EMPLOYMENT TRIBUNALS

Claimant: Mr M Clifford

Respondent: (1) Millicom Services UK Limited
(2) Martin Frechette
(3) Cara Viglucci
(4) HL Rogers

Heard at: London Central Employment Tribunal

On: 2 -17 September 2024 & 29,30, September 1 & 2 October 2024 (Chambers)

Before: Employment Judge Akhtar
Ms D Keymes
Mr S Godecharle

REPRESENTATION:

Claimant: Ms L Gould (Counsel)

Respondent: Mr C Rajgopaul KC (Counsel)
Ms S Cashell (Junior Counsel)

RESERVED JUDGMENT ON LIABILITY

The unanimous Judgment of the Tribunal is that:

1. The complaints of unfair dismissal and automatic unfair dismissal are not well-founded and are dismissed.

2. The complaints of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.

3. The complaints of discrimination arising from disability and a failure to make reasonable adjustments are not well founded and are dismissed.

CLAIMS AND ISSUES

1. The Claimant brings complaints of ordinary unfair dismissal, automatic unfair dismissal, detriment on the grounds of making protected disclosures, discrimination arising from his disability and failure to make reasonable adjustments. The issues were agreed between the parties in August 2020 as directed by Employment Judge Henderson, following a case management hearing on 25 June 2020.

2. The agreed issues are set out in a document 'AP1' appended to this judgment.

PROCEDURE, DOCUMENTS AND EVIDENCE HEARD

3. The Tribunal heard evidence from the claimant and the following witnesses on his behalf:
Ms Eva Rutkowska (HR lead UK, Millicom Africa);
Mr Juan Ruiz (Global Investigations Manager, Millicom Group)

2. The Tribunal also heard the evidence of the following witnesses on behalf of the respondents:

Mr Martin Frechette (Second Respondent, Vice President Legal – Corporate);
Ms Cara Viglucci (Third Respondent, Claimant's line manager and Vice President Global Investigations);
Mr HL Rogers (Fourth Respondent, Ms Viglucci's line manager and Executive Vice President - Head of Compliance);

Mr P Gill (Director of Corporate Governance, Risk Management and Company Secretary)

3. There was a tribunal bundle, including supplementary bundles of approximately 3415 pages. A number of additional documents were also added to the bundle during the course of the hearing, including a letter to the Vice President of Tanzania letter and judgments relating to the Rule 50 application. A link to a You Tube video of a BBC interview of Tundu Lissu was also provided by the Claimant's solicitors, which was accessed and viewed by the Tribunal. We informed the parties that unless we were taken to a document in the bundle, we would not read it. Both parties provided written closing submissions as well as making oral submissions.

FINDINGS OF FACT

4. Having considered all the evidence, both oral and documentary, we made the following findings of fact. These findings are not intended to cover every point of evidence given but are a summary of the principal findings that we made from which we drew our conclusions.

Background

5. The First Respondent is a company in the Millicom Group ("Millicom"), which provides a range of digital services to emerging markets in Latin America and at the time relevant to these proceedings, in Africa. The Claimant was employed by the First Respondent as a global investigations manager from 3 January 2017 until 30 November 2019; in this role, he was responsible for conducting and overseeing internal investigations into potential fraud, dishonesty, corruption and other wrongdoing in Millicom's operations.

6. The Second Respondent is Mr Martin Frechette, during the relevant time period he was Vice President Legal – Corporate.

7. The Third Respondent is Ms Cara Viglucci, she joined Millicom International in or around March 2017 as Vice President Global Investigations and became the Claimant's line manager.

8. The Fourth Respondent is Mr HL Rogers, during the relevant time he was Ms Viglucci's line manager and Executive Vice President - Head of Compliance.

9. In support of his claims of automatic unfair dismissal and protected disclosure detriment, the Claimant relies on what are claimed to have been six protected disclosures. The Claimant alleges that the Respondents subjected him to a number of detriments, and ultimately dismissed him, because of his protected disclosures.

General

Evidence

10. Throughout the final hearing, there were many instances where witnesses were asked to recollect historic matters going back many years; in some cases, dating back 6 years or longer. We were cognisant of the fact that memories naturally fade over time. We were mindful of this when assessing evidence and making our findings. Wherever possible, we attempted to reconcile disputed evidence primarily through contemporaneous documentation. Further, where there were inconsistencies in evidence, we have found these have arisen primarily due to the passage of time and the ability of witnesses to recall matters accurately rather than witnesses being deliberately untruthful. We will deal with such occasions separately in this judgment as and when they arise. However, in the main we do not doubt the honesty in the evidence of any of the witnesses.

Disclosure Concerns & Inferences

11. It was submitted on the Claimant's behalf that the Respondents had provided inadequate disclosure. This included missing documents, over redacted documents, incorrect privilege being asserted over documents and late disclosure.

12. The Respondents' denied any failings in respect of disclosure and asserted that they had complied with their disclosure obligations fully. It was highlighted that the Respondents had carried out an extensive disclosure exercise with circa 55,000 documents being uploaded on to the disclosure platform. The Respondents' assert that if documents have not been disclosed, it is because they are not in the possession of them, however, that does not detract from the fact that reasonable and proportionate searches have been carried out in accordance with disclosure obligations. The Respondents' pointed out that despite the significant passage of time and protracted litigation, the Claimant had not made any applications for specific disclosure.

13. Without specific details of which documents the Claimant asserts are in the possession of the Respondents' or which documents have been over redacted or incorrect privilege applied, the Tribunal is unable to scrutinise and reach any material findings in respect of such matters. Without these details or evidence of any failings in the disclosure exercise, we have no reason to doubt that the Respondents' have not complied with their disclosure obligations. As such, we decline the request to draw general adverse inferences from any such failings. Where specific documents are identified, such as the dismissal decision, we will comment on drawing adverse inferences as and when such matters arise in the chronology.

Protected Disclosure 1

14. In respect of the first alleged protected disclosure, it is the Claimant's case that he investigated and reported on concerns that Tigo Tanzania ("MIC Tanzania"), a Millicom subsidiary, supplied the mobile telephone data and live tracking data of a customer, Mr Tundu Lissu (Opposition Leader of the Chadema political party) to a government agency without lawful authority and that, subsequently, Mr Lissu was subject of an assassination attempt.

15. The Claimant alleges that he disclosed the findings of his investigation into the involvement of 'MIC 'Tanzania and its staff, as well as employees of Huawei and Dimension Data, in the tracking of Mr Lissu's mobile telephones and the supply of that data to the Tanzanian government. The Claimant states that it was his reasonable belief that MIC Tanzania was involved in an attempted act of political assassination and act of terrorism which may have to be raised with the United Nations 'UN'. The claimant states he also expressed his serious concern that international legal advice on reporting the matter to appropriate authorities was needed.

16. The Claimant alleges that he disclosed the information set out in summary bullet points on the appended list of issues, in a telephone conversation with Ms Viglucci (Third Respondent, Claimant's line manager and Vice President of Global investigations) on 20 September 2017; a face-to-face conversation with Mr Rogers (Fourth Respondent, Ms Viglucci's line manager and Executive Vice President and Chief Ethics and Compliance Officer) on 20 September 2017 and in his investigation report of 26 September 2017, which he sent to Ms Viglucci and Mr Rogers.

17. Ms Viglucci and Mr Rogers do not recall specific detail in respect of the conversations with the Claimant. We repeat our general findings on memory recall and on the facts, we are not surprised by Ms Viglucci's and Mr Rogers inability to recall matters considering how long ago the conversations were; the fact there are no contemporaneous record of the calls and the fact the Claimant

did not raise any issue pertaining to such conversations until almost 18 months later.

18. The details of disclosure 1 are set out in the list of issues appended to this judgment (AP1), in a table under paragraph 1. It is broken down into 9 separate bullet points of information, which we have numbered a-h to remain consistent with the parties numbering in submissions. For the purposes of our judgment, we will deal with our findings of fact relating to each individual piece of information separately. We will then draw this together in our conclusion section.

19. Broadly speaking, the Respondents admit the Claimant provided the information he sets out under disclosure one in the list of issues. In light of this, we will only seek to highlight the areas of dispute and provide our conclusions in respect of these areas.

20. In respect of para 1(a), the Claimant alleges that he disclosed that *"MIC Tanzania had been supplying the government of Tanzania with mobile telephone call data and live tracking showing the location of Mr Lissu".* The disclosure of this information is admitted.

21. In respect of para 1(b), the Claimant alleges that he disclosed that *"Information had been provided to the Tanzanian Government since 22 August 2017. From 29 August 2017, the intensity of the tracking increased and MIC Tanzania used its human and electronic resources to live track 24/7 the location of two of Mr Lissu's mobile phones".* The disclosure of this information is admitted apart from mention of 24/7; we will provide further comment on this aspect below.

22. In respect of para 1(c), the Claimant alleges that he disclosed that *"The location data had been passed on to the Tanzanian government via WhatsApp".* The disclosure of this information is admitted.

23. In respect of para 1(d), the Claimant alleges that he disclosed that *"There was no evidence of any formal legal documentation or request from the government,*

nor authorisation by the board of directors of Millicom International Cellular S.A., MIC Tanzania or Millicom International". The disclosure of this information is admitted, save for lack of authorisation from the board of directors of Millicom companies. The absence of authorisation does not itself appear to be a matter that is in dispute.

24. In respect of para 1(e), the Claimant alleges that he disclosed that, *"The Tanzanian Government had asked MIC Tanzania to delete the data and WhatsApp messages that had been provided".* The disclosure of this information is admitted.

25. In respect of para 1(f), the Claimant alleges that he disclosed that *"The Chief Technology Information Officer ("CTIO") was in a relationship with a lady whose father had been the ex-head of the Tanzanian secret service and was also the holder of a diplomatic position, and who was therefore a Politically Exposed Person (PEP), showing close connection between the senior management of MIC Tanzania and the government".* The disclosure of this information is admitted, apart from details as to the person with whom the manager was having an affair.

26. In respect of para 1(g), the Claimant alleges that he disclosed that *"The four senior managers involved in MIC Tanzania had given inconsistent and untruthful accounts when interviewed by the Claimant as part of his investigation".* The disclosure of this information is admitted but only in respect of 2 out of 4 managers.

27. In respect of para 1(h), the Claimant alleges that he disclosed that *"That other employees of MIC Tanzania had also raised their serious concerns regarding this matter".* The disclosure of this information is denied.

28. With regard to disclosures 1(a) to (d), in his written evidence, the Claimant submitted that he held a reasonable belief that the information he disclosed tended to show that criminal offences had been committed, various legal obligations had been breached and that the health & safety of various

individuals had been risked. With regard to disclosures 1(e) to (h), the Claimant submitted that he held a reasonable belief that the information he disclosed tended to show that matters had been or were being or were likely to be concealed or destroyed, leading to a miscarriage of justice.

Call Tracking Data 'CDR' requests – PID 1 (a-e)

29. On 29 August 2017, Mr Tumaini Shija (Legal Director and Company Secretary, Mic Tanzania) sent an email to Mr Jerome Albou (Chief Technology Information Officer 'CTIO', MIC Tanzania) advising that the *"TCRA DG is requesting for a dedicated resource that will be available for live tracking of numbers at all times".*

30. On the same date Mr Albou responds to Mr Shija advising that Mr James Kilaba, (Director General of Tanzania Communications Regulatory Authority "TCRA") would like to receive the location of selected numbers every 30 minutes, however, the team were unable to perform the request automatically. The team were going to work on an automatic solution but in the interim the 24/7 team was going to query and share the information, either by email or WhatsApp.

31. On 30 August 2017, Mr Albou provides a further update by email to Mr Shija, copying in Simon Karikari (General Manager, MIC Tanzania) and Sylvia Balwire (Head of Regulatory Team, MIC Tanzania). Mr Albou advises that since the previous night the requested information is being sent out manually every 30 mins. Mr Albou expresses concern that the requests are being made by phone call without any paper trail, which may put them in a difficult position.

32. On the same date, Mr Albou sends an email to Ms Esther Palsgraaf (Africa Region Compliance Manager) and Ms Viglucci referencing Call Data Requests 'CDR's' stating that they have "…..*more and more of such requests coming to us, without proper paper trails (just with phone calls) I am personally not that comfortable, and I am not sure about the company liabilities in case it goes public. We are working on making sure the legal team can fulfil these requirement without any involvement from the technology team, at least to*

make sure that they are not exposed to the requests; but the company will still be exposed…..” Mr Albou explained that the information had been sent by WhatsApp and he was concerned that they had been requested by phone calls without any proper trail.

33. Neither Ms Viglucci nor Ms Palsgraaf responded until 7 September 2017, following a further email from Mr Albou.

34. On 7 September 2017, Mr Lissu is shot at his residence by unknown assailants. On the same day, Mr Albou sends a link to an article to Ms Viglucci and Ms Palsgraaf about the assassination attempt on Mr Lissu. In his email, Mr Albou states “*Quick update on the below matter. It seems that the following news…..is pretty related to the below request. I have attached the WhatsApp print screens of the DG of TCRA requests for reference*”.

35. Ms Palsgraaf responds to Mr Albou on the same day to advise that she had only just seen the emails but was *“extremely concerned about this, and did not understand how anybody has acted on this without proper paper trails or required authorisations, whether this be a police report or legal order, as is the case with other requests”.*

36. Ms Viglucci also responds on the same day to advise that she was consulting with the team about this, but in the meantime asked Mr Albou to be as discrete as possible.

37. Ms Viglucci also asks for details of the regulations applicable in Tanzania, allowing requests of this nature. On 8 September 2017, Mr Shija responds to this request and shares the Cyber Crime Regulations.

38. On 9 September 2017, Mr Karikari asks Mr Shija to assist in preparing a major incident report in respect of the request from Mr Kilaba.

39. Mr Shija replies to Mr Karikari, advising that on 29 August 2017, he had received a verbal CDR request from Mr Kilaba. Mr Shija advises that he spoke

to the CTIO Mr Albou and asked him to contact Mr Kilaba. He goes on to advise that Mr Albou subsequently contacted him to advise that Mr Kilaba had requested CDR's for a certain number initially at 30 minute intervals and later at 10 minute intervals. Mr Shija quotes the Cyber Crime Act and Regulations stating: *"Under the Cyber Crime Act 2015, Section 39 (2) (b) and the Cyber Crime Regulations 2016, Service providers are required to provide information enabling identification of recipients of service upon request by competent authority. The (sic) is not obliged to request for reasons for a request neither is a competent authority obliged to disclose the (sic) give reasons or any details for a request."*

40. Mr Shija also advises that this was not the first time the TCRA had made such a request, although this was the first time it had made a real time request requiring assistance around the clock.

41. On 11 September 2017, Ms Viglucci calls the Claimant to ask if he would be in the office the next day because he would be needed.

42. On 12 September 2017, a meeting was held in respect of the events. Attended included, the Claimant, Ms Viglucci, Mr Rogers, Mr Karikari, Ms Palsgraaf, Ms Rachel Samren (Executive Vice President and Chief External Affairs Officer at the Millicom Group), Mr Salvador Escalon (Executive Vice President, General Counsel), Mr Frederic Pichon (in-house, legal counsel). Following this meeting, the Claimant was tasked with "*carrying out certain acts in relation to that investigation".*

43. The attendance of Martin Frechette (Second Respondent and Vice President Legal - Corporate) at this meeting is disputed. Mr Frechette was included in the meeting invite and on the same date at 15:31 he sent an email to Mr Escalon copying in other attendees providing an opinion on TCRA being a competent authority. Mr Frechette's evidence to the Tribunal was that he was in Tanzania at the time and was not present at the meeting, Mr Frechette states that he was contacted by his 'boss' Mr Escalon and asked to carry out some legal research on an issue, to which he subsequently responded by email. He was not made

aware of the reasons for the information being requested, however, this was usual, he wasn't always involved in matters where his line manager was. He did later become aware of the details pertaining to the investigation in a handover, from Mr Pichon in or around early 2018, following his departure from the company.

44. We accept the evidence of Mr Frechette regarding his attendance at the meeting. There is no documentary evidence confirming his attendance and Mr Frechette was categoric in his evidence that he was not there. He provided details of where he believes he was at the time and how he became involved in providing the information following a request from his line manager, Mr Escalon.

45. We are not clear on where Mr Frechette was at the time as the time stamp on the email suggests that this could not have been Tanzanian time as that is British Standard Time plus 2 hours. In the circumstances, it is likely that Mr Frechette is incorrect in his assertion that he was in Tanzania at the time. However, this does not necessarily mean that Mr Frechette was at the meeting, and we find that he was not in attendance.

46. The fact that Mr Frechette addresses his email "Hi Salvador" would suggest that he was not in the presence of the person to whom he was sending the email. Further, the advice that Mr Frechette provides, which we will come on to later is general on the TCRA being a competent authority under the Cyber Crime Act. We find, had he been at the meeting and appraised with relevant information, it is highly likely he would have been more specific and referenced this in the email. The fact that Mr Frechette realises the Claimant is missing off the recipient chain is also unremarkable in that the names of all requested attendees were on the meeting invite with the Claimant being forwarded the invite and all recipients notified.

47. Mr Frechette commissioned legal advice from Bowmans solicitors in Tanzania on the same day; again, this appears to have been premised on the same

general basis as the advice that he provided to the meeting attendees on 12 September. The advice requested was in general terms relating to whether or not the TCRA were a competent authority under the Cyber Crime Act for information requests to a Telecoms operator.

48. On 22nd September 2017, Mr Frechette received the advice from Bowmans, and he circulated this on the same day to Mr Rogers, Ms Viglucci Mr Escalon, the Claimant and Mr Pichon. The advice from Bowmans was that the TCRA did not qualify as a competent authority capable of requesting specific information on phone activities of a client of a service provider, such as Tigo Tanzania.

49. Following the meeting on 12 September and up to 26 September 2017, at the request of Ms Viglucci, the Claimant conducted an investigation into the events involving MIC Tanzania. The investigation involved interviews with four senior managers at MIC Tanzania, Mr Karikari, Mr Albou, Ms Balwire and Mr Shija.

50. The Claimant's interview with Mr Albou revealed three engineers working *"24/7, working in shifts"* when the frequency of tracking data went from 30-minute intervals to 5-minute intervals. Before that time, when still providing data only at 30-minute intervals, 24/7 coverage had not at that time been possible.

51. An email from the Claimant to Ms Viglucci dated 13 September 2017 sets out expressly that: *"The actual staff (2-3 persons on a 24/7 rota later) that physically were in the NOC who did the live tracking and sent that via WhatsApp to the TCRA is still not known. But it is suspected they may be outsourced staff belonging to 'Dimension Data' a contractor. Should have details of identities later today"*.

52. The Claimant states in a conversation with Mr Rogers on 20 September, he referenced contacting Huwaei and data dimension employees to interview them, however, Mr Rogers instructed him not to do so. The Claimant asserts that this was the first sign of Mr Rogers wanting to *"keep a lid"* on this matter. Mr. Rogers in his evidence could not recall whether this was raised however he

said it would be unusual to interview external people in relation to a sensitive internal investigation in circumstances where the Claimant was well aware that Huwaei was close with the Chinese and Tanzanian governments. As a result, careful consideration would have needed to be given as to the safety risk posed to MIC Tanzania employees by interviewing these external people in sensitive investigation before it was completed.

53. We find that it is likely that the Claimant found out the identities of the staff carrying out the live tracking and that he provided this information to Mr Rogers and Ms Viglucci. We also find it is more probable than not that if the Claimant asked Mr Rogers about interviewing external people from Huwaei and data dimension he would have asked him to refrain from doing so due to the concerns that Mr Rogers had about the safety risk to MIC Tanzania employees.

54. On 15 September 2017, the Claimant sent himself an executive summary, this was not copied to any of the Respondents'. It recorded that Mr Lissu had been shot at his residence, the motive of which was unclear, but initial reports showed that a car had been following him to his home from Parliament.

55. In his draft executive summary, the Claimant recorded that: "*The fact that he may have been under surveillance before he was attacked by armed assailants possibly indicates that the live tracking supplied by Tigo could have been used to geolocate his movements"*. He goes on to state that *"There are a number of possible scenarios with the events and findings that need to be explored…..1) That the live tracking request is entirely unconnected to the shooting and it is coincidence……2) The CDR request and live tracking was fully approved and Tigo just do not have any record provided by TCRA and it was entirely legitimate".*

56. We agree with the Respondents' that the draft executive summary provides an insight into the Claimant's beliefs, at the time.

57. At the time the Claimant states he made protected disclosures, the Claimant accepts he did not know whether the call tracking data was passed on by the TCRA to anyone else, who carried out the assassination attempt on Mr Lissu or whether those who committed the shooting used or had access to the mobile telephone data supplied by MIC Tanzania to the government of Tanzania in the days immediately prior to the shooting.

58. Whilst Ms Viglucci and Mr Rogers do not recall speaking to the Claimant specifically on 20 September 2017, both acknowledge that they were kept updated by the Claimant through the course of the investigation. There are contemporaneous WhatsApp messages and emails which we will come on to later. However, in light of these findings, we find it is likely that Mr Rogers and Ms Viglucci communicated with the Claimant on 20 September. The extent of those communications and precisely what was discussed is where the difficulty arises, however, we have attempted where possible to reconcile this with other contemporaneous documents from the time.

