarly, the presentations the Claimant sent (and which, for the reasons set out above, we found did not contain any disclosures of information) did not change their status simply because they were sent to a different audience.

244. In effect, the Claimant levelled allegations at the Respondent of failing to follow BIS principles and went on to suggest what he believed were the consequences of those failings. What the Claimant did not do was explain, by reference to sufficient detail or information, how those principles were being breached.

245. Further, at most, the Claimant was alleging breaches of BIS principles. Neither his email or the attached presentations demonstrated or explained how or why the BIS principles created any legal obligations on the Respondent. The email and attachments did not, therefore, tend to show any breach by the Respondent (whether actual or anticipatory) of a legal obligation to which it was subject (and by extension, the Claimant could not have reasonably believed that they did).

PD8 – the email of 16 October 2021 (at [1153] – [1156] of the Bundle)

246. The Claimant emailed various senior managers and executives on 16 October 2021, asking the Respondent's transformation committee to re-think its credit transformation pathway. The Claimant set out his thoughts on why a change of approach was needed. He concluded the email by asking for "*an opportunity of collective brainstorming on the way forward"* (at [1159] of the Bundle).

247. 16 October 2021 was a Saturday. As recorded above, a number of the email's recipients communicated with each other across the weekend, which culminated in Mr Hershey's response to the Claimant on 17 October 2021, wherein he explained again why the Respondent did not agree with the Claimant's thoughts and would be continuing with its transformation of the wholesale credit system as planned (at [1172] – [1173] of the Bundle).

248. In our judgment, this was another example of the Claimant sharing his own views and opinions, which were considered but not accepted by the Respondent. It was not a disclosure of information nor did it contain any evidence that the Claimant reasonably believed that the Respondent was breaching a legal duty. At most, the Claimant was articulating an contrary view, not making a disclosure of information.

PD9 – the email of 17 October 2021 (at [1169] – [1170] of the Bundle)

249. This email was the Claimant's response to Mr Hershey, copied to the same senior managers. As noted above, the Claimant again registered his disagreement, before outlining two options for how the Respondent could deal with his proposals and opinions.

250. The Tribunal again concluded that there was no disclosure of information by the Claimant. The contents of the email were simply the Claimant's opinions and did not or could not have led him to reasonably believe that there was any breach by the Respondent of any of its legal duties.

251. For those reasons, PD9 was, like its predecessors, not a protected disclosure.

PD10 – the email of 26 October 2021 (at [1325] – [1327] of the Bundle)

252. In his email of 26 October 2021 to senior managers, the Claimant did not disclose any information. Rather, he posed a number of questions, to which (as detailed above) answers were provided (all of which were in the affirmative).

253. Whilst the questions posed made reference to BIS and BCBS 239, the Claimant did not explain with sufficient detail or information how, if at all, those principles were being breached. Further, his email did not demonstrate or explain how or why the BIS and BCBS 239 principles created any legal obligations on the Respondent.

254. The email did not, therefore, tend to show any breach by the Respondent (whether actual or anticipatory) of a legal obligation to which it was subject (and by extension, the Claimant could not have reasonably believed that they did).

PD11 – the email of 28 October 2021 (at [1343] – [1344] of the Bundle)

255. The final alleged protected disclosure was the Claimant's response of 28 October 2021, following receipt of the answers to the questions he had posed on 26 October 2021.

256. The Claimant alleged that "*BCBS 239 is the heart of the matter of our discussions…and we are nowhere near structural compliance"* and "*[O]ur representations to PRA would have been materially misleading"* (at [1344] of the Bundle).

257. However, as with other alleged protected disclosures, the Claimant provided no disclosures of information to support his allegations. At most, he again shared the views and opinions which he had shared at various times, in various forms and with various senior managers and executives, over the preceding months. Those views and opinions had been engaged with by the Respondent and rejected. The Respondent's views and opinions were contrary to the Claimant's. There was and there always had been a difference of opinion. What there was not, in our judgment, was any disclosure of information by the Claimant that tended to show that the Respondent was in breach of a legal duty or committing a criminal offence.