59. On 26 September 2017, Mr Rogers asked the Claimant to produce a memo setting out the process of the investigation, the facts and various issues. The same day the Claimant sent an investigation memo, reflecting, as the Claimant accepts, his views at the time. As requested by Mr Rogers, the claimant reduced his report to 2 pages and included next steps that may be worthy of discussion.

60. The investigation report contains an executive summary which highlights that an investigation was commenced as a result of concerns raised by Mr Albou when he found Mr Shija had forwarded 2 electronic call data records to Mr Kilaba, without any formal written requests or emails formalising the requests.

61. In the investigation memo, the Claimant explains that there had been a breach of Millicom group policies i.e. the Major Events Policy and Police data request guidelines. The Claimant also sets out that that there was a lack of clear legal guidance by Mr Shija and a possible incorrect understanding of the law.

62. The Claimant goes on to state that Mr Karikari, Mr Albou, Ms Balwire and Mr Shija were all aware that the call logs belonged to that of Mr Lissu, opposition leader of Chadema party, Tanzania, who he highlighted was a fierce critic of the current regime.

63. The investigation report states that live tracking was commenced, and all information was passed to Mr Kilaba via WhatsApp messages with the Tigo data warehouse team deployed to conduct the exercise. The live tracking was requested by Mr Kilaba to be extended beyond 36 hours as agreed up to 15 September and upgraded from 30 minute to 5 minute updates.

64. The Claimant goes on to report that on 7 September 2017, an attempt was made on Mr Lissu's life by as yet unknown assassins outside his house after coming from parliament. He was shot several times having allegedly been followed by possibly 2 vehicles. That afternoon Mr Albou informed Global of the possible link to the live tracking events and the shooting. Global HQ subsequently informed Mr Karikari, that Mr Albou had escalated a concern on 30 August. The Claimant reports that Mr Karikari then immediately phoned up Mr Albou and had a heated conversation insisting not to make any connection between the two events as it was a coincidence. Mr Karikari then repeated this exercise with Ms Balwire and Mr Shija.

65. Following the assassination attempt on Mr Lissu, the Claimant sets out in his report that there was a request by Mr Kilaba for all messages about live tracking to be deleted, however he sets out in the report that the messages were preserved and in his evidence to the Tribunal he explains they were downloaded and secured by his colleague, Mr Jan Ruiz, Global investigator. The Claimant highlights that the actions taken by the TCRA with no formal written authority and the destruction of comms data requests could be considered to be also highly irregular if not an illegal request.

66. Following receipt of the investigation report from the Claimant, Mr Rogers produced a memo dated 2 October 2017 and sent this to the Claimant for comment. Within this memo, he records that having agreed matters "*with*

Compliance, CEO and Chairman of the Compliance and Business Ethics [committee]……A legal opinion would be obtained setting forth the legal duties of Millicom and Tigo TZ re the underlying facts".

67. On 21 September 2017 the Claimant sent Mr Rogers and Ms Viglucci a copy of a letter from the UK Bar Council and UK law Society. The Bar Council letter made reference to the International Covenant on Civil and political rights, African charter on human and people's rights and basic principles on the role of lawyers. The letter urged an independent and effective investigation of facts and circumstances of the shooting of Mr Lissu. The Claimant accepted the letter was not concerned with breach of human rights by illegally using or providing electronic surveillance methods, nor was it about any failing on the Millicom groups part potentially leading to a miscarriage of justice.

68. When the Claimant sent the letter to Ms Viglucci and Mr Rogers, he simply stated this is in local circulation in business circles, not general news. The Claimant did not suggest that Millicom needed to report anything or that Millicom had breached anything.

69. The Claimant states that in his conversation with Mr Rogers earlier in September, he also expressed his serious concern that international legal advice on reporting the matter to appropriate authorities was needed. Reference to this does not feature in the Claimant's investigation report. We find had he mentioned this to Mr Rogers earlier in September it would have been referenced in his report or featured in contemporaneous documentation, which it does not. We find that the Claimant did not disclose this information.

70. Reference to the UN or MIC Tanzania contributing to an act of terrorism and an attempted political assassination are not referenced within the investigation report or in any contemporaneous documentation. Based on the contemporaneous documentation at the time, we conclude that this was not information that the Claimant disclosed at the time.

71. Reference to the lack of authorisation from Millicom Board of Directors is not referenced within the investigation report or in any contemporaneous documentation. Based on the contemporaneous documentation at the time, we conclude that this was not information that the Claimant disclosed at the time.

PID 1 (f) – CTIO being in relationship with PEP

72. With regard to the CTIO being in a relationship with a politically exposed person 'PEP', again this does not feature in the Claimant's investigation report.

73. In his witness statement, the Claimant sets out that the manager who was having an extra-marital affair was Mr Albou, which he revealed to the Claimant during the investigation. The alleged affair was with Ms Lorna Mashiba. Ms Mashiba's father is Benedict Mashiba, formerly Tanzania's ambassador to Malawi and Head of President Magafuli's Tanzanian Secret Service ("TSS"). Accordingly, both Mr Mashiba and Ms Mashiba were Politically Exposed Persons ("PEPs"). Mr Albou had never revealed the conflict of interest previously. Ms Mashiba had been in Mr Albou's house when he was giving instructions to the engineers to comply with the TCRA request for live-tracking from Mr Kaliba, and Mr Albou accepted that she may have overheard those conversations. The Claimant warned Mr Albou he would tell Ms Viglucci and Mr Rogers of this.

74. The Claimant's evidence is that he had disclosed the full details of this relationship to both Ms Viglucci and Mr Rogers. Mr Rogers could not recall whether this was mentioned to him and Ms Viglucci recalls the Claimant telling her that the manager was in a personal relationship with someone who may have presented a conflict of interest.

75. On 13 September 2017, in a WhatsApp exchange between the Claimant and Ms Viglucci, the Claimant asks Ms Viglucci to call him, as Mr Albou had *"just reported a personal issue to me this morning that impacts on his security and the investigation – can brief you".*

76. We accept that call took place as the next day in WhatsApp messages, Ms Viglucci asks for the last name of Mr Albou's partner. The Claimant responds by advising the last name is Mashiba and that she is a Director of Mashiba Law Group. There is no reference in the messages to Ms Mashiba's father or concern around PEP's.

77. It is clear that some information was provided to Ms Viglucci pertaining to the identity of Ms Mashiba, however, this does not necessarily indicate that Ms Viglucci was made aware of any concerns relating to Mr Albou being in a relationship with a PEP. The fact that the Claimant states that the information impacts on Mr Albou's security and the investigation would tend to suggest that some information is likely to have been provided. Ultimately, however, we are not satisfied that this would have been details about any PEP association.

PID 1 (g) – 4 Senior managers giving untruthful accounts

78. In his investigation report of 26 September 2017, the Claimant states there was a lack of credibility and recall in the accounts of Mr Shija and Mr Karikari.

79. In an email dated 26 September 2017 and a table sent on 27 September 2017 to Ms Viglucci and Mr Rogers, the Claimant states the following about the plausibility of the accounts given by the four senior managers he had interviewed:

i) Whilst Mr Albou gave a concise account, parts of this relating to knowledge of the CDR and live tracking were for the same individual, were not plausible;
ii) Mr Karikari appeared to be deliberately buying time and had not given a full or accurate account;
iii) Ms Balwire gave a plausible account but "may know more";
iv) Mr Shija's account was not plausible and had *"large gaps in any explanation and not willing to expand"*.

80. Following the investigation of the matter, Mr Rogers arranged for the 4 senior managers to receive disciplinary warnings for their conduct in providing authorities with data without following proper processes. The warnings were agreed with the Maurico Ramos (Chief Executive Officer, Millicom Group) and the Millicom Group Board of Directors.

81. We conclude that it is clear from the contemporaneous documentary evidence that the Claimant conveyed concerns to Ms Viglucci and Mr Rogers about the completeness and veracity of the answers he had been given by all four managers. The subsequent disciplinary action taken against all 4 managers would also support tend to support that conclusion.

PID 1 (h) – other employees raising concerns

82. Finally, with regard to the Claimant disclosing other employees had raised concerns about the matter, the Claimant provided no detail around this regarding who raised concerns or what the concerns were. Ms Viglucci denies being made aware of other employees raising concerns. Mr Rogers's evidence is that the Claimant may have mentioned other employees raising concerns about the matter in their meeting on 20 September 2017 although he recalls no detail. Mr Roger's states he would not have been surprised by any such comments "*as it was a serious matter about which it was appropriate for them to be concerned and to raise concerns with Millicom so they could be investigated"*.

83. We find the Claimant may have mentioned other employees raising concerns, however, it is likely that this was a general comment. The fact that he has been unable to clarify any details or provide any detail in relation to such comments would suggest that is also what his comments were limited to at the time to Mr Rogers.

Protected disclosure 2 – Seacliffe Incident

84. On 13 March 2018, an incident occurred at the Seacliff Hotel in Tanzania when Mr Kerion Barnes (Africa Corporate Security & Global Integrated Service

Manager) along with the Claimant, Ms Balwire and Anna Tesha (Compliance Officer, MIC Tanzania) were approached by Tanzanian immigration officials and Mr Barnes was questioned and harassed as to his immigration documents.

85. The Claimant's pleaded case is that on or around 16 March 2018, he provided information to Ms Viglucci and Mr Rogers, concerning the Seacliff incident, during which he states, he had been verbally threatened by Ms Balwire at the Seacliff hotel and government officials then harassed him and his colleague. At the time Ms Balwire was was being interviewed in relation to a bribery/corruption allegation in relation to a borehole tender. The Claimant believed she or her colleagues had tipped off Immigration officials of the Tanzanian Government as to their location, who then came to harass the Claimant and his colleague.

86. On the same day of the incident, Ms Balwire, reported what had occurred in an email exchange to Ms Viglucci and Mr Rogers.

87. Ms Viglucci responded to Ms Balwire's email on the same day, thanking her for the update and commending the team on a "*very good job keeping [their] cool in a highly difficult situation"*. Ms Viglucci advised that she had been in touch with the Claimant and Mr Barnes and would continue to be.

88. The Claimant also sent an email to Ms Viglucci on the same day in relation to the incident and provided an update on the security of himself and Mr Barnes. Mr Dabbour, Ms Samren and Mr Rogers were also copied into the email. Within this email, the Claimant states that "*there are so many allegations/rumours of inappropriate conduct at all levels here – GM, GM-1 and below that need to be separated out into facts / intelligence / malicious rumours or truth"*. He goes on to state, *"We cannot exclude Sylvia as part of the issues over here either…….We cannot rule out the GM or his directs reports or our own security / fleet drivers who may be passing information - directly or indirectly……. We have major issues with information security and IT local operations that may mean our emails could be monitored - ……we cannot rule out anything - it's that simple".*

89. The Claimant excluded Ms Balwire, Ms Tesha and Mr Barnes from the email chain, stating *"I have left Sylvia off this email chain - for reasons of security - and Anna due to the fact her emails could be monitored internally - and Kerion as he is a contractor".* Despite excluding Ms Balwire and others from the email chain, the Claimant does not say anything in the email about Ms Balwire allegedly verbally threatening him or saying there would be "*consequences".*

90. Within the email, the Claimant expressly connects the Seacliff Incident to other investigations occurring in the country "*in November or the ones we are here for now*". One of those being the borehole tender investigation involving Ms Balwire. At the time, the Claimant does not connect the Seacliff Incident with the Tundu Lissu matter from September 2017.

91. The Claimant sets out that he believes, *"There is a clear objective to undermine the compliance / investigations process and those that investigate in TZ - with Kerion as the main target".*

92. The Respondents accept that there were real security concerns relating to Millicom employees working in Tanzania following this incident. As a direct result, steps were taken to ensure that the Claimant did not visit Tanzania for many months after the incident.

93. Mr Rogers responds to the Claimant's email on the same day, stating *"Let's have a call tomorrow with this group once Michael is safely out of the country".*

94. On 14 March 2018, a conference call takes place between the Claimant, Ms Samren, Mr Dabbour, Mr Rogers and Ms Viglucci. Following this, on 15 March 2018, the Claimant sent an email with various action points arising from the conference call, including that Ms Viglucci and Mr Rogers were going to assign external legal resource with investigation capability and the Claimant was tasked with recording all information captured from his visit.

95. Ms Samren replied to the Claimant to say her understanding of the Zantel inspection "*so far is that it is one of the more routine ones targeting expats more*

generally but I do not have all the facts of course". The Claimant responded "you could be right here as apparently other organisations have had some immigration visits this week two (from local sources). It is evident from this comment that at the time, the Claimant was not sure if the incident was just targeting Millicom employees, as other places were having visits at the same time.

96. Mr Rogers confirmed that the plan was to use a law firm they knew well with extensive investigation experience and partner them with a local provider that knew Tanzania extremely well. Sidley Austin were later instructed, and we will discuss this matter further, when we consider Protected disclosure 3.

97. On16 March 2018, in a WhatsApp exchange with Ms Viglucci, the Claimant mentions that he had concerns regarding Ms Balwire. Ms Viglucci responds stating "*She also helped you with those immigration officials though - thoughts on that?"* he replied *"Yes - that is odd in some ways…".* This is the extent of any contemporaneous detail the Claimant mentions relating to his concerns about Ms Balwire in respect of this incident.

98. On 16 March 2018, the Claimant sends an email to Mr Dabbour and Ms Samren copying in Julian Adkins (Chief Financial Officer, Africa) regarding the Seacliff Incident, stating that he had suggested to Ms Viglucci and Mr Rogers that a "*formal complaint should be drafted"* to the Government. He makes various recommendations as to what should be included in the letter of complaint. The Claimant's pleaded case is that it is this email which *"is evidence"* that he made the alleged protected disclosure to Ms Viglucci and Mr Rogers.

99. It is accepted that a verbal conversation took place between Ms Viglucci, Mr Rogers and the Claimant on 16 March. The Claimant does not set out the detail of that conversation, however, he relies on the contemporaneous email of 16 March as an accurate account of what was discussed. Neither Mr Rogers or Ms Viglucci are able to recollect the details, however, it is accepted that a

conversation took place and that the email of 16 March to Mr Dabbour and others is likely an accurate account of the conversation.

100. It is the call with Ms Viglucci and Mr Rogers referred to in the email of 16 March 2018 and in particular the suggestion of making a complaint that is relied upon by the Claimant as being a protected disclosure.

101. The Claimant was asked about what words specifically in the email of 16 March 2018, tended to show a breach of legal obligation or criminal offence. The Claimant pointed firstly to the words "*Immigration labour officials, they claimed, conduct inspection in a public place that had caused severe embarrassment and distress to Millicom employees".* His oral evidence to the Tribunal was the targeted inspection, in collusion with Millicom employees, who were deliberately trying to undermine investigations that were due to take place that day was a criminal offence and obstruction of justice. The Claimant went on to state that being prevented from doing his job as a Global Investigator to uncover fraud and corruption was a miscarriage of justice.

102. Secondly, the Claimant pointed to the words, "*The actions by the individuals were designed to intimidate and cause harassment"* as evidence of him reporting a breach of a legal obligation and a breach of health and safety rights.

103. Ms Samren responded to the Claimant's email, agreeing that a letter *may* be a good idea, but that she wanted to ensure that it was worded *"very carefully and slightly differently*" from what the Claimant had suggested. She stated that she wanted to be "*certain"* that any employees were acting illegally before making that allegation in a letter of complaint to the Government saying that Millicom's own employees had acted illegally.

104. Ms Samren concluded by suggesting that rather than a letter, they should "*start a step before this"* and have a meeting to engage on procedures and raise concerns in relation to recent incidents. The Claimant responds to Ms Samren, stating that he "*fully understood the approach"*.

105. The Claimant's evidence is that that during the call with Ms Viglucci and Mr Rogers on around 16 March 2018 he referred to Ms Balwire having verbally threatened him. In his oral evidence he suggested that it was on 13 March 2018 that he explained to Ms Viglucci "*how aggressive"* Ms Balwire was and how "*she blamed" the* Claimant regarding the warning letters that were issued to the 4 managers following the matters referred to in protected disclosure 1. Neither Ms Viglucci or Mr Rogers recall the Claimant mentioning anything to them about Ms Balwire threatening him.

106. There is no reference in any of the contemporaneous documents to the Claimant suggesting that he was verbally threatened by Ms Balwire. This is despite the Claimant expressing that he had concerns regarding Ms Balwire in a WhatsApp exchange with Ms Viglucci on 16 March. When Ms Viglucci responded stating: "*She also helped you with those immigration officials though - thoughts on that?"* he replied *"Yes - that is odd in some ways…".* This would have been the perfect opportunity for the Claimant to detail why he had those concerns i.e. that she had threatened him as he alleges during the Seacliff incident.

107. The Claimant clearly had concerns that Ms Balwire might have been involved in tipping off the immigration officials, hence he excluded her from one of his emails. However, based on the contemporaneous documents we find that his recollection about Ms Balwire threatening him and the referencing of warning letters is not an accurate recollection of events.

108. In respect of reasonable belief, the Claimant's evidence was that he believed (and still does believe) that there was collusion between certain MIC Tanzania employees and Tanzanian Government officials, that this collusion was intended to prevent the effective investigation of corruption and bribery and to intimidate and harass employees like himself and Mr Barnes, and that this collusion would lead to a miscarriage of justice and the commission of criminal offences (if it had not done so already). With regard to public interest, he believed that if he failed to raise these concerns, he would be failing to

safeguard the health and safety of his colleagues and the public, and to protect the reputation of Millicom.

Protected disclosure 3 – Sidley Austin

109. During the course of conference call meetings by telephone in early April 2018, including in a meeting on 12 April 2018, the Claimant alleges that he disclosed the same information that he had previously disclosed to Ms Vigluucci and Mr Rogers in September 2017 and March 2018 in respect of alleged PD1 and PD2. The Claimant also states that he disclosed further information to Sidley Austin regarding the legal and regulatory teams in MIC Tanzania, being dangerous and corrupt.

110. Sidley Austin were instructed to look into various matters concerning MIC Tanzania, overseen by Ms Viglucci and Mr Rogers. They conducted an investigation, which covered various aspects the Claimant had raised, as a result it necessarily involved discussing matters with the Claimant and other employees. Both Ms Viglucci and Mr Rogers deny being made aware of the detail of the Claimant's conversations with Sidley Austin.

111. Due to the Respondents' asserting privilege over the investigation, we were not made aware of what the Claimant told Sidley Austin in April 2018. Sidley Austin were not the Claimant's employer; they were an external law firm instructed to conduct specified investigations by the Respondents'.

Protected disclosure 4 – Senior Management concerns

112. The Claimant's case is that he repeatedly raised with Ms Viglucci his grave concerns about the lack of integrity and serious wrongdoing on the part of senior managers, and in the legal, regulatory and HR departments, of MIC Tanzania.

113. The Respondents admit many of the disclosures and where this is the case we will simply set out the relevant agreed facts. We will provide further comment on those areas which are disputed and make relevant findings of fact.

Disclosures relating to Mr Karikari

114. Firstly, it is admitted that the Claimant disclosed to Ms Viglucci, Mr Karikari's undisclosed affair with a supplier whose invoices he was authorising. The Claimant's case is that the relationship was "*in breach of company policy regarding the reporting and management of potential conflicts of interest and demonstrated a lack of integrity"*

115. On 21 September 2017, the Claimant emailed Ms Viglucci, copying in Mr Rogers to say that the call logs of Mr Karikari had thrown up some "*unusual activity with a female friend"* whose company was a supplier of the Millicom Group. This was in relation to Ms Helen Kiwia. The Claimant further stated that he was "*not too sure on the actual services that [had] been provided"*.

116. On 26 September 2017, the Claimant emailed Mr Rogers, copying in Ms Viglucci again referring to the call logs between Mr Karikari and Ms Kiwia. The Claimant indicated that "*it is evident from the logs that there is some form of relationship/close relationship between [Mr Karikari] and Hellen Kiwia"*. The Claimant concludes his email by saying "*it would be expected that any close relationship… would have been declared, whether this has been done is yet to be confirmed".*

117. In his oral evidence to the Tribunal the Claimant accepted, there was no evidence that the relationship had led to any fraud or anything else, nor did he believe at the time that fraud had occurred on the basis of that information. Further the Claimant provided no evidence as to a belief that such a failure could tend to show a relevant failure, rather than a breach of policy. In light of this we find there was no subjective or reasonable belief in a relevant failure at the time of the alleged disclosure.

118. The allegations that Simon Karikari had sexual relations with staff members and that a prostitute had a photo of him and another member of staff naked at a sex party are admitted save for Ms Viglucci denying only that she was made aware of "multiple" affairs as she recalls only one alleged relationship".

119. On 27 September 2017, the Claimant emailed Mr Dabbour, copying in Ms Viglucci and Mr Rogers in relation to Mr Karikari saying that "*we have not fully"* obtained the facts and later refers to "*possible relationship(s) with a junior employee(s)"*.