Conclusions: Protected Disclosures

258. In our judgment and for the reasons set out above, none of the alleged disclosures met the requirements to be protected. Each of them failed to meet the minimum requirements in order to engage protection. There was either no disclosure of information or no tendency to show an actual or anticipatory breach of a legal duty or commission of a criminal offence. Quite often, both requirements were absent.

259. The Claimant clearly had his own thoughts, ideas and opinions on how the Respondent managed wholesale credit risk and the direction of its the Risk 2025 programme. He shared those with his own managers and when they asked him for more details of what he disagreed about and why (the request for prescription), he escalated the same ideas, views and opinions to increasingly senior managers and executives and then on to the Bank of England.

260. The Respondent engaged with the Claimant initially to try and understand his thoughts, then to explain and reassure the Claimant on his concerns and latterly, to explain why they did not agree with him. Whatever the Claimant's thoughts might have been on the Respondent and its approach to risk, they were just that – his thoughts and opinions. They lacked the requisite factual content or detail to render them disclosures of information.

261. In addition, the Claimant consistently cited regulatory principles and guidelines and referred to market best practice. At no point in any of the alleged protected disclosures did the Claimant raise (either directly or by inference) any legal duties or criminal offences nor suggest that such legal duties or criminal offences were being breached or committed (or about to be breached or committed).

262. However, in the course of this litigation, the Claimant set out what he believed the criminal and legal offences were.

263. At paragraph 2.1(a) of the List of Issues (at Appendix 3), the Claimant alleged that the Respondent had made material misrepresentations to the Bank of England because of its failure to comply with BCBS 239 and BCBS 294. He submitted in the List of Issues that such non-compliance and misrepresentations were criminal offences, as were the consequential risk to the Respondent's depositors and the wider global financial markets. However, and for the reasons detailed above, these allegations were not supported by either sufficient factual information or an explanation of what the criminal offences were or how the Respondent's alleged actions had resulted in their commission.

264. The Claimant also believed that, by allegedly being non-compliant with BCBS 239 294, the Respondent was in breach of legal obligations (per Paragraph 2.1(b) of the List of Issues, at Appendix 3). However, and as with the alleged criminal offences, these allegations were not supported by sufficient factual information, there was no explanation of what the legal obligations were which it was alleged the Respondent was in

breach of and no detail or explanation as to how the Respondent's action were in breach (or would be in breach) of the said legal obligations.

265. It was not enough that the Claimant believed that not adhering to the BIS guidelines and principles amounted to a breach of a legal obligation. There must be some identifiable source of the legal obligation it is claimed the Respondent was subject to and breached. The Claimant provided no such source, either at the time or in the course of this litigation. Without identifying the legal obligation, it is difficult, if not impossible, to conclude that any belief the Claimant had that the Respondent was in breach of its legal obligations was reasonably held.

266. Even in respect of the regulatory guidelines and principles which were referred to (notably the BIS principles, BCBS 239 and BCBS 294), the Claimant was making assertions that the Respondent was in breach of those principles without providing sufficient detail or information as to how or why they were.

267. The Claimant's case was that he was dismissed for making protected disclosures. We set out our conclusions on his dismissal below. The Claimant did not expressly pursue a complaint of detriment other than dismissal. However, and for the sake of completeness, the evidence in fact showed the opposite. Rather than treating the Claimant detrimentally for sharing his views and opinions, the Respondent, at every level of management, listened to the Claimant and afforded him a platform. They gave him their time and they facilitated his access to increasingly senior levels of the Respondent's executive. In many ways, the Respondent went above and beyond what would be expected of a reasonable employer in accommodating the Claimant. Ultimately, the Respondent disagreed with the Claimant's thoughts and opinions, a conclusion which they were reasonably entitled to and which was open to them on the basis of what the Claimant was sharing with them. There was no detriment, just a difference of opinion.

268. For those reasons, the Claimant did not make any protected disclosures.

Unfair Dismissal

<u>The Reason for Dismissal</u>

269. The Respondent said that the principle reason for the Claimant's dismissal was redundancy, with his notice of termination temporarily suspended by reason of the TR.