120. The same day Mr Dabbour responded to "*stress*" that Tanzania was a "*nasty environment where gossiping, personal vendettas and sabotaging [were] very common*" and so they had to be "*very careful"* with such allegations. Ms Viglucci cautioned that they had to be careful with the different allegations as they "*had not had a chance to ascertain how accurate they are"*.

121. In his evidence to the Tribunal, the Claimant accepted that he would have to be very careful with any information in any operation as to whether it was accurate, as there is gossiping and vendettas in all countries and that it would be sensible to properly interrogate any allegation to find out what proof there is before assuming it would likely be true.

122. Mr Dabbour, Mr Rogers and the Claimant then had a call to discuss the matter. Subsequently, the Claimant updated Ms Viglucci that Mr Dabbour was responsible and aware of possible overriding issues, and that Mr Rogers had covered all points. The Claimant accepted in his oral evidence that Mr Rogers was "*absolutely"* responsive. Following this, Mr Dabbour had a call with Mr Karikari who informed Mr Dabbour "*there was really nothing behind"* it.

123. The Claimant claims that in November 2017, when he was conducting an investigation, Mr Black, the Procurement Director, told him that Mr Karikari was involved in multiple sexual relationships with employees and that a prostitute was in possession of a photograph showing Mr Karikari and another MIC Tanzania employee naked with her at a sex party.

124. Going back to issues with the reliability of memory recall, we turn to the contemporaneous documentary evidence, to assist in our findings. We find the documentary evidence shows the Claimant making Ms Viglucci aware of Mr Karikari allegedly having a sexual relationship with one employee.

Disclosures relating to Mr Albou, CTIO

125. With regard to Jerome Albou's extra-marital affair with a PEP, we repeat the findings in paragraphs 72-77 of our judgment.

Disclosures relating to CDR's

126. The Claimant's evidence in respect of this disclosure of information is set out in his witness statement where he states he disclosed to Ms Viglucci and Mr Rogers, "*all employees could access the CDRs and that, as there were no access logs, it was easy and commonplace for customer data to be shared with others outside the organisation*."

127. The Claimant's evidence is that he sent an email On 21 September 2017, to Mr Rogers and Ms Viglucci setting out the concerns at paragraph 126 above. At the end of the email of 21 September 2017, the Claimant informs Mr Rogers and Ms Viglucci that:
"there is evidence that CDRS are being sent to TCRA and DCEA WITHOUT any written requests
a) Either with incoming emails without any attached formal request
b) Or No email just a phone call followed by an outgoing CDR sent suggesting a verbal request.
Possible Conclusion:
The legal team are processing CDRs and forwarding on to at least two agencies without any formal requests in place which also impact on how any figures are reported to HQ as there is no visibility."

128. We find the email of 21 September does not include reference to the alleged disclosure of information set out in paragraph 126 above.

129. The Respondents admit there was disclosure of customer data without authority to the TCRA and others, with systematic security failures around customer data, and false reports of governmental access were making their way into reports but only in respect of emails and WhatsApps in September 2017 and not in March 2018. For clarity, the emails and messages in March 2018 relate to the Claimant's communications following the Seacliff incident set out at paragraphs 84 to 88 above.

130. We considered whether, in his March 2018 messages, the Claimant was linking the intimidation of foreign investigators at the Seacliff Hotel to the investigation into the unauthorised provision of Mr Lissu's data to the TCRA which had led to warning letters to Ms Balwire and others. We find there is nothing in the content of his emails and messages in March 2018, which suggests any link with those 2 incidents. We found earlier that the Claimant was mistaken with regard to his evidence about Ms Balwire being angry about the Warning letter she had received. In the circumstances, we find at the time of these alleged disclosures the Claimant did not hold a belief that these matters were linked. This has been something that he has retrospectively linked.

Disclosures relating to Ms Doris Luvanda.

131. The Claimant's pleaded case is that he disclosed to Ms Viglucci by telephone on 13 November that Doris Luvanda (Deputy HR Director, MIC Tanzania) had sent false allegations of sexual harassment about him and Mr Ruiz.

132. In November 2017, the Claimant was in Tanzania in company with Mr Ruiz conducting multiple investigations. Ms Luvanda was one of the individuals who was interviewed at that time.

133. On 13 November 2017, Ms Luvanda raised concerns in relation to the Claimant, including that she was sexually harassed.

134. At 5:42 am, the Claimant forwarded the allegation to Mr Rogers asking for support and proper action.

135. At 5:53 am, the Claimant sent a further email to Mr Rogers and Ms Viglucci saying he was being deliberately undermined and at risk of false allegations that "*could impact"* on his safety.

136. At 5:58 am, the Claimant requested that all issues that "*may impact*" on health and safety or security of the Claimant and Mr Barnes be discussed with Mr Garry Bridgwater (Global Health, Safety & Environment Manager, Millicom Group), so to have any potential evacuation plan if needed. The Claimant stated that *"Doris could easily go the police and lay a claim that would impact on my safety".*

137. On the same day Ms Viglucci contacted Mr Bridgwater asking him to set up a security and potential evacuation plan in light of concerns around the Claimant's safety.

138. The Claimant's evidence to the Tribunal is that "*If she had spread these allegations of sexual harassment against me and Mr Ruiz more widely, this could have endangered our safety"*. Accordingly, we find his evidence is not that he believed that the information he disclosed tended to show that it was likely that health and safety would be endangered rather that risk would arise should Ms Luvanda spread the allegations, which he was not suggesting she had done. In light of this, we conclude even if he did hold a subjective belief, we find that belief was not reasonable.

139. Ms Luvanda's allegation was investigated and ultimately her complaint was not upheld as it transpired that Ms Luvanda was concerned about perceived discriminatory behaviour on the grounds of her sex, rather than sexual harassment.

Managers refusals to give access to mobile phones

140. The disclosure by the Claimant to Ms Viglucci that managers had refused to give access to Sidley Austin during the investigation is not admitted.

141. The Claimant alleges that on 9 April 2018, he disclosed to Ms Viglucci face to face regarding the Sidley Austin investigation that when members of Sidley Austin had interviewed Senior Managers, they refused to provide access to their work communications and company paid mobile phones.

142. The Claimant states that at the end of April or beginning of May he repeated the information to Ms Viglucci and drew her attention to the guidance on employee communications evidence capture and preservation for Foreign Corrupt Practices Act ("FCPA") compliance and DoJ guidance.

143. Ms Viglucci's evidence to the Tribunal was that she "does not recall" the Claimant telling her that information. Ms Viglucci accepts that she knew of it, however this was from Sidley Austin directly, although she accepts that the Claimant followed-up by email on 16 May 2018 with Department of Justice 'DoJ' guidance on employee communications capture and preservation.

144. The Claimant raised these matters for the first time in his further and better particulars in 2020.

145. In his witness statement of August 2024, the Claimant has included additional details regarding this disclosure, including that one of the managers had been to see the IT department before handing over their laptop, evidence would most likely be destroyed given this and that Mr Karikari had been the most vocal.

146. None of this detail features in the Claimant's further and better particulars nor do they feature anywhere else in the contemporaneous evidence. in light of

this we are not be satisfied that the Claimant said or held any subjective belief in any of these things that he raised in his witness statement.

147. On 16 May 2018, the Claimant sent an email to Mr Rogers and Ms Viglucci (copying in various individuals) with the subject 'use of personal mobile devices and data examination'. The Claimant states the following *"Bolette Kindly shared this PDF doc with me and the new FCPA Corporate Enforcement Policy notes contained therein. I have pulled this paragraph below which is a subject close to my heart especially from recent Tanzania matters.*

The cost of this is may be minimal compared to the fact we cannot recover or examine personal phones if we wished to do so or have access to the device without the permission of the employee and the risk that this causes us".

148. The Claimant also asked a question around whether it would be *"wise to make sure that GM and GM-1 s only use Company work provided Tigo Network phones that allows data examination and retrieval by Global Compliance /Investigations .... this could also be extended to key roles? procurement / commercial/ regulatory / legal and HR teams too?"* and asked if it was worthy of a discussion.

149. The Claimant's written evidence was that the purpose of sending this email was "*drawing their attention to the risks of Millicom and its staff facing FCPA/DoJ penalties for failing to comply with the FCPA's guidelines regarding the retention and storage of all business commnications [sic] and transactions". When cross-examined about his understanding of the FCPA guidelines,* he admitted he was unaware of what the actual FCPA guidelines meant.

150. In summary the Foreign Corrupt Practices Act 'FCPA' Guidelines set out that if a company has complied with the guidelines, and there is a breach, then there is a presumption, absent aggravating circumstances that they will not be prosecuted, and any penalties would be reduced if there was a violation. The Claimant accepted in evidence that a breach of the FCPA Guidelines would not lead to penalties rather it could reduce penalties if there was a violation. Given the Claimant's lack of understanding of the document he had sent on, and his

concession that it does not by itself impose penalties, we find he could not reasonably have believed at the time that sending that article showed a breach of legal obligation had occurred or was likely to occur.

151. In her evidence, Ms Viglucci confirmed that she understood the reference in the Claimant's email of 16 May 2018, to be to the refusal by Tanzanian managers to hand over their phones, because that was a matter that "he [the Claimant] had witnessed or reported". Whilst we find that the Claimant was clearly aware of managers refusing to hand over their phones to Sidley Austin, this does not equate to the Claimant informing Ms Viglucci of this fact. That said, Ms Viglucci appears to be uncertain in her evidence as to whether this fact was disclosed to her by the Claimant. The fact that Ms Viglucci and the Claimant spoke regularly about matters arising out of investigations, on balance we find that that it is likely the Claimant did make her aware of this fact.

Disclosures relating to HR failures

152. It is admitted the Claimant disclosed HR failures at Millicom in Tanzania, relating to sickness reporting, work permits and performance management.

153. On 18 July 2018, Ms Viglucci followed up a query relating to an individual with whom there were disciplinary and performance concerns. Ms Viglucci queried with the Claimant, whether the individual had yet been terminated. In his responses, the Claimant explained that:

> "*permits are now in an awful state – even they have messed up Esther's one – also others refused which is a serious concern…"* .
> **"***If think that they [sic] and especially Eva wish to wait for the report as they do not have all the performance issues documented - documented - the Tigi TZ HR is totally incompetent in many areas including sickness reporting / permit processing / performance management and more - as both [] and [] are not dealing with the issues - Eva is very frustrated with the whole TZ piece - bennet not providing information or answers and [] ignoring communications etc - she is realising her task as HR Africa is so difficult –"*

154. With regard to Ms Palsgraaf, it was accepted that she was not actually entering the country until 21 July 2018, that was 3 days after the Claimant's email setting out his concerns. We find the belief therefore could not have been that Ms Palsgraaf had been working in breach of work permits. There is no evidence to suggest that she would have entered the country and worked in breach of work permits nor did the Claimant set this out as his reasonable belief.

Protected disclosure 5 – Security concerns

155. On 29 October 2018, the Claimant alleges that he disclosed to Lynne Dorward (Regulatory Director, Africa), Mr Karikari, Mr Dabbour, Ms Viglucci, Mr Rogers, Ms Samren, Eva Rutkowska (HR lead for UK and Africa) and Ms Tesha that he had concerns about security and safety arrangements in Tanzania and that Millicom had never written formally to the relevant authorities about the Seacliff incident in March 2018 when he and his colleague Kerion Barnes had been harassed and threatened.

156. On 29 October 2018, Mr Karikari wrote an email to various individuals and copied in the Claimant. Mr Karikari explained that there had been an impromptu labour inspection visit at the MIC Tanzania premises. He states;

"I have been made aware that three TZ labour officials have entered Tigo HQ at 1100 hours today and are asking for information on the following:
Recent disciplinary cases in Tigo TZ (I have been involved in these)
Making comments about Kerion Barnes and alleged mistreatment and retaliation against Local TZ employees. This is a serious matter that we need to understand from a global perspective".

157. Ms Dorward replied to say that there was *"always something new"* and *"let us hope that this is the end of it".*

158. The Claimant replied to Ms Dorward by email on the same day, also sending his email to Mr Karikari, Mr Rogers, Mr Dabbour, Ms Samren, Mr Frechette, Ms

Rutkowska and Ms Tesha. In his email the Claimant outlined that this may be part of a concerted effort by MIC Tanzania employees to use government officials to impede investigations, make it more difficult for foreign investigators, like the Claimant, or Mr Barnes either by threatening their safety or by bringing legal troubles around immigration and work permits. In particular, he highlighted this could impede giving evidence in a CMA Court the following month, leading to the Claimant giving video evidence only.

159. The words the Claimant alleges tend to show, in his belief, an 'obstruction of justice' and a 'criminal offence' are the following: *"I believe this incident/matter is all part of a concerted effort to victimise Kerion by ex-employees and working possibly in collusion with current employees to prevent him (and possibly myself to do our job)."*

160. As to the criminal offence, the Claimant said he thought the *"harassment or the intended harassment of people like Mr Barnes to prevent him from going legally into a country to carry out corporate investigations on behalf of his company [was] a criminal offence."*

161. We find that the Claimant's subjective belief was not reasonable. At this stage neither Mr Barnes nor the Claimant were in Tanzania, steps had been taken to ensure the Claimant and Mr Barnes' health and safety was not going to be endangered and they were scheduled to be giving evidence by video link the next month.

162. As to the 'obstruction of justice', the Claimant explained that his belief was that there was a "potential obstruction of justice" because, he and Mr Barnes could not give evidence in the country. We conclude that it was not reasonable to believe that giving evidence remotely in accordance with the law was likely to lead to a miscarriage of justice.

163. The Claimant accepted that he "did not know" whether there was a legal obligation to raise these issues formally as a complaint at a higher level with

the Tanzanian Authorities, but his belief was that it was a "corporate responsibility" obligation. The Claimant agreed in cross-examination that there was not a legal obligation to complain to the government about the government's own actions. In the circumstances, we conclude that there could have been no subjective or reasonable belief that this information tended to show a relevant failure.

Protected disclosure 6 – Grievance

164. On 21 March 2019, the Claimant submitted a grievance to Mr Salvador Escalon (Executive Vice President, Chief Legal and Compliance Officer) alleging that he had been subjected to detriments as a result of previous protected whistleblowing disclosures.

165. The Claimant relies on the following as protected disclosures to Mr Escalon:

i) Ms Viglucci's retaliation against the Claimant for challenging her performance, her 2018 performance review of him, and her failure to investigate serious matters of compliance;

ii) Ms Viglucci and Mr Rogers withholding from the Claimant and others relevant information necessary for their investigations, thus exposing employees to safety and security risks;

iii) Ms Viglucci and Mr Rogers failing to properly oversee or respond to the Claimant's investigation;

iv) That the Claimant was being subjected to detriment because of his protected disclosures;

v) That the Claimant had been accused of a "lack of confidentiality" because of his protected disclosures, engaging the Public Interest Disclosure Act.

166. In respect of (i), (ii) and (iii) the Claimant was not clear in his evidence of what relevant failure the information tended to show nor is there sufficient detail to establish a reasonable belief that this tended to show one. This information primarily concerned his own performance and as such we also find there is no evidence that the Claimant reasonably believed that this disclosure of information was made in the public interest. We conclude these disclosures were not protected disclosures.

167. With regard to (iv) and (v), again the Claimant was not clear of what relevant failure the information tended to show nor is there sufficient detail to establish a reasonable belief that this tended to show one. We also agree with the Respondent that these are entirely personal matters which were not made in the reasonable belief they were in the public interest. In his witness statement, the Claimant refers to failure to deal with corruption, collusion and illegality and deliberate cover up of crimes and misconduct by the company in not investigating. It is unclear which parts of the email the Claimant says tends to show this. Even if he did have a subjective belief of these things, we find in light of the actual information disclosed this belief was not reasonable. We conclude these disclosures were not protected disclosures.

168. On 8 April 2019, the Claimant sent a further email to Mr Escalon, which particularised his grievance against Mr Rogers and Ms Viglucci. It set out issues regarding his performance assessment and the transfer of his line management to Mr Dabbour. Again, the Claimant's evidence was unclear as to what relevant failure the information tended to show nor is there sufficient detail to establish a reasonable belief that this tended to show one. We also agree with the Respondent that these are entirely personal matters which were not made in the reasonable belief they were in the public interest. We conclude these disclosures were not protected disclosures.

169. On 29 April 2019, the Claimant sent an email to Ms Susy Bobenrieth (Executive Vice President, Chief HR Officer at the Millicom Group) attaching additional emails he considered may be relevant to his grievance. The emails the Claimant attached related to his performance review and role including change

of line management and move from compliance function. The Claimant's evidence was unclear as to what relevant failure the information tended to show nor is there sufficient detail to establish a reasonable belief that this tended to show one. We also agree with the Respondent that these are entirely personal matters which were not made in the reasonable belief they were in the public interest. We conclude these disclosures were not protected disclosures.

170. Neither Mr Escalon or Ms Susy Bobenreith attended the final hearing as witnesses, therefore we did not have the benefit of their evidence for the purposes of this judgment. That said, the Respondents accept that the information as alleged was disclosed, the dispute is whether this was a protected disclosure.

171. The First Respondent subsequently instructed Mr Niran de Silva, barrister at Littleton Chambers to hear and investigate the Claimant's grievance. The scope of the investigation was agreed between the Claimant and Mr de Silva and various individuals including Ms Viglucci and Mr Rogers were interviewed as part of the investigation.

172. The Claimant was interviewed twice as part of the grievance. In his second interview on 10 September 2019, the Claimant explained that he would provide a further statement and information to Mr De Silva. This additional information was not provided by the Claimant at any point and as a result Mr de Silva was unable to conclude the grievance investigation.

Detriment 1 – Challenge by Ms Viglucci regarding confidentiality (13 April 2018)

173. The Claimant's evidence is that on 13 April 2018 he was called into a meeting with Ms Viglucci, having made protected disclosure 3 to Sidley Austin the previous day. He describes Ms Viglucci being in the office with Mr Rodgers and her being "red faced and agitated". The Claimant contends that at the meeting with him a short time later, Ms Viglucci asked him who he had been "speaking to recently".

174. The Claimant's account is corroborated by Mr Ruiz corroborates, to the extent that he describes Ms Viglucci as having a heated discussion with Mr Rodgers in his office, then 'storming out' and calling the Claimant for a meeting. Mr Ruiz states that Ms Viglucci took the Claimant around the corner *"out of eyesight and earshot"* so he did not see or hear what was discussed. Mr Ruiz states that the Claimant later told him that Ms Viglucci had *"tongue lashed"* him and had accused him of *"leaking information".* Mr Ruiz provides no detail in relation to what information the Claimant had been accused of leaking and it is clear from his evidence that at the time both he and the Claimant were speculating about why Ms Viglucci was angry and they "thought" this related to the Claimant telling Sidley Austin about the Tundu Lissu matter.

175. The Claimant raises issues about this meeting for the first time with Mr de Silva as part of his grievance almost a year later in 2019.

176. Both Mr Rodgers and Ms Viglucci have no recollection of any meeting in Mr Rodgers office, or Ms Viglucci being red faced or agitated in any meeting. Ms Viglucci also has no recollection of any meeting with the Claimant on 13 April, although Ms Viglucci points to what she describes as a concerning email received on this day regarding a Ghana investigation, which she states she is likely to have spoken to the Claimant about either that day or the next day.

177. Whilst Ms Viglucci cannot recall the specifics of the conversation, she accepts that she had conversations with Mr Clifford throughout their time working together that he needed to be more careful about keeping confidential matters confidential, however, she was firm in her evidence that she never threatened the Claimant "*veiled"* or otherwise in any of her meetings with him.

178. The email Ms Viglucci refers to was sent to her by the Claimant on 13 April at 22:03. The Claimant contends that this therefore could not have been the matter that Ms Viglucci spoke to him about earlier on the day on 13 April. In light of the time stamp on the email, we find that this email was sent after any meeting on 13 April.

179. The Claimant's written evidence and oral evidence to the Tribunal regarding the Ghana investigation was contradictory. In his written evidence he stated that he explained to Ms Viglucci in the meeting on 13 April that he had been speaking to Mr Dabbour about the Ghana case, and briefly told her about it. Ms Viglucci then allegedly responded stating, "*Michael you cannot go off talking [to people] without me knowing; you need to be careful"*. However, in his oral evidence the Claimant did not accept that he had informed Ms Viglucci about the Ghana matter.

180. The Claimant further states in his written evidence that he informed Ms Viglucci that he had *"been speaking to Mr Dabbour and Roshi Mottram (General Manager of Millicom Ghana Limited), as Mr Dabbour (who was in Ghana with Mr Mottram at the time) had asked me for an update on a matter there. There were concerns about the way that the Head of HR had handled a particular case. I had updated Mr Dabbour by email and had included Mr Mottram in copy, as I understood that they were working together on the matter".* The Claimant accepts he did not copy Ms Viglucci into this email and that he later sent a copy of this email.

181. We find the Claimant did speak to Ms Viglucci about the Ghana matter on 13 April, it is clear a conversation took place about the details of the Ghana case and the fact that an email was sent to Mr Dabbour and Mottram to which Ms Viglucci was not copied into. By the Claimant's own account, this discussion was around confidentiality and the email which was later sent to Ms Viglucci did support her concerns. We find whilst the email itself was sent post the conversation, the discussion about the contents of that email and who it was sent to including the fact it wasn't sent to Ms Viglucci were discussed in the meeting. The email then being forwarded to Ms Viglucci later that day supports our findings.