270. In contrast, the Claimant said that:

    270.1. His role as Head of Financial Risk Management, within the GTRF was made redundant at the direction of Adrian Rigby and was an act of race discrimination; and

270.2. The TR was ended (or not extended) because he had made protected disclosures.

271. In our judgment, the Claimant was dismissed by reason of redundancy. We reached that conclusion for the following reasons:

271.1. There was a genuine redundancy situation at large within the Respondent toward the end of 2019. The decision to make redundancies was not limited to the Claimant's post but extended to thousands of employees being at risk.

271.2. There was evidence of discussions, planning and decisions being taken from early 2020 to identify the roles and employees at risk of redundancy (which included the Claimant).

271.3. The Respondent engaged in a standard redundancy process from August 2020, notifying the Claimant that his role was at risk of redundancy, considering pools for selection and holding consultation meetings

271.4. At the meeting with Mr Yates on 1 October 2020 and in the letter of the same date, the reason given for the decision to terminate the Claimant's role in December 2020 was redundancy.

271.5. The terms and conditions of the TR of 10 December 2020 reiterated that the Claimant's role was being made redundant and that a consequence of the TR was that the notice of redundancy would be temporarily suspend.

271.6. In his final pay on 20 January 2022, the Respondent paid the Claimant a statutory redundancy payment.

272. We went on to consider two factors which were also relevant to the operative reason for the Claimant's dismissal – the provisions of section 138 of the ERA 1996 and the TR.

273. As recited above, the effect of section 138 of the ERA 1996 is that if an employee is re-engaged under a new contact or the contract at risk of redundancy is renewed before the redundancy takes effect (that is, before the end of the employment which is subject to the redundancy), there is no dismissal by reason of redundancy (per section 138(1)). However, the provisions of section 138(1) do not apply if the terms and conditions (including as to capacity and location of the employment) of the new or renewed contract "*differs (in whole or part) from the corresponding provisions of the previous contract"* (per section 138(2)(a) of the ERA 1996).

274. We were not addressed by either party on section 138 of the ERA 1996. However, mindful that the Claimant was acting without legal representation and as we had ourselves discussed the provision in our deliberations, we set out our conclusions.

275. In short, we found that section 138(1) of the ERA 1996 did not apply in this case because the terms and conditions of the TR differed in part from the terms and conditions of the Claimant's previous contract of employment. Most notably, the Claimant's role and responsibilities were different, with the attendant changes to the department and structure within which he performed that role.

276. It followed that the parties entering in the TR did not, in itself, prevent the Claimant's employment being ended by reason of redundancy.

277. We next considered what the impact of the TR and its subsequent termination had on the operative reason for the Claimant's employment with the Respondent coming to an end. In other words, was it necessary to treat the TR as a new period of employment and determine the reason for it ending when it did as the cause of the Claimant's dismissal?

278. As recited earlier, the Respondent's Redeployment and Redundancy Policy specifically catered for the situation where a temporary redeployment opportunity arose, what it termed "*short-term assignments"* (at [78] of the Bundle). Those arose where "*an employee agrees to go on a secondment in another business area for a period not exceeding 12 months"*, which is precisely what the Claimant did when he agreed to the TR. As the policy made clear, the effect of such an assignment was to defer the redundancy notice period "*so that it finishes at the same time as the expiry of your secondment assignment".*

279. The letter of 10 December 2020 (at [105] of the Bundle) set out the terms and conditions of the TR. Giving those terms and conditions their ordinary and natural meaning, we found that this was a case where the parties had agreed to defer the termination of the Claimant's employment by reason of redundancy until 31 December 2021, at the latest. The notice period which had begun in 2020 was suspended and provision was made for either party to lift the suspension and trigger the remaining notice period (of 18 days).

280. The terms and conditions of the TR contained certainty as to when the redundancy dismissal would take effect. It would either be on 31 December 2021 or 18 days after one of the parties triggered the resumption of the notice period, whichever was the earlier of the two.

281. It was clear that both the Respondent and the Claimant continued to treat the Claimant as dismissed by reason of redundancy, both from the terms of the TR and the payment of the statutory redundancy payment in January 2022 (per [24] of the Remedy Bundle).