182. Further, if the Claimant was confused about what the discussion related to at the time, it is likely that he would have asked for clarification, something which

he did not do. This also supports the fact that the conversation was about the Ghana investigation and the Claimant was aware of this at the time.

183. During his grievance meeting with Mr de Silva on 29 May 2019, the Claimant explained that he assumed *"that the lack of confidentiality was over this email"* (i.e. the Ghana email, but later he comments it was only when he "*look[ed] back"* at this conversation he considered there was a link to his conversations with Sidley Austin.

184. Ms Viglucci's evidence to the Tribunal was that she had multiple concerns about the email primarily to do with confidentiality and the fact that the Claimant had copied in a third party who was not a Millicom employee or a lawyer (Mr Sarvjit Singh Dillon of Bharti Enterprises). Ms Viglucci describes the email as breaching confidentiality of employees subject of investigations, risked waiving legal privilege and generally compromised the work of the Compliance Unit.

185. We were not provided with copies of the Sidley Austin investigation report as the Respondent asserted legal privilege over the content. Both Mr Rodgers and Ms Viglucci were firm in their evidence that they were not aware of the information discussed between the Claimant and Sidley Austin.

186. The Claimant produced no evidence supporting that fact that he shared details of his discussions with Sidley Austin. It is notable that no such evidence is in the hearing bundle or produced to Mr de Silva as part of the grievance investigation.

187. With regard to Sidley Austin, it is Ms Viglucci and Mr Rodgers who instructed them to review a number of outstanding investigations, including matters that the Claimant was involved with. As accepted by the Claimant, it was Mr Rodgers and Ms Viglucci who asked the Claimant to speak with Sidley Austin and provide them with any information they needed.

188. We conclude it is therefore illogical that in response to the Claimant speaking to Sidley Austin, Ms Viglucci would have any need to ask him who he had been

"speaking to recently" or that he *"needed to be careful"* who he spoke to. For these reasons, we do not find that Ms Viglucci made these comments. Even if we found that she had made these comments, we conclude that these comments were in respect of confidentiality concerns that Ms Viglucci had in respect of the Ghana matter.

189. There is no contemporaneous record of 13 April meeting and the alleged conversation took place a year before the Claimant raised any concerns regarding it with Millicom on 24 April 2019. As such and understandably, we find the Claimant is mistaken in his recollection about the details of the conversation.

190. Further, regarding Ms Viglucci's behaviour after the meeting, the Claimant informs Mr de Silva in September 2019 that subsequent to the meeting on 13 April, on the same day, Ms Viglucci invited him to meet and go to the beach as he was leaving the next day. We find if there had been animosity and anger towards him as the Claimant describes, it is unlikely that Ms Viglucci would have sent him a friendly message suggesting to meet.

Detriment 2 – Ms Viglucci and Mr Rogers stone-walling and ostracising the Claimant – (Mid-April 2018 to March 2019)

191. This detriment is broken down in the list of issues into 4 specific allegations, we number these as 2(a) to (d) and deal with the facts pertaining to each matter individually before going on to draw our cumulative conclusion in respect of this detriment.

192. There were a number of additional matters raised by the Claimant as examples of Ms Viglucci and Mr Rogers stone-walling and ostracising him however, we will only deal with those that are part of the Claimant's pleaded case and list of issues, we do not intend to determine any other miscellaneous matters that the Claimant refers to.

2(a): Ms Viglucci failing to do a mid-year review in August 2018 [R3 & R4]

193. It is not in dispute that Ms Viglucci did not carry out the Claimant's mid-year review. it is also not in dispute that Ms Viglucci did not carry out a mid-year review for any of her line reports.

194. Ms Viglucci's evidence as to why she did not complete such reports was that she was not familiar with the process of mid-year reviews and was very busy with her job. Her evidence was that she kept open an ongoing line of communication with her direct reports regarding their performances.

195. Despite the Claimant claiming that he updated the Talentia system (the appraisal system used to record goals and feedback) in July 2018 he in fact received reminders to complete his mid-year review on 7 August 2018, 22 August 2018 and 27 August 2018.

196. We find performing a mid-year review for the Claimant was not Mr Rogers responsibility, this would be for Ms Viglucci as his line manager. The Claimant's case is that Mr Rogers should have ensured that his mid-year review was completed and whilst he accepts others also did not have their mid-year reviews completed he was the only one downgraded and therefore subjected to a specific detriment.

2(b): Ms Viglucci ignoring C's requests to review the report by Sidley Austin

197. It is not disputed that the Sidley Austin report was privileged and that it was not disclosed to the Claimant. In light of this, our primary focus in relation to this detriment is whether Ms Viglucci ignored the Claimant's request to review the Sidley Austin report.

198. In his oral evidence to the Tribunal, the Claimant accepted that the report by Sidley Austin was privileged and notably in September 2019, he told Mr de Silva "*I haven't seen the Sidley Austin report, and I understand I don't need to"*.

199. Ms Viglucci's evidence was there was no basis for sharing the report and all the others who were interviewed (including others in the investigation team) were not shown a copy. Whilst Ms Viglucci cannot recall the specific conversation, she believes she explained to the Claimant verbally her reasons for not sharing the report. The Claimant accepts this may have been conveyed to him verbally albeit he recalled receiving an email from Ms Viglucci to say that he did not need to see the report and for him to close out the requests on Navex (the Respondents' investigations case management system).

200. In oral evidence, the Claimant sought to clarify his position by saying Ms Viglucci *"did not respond sufficiently enough to explain to [him] the reasons"*, The Claimant's evidence to the Tribunal was that he needed to see the Sidley Austin report to close the cases down on the case management system, Navex.

201. Ms Viglucci's evidence regarding Navex was that *"It is possible to simply close a case on Navex and what we would do especially if we had a privileged report, is make reference to that and who the custodian of that report is without actually including it in Navex. So at my request, he could close it and if he felt uncomfortable, we could have a discussion about it, but then the answer would have been, you know, make reference to me or to Mr Rogers in the closing of the case, that we have the relevant information and the relevant remediation, if there was one in a privileged and confidential document."*

202. We prefer the evidence of Ms Viglucci in relation to this matter and we find that the Claimant did not need to see the report to close the cases down on Navex; the fact he didn't feel comfortable doing so is not sufficient to conclude that he needed to see the report.

203. The Claimant's case is contradictory on the point of Ms Viglucci ignoring his requests to see the Sidley Austin report. There is no evidence to support the

assertion that requests were made to view the report and that these were then ignored by Ms Viglucci. It is a separate matter that the report was not shared by the Respondents' for reasons related to privilege, this was equally applied to all other investigators and even if we found the report not being shared with the Claimant was a detriment, there is nothing to link this action to any protected disclosure. Infact, the evidence points to the contrary and there being a reason related to privilege, which applied equally to all.

2(c): Ms Viglucci not communicating verbally with C Sept-Nov 2018

204. It is not disputed that during September and November 2018, Ms Viglucci sent around 44 emails to the Claimant.

205. In terms of verbal contact, this included the following:

i) On 10 September 2018, the Claimant and Ms Viglucci had a SKYPE call which lasted for 36 minutes and 42 seconds. The Claimant accepted that the calls he had with Ms Viglucci were generally lengthy and would cover discussions about a number of different investigations he was working on and steps that needed to be taken;

ii) On 24 September 2018, the Claimant emailed Ms Viglucci to explain that he would be on annual leave from 28 September until 7 October. Ms Viglucci replied to thank him for the update and said "*let's talk again this week before you take off for the coastal paths".* This suggests that a further verbal conversation took place between 10 and 24 September. When asked in cross-examination, how his case was that Ms Viglucci was not speaking with him because of his protected disclosures in light of her email saying "*let's talk*", the Claimant replied "*I can't account for her behaviour, can I? I can't explain all her behaviour."*

iii) On 9 November 2018, in WhatsApp messages between the Claimant and Ms Viglucci, there is discussion of a presentation and that it would

be better for the Claimant to present during regular calls rather than the next morning.

206. In respect of Ms Viglucci's communication style generally, this was viewed as poor by many of her line reports. The Claimant was aware of this and indeed informed Mr de Silva that "*many people"* viewed Ms Viglucci's communication as poor and that he was aware from reading Ms Rutkowska's interview transcript that Mr Bridgwater also had "*zero connectivity"* with Ms Viglucci. Further, Mr Ruiz's evidence was *that "Ms Viglucci was really difficult to get hold of and didn't reply to emails"*

207. It is clear that during the relevant period, between September and November 2018, the Claimant had a number of verbal conversations with Ms Viglucci, additionally, she was in regular email contact with him and the communications between her and the Claimant appear to be positive and encouraging inclusivity rather than ostracising him or isolating him.

208. We conclude that the factual allegation here is not proven. Even if there was any evidence of Ms Viglucci failing to communicate, considering how Ms Viglucci communicated with her other line reports, there is no evidence to suggest that any such treatment of the Claimant was for different reasons i.e. related to his protected disclosures.

2(d): Ms Viglucci and Mr Rogers failing to respond to C's investigation reports

209. The Claimant's case in respect of this detriment links to two reports, the first in September 2018, a Zantel report regarding the Zantel Compliance Manager and the second in November 2018, the Chad and London bribery investigation report, regarding two employees who had recently been made redundant.

210. With regard to the Zantel report in September 2018, the Claimant accepted that he had discussed this matter in detail with Ms Viglucci in his lengthy phone call with Ms Viglucci on 10 September as per paragraph 205.

211. The Claimant's evidence was that there were "*disciplinary actions that need[ed] to be taken"* and he wasn't thanked or asked about next steps by Ms Viglucci.

212. The Respondents' pointed to the Investigations Standards and Global Investigations Policy which as accepted by the Claimant states that it was not the role of the investigator to determine disciplinary outcomes. and therefore there would be no reason for Ms Viglucci to go back to the Claimant regarding this. Additionally, Mr Ruiz' evidence in relation to the submission of reports was that Ms Viglucci would rarely comment and provide feedback on reports.

213. We conclude that Ms Viglucci did speak at length with the Claimant about this matter and once investigation reports are submitted, it is not the investigators role to determine disciplinary outcomes. Ms Viglucci behaved like this with her other line reports. There is simply no evidence to support a conclusion that Ms Viglucci did not respond to the investigation report once submitted due to any protected disclosures.

214. In November 2018, the Chad and London Bribery investigation report was emailed by the Claimant to Ms Viglucci at simply as an "*FYI"*. The Claimant accepted that his email did not ask for any discussion or feedback. Within the investigation report, the Claimant reported that "*tactics were agreed with Cara Viglucci… in order to progress the evidence obtained and identify by what method [ ] have been making any payments as claimed, what exactly [ ] were willing to offer the reporter, and what were they expecting the reporter to do in as much detail as possible"*.

215. Ms Viglucci's evidence was by the time the reports were prepared, she was generally aware of what the content of them would be and there was no need for further discussions with the Claimant in relation to them. If there had been any issues with the reports, then she would have raised them with him. It is clear that the failing to respond to investigation reports allegation relates to the provision of feedback rather than any matters requiring responses. The fact Ms Viglucci did not provide this feedback as she felt there was no need for further discussions does not prove that this lack of feedback had anything to do with

the Claimant's alleged protected disclosures. There is no evidence linking such actions to any protected disclosures.

216. With regard to Mr Rogers, his evidence was that the Claimant sent various reports to him during his employment, and it would have been Ms Viglucci as the Claimant's line manager who would have liaised directly with the Claimant in relation to the underlying investigations and the report. Mr Rogers would not have taken any active part in liaising with the Claimant. Acknowledging the line management structure, we accept Mr Rogers' evidence in this regard.

217. It is accepted that once reports were submitted Ms Viglucci and Mr Rogers would generally not respond to such reports. Ms Viglucci would not do so as by that point she would have been updated on the content and we accept her evidence, there would be no need for her to speak the Claimant. The next part of the process relating to disciplinary outcomes would not involve investigators as per policy and therefore there would be no need for investigators to be updated.

Detriments 3 & 4 - Attempts to dismiss C in 2018 / not offering C two roles in Miami

218. When the Claimant joined in January 2017, he was the only Global Investigator employed by Millicom. He was based in the London office throughout his employment with the first Respondent.

219. Shortly after the Claimant joined, in March 2017, Ms Viglucci was recruited as Vice President Global Investigations. Ms Viglucci was based in the Miami office and was a fluent Spanish speaker. At the point of Ms Viglucci's recruitment, she became the Claimant's direct line manager.

220. On 20 March 2017, a few weeks after joining, Ms Viglucci asked for the job description of Global Investigator. The original job description stipulated that "*Fluent English is essential. Spanish highly desirable. French would be an additional advantage"*.

221. On 24 March 2017, when recruiting for a new global investigator, Ms Viglucci, updated the job requirement amending the language requirement to "*Fluent English and Spanish are essential. French highly desirable".* The Claimant accepts that Ms Viglucci believed being fluent in Spanish was a "*necessary*" requirement for an investigator in LATAM.

222. The Claimant was involved in the interviews for the additional global investigation role. Whilst the Claimant does not recall seeing the job description, his evidence was that he was "*aware Mr Ruiz could speak fluent Spanish",* that other candidates could also speak fluent Spanish, and this role would be based in Miami and primarily focused on LATAM.

223. Mr Ruiz was recruited to the global investigator role in August 2017. After Ms Viglucci and then Mr Ruiz joined the Millicom Group, the focus of the Claimant's role became "*overwhelmingly focused on Africa"*. The Claimant did assist Mr Ruiz from time to time in carrying out investigations in LATAM, just as Mr Ruiz assisted the Claimant in Africa, however, overwhelmingly both were focused on Africa and LATAM respectively.

224. The Claimant did undertake occasional training in LATAM, however, this did not involve him delivering the training in Spanish, he would translate his slides into Spanish with assistance from Google translate and Mr Ruiz.

225. It is not disputed that the Claimant's role was overwhelmingly focused on Africa. Nor is it now disputed that the reality was that there was a regional investigator for LATAM, Mr Ruiz, and a regional investigator for Africa, the Claimant.

226. This structure in terms of investigators was also widely understood by others in the company as evidenced by the Claimant's witness Ms Rutkowska, who was a HR Manager at the relevant time. In her grievance meeting with Mr de Silva, she explained that the Claimant *"at the time was covering primarily Africa. All investigators were hired technically as global investigators, meaning their coverage was global. But in practice they all focused on a specific part of the*

business, meaning that Miami-based investigators were focusing primarily on Latin America, and I'm not aware of them ever being involved in Africa; and [C] being based in London, he was focusing on Africa, even though his title and job description didn't necessarily reflect that. But that was the internal arrangement."

227. The Claimant's oral evidence was that he was well aware of the general plan of the CEO, Mr Ramos, to exit all of Millicom's African investments and to expand in LATAM. The Claimant also accepted that Spanish was the native language in all of the LATAM countries the Millicom Group operated in and that many of the documents created and the communications sent in the local companies in LATAM were in Spanish.

228. Generally speaking, employees in LATAM only spoke Spanish and Ms Viglucci's view was that investigations were far more effective if the investigator could conduct the interviews personally, directly, and speaking the local language.

229. The Claimant accepted in cross-examination that when conducting an investigation into sensitive matters, like fraud it is much better if the investigator and the witness can speak the same language since it can help ensure the witness has understood the question and also that nuances and turns of phrase can be important in deciding whether the witness is telling the truth.

230. The Claimant accepted he did not speak Spanish and his evidence was that he would rely on Google Translate to understand complaints regarding LATAM. He did accept however, that google translate was not an accurate tool.

231. The Respondents' position was that the Claimant, as a native English-speaker who did not speak Spanish, was much better suited to African operations where many of the investigations were with English speakers and could be for the most part conducted in English. The Claimant accepted, someone who could not speak fluent English would not be well placed to carry out investigations in English.

232. Millicom began exiting its operations in Africa in summer 2015 and at the same time, Millicom significantly increased its acquisitions in Latin America 'LATAM'.

233. The Millicom Group's sales and acquisitions over the relevant period are as follows:

i) On 21 April 2016 Millicom sold its operations in the Democratic Republic of Congo to Orange S.A;
ii) On 3 March 2017 Millicom and Bharti Airtel Limited announced agreement in relation to a joint venture in Ghana, which was subsequently completed on 12 October 2017;
iii) On 31 December 2017 Millicom's, Tigo Paraguay completed acquisition of TV Cable Parana;
iv) On 31 January 2018 Millicom completed the sale of its Rwanda operation to subsidiaries of Bharti Airtel Limited;
v) On 27 April 2018, Millicom completed the sale of its operations in Senegal to a consortium;
vi) On 7 October 2018, Millicom entered into an agreement to purchase a controlling stake in Cable Onda (Panama), completing its acquisition on 13 December 2018;
vii) On 9 January 2019, Millicom announced its common shares would begin trading on the NASDAQ stock market in the US;
viii) On 20 February 2019, Millicom announced agreement to pay $1.65 billion to acquire Telefónica's operations in Panama, Costa Rica and Nicaragua (to complement existing operations in those countries);
ix) On 14 March 2019, Millicom announced agreement to sell its operations in Chad to Maroc Telecom, completing its sale on 27 June 2019;
x) On 16 May 2019, Millicom completed its acquisition of Telefónia Celular de Nicaragua S.A;
xi) On 29 August 2019, Millicom completed its acquisition of Telefónica Móviles Panamá S.A;
xii) On 19 April 2021, Millicom announced it had signed agreements to sell its stake in its joint venture in Ghana and its operations in Tanzania;

xiii) On 13 October 2021, Millicom completed the sale of its stake in its joint venture in Ghana;

xiv) On 5 April 2022, Millicom completed the sale of its operations in Tanzania to a consortium led by Axian.

234. The Claimant accepts, there was a "*definite acceleration*" in the downsizing of Millicom's London and Africa operations in 2018. Ms Rutkowska, noticed a "*complete negligence*" of anything to do with London and Africa, and that the Millicom Group stopped recruiting in London. It was widely known and discussed at the time within the Millicom Group's London office that, as a result of the divestment of Millicom's African businesses, there would be redundancies in London and, ultimately, the London office would close.

235. The Respondent's audited annual reports and financial statements for the financial years between 2016 and 2020, show the number of staff employed by the First Respondent fell from 85 to 9 by the end of 2019. In the early part of 2020 only 5 employees remained in the London operating a skeleton crew in various back office functions such as legal and finance; none of these individuals were part of the investigations team. Mr Frechette was the last employee of the First Respondent to be made redundant in April 2023.

236. As the Millicom group's functions were growing in LATAM, its investigations also consequently increased. As a result, by late 2018, the Millicom Group needed the budget to pay for an investigator based in Miami to support the LATAM operations. The Claimant was aware of this as he mentions to Mr de Silva, in his second grievance meeting, that he knew that "*Miami needs a budget to pay for the growth…….They needed extra staff – naturally, as the function's growing in Latin America, they needed another investigator".*

237. Ms Viglucci only had the budget for two global investigators and so as part of the downsizing of the London office and the African organisation, HR approached Ms Viglucci to ask whether any of her direct reports, which included the Claimant would be a candidate for continued employment in Miami. If they were not a candidate for transfer, they were potentially at risk of redundancy.

238. In or around the same time, Ms Viglucci had been considering the *"shape of her team*" and scenario planning for 2019. This is evident in the talent books that she completed and circulated at the time. Within the scenario planning, she had set out the need for 2 roles, a global investigations manager in Miami and an employee relations specialist who would split an equal amount of their time between HR and investigations.

239. On 7 September 2018, Eva Cunillera, HR in Miami, sent an email to Ms Rutkowska, HR in London, to discuss the roles of Ms Viglucci's two direct reports in the London office, the Claimant and Mr Bridgwater. Ms Cunillera wrote that "*[C's] role will be transferred into Miami, same level, same role but with fluent Spanish required, and [Mr Bridgwater's] role will be revamped into a director level role".*

240. Ms Viglucci's view was that the Claimant's position was potentially redundant for business, budgetary and operational reasons. Ms Viglucci considered that the Claimant was not a suitable candidate for continued employment in Miami as the need was for a Spanish speaking investigator. The Claimant accepts that he was not qualified for a role in Miami requiring fluent Spanish.

241. In his oral evidence to the Tribunal, Mr Rogers stated he was told by the Chief Finance Officer "CFO" that there was no budget for an additional investigator in Latin America on top of the Claimant's Africa-focused role. He added "*in a perfect world I would want an investigator [in Africa], but I was working under continuously more constrained resources, as we were making reductions in costs and shifting from Africa to LATAM.*

242. The decision taken by Ms Rogers and Ms Viglucci for commercial and economic reasons was to prioritise a Spanish-speaking investigator for LATAM based in Miami, over an English-speaking employee for Africa based in London.

243. Around the same time discussions took place between Mr Dabbour and Mr Rogers, during which Mr Dabbour agreed to take on the cost of the Claimant's role as he required an investigator for Africa operations.