282. The understanding that the Claimant's redundancy had been deferred until 31 December 2021 was also reflected in other communications which occurred at the relevant time:

282.1. When the Claimant made enquiries about switching roles on 10 February 2021, the response from the Respondent's Resourcing & Onboarding team included reference to the Claimant having "*already agreed to do another until the end of the year which at the time resulted in your redundancy being paused by taking up that opportunity"* (at [250] of the Bundle, emphasis added);

282.2. On 12 October 2021, HR advised Mr Yates on the process to end the TR, which was wholly consistent with the provisions in the TR for re-starting the redundancy notice period (at [1052] – [19053] of the Bundle).

282.3. The letter of 1 November 2021 was titled "Notice Reinstatement Letter" and was similarly consistent with the terms of the TR (at [140] – 141] of the Bundle).

283. The terms of the TR and how they operated in practice were also wholly consistent with the concept of a "*short-term assignment*"*,* per the Redeployment and Redundancy Policy.

284. For those reasons, we concluded that the decision in October 2021 (and confirmed by the letter of 1 November 2021) was to restart notice period under TR. It did not change operative reason for dismissal, which was redundancy. The TR and decision to restart the remaining notice period simply set the effective date of termination of employment, not the reason for the termination of the Claimant's employment.

285. By way of analogy, if the Claimant had triggered the notice period (or if he had remained in post under the TR until it expired on 31 December 2021), he would have still been entitled to be paid a redundancy payment, consistent with the dismissal being by reason of redundancy.

286. For those reasons, we found that the reason for the Claimant's dismissal was redundancy. The actual dismissal was deferred until 31 December 2021 (or earlier, by way of the mechanism contained within the TR).

287. It follows that the reason for ending the TR was not strictly relevant or material. The TR permitted either party to bring forward the effective date of termination of employment from the agreed termination date of 31 December 2021. That was what the Respondent did but it was equally open to the Claimant to do the same (if, for example, he had a secured another job).

288. Given the Tribunal's findings that the Claimant did not make any protected disclosures, self-evidently they can have played no part in any of the Respondent's decisions regarding the Claimant's employment. In addition, the events and actions relied upon by the Claimant as protected disclosures did not inform the Respondent's decision not to extend the TR or to end the TR prematurely.

289. If we were required to identify a reason or reasons for the Respondent's decision to bring the TR to an end, it was perhaps most clearly set out in Ms Willmore's email of 25 November 2021, following her investigation into the reasons why the TR was being terminated (at [1514] of the Bundle). Those reasons, which all related to the Claimant's performance, were also consistently raised, discussed and recorded throughout almost the entire duration of the TR (and as detailed in our findings of fact).

290. For the sake of completeness, and in any event, even if the Claimant had made protected disclosures, the reasons for ending the TR included his conduct and behaviour (which encompassed the manner in which he pursued his alleged protected disclosures).

The Fairness of the Dismissal

291. What was clear from the chronology of the case was that when the Claimant went through the redundancy process in 2020, he had not been continually employed for a period of two years. As such, at that time, he had yet to acquire protection against unfair dismissal (per section 108 of the ERA 1996). However, by the time of the decision to end the TR, he had been continuously employed for over two years.

292. The Respondent did not dispute that by the time the Claimant's employment ended, he had become entitled to protection against unfair dismissal. As such, it was for the Respondent to prove the reason for dismissal, which, as detailed above, it did and that reason was potentially fair (namely, redundancy).

293. In deciding whether the decision to dismiss the Claimant by reason of redundancy was fair, we focussed on the events and the processes adopted in 2020, which culminated with the decision of 1 October 2020 to make the Claimant's role redundant. For the reasons set out above, the decision to end the TR was not the reason for the Claimant's dismissal. It was the reason for when that decision to dismiss took effect.

294. As set out in our findings of fact, the decision to make the Claimant's role redundant was made by Mr Yates and it was his own decision. Contrary to the allegations by the Claimant, Mr Rigby did not decide the make the Claimant redundant, played no part in the decision to make the Claimant redundant and did not influence the decision to make the Claimant redundant.

295. As set out in our findings of fact:

295.1. There was a genuine redundancy situation.

295.2. The Respondent warned the Claimant that his role was at risk and then undertook a fair and proper consultation with him.

295.3. The Respondent adopted a fair, reasoned and cogent basis for selecting his role for redundancy (including the decision to place him in a pool of one).

295.4. The Respondent actively explored and considered redeployment.

296. The Claimant was not explicitly informed in the letter of 1 October 2020 of his right of appeal against the decision to make his role redundant. However, both the Redeployment and Redundancy Policy and the Security of Employment Policy provided a right of appeal and details of how to appeal (and it was not suggested that both policies, which were available on the Respondent's HRDirect service, were not available to the Claimant).

297. As we have found, on 13 August 2020, the Claimant was informed that he was at risk of redundancy. On 16 August 2020, before the first consultation meeting, the Claimant raised a compliant against the decision to out him at risk via HSBC Confidential. That complaint was accepted and investigated by the Respondent. The only reason the process did not reach a final conclusion was the Claimant's decision to withdraw the complaint when he took up the TR (and even then, there was an investigation report dated 15 February 2021, based upon the information obtained up to the withdrawal of the complaint, at [262] – [274] of the Bundle, which concluded that the decision to make his role redundant was justified).

298. In the context of looking at the fairness of the redundancy process in the round, it was reasonable to consider the compliant as a de facto appeals process, since it afforded the Claimant the opportunity to challenge the decision to, initially, place him at risk of redundancy. It was reasonable to conclude that, but for the TR, the complaint would have continued and would have encompassed the decision to make the Claimant's role redundant.

299. If the Claimant had been explicitly informed of his right of appeal in the decision letter of 1 October 2020 and had he exercised that right of appeal, it was also reasonable to conclude that he would have acted in a similar manner when he accepted the TR, namely he would have withdrawn any appeal (or, in the alterative, any appeal would have resulted in the same conclusion and outcome as the compliant investigation report of 15 February 2021).

300. Ms San Gupta also referred the Tribunal to the decision in Gwynedd Council v Barratt [2021] IRLR 1028, CA, wherein Bean LJ held as follows (at [38], emphasis retained):

> I agree with the proposition that in redundancy cases the absence of any appeal or review procedure does not of itself make the dismissal unfair – that is to say, if the original selection for redundancy was in accordance with a fair procedure the absence of an appeal is not fatal to the employer's defence…it would be wrong to find a dismissal unfair *only* because of the failure to provide

> the employee with an appeal hearing…the absence of an appeal is one of the many factors to be considered in determining fairness.

301. Having regard to all those factors, we found that, to the extent that the Claimant was denied any explicit invitation to appeal against the decision to make his role redundant, he was not deprived of a right of challenge (because of the availability and nature of the complaints process), he was not placed at any material disadvantage (for the same reason) and any failure to notify him of his right of appeal in the decision letter of 1 October 2020 did not render the redundancy processes followed by the Respondent unfair.

Conclusions: Unfair Dismissal

302. For all those reasons, we concluded that:

302.1. The reason for the Claimant's dismissal was redundancy;

302.2. There was a genuine redundancy situation;

302.3. The Respondent followed a fair procedure in making the Claimant's role redundant; and

302.4. The events of October and November 2021 were about when the decision to terminate by reason of redundancy took effect.

303. On that basis, the Claimant's dismissal was not unfair and the complaint of unfair dismissal is dismissed.

Discrimination on grounds of race

304. The Claimant contended that there were two acts of direct race discrimination, namely:

304.1. The decision to select him for redundancy on 13 August 2020; and

304.2. The decision to terminate his employment with effect from 30 November 2021.

305. We repeat our findings and analysis regarding the chronology and decision to make the Claimant's role redundant, namely:

305.1. There was a genuine redundancy situation.

305.2. The Respondent warned the Claimant that his role was at risk and then undertook a fair and proper consultation with him.

305.3. The Respondent adopted a fair, reasoned and cogent basis for selecting his role for redundancy (including the decision to place him in a pool of one).

305.4. The Respondent actively explored and considered redeployment.

305.5. The reason for dismissing the Claimant from his role as Head of Financial Risk Management was because of redundancy.