244. On 21 September 2018, Mr Dabbour sent an email to Ms Rutkowska and Mr Adkins (the Chief Finance officer 'CFO' of Africa) regarding the Africa team reorganisation. In respect of the Claimant, Mr Dabbour advised that nothing changes for the Claimant but he was agreeable to having his headcount included in the Africa budget.

245. On 25 September 2018, Ms Rutkowska emailed Ms Cunillera to say, in relation to the Claimant, she had "*discussed with Mohammed and apparently he agreed with [Mr Rogers] to take on the cost of [C] and as such the potential redundancy is now parked. Please let me know if that is your understanding as well?"*.

246. In his grievance interview with Mr de Silva, Mr Dabbour's recollection of the events relating to Mr Clifford transferring to his budget was as follows: *"What happened at the time, I was told that they needed the budget for - to recruit someone to do investigations in Latin America, or someone would be based in Miami who speaks Spanish, etc., and that they were going to let [C] go. So at that moment I said that that was not something that was doable, because actually I needed the role - someone to do the role in Africa. So I suggested that in that case that [C] gets transferred to Africa, so I could have the role, the person and I would pay for the budget*."

247. Evidencing the Millicom Group's budgetary constraints at that time, on 17 October 2018, Ms Bobenrieth sent an email to various individuals, including Mr Rogers to say that "*as Mauricio [i.e., the CEO] said at the beginning of week, Corp costs need to remain flat [year on year]. As you are all aware, collectively the current budget submissions show us at approx. 9.5 over 2018 budget"*.

248. Accordingly, on 18 October 2018, Mr Rogers emailed Ms Viglucci (and others) to ask for the latest budget spreadsheets and to inform them that "*corporate costs across the board are too high and every function is being asked to do*

some cuts". It was in this climate that Mr Dabbour was asked to take on the budget for the Claimant, if he felt there was a need for investigator in Africa. Once Mr Dabbour had agreed to take the Claimant on his budget, this freed up the Compliance functions budget to take on a Spanish speaking investigator in Miami to conduct LATAM investigations.

249. On 22 October 2018, Ms Bobenrieth emailed Mr Dabbour to confirm that he was picking up the Claimant's role in his budget. Mr Dabbour replied to confirm "*that's indeed what I suggested when I heard we are taking investigation away. Tz is a mess, I will take [C's] cost if I have to. We can discuss tomorrow. I'm open to other alternatives."*

250. On 26 October 2018, Ms Bobenrieth sent an email to Ms Rutkowska and Mr Dabbour, copying in Mr Rogers to say:

"…*the question Mohammed raised regarding the work still needed was the following:*
- provide a governance (scarecrow/investigation) oversight for TZ
- security/crisis management in case of emergency (this is broader than just Africa and HL is already in discussion)
Should Michael stay and perform the first, what we discussed is the costs would be covered by Africa. HL will hire that role in Miami…"

251. Ultimately, the Claimant's role was not made redundant in 2017, he was transferred to Mr Dabbour's budget so that Ms Viglucci could hire a Spanish speaking investigator. We agree with the Respondents' that the Claimant's move to the role under Mr Dabbour was a *benefit* to him, allowing him to remain employed within the organisation as opposed to being made redundant.

252. On 31 October 2018, Angela Prieto, HR emailed Ms Viglucci and Mr Dabbour, copying in Ms Rutkowska, saying that she and Ms Rutkowska "*would like to coordinate the conversation with [C] regarding the scope of the role and the expectations that we want to present to him, due to the focused [sic] on the role in Africa and the new position that we posted based in Miami. Is very important*

that we get a conversation with [C] soon to let him know that his position will continue with this scope".

253. Mr Dabbour responded to Ms Prieto on the same day, agreeing with her comments. Subsequently, on 12 November 2018, Ms Rutkoska sent an email to Mr Dabbour and Ms Viglucci confirming that Mr Dabbour and her had met with the Claimant and informed him that they *"would like him to continue to support Africa. We were clear that we were unable to give him a timeline of any kind but he was ok with that and happy to continue working with us for as long as it is required"***.** Ms Rutkowska also advised that they had touched upon the role being advertised in Miami and had confirmed that was a new role and not a replacement for his role.

254. In his grievance interview with Mr de Silva on 17 June 2019, Mr Dabbour was clear in his view that the Claimant's role was "*absolutely time limited"* because they were in the process of selling the African business, and that "*by the end of this year [2019] we probably will end up with only one market. And at that moment I think one market will be a good – having only one market will be sufficient to probably shut down the Africa division."*

255. On 30 October 2018, Ms Rutkowska sent Mr Dabbour a paper on 'Operation Decaf', which set out that there were a total of 13 employees in Africa HQ (10 in London and 3 in Dubai), with 9 expedited exits by end of March 2019.

256. Ms Moreno was subsequently hired for the Global Investigator role in Miami. Ms Moreno was hired although she "*needed to upskill her English … she could speak, she could have a conversation."* We find that this supported Ms Viglucci's clear firm view that Spanish was an absolute must, however, English was something desirable and could be worked upon**.**

257. With regard to Ms Moreno picking up investigations in Africa, Ms Viglucci's evidence was; "*I really didn't envision Ms Moreno going to Africa. That really wouldn't have made any sense. Mr Ruiz was also familiar with matters in Africa, so that would have made more logical sense*" The Claimant also appeared to

be of this understanding as he messaged Mr Ruiz on 19 March 2019 to say that Mr Ruiz would have to fly over to investigate the Africa cases, and that it was Ms Cunillera who suggested the new investigator "*can assist*".

258. The Employee Relations Specialist role requirement included, a minimum of 5 years' experience related to HR, knowledge of US local state and federal employments laws, a degree in HR or similar, being bilingual in Spanish and English. In cross-examination, the Claimant accepted he did not meet any of these requirements.

259. The position was open for 98 days, we find the Claimant could have applied for the role, if he wished. He was aware of it from the outset having been informed by Mr Ruiz that this role had been created.

260. In WhatsApp messages between Mr Rogers and Ms Viglucci in or around September 2018, the following conversation takes place:

Mr Rogers: Is Rodrigo always a slowtalker

Ms Viglucci: he's a slow talker

Mr Rogers: so yes

Mr Rogers: Is Michael always an alarmist or am I missing something?

Ms Viglucci: I have not read through the latest OPUS

261. The Claimant points to these messages as evidence of Mr Rogers and Ms Viglucci being critical and dismissive of matters that he is bringing to their attention. He perceives these comments as evidence of Ms Viglucci and Mr Rogers viewing him as a problem.

262. Whilst we accept, the comments are not very complimentary, we find it is a significant leap to suggest that this is evidence that Ms Viglucci and Mr Rogers viewed the Claimant as a problem and consequently subjected him to detriments for making qualifying disclosures. We will comment further on Ms

Viglucci's concerns about the Claimant's lengthy communications when we set out our findings in respect of detriment 6 and performance. However, Ms Viglucci was clear in her evidence that she felt at times the Claimant's communications were unnecessarily lengthy, containing speculation and opinion rather than clear facts and evidence. Mr Rogers appears to be of a similar view and we find the comments here are simply reflective of those opinions rather than being proof of Ms Viglucci and Mr Rogers viewing the Claimant as a problem.

Detriment 5 - Changing C's line management, Navex access & reducing his role

263. The Millicom Group had sought legal counsel on the manner in which attorney-client privilege in relating to an investigation could be maintained. Whilst legal privilege to that advice was not waived, Ms Viglucci explained to Mr de Silva *"[a]s a result, the company, and specifically the Compliance Global Investigations function, ha[d] taken steps to ensure that its internal investigations protect and retain the attorney-client privilege.*

264. *The Millicom Group's Global Investigations Policy establishes that Global Investigations are privileged and are to be supervised by an attorney with an end toward providing the company legal counsel…"* The Global Investigations Policy, provides at paragraph 7.3 that:

"Legal Privilege and Investigations. *Investigations conducted or directed by the Global Investigations team will be privileged because they are supervised by counsel and conducted to address allegations, assess risk, and provide the company with legal advice regarding a particular matter. As such, they are covered by attorney-client privilege. In addition, the work product doctrine applies to global investigations if they are conducted with anticipation that litigation could occur. It is critical for Employees who participate in an investigation conducted or directed by the Global Investigations team to maintain the utmost confidentiality and keep in close contact with the Global Investigations team."*

265. NAVEX was the Millicom Group's internal database for logging concerns raised via its whistleblowing hotline and separately serves as the Millicom Group's case management system for the logging, tracking and progressing of internal investigations. It is intended to be a privileged record, maintained by those working on investigations under the direction or supervision of a lawyer.

266. As Ms Viglucci told Mr de Silva, "*an important part of protecting privilege is restricting the flow of information related to a privileged investigation*", this included placing limitations on who can access investigation materials, changing the distribution and access levels of employees over time and ensuring that the individuals receiving the hotline complaints are either the attorney directing the investigations function themselves (i.e., Ms Viglucci) or their direct reports whose role is to conduct investigations pursuant to their direction and supervision.

267. The Claimant accepted that investigations directed and overseen by Ms Viglucci were privileged as a matter of US law and that he believed the NAVEX system was there to have privileged retained over the documents uploaded onto it. The Claimant accepts he had been informed by Ms Viglucci in May 2017 that she expected reports to be marked as legally privileged and confidential. The Claimant was also aware of the Global Investigations Policy.

Transfer of Claimant's Line management

268. During his grievance interview with Mr de Silva, Mr Dabbour advised that he informed the Claimant that his job was going to move to the Africa division and that the Claimant was going to report to him. He later went on to state that effectively from January 2019 they acted as if the Claimant was reporting to Mr Dabbour. The Claimant disputed that this was the position as there had been "*no official handover"* or "*no official notes".*

269. The Claimant did however accept that by the end of 2018 he had agreed to concentrate solely on Africa and that in February 2019 Mr Dabbour informed him that he was being 'transferred' to Mr Dabbour's line management.

270. By 12 March 2019 at the latest, the Claimant was formally referring to Mr Dabbour as his line manager.

271. Around March/early April 2019, discussions took place between Ms Viglucci and Mr Dabbour regarding the Claimant's work going forward and the Claimant formally transitioning to Mr Dabbour's line management.

272. On 15 March 2019, Ms Viglucci sent an email to Ms Cunillera setting out what she was proposing to say to both Mr Dabbour and the Claimant in terms of the working arrangements moving forward. Ms Viglucci set out that the Claimant will work under Mr Dabbour's direction and because he would no longer be reporting to Ms Viglucci he would not be responsible for the Global level compliance investigations in Africa or elsewhere.

273. The Claimant accepts that, on 19 March 2019 Ms Viglucci read out a script of bullet points, as set out in her email of 15 March 2019 including that they had moved his reporting line to Mr Dabbour which allowed the Claimant to continue doing investigative work in Africa under Mr Dabbour's direction**.** The Claimant was advised that it would make most sense for Mr Dabbour to set the goals as he would be evaluating them, and the Claimant's overall performance. The Claimant was also advised that as he no longer reported to Ms Viglucci and she did not direct his work as a matter of course, he would not be responsible for the Global level compliance investigations in Africa or elsewhere, because "*these are the investigations that require her direction in order to remain privileged".*

274. Ms Viglucci explained in her grievance interview with Mr de Silva that it made sense for the Claimant to report to Mr Dabbour because it more accurately reflected what was practically happening and it would maintain privilege over investigations conducted by the Global Investigations department.

Restriction of Navex

275. Initially the Claimant had been allowed unrestricted access to NAVEX because he reported directly to Ms Viglucci and conducted investigations at Ms Viglucci's direction.

276. Following discussions between Ms Viglucci and Mr Rogers regarding the Claimant's transfer to Mr Dabbour's team, Mr Rogers decided to reduce the Claimant's access to investigations in Africa. Mr Roger's rationale for reducing access was to ensure legal privilege and confidentiality was maintained, in light of the fact that Ms Viglucci would not be managing the Claimant moving forward.

277. Around 19 March 2019, Ms Viglucci arranged for Mr Clifford's access to be restricted solely to the cases that were assigned to him. The Claimant contends that he was not aware of why his access was restricted. This contradicts with his acceptance that Ms Viglucci informed him during the 19 March 2019 meeting that, as he no longer reported to her, he would not be responsible for the Global level compliance investigations in Africa or elsewhere as they had to remain under Ms Viglucci's direction in order to remain privileged.

278. The Claimant was given access to the cases he was assigned pursuant to Ms Viglucci's direction and supervision. The Claimant accepted in his oral evidence that having access to information on NAVEX about countries outside Africa might jeopardise the privilege of that information.

279. There is no evidence to support the assertion that the Claimant's access to Navex was restricted because of any alleged protected disclosures. We find the Respondent had clear and justifiable reasons for restricting access, primarily to protect confidentiality and legal privilege.

Reduction in role (removal from investigation)

280. The Claimant continued to conduct investigations into African business operations, as he had agreed with Ms Rutkowska and Mr Dabbour. The Respondents' do not accept any reduction in his role.

281. In his grievance interview with Mr de Silva, the Claimant set out that he considered that the reason for his move out of the Compliance function was because he had called out what he saw as Ms Viglucci's own performance short fallings in February 2019 as opposed to any alleged protected disclosures prior to that.

282. The Claimant refers to two investigations from which he states he was removed. Firstly in September 2018, the Claimant alleges that he was removed from an investigation following Titus Aaron (Acting Head of HR, Tanzania) raising a grievance about him following an interview.

283. It is admitted that the Claimant was removed from this investigation and subsequently reinstated.

284. With regard to the removal from this investigation, on 7 September 2018, the Claimant sent an email to Mr Rogers and Ms Viglucci advising them that Mr Aaron had raised a grievance about him in relation to an interview that was conducted with him. On the same date, Mr Rogers sends Ms Viglucci an email stating *"Probably not wise to have Michael interview Titus now that Titus has raised a grievance".*

285. Ms Viglucci agreed with Mr Rogers sentiments and sent an email to the Claimant advising him that due to Mr Aaron raising the grievance it was best not to have him do any further work on the case. The Claimant responded to Ms Viglucci setting out that he was unhappy with her decision and he felt it

premature. Ms Viglucci then speaks to the Claimant to explain that the reason to remove him had nothing to do with whether they believed the allegations were true rather it was to protect him and Mr Aaron by maintaining the impartiality of the investigation. We accept Ms Viglucci's evidence, we find there is no reasons not to believe her evidence that she held genuine concerns about the impartiality of the investigations should the Claimant have continued with this in light of the complaint against him.

286. Mr Aaron's complaints were subsequently investigated by Ms Rutkowska and not upheld. Ms Rutkowska did however speak to the Claimant and gave him informal guidance on how to engage with people.

287. With regard to the second investigation the Claimant alleges he was removed from, this involves matters set out in a letter to the Vice President of Tanzania in January 2019.

288. On or around 7 January 2019, a letter was sent from Godfrey Rutasigwa (Acting Director of HR) to the Vice President of Tanzania requesting his intervention in respect of reconsidering a work permit refusal for Millicom Group's Corporate Security Manager.

289. It is apparent that the issue relating to the work permit refusal were considered serious, because it involved the disclosure of highly sensitive information. It would appear the Claimant was appreciative of this at the time as he had not approached Mr Rogers directly regarding the matter and had asked Mr Dabbour to raise the issue with Mr Rogers.

290. The matter was subsequently escalated to the CEO and CFO of Millicom Group. Contrary to his witness statement, the Claimant accepted in his oral evidence that, given it was causing concern at the highest levels within the company and was immediately escalated to the CEO, it is not surprising that the executive committee wanted the head of the investigation function, Ms Viglucci to handle the investigation rather than the Claimant. We also accept there were genuine and serious concerns held by Senior Executive

Management and this was the reason why the matter was referred to Ms Viglucci to handle moving forward.

Detriment 6: Reduction in performance rating & bonus

291. In the Claimant's role as a Global Investigations Manager, confidentiality was considered paramount. The importance of confidentiality within the Compliance Function was apparent from the following**:**

i) The role requirements used to advertise the job stressed that "*high level of integrity and clear understanding of confidentiality of data and information"* was required;

ii) The MIC Investigation Standard stipulates that one of the 'fundamental' principles in the application of the standard is that the "*level of confidentiality necessary and appropriate to the circumstances will be applied at all times*";

iii) The Global Investigations Policy at paragraph 2.1.5 states: ***"****Maintaining confidentiality throughout an investigation is paramount. …….Employees involved in an investigation should not discuss the investigation with others."* And at paragraph 6.2: ***"****Employees who contact the Ethics & Compliance Department or the Ethics Line expect and deserve confidentiality. Neither investigators nor Employees should talk about an investigation (even one that is closed) in casual conversation.* And at paragraph 7.3: *"It is critical for Employees who participate in an investigation conducted or directed by the Global Investigations team to maintain the utmost confidentiality and keep in close contact with the Global Investigations team.";*

iv) The Code of Conduct under the heading 'confidential information' provides that "*Even within the Company and among co-workers,*

> *Employees should only share confidential information on a need-to-know basis and to authorized Employees. The fact that Employees have access to confidential information does not automatically imply that they can share such information with other Employees or Third Parties.*"

292. The Claimant accepted in his oral evidence that he had to keep as much confidential as he could and only disclose the minimum necessary to get the information he needed.

The performance review process

293. The performance review stages at the Millicom Group involve 5 steps: (1) employee self-assessment; (2) manager review; (3) calibration; (4) manager acknowledgment; and (5) employee acknowledgment.

294. On 13 November 2018, Ms Viglucci and Mr Rogers (and others) were invited to a calibration meeting.

295. On 3 December 2018, a calibration meeting took place to discuss and calibrate the performance ratings of all recipients' direct reports in the Ethics and Compliance Team. Ms Viglucci and Mr Rogers were in attendance at this meeting. During the meeting, Ms Viglucci explained that the Claimant had broadly met his goals and targets for the year, however, she also highlighted a number of performance concerns relating to his approach to confidentiality and privilege as well as his communication style. We will comment on these performance concerns in further detail below.

296. As a result of these performance concerns, it was agreed at the Calibration meeting that the Claimant should be given a rating of 'partially meets'.

297. On 25 February 2019, Ms Viglucci received a generic email from Ms Cunillera saying that in light of the Claimant's 'partially meets' rating, he would need to be put on a performance improvement plan. Ms Viglucci replied to say that as

the Claimant had now transitioned to Mr Dabbour's line management, it would make more sense for him to deal with the process. Ms Viglucci does not forward this email to Mr Dabbour and does not appear to take any further action in this regard.

298. On 6 May 2019, Ms Viglucci responds to an email from Ms Cunilera addressed to her and Mr Dabbour, regarding the Claimant's goals for 2019. Ms Viglucci responds on the same day attaching her suggestions.

299. On 7 March 2019, the Claimant sent an email to Ms Viglucci asking if she could call when free in relation to his performance review. The Claimant explained that he will be on annual leave from 13 March 2019 until 18 March 2019. He said he had a lot of calls with Tanzania, so 19 March 2019 would be fine for the chat.

300. Before Ms Viglucci had the chance to speak to the Claimant regarding his rating, the Claimant had gone into Talentia and seen his end year review was partially meets. The Claimant sent an email to Ms Viglucci on 12 March 2019 stating he would not accept the review without clear evidence for it. Ms Viglucci replied to say they needed to discuss it and offered to do so on a later date given her travelling arrangements, and the Claimant's annual leave.

301. On 15 March 2019, Ms Viglucci, in an email to Ms Cunillera, explaining her reasoning for rating the Claimant's performance as 'partially meets' attaching 8 example emails to support the rating. The emails were sent to various people between 2 August 2017 and 29 October 2018. Ms Viglucci highlights various matters in these emails ranging from inappropriate recipients being copied into emails, discussing sensitive matters with others before discussing with Ms Viglucci and not copying her into emails particularly to senior members of the executive and including inappropriate comments speculating on matters and setting out suspicions.

302. A number of the emails relied on by Ms Viglucci also included concerns being raised by others as to the nature and content of emails. This included, the following emails:

i) On 2 August 2017, the Claimant sent an email to Frederic Pichon (Millicom) and several other employees of Millicom. The email contained a number of speculations, as well as giving details of investigations to individuals who were not part of the investigation function. In Ms Viglucci's view, this email showed a lack of discretion and jeopardised confidentiality and legal privilege. Mr Michel Koppen, Vice President of Human Resources Africa (at the time), responded to the email stating that it was not good to go into the level of detail in the Claimant's email and *"lets shutup before that blaming HR and crying crocodile tears"* before concluding by stating *"I think we need to be discrete and respect all our people till the investigation is done and the facts are on the table".* It was clear Mr Koppen felt very strongly about the nature and content of the Claimant's email, hence why it elicited such a negative response from him;

ii) On 29 October 2018, the Claimant sent an email to Ms Dorward, Mr Karikari, Mr Dabbour, Mr Rogers, Ms Samren and others, Ms Viglucci was not copied in by the Claimant and is later added by Mr Rogers. The recipients also included 2 internal members of MIC Tanzania despite the Claimant removing other individuals from MIC Tanzania because of worries regarding leaks and security of internal emails. Within the email, the Claimant speculated about local employees being involved in a conspiracy. The Claimant also admonished Ms Dorward regarding her response, stating *"it was not good enough an assessment of the situation".* Ms Samren replies taking the Claimant and all MIC Tanzania employees out of copy stating that if the Claimant was concerned about leaks he should not have left 2 MIC Tanzanian staff in copy. Ms Samren also went on to state *"I also don't think him emailing on this topic along the below lines helpful to anyone or anything so would be good enough if we could ask him to refrain from doing so".* Ms Samren was a Senior

member of the Executive Committee and is requesting here that the Claimant be spoken to about the nature and content of his emails.