306. There was no evidence whatsoever that the Claimant was selected for redundancy, pooled or made redundant because of his race. There was nothing in the evidence which came close to shifting the burden to the Respondent. Not one of the decisions taken or steps followed by the Respondent were in any way informed, influenced or dictated by the Claimant's race, conscious or otherwise.

307. The reasons for the Respondent's actions were clear – it was faced with circumstances which required it to make many thousands of posts redundant and the Claimant's fell within that category. Thereafter, it followed a fair and proper process before a decision was made to make his role redundant.

308. In reality, any suggestion that the decision to place the Claimant at risk of redundancy and the process and decisions that followed thereafter, were because of his race were nothing more than the beliefs and assertions of the Claimant. As with his belief and assertion that Mr Rigby was the decision maker, he was mistaken.

309. The Tribunal reached similarly clear and compelling conclusions regarding the allegations that race played any role in the decision to terminate the TR early. As out findings of fact show, the Respondent, with good reason, concluded that the Claimant was not performing the tasks asked of him, was refusing to follow reasonable management instructions (whether pertaining to those tasks or regarding who he should be communicating his ideas with) and was at times rude and unprofessional towards other employees.

310. The Claimant himself was clearly not happy in the TR, enquiring about a role change as early as 10 February 2021. He struggled to work effectively with colleagues (most notably Mr Soppitt , Mr Bagirathan and Mr Grisdale) and clashed with others with whom he had only minimal contact (notably, Mr Mubashar).

311. Indeed, the Claimant's approach to his work during the TR caused such concern that as early as June 2021, there were active discussions at management level about whether to let him go. Despite affording the Claimant numerous chances, despite changing his role and despite indulging his ideas and suggestions, the Claimant's conduct and behaviour did not, in the Respondent's opinion, improve. That was the reason for not extending the TR beyond 31 December 2021 (a decision which had been discussed for some time and was categorically decided upon by Mr Penney by the end of September 2021) and that was the reason for thereafter ending the TR with effect from 30 November 2021 (made by Mr Grisdale in light of the Claimant's continued behaviour during the first three weeks of October 2021).

312. The reasons behind the Respondent's decisions regarding the TR were clear and extensively supported by the evidence. Those reasons had nothing to do with the Claimant's race and everything to do with his conduct and his behaviour. As with the redundancy, there was no evidence whatsoever that the TR was ended because of the Claimant's race. There was nothing in the evidence which came close to shifting the burden to the Respondent. None of the decisions taken by the Respondent were in any way informed, influenced or dictated by the Claimant's race, conscious or otherwise.

Conclusions: Race Discrimination

313. The Claimant had to prove facts from which the Tribunal could infer that race discrimination has taken place in the decisions to make his role redundant and thereafter to end the TR. For the reasons set out above, the evidence did not come close to meeting that threshold and, as detailed in our findings of fact, the reasons for each of the decisions under scrutiny were clear, unambiguous and amply supported by the evidence.

314. In short, there was no evidence which was capable of supporting any finding from we which we could infer that either decision, in any way whatsoever, was related to the Claimant's race.

315. For those reasons, the decisions to make the Claimant's role redundant and to end the TR were in no way because of the Claimant's race. It follows that the complaints of direct race discrimination were not made out and are dismissed.

Time limits

316. By virtue of the EqA 2010, complaints of discrimination must be presented to the Tribunal within three months of the alleged act of discrimination occurring (subject to the effects of the ACAS Early Conciliation process which, if started within the three month time limit, serves to stop the clock for the duration of the Early Conciliation and/or extend the time limit by a month, if the three month time limit expires during Early Conciliation). Whether or not complaints have been brought in time goes to the Tribunal's power to be able to consider and determine them, otherwise known as the Tribunal's jurisdiction.

317. So far as relevant, the Claimant began ACAS Early Conciliation on 2 November 2021 and it ended on 25 November 2021. He presented his claim to the Tribunal on 20 November 2021.

318. As noted above, the complaints of race discrimination related to:

318.1. The decision to place the Claimant at risk of redundancy (a decision communicated to him on 18 August 2020 and which culminated in

him being notified on 1 October 2020 that he would be made redundant with effect from 31 December 2020); and

318.2. The decision to end the TR early, which was communicated to the Claimant on 1 November 2021 and took effect on 30 November 2021.