303. As a result of being made aware of Ms Samren's and Mr Rogers concerns, on 30 October 2018, Ms Viglucci sent an email to the Claimant thanking him for keeping an eye on the situation and reminding him *"as we've discussed on several occasions you need to be mindful of the tone and contents of your email and the recipients of said emails. If you have concerns about ongoing leaks from the TZ organization you should be very careful about how you state that in an email and to whom you send an email like that".*

304. The Claimant responded to Ms Viglucci on the same date stating that he understood her point of view and that he would be more guarded in future but asserted that he had not shared anything that the recipients were not aware of in any event.

305. In his oral evidence to the Tribunal the Claimant refused to accept that there had been several conversations between him and Ms Viglucci on this subject. We find that Ms Viglucci did speak to the Claimant on several occasions regarding the tone and content of his emails, just as she asserts in her email to him. We find this is supported by the fact that the Claimant did not challenge her assertion at the time, if he had disagreed with this, he would have responded to this effect. It is also evident from the other emails that Ms Viglucci relied on as evidencing performance concerns that it is highly likely a conversation took place following Mr Koppen's email in August 2017 considering the extreme reaction that had elicited.

306. On 19 March 2019, a meeting took place between Ms Viglucci, the Claimant and Ms Cunillera to discuss the Claimant's 2018 performance review. During this, Ms Viglucci explained the reason for the Claimant's 'partially meets' rating, in line with the script she had prepared in her email to Ms Cunillera on 15 March 2019.

307. The thrust of Ms Viglucci's performance concerns were around the nature and content of some of the Claimant's verbal and written communications. Ms Viglucci highlighted that the Claimant needed to exercise more judgment and discretion in the content and recipients of his communications, which she stressed had caused significant concerns not only to her butat levels above her. Ms Viglucci set out that she had asked the Claimant several times to come to her first with sensitive concerns, but he continued to fail to copy her in. Also, despite being asked to refrain from sending long emails including some fact, some speculations and some suspicion, including others from outside the team, the Claimant continued to do so.

308. On 29 March 2019, Ms Viglucci sent the Claimant his 2019 compensation letter confirming his bonus for the 2018 year. It is accepted that due to his partially meets rating, the Claimant's bonus for the 2018 performance year was reduced.

Detriment 7 - Exclusion from Hogan Lovell's review & accusing C of tracking data

309. Around April or May 2019, Hogan Lovells was instructed to carry out an audit into the Global Investigations function, focusing initially on Latin American issues, but potentially broadening to Africa at a later stage.

310. The Claimant's allegation is that around April or May 2019, Mr Rogers sought to prevent him from being involved in the review of the compliance and investigations department by Hogan Lovells. The Claimant alleges he was told by Dan Stevens, Vice President, Internal Audit, that he was considered by Mr Rogers to be 'dangerous', and that Mr Rogers did not want him to be involved in the Hogan Lovells review because he was disgruntled and would not be credible.

311. Mr Rogers denies making any such comments to Mr Stevens. Mr Stevens was not called as a witness by the Claimant. The Claimant relies on a hearsay discussion in support of this detriment complaint.

312. The Claimant relies on his own hand-written note dated 30 April 2019, which refers to a discussion with Mr Stevens "*last week"* . The note records *"that HL did not wish me to be part of compliance investigation review with a law firm conducting audit, as he claimed that as Michael has an issue over his performance review he could give an unbalanced assessment of any matters he was asked about and now he is not in the compliance team".*

313. The note does not record Mr Rogers saying the Claimant was dangerous. We find had those words been used, they would have been recorded contemporaneously. If a contemporaneous note of a conversation was being made, it is unlikely that a person who had been described in such a way by a senior manager would fail to make a record of that, yet make a general note of other parts of the conversation. Accordingly, we find that M Rogers did not make this comment.

314. Mr Roger's evidence was that he told Hogan Lovells that, since the initial focus was on Latin America, it probably did not make sense for them to speak to the Claimant in the first instance since he was not involved in LATAM.

315. The Claimant was not involved in LATAM cases, his focus as he accepted was on Africa. We find that Mr Rogers suggestion that it did not make sense for the Claimant to be interviewed in the first instance due to the LATAM focus, reflects the reality of why he suggested this. There is no evidence that this was linked to any alleged protected disclosures.

316. On 23 May 2019, the Claimant did have an initial conversation with Hogan Lovells lasting 15 minutes and the Claimant's evidence was that on 28 May 2019 he had a seven-hour meeting where he raised a variety of things. We agree with the Respondents' that far from being excluded from the meeting with Hogan Lovells, these meetings suggest that the Claimant communicated with them at length.

317. On a SKYPE call, the CEO, Mr Ramos, said that there would be no retaliation by the company against anyone who had spoken out. The Claimant describes

this as a "*warning shot*". We disagree with the Claimant, we find the words of Mr Ramos are suggestive of reassurance from the top of the Organisation for anyone that may have been worried. It is also reflective of openness and transparency on the part of the Respondent that it brought in an external law firm to conduct an independent investigation into allegations. This does not support the assertion by the Claimant that the Respondent had a culture of covering things up.

Allegation that the Claimant was tracking employee mobile phone data

318. The Claimant's allegation is that in an interview with Mr de Silva, Mr Rogers accused him of "*illegally tracking the mobile phone of an employee at interview".*

319. In his grievance interview with Mr de Silva, when discussing performance concerns, Mr Rogers informed him that "*[t]here had also been an incident where he had tracked employees' cell phones, where they were going on certain days, without getting any authorisation from anyone in the company as a – in violation of policy."*

320. Mr Rogers evidence was that the Claimant had informed him in September 2017, during a meeting in London that he had tracked certain employees' cell phones, which he had believed was necessary for the performance of an investigation. Mr Rogers *states he "asked him not to do that without the proper authorisation".* That is consistent with what he told Mr de Silva in the grievance investigation meeting in 2019. Mr Rogers was clear in his evidence that he was not attributing illegal activity to the Claimant, rather he was referencing a breach of policy in terms of authorisations.

Detriment 9 - Placing C at risk of redundancy

321. Prior to April 2019, Ms Rutkowska was responsible for implementing redundancies in the London Office based on discussions with the Senior HR team in the US. Ms Rutkowska would communicate with the relevant employees' line managers and instigate an at risk meeting with the affected

employees, setting out the basis of the redundancy situation and seeking to find alternative employment opportunities within the group wherever possible.

322. Following Ms Rutkowska's exit from the business on redundancy grounds in April 2019, Mr Frechette became primarily responsible for managing the redundancy process in the London office. Mr Frechette's evidence that he would be contacted by US HR when the next round of redundancies was being initiated and he would prepare relevant paperwork with external counsel and carry out a redundancy procedure. We were not taken to any documentary evidence relating to this process as described nor were we provided details of the decision maker in relation to the redundancies. We will comment on this further in our conclusion section.

323. In mid-August 2019, Mr Frechette was notified by US HR that Mr Dabbour was to be placed at risk of redundancy, given the position of the Millicom Group's African operations at the time. Consideration was given at the same time as to whether Mr Dabbour's three line reports should also be placed at risk of redundancy. Around this time, Mr Frechette's evidence was that he was informed by US HR that the Claimant's role was also potentially redundant and should be placed at risk.

324. There is a lack of evidence in the bundle regarding who made the decision to place the Claimant on notice of risk of redundancy and who made the decision to dismiss. Towards the end of his evidence Mr Frechette indicated, that the person responsible may have been Ms Bobenreith but he was not certain. We find it was more than likely Ms Bobenreith who ultimately made the decision to put the Claimant at risk of redundancy and subsequently dismiss him. It is clear at the time, Ms Bobenreith was leading the process in respect of Mr Dabbour's termination and we find this would have naturally meant decisions relating to those he was managing would have been considered by her and the HR team around the same time.

325. Redundancies were dealt with in phases, with the HR team in the US contacting relevant managers and HR personnel in the UK. The person who was primarily

dealing with the redundancy process in London was Ms Rutkowska, however following her redundancy, Mr Frechette took over the process. Ultimately, the London Office was going to close, and Millicom Group were going to exit Africa. Redundancies from the London Office took place over a period of time from 2018 and by the time the Claimant was made redundant in November 2019 there were only a small number of skeleton staff remaining in back office functions, none of which were related to investigations. Everyone including the Claimant was aware of these plans.

326. At the time of the Claimant's dismissal, Millicom Group's only remaining Africa operations were in Ghana and Tanzania, both of these were in the process of being sold. In April 2021, Millicom announced it had signed agreement to sell its stake in its joint venture in Ghana and its operations in Tanzania. The sale of Ghana took place in October 2021 and Tigo Tanzania in April 2022. The exit from Africa would have happened sooner than it did had litigation not arisen regarding ownership of Tigo Tanzania, which delayed the sale of the Tanzania Operations.

327. Whilst the lack of formal documentation relating to the dismissal decision would be concerning and raise questions in many cases, we do not share those concerns here as on the particular facts of this case, we are satisfied that the decision to exit Africa and consequently close the London Office came from the Executive Board in line with the Millicom Groups long term plans, which had been in execution since 2016. The evidence overwhelmingly supports this conclusion.

328. In early September 2019, Mr Dabbour spoke with the Claimant in relation to the potential redundancy and asked whether he would be willing to exit under the First Respondent's enhanced redundancy terms. Mr Dabbour informed Mr Frechette that the Claimant was going to challenge the redundancy process.

329. The Claimant accepts this conversation took place between him and Mr Dabbour, during which he claims he was offered 15% above the redundancy package. The First Respondent points to its redundancy policy, which, at

paragraph 14.8 provides that "*Millicom may offer the employee an enhancement to the statutory redundancy payment, subject to and conditional upon the employee signing a severance agreement"*. The First Respondent states it is more likely that Mr Dabbour suggested to the Claimant that he would get enhanced redundancy terms like these. It is not disputed that the Claimant did not accept enhanced redundancy terms at any point.

330. At his appeal hearing in January 2020, the Claimant explained that "*I understand there's a redundancy process. I understand that the office is closing, but the way that I was treated and managed and dealt with, that whole concept of redundancy, was simply unacceptable. Because I didn't have a job even before I was made redundant I was removed from that position by Cara, in fact she gave it to other people".*

331. By 20 September 2019, the Claimant accepts that for more than six months he had been performing a role focused exclusively on Africa, reporting to Mr Dabbour and which was not part of the global investigation team.

332. Mr Frechette's unchallenged evidence was that "*the proposal was to remove Mr Clifford's role altogether without replacing it"* and that "*Mr Clifford's role was no longer required as the First Respondent's operations was wound down … he was one of the very last employees to leave"*.

333. Further, Ms Viglucci confirmed that by September 2019, the Claimant "*might have been doing at most a handful of cases for global investigations, and then the rest of the time though he was working for Mr Dabbour, so it would be matters more like local investigations that didn't rise to the level of global investigations, or whatever else Mr Dabbour wanted him to do…"*.

Detriment 8 - Short notice of consultation

334. Until her own redundancy in April 2019, Ms Rutkowska had been assisting with the redundancies in Millicom UK and it was only after she left that Mr Frechette

as one of the few remaining employees) took over responsibility for managing the redundancy process.

335. When advising Ms Cunillera of the redundancy process, they should follow in respect of Mr Bridgwater, Ms Rutkowska said the following:

"All these meetings should take place in person so we will need to ensure that he is in the London office (which he visits sporadically) at least for the At Risk meeting (we can then agree with him he will come for the follow up meetings). We do not usually give employees a notification just simply invite them to this meeting by surprise the same day – this is to avoid additional stress (UK employees know what invite from HR typically means) but also to avoid employee calling sick and delaying the process."

336. On Friday 20 September 2019, Mr Frechette sent an email to the Claimant inviting him to attend a redundancy consultation meeting by videoconference on Tuesday 24 September 2019. Mr Frechette stated:
"I hereby to invite you [sic] to attend a consultation meeting on Tuesday 24 September 2019 at 09:30 by call. As you are aware, Millicom UK's operations and Millicom's Africa operations are winding down and unfortunately, your role is potentially redundant. I propose to discuss further with you the reasons for the potential redundancy, and any possible alternatives…".

337. The Claimant replied to Mr Frechette the same day to say that he would not be attending the meeting as he felt he needed more time to prepare "*for this formal discussion which is at quite short notice"*, he also referred to needing to speak to ACAS / seeking legal advice, and expressed a preference for an in-person meeting.

338. Mr Frechette replied on 21 September 2019 stating:
"Please be assured that the company does not intend to discuss the substantive issues you have set out below at this first redundancy consultation meeting. The independent grievance investigation is continuing and the concerns you raise are being addressed as part of that process. The purpose of this first

redundancy consultation meeting is simply to initiate the consultation process. This is the starting point by which the company can share with you mandatory information about the impending business closure and consequent potential redundancy situation. The consultation will continue thereafter with a meeting in person at the office, with potentially a broader agenda and the opportunity for further preparation. As an employee of the company, you are hereby formally requested to attend this mandatory consultation meeting on Tuesday 24 September 2019 at 09:30 by call."

339. The Claimant confirmed on 23 September 2019 that he would be attending the meeting however, he was subsequently unable to attend the meeting due to being admitted to hospital.

Detriment 10 - Refusal of Mr Frechette to postpone consultation

340. The Claimant's allegation in respect of this detriment is that Mr Frechette "*refused to postpone the consultation process and provided for consultation only by written representations notwithstanding the Claimant's certified sickness with serious eye injury".*

341. On 23 September 2019, Mr Dan Stevens (Vice President Internal Audit and the Claimant's companion in respect of the redundancy consultation process) sent an email to Mr Frechette advising that the Claimant was unwell and in hospital, where he was likely to be kept overnight. As a result, Mr Frechette agreed to cancel the SKYPE meeting scheduled for the next day and pause matters until the Claimant was able to provide an update on his health.

342. The Claimant subsequently contacted Mr Frechette on 28 September 2019 advising that he had been released from hospital and was awaiting further tests. In respect of his eye, he advised that he had *"lost full vision in over 30% of [his] left side"* and that he had *"no clue if it is permanent".*

343. On 30 September 2019, the Claimant sent an email to Mr Frechette stating that he had undergone a variety of urgent tests and that he was being "*fully*

supported by Mohamed and his team with my welfare needs and I intend to also inform the medical insurance people".

344. On 1 October 2019, the Claimant provided Mr Frechette a fit note from his doctor signing him off work until 29 October 2019 with a 'visual problem' and the first page of a discharge letter from the Kingston hospital. The discharge letter noted that Mr. Clifford was admitted to *"AAU via Ophthalmology clinic (REC) on account of finding of left inferior and temporal visual field defects with left optic disc swelling".*

345. On 1 October 2019, a report was produced by Mr Barnes, which recorded that C has a "*potential loss of eyesight with a yet-to-be-determined cause"*. Mr Barnes also recorded that the Claimant was to produce further information from resulting medical reviews to understand his condition and report under RIDDOR if associated to work activities.

346. A RIDDOR, Health & Safety Executive report was completed on 3 October by Mr Bridgwater. The report set out that the Claimant had recently indicated he was suffering from NAION most likely caused through increased blood pressure as a result of work related activities.

347. On 2 October 2019, Mr Frechette wrote to the Claimant wishing him a speedy recovery and seeking to progress the redundancy consultation process. Mr Frechette states*; "as you are aware, Millicom Services UK Limited is in the process of being wound down and ceasing all operations, including the Africa desk operations…… Your role is at risk of redundancy because the role that you are currently carrying out will shortly cease as the company completes the winding down process".*

348. Mr Frechette invites the Claimant to make written representations as he is unable to attend a redundancy consultation meeting either in person or via telephone. He advises that the representations may include any comments that the Claimant has on the redundancy situation, any thoughts on current ways to

avoid redundancy, and any views on alternative vacancies. He also attaches a list of current vacancies in the Millicom group and advises the Claimant to apply for any vacancies that he may be interested in as soon as possible.

349. It is accepted that all of these vacancies were in the US and LATAM. During the redundancy period and during his appeal, the Claimant did not express any interest in any of them.

350. The Claimant responds to Mr Frechette on 4 October 2019 stating that he wished for a face to face consultation the following week and that he did not accept that his role was redundant referring to matters raised in his grievance. In respect of his eye the Claimant advised that he had 'restricted vision in his left eye due to as yet unidentifiable cause', and it was therefore hard to prepare documents; he wanted a full meeting in the office with a transcript note. The Claimant did not ask Mr Frechette to postpone the redundancy consultation.

351. Mr Frechette responds the next day agreeing to arrange a face to face meeting with a note taker present. Following a few email exchanges with the Claimant regarding timings, Mr Frechette sent out a SKPE invite to a meeting on 9 October. Mr Stevens confirmed his availability, however, the Claimant subsequently responded on 7 October to advise he could not attend the meeting as he had just received an appointment at the Kingston hospital neurology department. The Claimant suggested meeting another day that week.

352. Mr Frechette, heard nothing further from the Claimant, however, on 19 October 2019, he received a letter from the Claimant's solicitors, following which 'without prejudice' communications took place, which for privilege reasons, we were not provided any detail about these matters. Mr Frechette did not progress redundancy consultation discussions directly with the Claimant following this point.

353. On 30 October the Claimant sent an email to Mr Frechette and others advising that he had more medical appointments to do with his 'medical condition' and that he had been signed off work until 27 November by his GP. The Claimant indicates that he would forward the fit note later that evening, Mr Frechette's evidence was that he does not recall receiving this and the Claimant could not recall whether he did infact forward this.

Detriments 11 & 12 – Termination of the Claimant's employment

354. On 21 November 2019, Mr Frechette sent the Claimant a letter giving him notice of termination of his employment on the grounds of redundancy. He advised the Claimant that he would be paid in lieu of notice as well as a statutory redundancy payment and his employment would terminate on 30 November 2019.

355. Mr Frechette confirmed in his oral evidence that "*Everybody got paid in lieu of notice to my knowledge, in the UK"*. The Claimant infact had the benefit of 9 days of garden leave before the termination of his employment and was then paid in lieu of his full notice period from 30 November 2019.

356. Mr Frechette's evidence to the Tribunal was that around 6 November 'without prejudice' discussions with the Claimant's solicitors had come to an end and at that point he had agreed to allow the Claimant an additional 3 weeks to transition his medical care from private health care back to the secure NHS or another health care provider.

357. No documentary evidence of any 'without prejudice' was produced as privileged was not waived, however, the Claimant disputes that a 3 week extension to his termination date was agreed with his solicitors. We prefer Mr Frechette's evidence in relation to this for the following reasons:

i) partly because it was clear 'without prejudice' discussions were taking place and that communication was considered privileged for the purpose of these proceedings, so it not surprising that Mr Frechette was not able

to provide any documentary evidence supporting his assertion and there had been a number of weeks that had passed since last communications between Mr Frechette, the Claimant and his solicitors;

ii) Mr Frechette informed the Claimant of his right of appeal within 7 days. Subsequently on 24 November 2019, the Claimant sent an email to Mr Frechette indicating that he wished to appeal. The Claimant also advised that he was still off certificated sick with his optic nerve Injury and had *"follow up examinations in January 2019 with the NHS, as he would be deprived of any employee health insurance provision if he was terminated from employment".* Mr Frechette, replied the following day advising the Claimant that if was unable to attend an appeal meeting due to ill-health, he could submit written representations if he wished. He also stated ""*I acknowledge having been informed that you are transiting your health care follow up with the NHS"* ;

iii) On 20 January 2020, Mr Frechette sent an email to Mr Gill stating that the Claimant's "*termination date was delayed by three weeks (from 8 November until 30 November) to allow him to transition his medical care with respect to his eye condition from private to public coverage"*.

358. In light of these contemporaneous communications, we accept Mr Frechette's evidence that he agreed with the Claimant's solicitors that the First Respondent would delay the date of termination from 8 to 30 November 2019 to enable the Claimant to transition his healthcare back to the NHS.

359. On 25 November 2019, Mr Barnes' report of 1 October was updated and it was recorded that "*at present, Michael is unable to provide a full diagnosis except the private specialist has diagnosed NAION. However, the specialist requires to review the MRI scan and blood tests conducted when hospitalised"*.

360. The Claimant sent Mr Frechette another email on 26 November attaching a fit note dated 20 November 2019, which simply stated that the Claimant was unfit for work for another 2 months, with the condition recorded as "under

investigation". In his email the Claimant explained that "*thankfully my right eye is very good".* The Claimant also attaches copies of his vision filed tests on both eyes and comments that he has been told *"there is a 25% -40 % chance of some improvement over 6 months in my left eye BUT also a 25 % risk of a repeat occurrence in my right eye over 5 years. The optic nerve can never fully recover however back to before".*

361. Mr Frechette replied on the same day and advised the Claimant that as he was off sick, reasonable adjustments would be made including an extension to the time limit for receiving his appeal written submission to 9 December 2024.