319. Even at its highest, the three month time limit for presenting his complaint of race discrimination regarding the redundancy began running on 31 December 2020 and expired at the end of March 2021. As such, that complaint was presented almost eight months after the expiry of the requisite time limit.

320. In contrast, the three month time limit for presenting the complaint of race discrimination regarding the termination of the TR began running from 1 November 2021 at the earliest. That compliant was clearly presented within the requisite time limit.

321. The redundancy race discrimination complaint can only be in time and importantly only be considered by Tribunal (as a matter jurisdiction) if either it is part of a continuing act of discrimination, the last act of which falls in time (in which case all complaints in the continuum are deemed to have been brought in time) or the Tribunal exercises its discretion under the EqA 2010 and extends time.

322. To be a continuing act of race discrimination, the Claimant would need to show that the two allegations he relied upon were connected, that the decision to end the TR was a continuum of the decision to select him for redundancy. We had a number of difficulties with that, namely:

322.1. The decision to select the Claimant for redundancy and then make him redundant was made by Mr Yates. The decision to end his TR was made by Mr Grisdale. We were not presented with any evidence to suggest that they were in contact with each other or aware of each other's decisions, still less in collusion in effectively following the same course and making decisions based upon the Claimant's race;

322.2. There was a 12 month gap between the decision to make the Claimant's post redundant and the decision to end the TR. That gap extends to 14 months if calculated from the decision to place the Claimant at risk of redundancy;

322.3. Taken at their highest, the complaints relate to different events and are disparate. Whilst they all pertain to the Claimant, the allegations are against different people, different processes and different events.

323. Even if the decisions under scrutiny were acts of discrimination (which for numerous reasons, we have found that they were not), they were not

a continuing act of discrimination, in the sense required to enable the decision to make the Claimant redundant to be treated as in time.

324. Should the Tribunal extend time in respect of the race discrimination allegations which relate to the redundancy decision?

325. The test is whether, in all the circumstances, the complaints were presented within such other period of time as the Tribunal thinks just and equitable (per section 123(1)(b) of the EqA 2010). That includes a consideration of why the complaints were brought out of time, how out of time they are, the merits of the complaints and the balance between the likely prejudice caused to each party of granting or refusing the application to extend time.

326. The Claimant's written submissions on the time limit issue were as follows (at Paragraph 25.d, emphasis retained):

> The events from my **1st sham redundancy (costing out)** and the **2nd sham redundancy (final dismissal)** were part of a chain of events over an extended period and therefore warrant extension of time and jurisdiction by ET over the entire chain of events.

327. The Claimant did not advance any other basis for why the redundancy race discrimination complaint should be deemed to have been presented in time. Given our conclusion that the allegations pertaining to the redundancy and the ending of the TR were not capable of being continuing acts (due to the differences detailed above), we were left with no explanation from the Claimant for why the redundancy race discrimination compliant was presented out of time or what, if any, prejudice would be caused to him by not extending time.

328. It was for the Claimant to show that it was just and equitable to extend time (in circumstances where a complaint is not brought in time by virtue of being part of an in-time continuing act). The Claimant failed to provide any reason, basis or evidence for why it would have been just and equitable to extend time.

329. For those reasons, the redundancy race discrimination complaint was not part of a continuing act, was presented out of time and it was not just and equitable to extend time. It follows that Tribunal does not have jurisdiction to consider and determine the complaint.

330. Notwithstanding that and as can be seen, we determined all the complaints before us and have dismissed them. It was important for the parties to know and understand our findings and conclusions on the complaints, including those over which, ultimately, we did not have jurisdiction. Discrimination is a serious allegation. We did not want the Claimant believing that his redundancy race discrimination complaint had failed on a technicality (that of being presented out of time). We did not want those accused of race discrimination to be left with any residual

sense that they had not been fully exonerated of the allegations of discrimination.

331. For those reasons in particular, we considered the redundancy race discrimination complaint and, as explained above, dismissed it.

Employment Judge Povey
4 June 2024