362. On 29 November, the Claimant sent an email to Mr Frechette and Tim Pennington (Millicom Group, Chief Finance Offer) advising that he intended to appeal and would send in his written appeal submissions as soon as he was able to. He also stated "*as you know, I am currently signed off work sick by the doctor, and I have sustained a serious eye injury with permanent loss of vision in one eye. I believe this qualifies as a disability for the purposes of the Equality Act and that in the circumstances you are therefore required to make reasonable adjustments to the appeal process, including a reasonable time frame".*

363. Following the notification on 29 November 2019, the First Respondent offered to make any adjustments the Claimant required. The Claimant accepted in cross-examination that he did not request any adjustments that were not made as part of the appeal process.

364. On 10 December 2019, the Claimant submitted his appeal against redundancy to Mr Pennigton. Subsequently Patrick Gill (Director Corporate Governance & Risk Management) was appointed to hear the appeal. In summary, the Claimant alleged that there was no genuine redundancy and his dismissal was because of various whistleblowing complaints and/or as a result of detriments that he had been subject to as a result of whistleblowing. the claimant also appealed on the grounds that there had been no effort to properly consult and that the

consultation did not take into account his eye impairment. Finally his dismissal with pay in lieu of notice also disregarded his disability.

365. Mr Gill held a redundancy appeal meeting with the Claimant on 8 January 2020. At this meeting, Mr Gill explained to the Claimant that he had no previous involvement in any matters pertaining to his dismissal and that the purpose of the hearing was to hear the Claimant's side of the appeal and provide him with an opportunity to "*share anything else".*

366. During this meeting it was clarified by Mr Gill that the Claimant accepted *"that a redundancy process was happening".* However, his objections were related to the way in which the redundancy was specifically handled for him in his particular role as well as the circumstances that led up to the ultimate letter of redundancy.

367. On 22 January 2020, Mr Gill sent the Claimant an Appeal outcome letter rejecting his appeal. Mr Gill set out that the matters relating to the Claimant's grievance were outside the scope of his remit and the appeal process was entirely separate to the ongoing grievance complaint.

368. Mr Gill stated that his focus in respect of the appeal was to determine whether the Redundancy was a genuine redundancy and whether the process followed was fair and reasonable. Mr Gill ultimately concluded that there were valid and objective business reasons for the Redundancy which were unrelated to the Claimant or his personal circumstances and that the Company had taken many steps to consult the Claimant about his dismissal.

369. Evidencing his consideration of the question with regard to investigator roles in Miami, Mr Gill set out in his appeal outcome letter that he considered that there were legitimate business reasons for the Company to require a fluent or native Spanish speaker in Millicom's operations in Latin America.

370. It was submitted on behalf of the Claimant that the substantial involvement of Ms Viglucci and Mr Rogers with drafting many iterations of the talent and budget reports in relation to the Claimant's proposed termination and replacement in

2018 would indicate that the same likely would have been required in 2019. We do not accept this; we find the only reason Ms Viglucci and Mr Rogers were involved to that extent in 2018 was because at that time the Claimant was part of the global compliance function. Once he moved away from that function and fell under the management and budget of Mr Dabbour, there was no need for Ms Viglucci and Mr Rogers to be involved. Infact it was Mr Dabbour who was contacted as the Claimant's line manager to informally warn and discuss the potential redundancy situation.

371. Ms Viglucci's evidence to the Tribunal was that, following the transfer of the Claimant's line management to Mr Dabbour, she had very limited contact with the Claimant, save for liaising on investigations carried out in Africa operations. She further explained that she had no involvement at all in respect of the Claimant's termination on the grounds of redundancy.

372. We accept that Ms Viglucci continued to have some limited involvement with the Claimant following his move from the compliance function as there were some Africa cases that fell under the global compliance function. However, we accept that this was limited involvement, the bulk of the Claimant's cases were local investigations falling under Mr Dabbour's remit.

373. Ms Viglucci's evidence was that she may have been aware the Claimant went off sick in September, however, she was not aware of the detail. In our view, this is consistent with her having some limited interactions in respect of global cases in Africa and suggests nothing more than that.

374. We find the contemporaneous evidence supports Ms Viglucci position; there is no evidence suggesting Ms Viglucci was involved in any way with the redundancy process or decision to dismiss. At that point the Claimant was no longer part of the Global Compliance function and was under the line management of Dabbour. Mr Dabbour was contacted and he did speak to the Claimant. In the circumstances, we accept Ms Viglucci's evidence and find that she had no involvement at all in the termination of the Claimant's employment.

375. Mr Roger's evidence was similar to Ms Vigluccis, he confirmed that the Claimant's redundancy "*had nothing whatsoever to do"* with him. Mr Rogers evidence was that as a member of the executive team he was kept informed of the redundancy terminations in the London office, however, he was not involved in the decision to place the Claimant at risk of redundancy nor was he involved at any stage in the redundancy process or ultimately the decision to make him redundant.

376. Mr Rogers accepts he was involved in *"high level discussions"* relating to Mr Dabbour's exit from the organisation and this would have touched on Mr Dabbour's direct line reports, including the Claimant, but this did not involve discussions their about redundancy.

377. Mr Dabbour was a member of the Executive Committee and we find therefore Mr Roger's evidence of awareness and involvement of his termination is consistent with the role that he had as a member of the Executive Committee.

378. For the same reasons set out in respect of Ms Viglucci at paragraph 375 we conclude that Mr Rogers was not involved at any stage in the redundancy process including the decision to make the Claimant redundant.

Disability

379. Relevant medical records for the material time include the following:

i) letter dated 22 October 2019 from Dr Bremner, Consultant Neuro-Ophthalmologist. Dr Bremner was seen by the Claimant on a private basis as a result of the private medical insurance provided to him through his employment with Millicom UK. Dr Bremner states *"The examination today shows reasonably good sight in his right eye, with an unaided acuity of 6/9 and normal colour vision. However, in his left eye he sees only 6/60, and cannot identify even the test plate of the Ishihara system".* Dr Bremner concludes that he suspects that the Claimant has a *"non arteritis ischaemic optic neuropathy*", which is also known as NAION.

ii) In a further letter dated 5 November 2019 sent to the Claimant's GP, Dr Bremner confirms his diagnosis of NAION.

380. Dr Bremner's reports did not address the substantial effects on the Claimant's day to day activities, so does not assist our considerations in this regard. In respect of other medical evidence, the Parties also jointly instructed a medical expert, Dr McHugh, who provided an initial report dated 10 August 2020 and a further report dated 22 May 2024.

381. We agree with the Claimant's submissions, that Dr McHugh misapplied the test for determining disability under the Equality Act and incorrectly focused on what the Claimant 'could do' rather than what he 'could not do'. Ultimately, however, the question of disability is one for the Tribunal to determine based on all of the evidence before it.

382. Dr McHugh opined the following:

i) "The diagnosed condition was a left non-arteritic ischaemic optic neuropathy that caused a profound reduction in visual function;

ii) "The claimant presented on 23 September with a four to five-week history of blurred vision in the left inferior visual field, that became progressively worse. It is therefore probable that the onset of the neuropathy was in the month of August 2019".

iii) "There is profound and irreversible visual loss on the left. Visual function on the right however is normal. The limitations described by Mr Clifford in his ability to perform a range of activities are consistent with his monocular status";

iv) "There is currently profound visual reduction on the left, with blurring and perception of shadows, that interferes with the good vision on the right".

v) *"The loss of vision in one eye represents a life-changing event and even if there was normal function in the contralateral eye, a period of adaptation is required to compensate for the changed visual circumstances. I am of the opinion that a period of approximately three months represents a reasonable interval for an otherwise healthy individual to adapt to uniocular loss of vision with the proviso that the personal daily activities and also usual occupation do not specifically require good binocular function";*

vi) *""a period of adaptation is required following loss of vision in one eye. However, during this time, there should be gradual improvement in the ability effectively to use the remaining good eye".*

vii) *"Mr Clifford does state that reading documents requires increasing the font size of the text and he is more easily fatigued performing this task. My own examination findings included an ability to read small, N5 print with the right eye with a reading correction (consistent with an individual of his age)"…… "Therapeutic options include wearing a patch over the left eye, the provision of a frosted lens on the left for his spectacles; or even an occluding contact lens*";

viii) *"On balance, it is probable that visual function in either eye will remain stable for the foreseeable future. If NAION develops in one eye, there is a risk of second-eye involvement, but there is evidence that daily aspirin reduces this risk to a level of approximately 15-20%";*

ix) *"The estimated risk of developing total blindness in the remainder of Mr Clifford's lifetime is 20%".*

383. Dr McHugh provided an updated report dated 22 May 2024, within which he opined the following:

i) *"The continued limitations described by Mr Clifford in his ability to perform a wide range of personal activities, including negotiating steps,*

stairs, the kerb and uneven ground, food and drink preparation and gardening are consistent with the impairment of binocular, three-dimensional, stereoscopic vision and depth perception"

ii) *"Mr Clifford does however appear to have adapted reasonably well to the loss of vision on the left, with no significant requirement for increased care and support";*

iii) *"…. with good visual function on the right, there should be no significant limitations on Mr Clifford's ability to perform a wide range of personal activities and also his current usual occupation, albeit with increased care, the implementation of appropriate work-place adaptations and frequent rest breaks.*

384. The Claimant produced two disability impact statements dated 1 July 2020 and 11 April 2022, respectively, within which he describes symptoms of NAION through his left eye; amongst others, these include significantly reduced and obscured vision in the left eye, pain and bright flares in bright light or seeing bright colours, inability to see print in a book, details on a tv screen or faces in detail, headaches, tiredness, anxiety and depression.

385. The Claimant also describes the following substantial adverse impact that his NAION symptoms have on his day to day activities:

i) *"continuing mental and psychological difficulties from the NAION, with fatigue and anxiety concerning blindness on the right. He will wear safety goggles when cooking or gardening. A large screen monitor is used for work with an enhanced font size, although this impacts on his efficiency when reading or typing documents";*

ii) *"Watching television requires more concentration and he has given up reading paper books almost entirely due to fatigue. There is impairment of depth perception and, for example, he can no longer thread a needle.*

There is difficulty with simple DIY tasks, and he is anxious regarding climbing ladders……..";

iii) He dislikes crowded environments due to the tendency to bump into people and glass doors. He therefore feels anxious when going into a crowded place. Walking on uneven terrain is also more challenging and there is a tendency to trips and stumbles, more so than before the development of the NAION. He does not want to run anymore and has discontinued cycling, which he previously enjoyed. Driving requires more concentration, with increased movement of the head to the left due to constricted peripheral vision".;

iv) The condition has affected his ability to perform his usual occupation. Text enlargement is required when working on a computer and it takes him longer to review documents and analyse data and he will spend more time checking his work".

Relevant Law

Public Interest Disclosure

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

387. *"Qualifying disclosures"* are defined by s43B ERA 1996;

43B Disclosures qualifying for protection

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

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

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

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

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

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

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

388. In claims under both **section 47B ERA** (detriment) and **section 103A ERA** (automatic unfair dismissal), knowledge of the protected disclosure is required. ***Nicol v World Travel and Tourism Council and Others [2024] EAT 42,*** knowledge must be more than simply that a disclosure has been made: the decision-maker *"ought to know at least something about the substance of what has been made: that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about".*

389. In an automatic unfair dismissal case, knowledge may be imputed to the decision-maker if someone at the respondent who is in the hierarchy of responsibility above the employee manipulates the decision-maker, leading the decision-maker to dismiss an employee for an apparently fair reason, not realising that there was a protected disclosure and that they have been manipulated, ***Royal Mail Group Ltd v Jhuti [2019] UKSC 55.***

390. In contrast, in a detriment claim, knowledge of one person cannot be imputed to another, even where they are in a position of hierarchy over the employee

Malik v Cenkos Securities PLC EAT/0100/17, as confirmed in ***William v Lewisham and Greenwich NHS Trust [2024] EAT 58***.

391. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions and allegations), ***Cavendish Munro Professional Risk Management v Geldud*** **[2010] ICR [24] – [25];** ***Kilraine v LB Wandsworth*** **[2016] IRLR 422**. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance, ***Fincham v HM Prison Service EAT 19 December 2002, unrep; Western Union Payment Services UK Limited v Anastasiou EAT 21 February 2014, unrep.***

392. In ***Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979*** the Court of Appeal considered the public interest element of the definition. It held that:

"where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker."

393. The court said that the question of whether a disclosure about a personal interest is also made in the public interest is one to be decided by considering all the circumstances of the case, but these might include:

"(a) the numbers in the group whose interests the disclosure served;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer…the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest."

394. A disclosure of information includes a disclosure of information of which the person receiving the information is already aware **(section 43L(3)).**

395. If a qualifying disclosure has been made, consideration needs to be given as to whether the method of disclosure makes it a protected disclosure. **Section 43C** says:
"(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure -
(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility, to that other person."

Detriment

396. **Section 47B of the Employment Rights Act** says:

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

397. The Court of Appeal decision in ***Jesudason v Alder Hay Childrens NHS Foundation Trust [2020] IRLR 374*** stated *'It is now well established that the*

concept of a detriment is very broad, and must be judged from the view point of the worker. There was a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment'.

398. Detriment has been held to be analogous with placed at a disadvantage after ***Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230*** albeit under the Equality Act instead of the Employment Rights Act 1996.

399. **Ibekwe v Sussex Partnership NHS Trust UKEAT/0072/14/MC,** unlike the operation of the burden of proof under the Equality Act 2010, a failure by the employer to show positively the reason for an act or failure to act does not mean that the complaint of whistleblowing detriment succeeds by default. It is a question of fact for the tribunal as to whether or not the act was done 'on the ground' that the claimant made a protected disclosure.

400. Like in discrimination law, the key question is what was the real reason for why the decision maker treated the person making the disclosure in an adverse way after ***Kong v Gulf International Bank UK Ltd [2022] EWCA Civ 941***.

401. The test for "reasonable belief" is a subjective test. The Tribunal should consider whether the belief was reasonable for the Claimant in her circumstances. What is reasonable for a lay person to believe may not be reasonable for a trained professional ***(see Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 at 62)***.

402. If a detriment is made out it is for the employer to show that the reason for the treatment was in no way whatsoever materially influenced by the protected disclosure. The relevant test is whether the protected disclosure materially influenced, in the sense of being more than a trivial influence, the treatment of the Claimant *(**Fecitt & Others v NHS Manchester [2011] IRLR 111**).*

<u>Unfair dismissal</u>

403. ***Section 94(1) of the Employment Rights Act 'ERA' 1996 Act*** *provides that:*

"An employee has the right not to be unfairly dismissed."

404. ***Section 98 ERA*** *provides clarity as to what is meant by unfair dismissal:*

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2) A reason falls within this subsection if it-
…
(c) is that the employee was redundant."

405. *The meaning of redundancy is set out in* ***section 139 ERA****:*

"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-

(a) the fact that the employer has ceased or intends to cease-

(i) to carry on the business for the purposes of which the employee was employed by him, or
(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business-
(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased, or diminished or are expected to cease or diminish."

406. The EAT held in ***Safeway Stores v Burrell*** **[1997] ICR 523**:

"From time to time the mistake is made of focusing on a diminution in the work to be done, not the employees who do it. One example will suffice. In Carry All Motors Ltd. v. Pennington [1980] I.C.R. 806 the applicant before the industrial tribunal, employed as a transport clerk, was dismissed by his employers following their decision that his depot was overstaffed; they concluded that the work of the transport manager and transport clerk could be carried out by one employee only… On appeal the appeal tribunal reversed the industrial tribunal's findings. It held that the question was not whether the requirement for particular work had diminished, but whether the requirement for employees to do that work had diminished. Since one employee was now doing the work formerly done by two, the statutory test of redundancy had been satisfied."

407. There is also no need for an employer to show an economic justification or business case for the decision to make redundancies ***Polyfor Ltd v Old*** **EAT 0482/02.**

408. If the employer has a potentially fair reason for dismissing the employee, it still needs to be reasonable in the particular factual circumstances for the employer to rely on that reason to dismiss the employee, and it needs to follow a fair procedure in doing so, as required by ***section 98(4) of ERA***:

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case."

409. The fairness of the dismissal is a neutral issue for the Tribunal to decide: ***Boys and Girls Welfare Society v Macdonald [1997] ICR 693, 700A.***

410. The Tribunal must determine whether, in the particular circumstances of the case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted: ***Iceland Frozen Foods Limited v Jones [1983] ICR 17, 25A.***

411. This range of reasonable responses test applies to the decision to dismiss, and the procedure adopted: ***Whitebread plc v Hall [2001] ICR 699, at §16-18.***

412. It is trite law that a Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer***: Foley v Post Office [2000] ICR 1283, 1292H – 1293B***.

413. In ***Williams and ors v I Maxam Ltd [1982] ICR 156, at 162***, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals:

I. Whether employees were warned and consulted about the redundancy;
II. Whether, if there was a union, the union's view was sought;
III. Whether the selection criteria were objectively chosen and fairly applied; and
IV. Whether any alternative employment was available.

414. A fair consultation occurs when proposals are at a formative stage and where adequate information and adequate time in which to respond is given along with conscientious consideration being given to the response; ***R v British Coal Corporation ex p Price [1994] IRLR 72.***

415. In the Court of Appeal, Underhill LJ, considering the meaning of the words "formative stage" in ***R v British Coal Corporation***, concluded this meant "*at a stage where it can make a difference to outcomes" (as opposed to "early consultation"* in the temporal sense) or *"at a point at which the employee can realistically still influence the decision"* (see para.60).

416. Whether in collective or individual consultation, the purpose is to avoid dismissal or ameliorate the impact; ***Freud v Bentalls Ltd [1983 ICR 77.***

417. Failure by the employer to consult an employee before dismissal can be cured at an appeal hearing after the date of dismissal: ***Lloyd v Taylor Woodrow Construction [1999] IRLR 782***.

418. Where a dismissal has been found to be procedurally unfair, a tribunal, when assessing the appropriate remedy to be awarded, should consider whether the employer could have dismissed the employee fairly, and whether it would have done so ***(Polkey v AE Dayton Services Ltd [1988] ICR 142).***

Automatic Unfair Dismissal

419. ***Section 103A Employment Rights Act 1996*** provides that: *"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."*

420. A case of whistleblowing dismissal is not made out simply by a 'coincidence of timing' between the making of disclosures and termination (**Parsons v Airplus International Ltd [2017] UKEAT/0111/17**).

421. *In **Kuzel v Roche Products Ltd [2008] ICR 799, CA**, Mummery LJ set out a three-stage approach to s.103A claims at paragraphs 57 – 59:*

    (i) First, the employee must produce some evidence to suggest that their dismissal was for the principal reason that they made a protected disclosure, rather than the potentially fair reason advanced by the employer. This does not place the burden of proof on the claimant, but requires the claimant to challenge the evidence produced and produce some evidence of a different reason.

(ii) Second, the Tribunal, having heard evidence on both sides, will consider the evidence as a whole and make findings of primary fact on the basis of direct evidence or reasonable inferences.

(iii) Third, the Tribunal must decide the reason or principal reason for the dismissal on the basis that it is for the employer to show what the reason was. Where a tribunal is unpersuaded by the employer's reason, is open to find the reason was that asserted by the employee, however it does not have to accept the employee's reason.

DISABILITY

422. ***Section 6 of the Equality Act 2010*** provides, so far as material, that:

"(1) A person (P) has a disability if—
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities"

423. ***Schedule 1 paragraph 2 of the Equality Act 2010 Act*** states:
"(1) The effect of an impairment is long-term if—
(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.
(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur…."

424. **Schedule 1, paragraph 8 of the Equality Act 2010,** states**:**

"*(1) This paragraph applies to a person (P) if—*
(a) P has a progressive condition,
(b) as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but

(c) the effect is not (or was not) a substantial adverse effect.
(2) P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment."

425. The Equality and Human Rights Commission (hereafter "EHRC") Employment Statutory Code of Practice (hereafter "Code"), which applies to the Equality Act 2010 states in Appendix 1:

What about people who know their condition is going to get worse over time?
20. Progressive conditions are conditions which are likely to change and develop over time. Where a person has a progressive condition they will be covered by the Act from the moment the condition leads to an impairment which has some effect on ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment might well have a substantial adverse effect on such ability in the future. This applies provided that the effect meets the long-term requirement of the definition."

426. The burden of proof is squarely on the claimant to show that he satisfies the definition under s6 EqA 2010: ***Royal Bank of Scotland plc v Morris*** **EAT 0436/10.**

427. The question before the tribunal is not whether the claimant is disabled at the date of the hearing, but whether he was disabled within the meaning of the Act at the date of the alleged discriminatory act: **Cruickshank v VAW Motorcast Ltd [2002] ICR 729.**

428. In ***All Answers v W*** **[2021] IRLR 612**, the Court of Appeal highlighted, the key question for the Tribunal is whether:

"As at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is ***making an assessment, or prediction, as the effect of an impairment was likely to last at least 12 months from that date. The***

tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months..."

429. 'Likely to' has been interpreted by the House of Lords as meaning "*could well happen*": ***SCA Packaging Ltd v Boyle* [2009] IRLR 746.**

430. The Tribunal is looking at whether the impairment in question has had a "*substantial*" effect, which s.212(1) EqA 2010 defines as "*more than minor or trivial"*. In considering the long-term question, it is necessary for the Tribunal to determine whether the *effect* of the impairment is long-term, noting it is not the impairment that has to be long-term, but the substantial adverse effect of the impairment: ***Royal Borough of Greenwich v Syed* UKEAT/0244/14.**

431. The Tribunal must consider what the Claimant cannot do, not what he can do, ***Paterson v Commissioner of Police of the Metropolis* [2007] ICR 1522, EAT.**

432. Whether a sight impairment is 'correctable' by means of spectacles or contact lenses is a practical issue to be decided on a case-by-case basis: ***Mart v Assessment Services Inc* [2019] ICR 1414.**

S.15 EQA 2010 - Discrimination arising from disability

433. *Section 15 of the Equality Act 2010 provides;*

(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

434. In ***Gallop v Newport City Council [2013] EWCA Civ 1583***, the Court of Appeal highlighted that it is vital for a reasonable employer to consider whether an employee is disabled, and form their own judgment on this issue.

435. The burden of proof in terms of knowledge is on the employer to prove that it was unreasonable for them to have the required knowledge. This is a question of fact for the Tribunal. The burden is on the employer to show it was unreasonable to have the required knowledge.

436. The EHRC Employment Code provides that employers must do all they can reasonably be expected to do to find out whether a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

437. S15 (2) provides that the discrimination will not arise if A shows they did not know and could not reasonably be expected to know that B had a disability.

438. Failure to enquire into a possible disability is not by itself sufficient to vest an employer with constructive knowledge. It is also necessary to establish what the employer might reasonably have been expected to know had it made such an enquiry: ***A Ltd v Z*** **[2020] ICR 199,** §23.

439. Crucially, however, the employer must have the requisite actual or constructive knowledge at the time of the impugned treatment; knowledge acquired only at a later point is not sufficient: ***Stott v Ralli Ltd*** **[2022] IRLR 148**, §68.

440. In ***Gallacher v Abellio Scotrail Ltd*** **UKEAT/0027/19** it was found by the Tribunal (and upheld by the EAT) that whilst the claimant had provided some information to their manager as to their conditions, there was none of the detail required as to any substantial disadvantage they suffered by reason of

disability, its effects on their day-to-day activity or the longevity of those effects for the purpose of s.6 EqA 2010.

441. In order for a Claimant to succeed in a claim under section 15, the following must be made out: a. there must be unfavourable treatment; b. there must be something that arises in consequence of the Claimant's disability; c. the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability; d. the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

442. Useful guidance on the proper approach was provided by Mrs Justice Simler in the case of ***Pnaiser v NHS England [2016] IRLR, EAT***: "A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises. The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it."

443. Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and the Respondent's motive in acting as he or she did is simply irrelevant.

444. The Supreme Court considered this claim in ***Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] IRLR 306*** and confirmed that this claim raises two simple questions of fact: what was the relevant

treatment and was it unfavourable to the Claimant?' 'Unfavourable' must be given its normal meaning; it does not require comparison, it is not the same as 'detriment'. A Claimant cannot succeed by arguing that treatment that is in fact favourable might have been even more favourable. The court confirmed that demonstrating unfavourable treatment is a relatively low hurdle.

445. The Supreme Court said that in dealing with a section 15 claim, the first requirement was to identify the treatment relied upon. In that case it was the award of a pension. There was nothing intrinsically unfavourable or disadvantageous about the pension on the facts of this case. On the facts the pension was only available to disabled employees (since the entitlement only arise upon permanent incapacity). While that could be less favourable than someone with a different disability, who may have worked more hours upon cessation of employment, no comparison was needed for the purposes of section 15. The claim failed. The Court emphasised that unfavourable treatment meant what it says and was not a high hurdle to surmount.

446. The Equality and Human Rights Commission Code of Practice contains some provisions of relevance to the question of justification. Paragraph 5.2.1 of the Code suggests that if a Respondent has failed to make a reasonable adjustment it will be very difficult for it to show that its unfavourable treatment of the Claimant is justified. As to justification, in paragraph 4.27 the code considers the phrase “a proportionate means of achieving a legitimate aim” (albeit it in the context of justification of indirect discrimination) and suggested that the question should be approached in two stages:- * is the aim legal and non discriminatory, and one that represents a real, objective consideration? * if so, is the means of achieving it proportionate – that is, appropriate and necessary in all the circumstances.

447. As to that second question, the code goes on in paragraphs 4.30 – 4.32 to explain that this involves a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts. It goes on to say the following at paragraph 4.31:- “although not

defined by the Act, the term "proportionate" is taken from EU directives and its meaning has been clarified by decisions of the CJEU (formerly the ECJ). EU law views treatment as proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. But "necessary" does not mean that the [unfavourable treatment] is the only possible way of achieving a legitimate aim; it is sufficient that the same aim could not be achieved by less discriminatory means."

448. In ***Chief Constable v Homer 2012 ICR 704*** Baroness Hale stated that to be proportionate a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so. She approved earlier authorities which emphasised the objective must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. It is necessary to weigh the need against the seriousness of the detriment.

449. The question is whether the action is, objectively assessed, a proportionate means to achieve a legitimate end. The employer has to show (and the onus is on the employer to show) that the treatment is a proportionate means of achieving a legitimate aim. The Tribunal can take account of the reasonable needs of the Respondent's business but the Tribunal must make its own judgment as to whether the measure is reasonably necessary. There is no room for the range of reasonable response test.

<u>Duty to make adjustments</u>

450. Sections 20 & 21 of the Equality Act 2010 provides;

Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A. The duty comprises the following three requirements.

(1) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in

relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(2) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(3) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

Section 21 Failure to comply with duty

451. A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

452. It is not necessary to prove that the potential adjustment will remove the disadvantage; if there is a “real prospect” that it will, the adjustment may be reasonable. In ***Romec v Rudham [2007] All ER (D) 206, EAT***: HHJ Peter Clark said that it was unnecessary to be able to give a definitive answer to the question of the extent to which the adjustment would remove the disadvantage. If there was a 'real prospect' of removing the disadvantage it 'may be reasonable'.

453. In ***Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep), EAT***: HHJ McMullen said that 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'.

454. In ***Leeds Teaching Hospital NHS Trust v Foster UK EAT/0552/10, [2011] EqLR 1075***, the EAT said that, when considering whether an adjustment is

reasonable, it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage.

455. In respect of reasonable adjustment claims, an additional element of knowledge is required. The first element is the same test as in S15 namely that A shows they do not know or could be reasonably be expected to know that the [interested] disabled person has a disability. Schedule 8 EQA 2010 pt. 3 para 20 states that A is not subject to the duty to make reasonable adjustments if A does not know and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at a disadvantage. Accordingly, the additional element on knowledge for S20/21 claims is that A must also be reasonably expected to know the disabled person is likely to be placed at the disadvantage.

Time limits

456. ***Section 48(3), ERA)*** states:

A claim for detriment under section 47B of the ERA 1996 must be presented *"(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months ".*

457. ***Section 48(4), ERA*** sates:

"(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer [a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done".

457. In ***Dedman v British Building and Engineering Appliances Ltd 1974 1 All ER 520)*** Lord Denning stated "it is simply to ask this question: has the man just cause or excuse for not presenting his complaint within the prescribed time?". S.111(2)(b) ERA [and other corresponding provisions in ERA such as s.48(3)] should be given a *'liberal construction in favour of the employee'.*

458. When a Claimant knows of the right to bring a claim, he/she is not obliged to seek legal advice on enforcing that right, but Ignorance of the law or time limits does not necessarily make a delay reasonably practicable.

459. In ***Flynn v Warrior Square Recoveries Ltd 2014 EWCA Civ 68, CA***, the Court of Appeal stressed the need for tribunals to identify with precision the act or deliberate failure to act that is alleged to have caused detriment when considering whether an act/omission extended over a period of time for the purposes of s.48(4)(a). It is a mistake in law to focus on the detriment and whether the detriment continued.

460. In ***Royal Mail Group Ltd v Jhuti EAT 0020/16***, the EAT held that it was irrelevant for the purposes of extending time under S.48(3)(a) that the out-of-time proven acts may have had continuing consequences in terms of the detriment experienced by the Claimant. S.48(3)(a) was concerned with when the act or failure to act occurs, not with when the consequence of that act or failure to act is felt or suffered.

461. The concept of "a series of similar acts" for the purpose of S.48(3)(a) is distinct from that of an act extending over a period of time in the context of S.48(4)(a). ***In Arthur v London Eastern Railway Ltd (t/a One Stansted Express) 2007 ICR 193, CA***, the Court of Appeal held that S.48(3)(a) could cover a situation where the complainant alleges a number of acts of detriment by different people where, on the facts, there is a connection between the acts or failures to act in that they form part of a 'series' and are 'similar' to one another.

462. At paragraph 31 of the judgment LJ Mummery said (emphasis added):
"31. The provision can therefore cover a case where, as here, the complainant alleges a number of acts of detriment, some inside the 3 month period and some outside it. The acts occurring in the 3 month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case. There must be some relevant connection between the acts in the 3 month period and those outside it. The necessary connections were correctly identified by HHJ Reid as (a) being part of a "series" and (b) being acts which are "similar" to one another."

463. At para [45], LJ Lloyd stated that in deciding this question "*it must be sensible to consider the evidence as to each act relied on before deciding (a) whether they are part of a series at all and (b) whether they are sufficiently linked factually to be "similar" acts".* ***Oxfordshire County Council v Meade UKEAT/0410/14),*** in order to form part of a continuing act for the purposes of both the whistleblowing and victimisation claims, the acts relied upon must be unlawful. What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide.

464. LJ Shaw said in ***Wall's Meat Co Ltd v Khan 1979 ICR 52, CA:*** "The test is empirical and involves no legal concept. Practical common sense is the keynote….". The onus of proving that presentation in time was not reasonably practicable rests on the Claimant. "That imposes a duty upon him to show precisely why it was that he did not present his complaint" — ***Porter v Bandridge Ltd 1978 ICR 943, CA.*** Even if a Claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour.

465. The tribunal must then go on to decide whether the claim was presented *"within such further period as the tribunal considers reasonable".* Lady Smith in ***Asda Stores Ltd v Kauser EAT 0165/07*** explained it in the following words: *"the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done".*

Discussion & Conclusions

466. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide: What did the claimant say or write? When? To whom?

Protected Disclosure 1

467. *Did the Claimant disclose information?*

We firstly considered whether the Claimant had disclosed information. The ambit of the Claimant's disclosure under protected disclosure 1 is broad and we have found earlier that some of the alleged disclosures of information were made and others were not. For the sake of clarity, we found the following disclosures were made and that these were disclosures of information to his employer:

(a) In his investigation memo of 26 September 2017 to Ms Viglucci and Mr Rogers, the Claimant disclosed that *"MIC Tanzania had been supplying the government of Tanzania with mobile telephone call data and live tracking showing the location of Mr Lissu".*

(b) In his investigation memo of 26 September 2017 to Ms Viglucci and Mr Rogers and his communications with Ms Viglucci and Mr Rogers between 13 September and 26 September 2017, the Claimant disclosed that *"Information had been provided to the Tanzanian Government since 22 August 2017. From 29 August 2017, the intensity of the tracking increased*

and MIC Tanzania used its human and electronic resources to live track 24/7 the location of two of Mr Lissu's mobile phones".

(c) In his investigation memo of 26 September 2017 to Ms Viglucci and Mr Rogers, the Claimant disclosed that *"The location data had been passed on to the Tanzanian government via WhatsApp".*

(d) In his investigation memo of 26 September 2017 to Ms Viglucci and Mr Rogers, the Claimant disclosed that *"There was no evidence of any formal legal documentation or request from the government";*

(e) In his investigation memo of 26 September 2017 to Ms Viglucci and Mr Rogers the Claimant disclosed that, *"The Tanzanian Government had asked MIC Tanzania to delete the data and WhatsApp messages that had been provided".*

(f) In a telephone conversation with Ms Viglucci on 13 September 2017 the Claimant disclosed that *"The CTIO was in a relationship with a lady and had not declared a conflict of interest.*

(g) In his investigation memo of 26 September 2017 to Ms Viglucci and Mr Rogers and in an email to Ms Viglucci and Mr Rogers on the same date, the Claimant disclosed that *"The four senior managers involved in MIC Tanzania had given inconsistent and untruthful accounts when interviewed by the Claimant as part of his investigation".*

(h) the Claimant disclosed *"That other employees of MIC Tanzania had also raised their serious concerns regarding this matter".*

468. We found earlier that the Claimant did not disclose the following information as alleged:

(a) The Claimant did not disclose that international legal advice on reporting the matter to appropriate authorities was needed; that matters should be

referred to the UN or that MIC Tanzania had contributed to an act of terrorism and an attempted political assassination;

(b) The Claimant did not disclose that there was no evidence of any authorisation by the board of directors of Millicom International Cellular S.A., MIC Tanzania or Millicom International". The absence of authorisation of itself is not a matter that is in dispute;

(c) The Claimant did not disclose that CTIO was in a relationship with a lady "whose father had been the ex-head of the Tanzanian secret service and was also the holder of a diplomatic position, and who was therefore a Politically Exposed Person (PEP), showing close connection between the senior management of MIC Tanzania and the government".

469. *Did he believe the disclosure of information was made in the public interest? Was that belief reasonable?*

We deal with both of the above questions together. We conclude that the Claimant did have such a belief. In his written evidence, in respect of the first disclosure the Claimant states *"I believed that it was in the global public interest for the information I had discovered during my investigation to be shared, properly investigated, and reported"*. This aspect of his belief was not challenged, and we conclude that where we have found disclosure of information was made with regard to protected disclosure 1, the Claimant held a reasonable belief that his disclosure was made in the public interest.

470. *Did he hold a reasonable belief that it tended to show one of the statutory criteria:*

With regard to disclosure 1(a) to (d), in his written evidence, the Claimant submitted that he held a reasonable belief that the information he disclosed tended to show that criminal offences had been committed, various legal obligations had been breached and that the health & safety of various individuals had been risked. With regard to 1(e) to (h) he submitted that he held

a reasonable belief that the information he disclosed tended to show that matters had been or were being or were likely to be concealed or destroyed, leading to a miscarriage of justice.

471. Again we deal with his belief and the reasonableness of it together. We repeat paragraphs 56 and 57 of our findings.

472. We conclude it is clear that the Claimant's overall belief at the time of the disclosures is limited to suspecting a possible connection between the call data supplied being used to geolocate Mr Lissu's movements. He makes it clear in the draft executive summary report he sends himself at the time, that there are a number of possible scenarios that need to be further explored, which further supports the fact that at the time he may have suspected a connection with the assassination attempt and the call data supplied but this does not support the proposition that he held a 'reasonable belief'. What is telling is, that he does not include these thoughts from his draft executive summary in his investigation report to Ms Viglucci and Ms Rogers or in any other contemporaneous documentation to them.

473. At the time the Claimant states he made protected disclosures, the Claimant accepts he did not know whether the call tracking data was passed on by the TCRA to anyone else, who carried out the assassination attempt on Mr Lissu or whether those who committed the shooting used or had access to the mobile telephone data supplied by MIC Tanzania to the government of Tanzania in the days immediately prior to the shooting.

474. The Claimant does not disclose any information pertaining to any link between the call data requests and the assassination attempt in his investigation report sent to Ms Viglucci and Mr Rogers or in any contemporaneous documentation, save for speculation in the draft report to himself. He highlights in his investigation report the reference to Mr Albou raising the issue about the call data requests in the context of the assassination attempt on Mr Lissu, however,

we conclude this is not evidence of the Claimant himself holding that as a reasonable belief.

475. The Investigation report is primarily concerned with lack of authorisation for verbal requests and breach of policy relating to this as well as reporting policy under major events. Whilst we accept in certain circumstances a breach of policy can also be a breach of law, in the context of the information disclosed by the Claimant, we conclude that was not the case here.

476. The claimants view at the time was there was a lack of real clarity in respect of the legal position. In his investigation memo, he states that that there was a lack of clear legal guidance by Mr Shija and possible incorrect understanding of the law. It is clear that at the time the Claimant only believed that it was possible that the internal legal advice was wrong, as such we conclude that the claimant could not have had a subjective believe let alone a reasonable belief that this disclosure tended to show a breach of a legal obligation.

477. To date, those responsible for the assassination attempt have not been identified via any investigation and it is not the role of this Tribunal to determine culpability in this regard. We reminded ourselves our sole focus in respect of determining the question of protected interest disclosures was what information had been disclosed and whether the Claimant held the requisite reasonable belief in the statutory factors, at the time of the disclosures.

478. The Claimant is a retired police officer and as such we conclude that he well understands the difference between suspicion and belief. He accepted in his oral evidence that he only held suspicions as he was not investigating the shooting itself. It was submitted on the Claimant's behalf that he could have held a reasonable belief about something even though subsequently that belief could have turned out to be wrong. We accept that proposition, however, we are not dealing with that situation here; what we have here is the Claimant only suspecting something, which is not the same as holding a belief. What he suspects and sets out in his draft executive summary report to himself, he does

not include in the actual investigation report further detracting from any argument that he held such a reasonable belief.

479. With regard to the request to Mr Albou from Mr Kilaba for all messages about live tracking to be deleted, the Claimant confirmed in the investigation report that those messages had infact been preserved. As such, we conclude that the information cannot be said to "have been, being or likely to be destroyed" as it had in fact been preserved, something of which the Claimant was aware. Further, even if we accept the Claimant did have such a belief, we conclude that belief was not reasonable.

480. We repeat paragraph 67 in respect of the Bar Council letter sent to Mr Rogers and Ms Viglucci. We agree with the Respondents' merely sending a message to Mr Rogers and Ms Viglucci attaching a Bar Council letter which was in circulation at the time does not support the Claimant's contention that he believed that information tended to show the failure of the Millicom Group to report the matter would likely lead to a miscarriage of justice. Further, even if we accept the Claimant did have such a belief, we conclude that belief was not reasonable.

481. We found earlier that the Claimant had not expressed his serious concern that international legal advice on reporting the matter to appropriate authorities was needed and we repeat our findings in paragraph 69. Even if the Claimant had expressed a concern that legal advice should be sought, we agree with the Respondents' that this could not reasonably tend to show that Millicom had breached or was likely to breach a legal obligation. On the contrary, it would be a recommendation for taking a step to establish whether such an obligation exists, and if so how to comply with it.

482. With regard to the CTIO being in a relationship with a PEP, we found earlier that whilst the Claimant disclosed the CTIO was in an undeclared relationship, we could not be satisfied that he had disclosed the relationship was with a PEP. Either way, whilst we find this evidences a disclosure of information, we heard no evidence form the Claimant as to whether he held a belief that this tended

to show a relevant failure. As such we find this aspect is not a qualifying disclosure.

483. Similarly with regard to the completeness and veracity of the answers he had been given by all four Senior managers, whilst we found this evidences a disclosure of information, we heard no evidence from the Claimant as to why he held a belief that this tended to show a relevant failure. As such we find this aspect is not a qualifying disclosure.

484. With regard to other people expressing a concern about the incident, the Claimant provided no detail around this regarding who raised concerns or what the concerns were. We heard no evidence form the Claimant as to why he held a belief that this tended to show a relevant failure. Even if we accept that the Claimant held a belief, we find that it was not reasonable for the Claimant to hold a belief that this tended to show that matters had been or were being or were likely to be concealed or destroyed leading to a miscarriage of justice. As such we find this aspect is not a qualifying disclosure.

485. The Claimant has not given any clear evidence as to what information he believed tended to show that health and safety had been or was likely to be endangered. He states that he held this reasonable belief in respect of disclosures 1(a) to (d) which relate to the provision of the call data to the TCRA without following proper processes. By the time, the Claimant makes these disclosures, the supply of call data had ended. The Claimant did not provide any clarification in this respect save for advising that he believed and still does believe that the health and safety risk was continuing as nobody knew who the assassins actually were. However, we heard no evidence relating to which part of the information he disclosed evidenced a health and safety risk, who this related to and the reasons behind any reasonable belief. As such we find this aspect is not a qualifying disclosure.

486. In summary with regard to protected disclosure 1, we conclude that none of the disclosures were qualifying disclosures, whether on their own individual facts or overall on a cumulative basis. Whilst in the main the Claimant was able to

satisfy us that he disclosed information, he was unable to satisfy us that he held a reasonable belief that the information tended to show one or more of the statutory factors.

Protected Disclosure 2

487. *Did he disclose information?*

There is no record of the verbal conversation that took place between the Claimant, Ms Viglucci and Mr Rogers, however, it is accepted that the email of 16 March 2018 to Mr Dabbour and others is an accurate account of what was discussed in the meeting. Whilst we conclude that the purported disclosure was limited in terms of detail, we find there was a disclosure of information relating to a complaint being made to the Government about actions of government officials. Reference is made to concerns that the inspection was targeted and that there must have been a "tip off". Further that the inspection was designed to intimidate and cause harassment.

488. *Did he believe the disclosure of information was made in the public interest? Was that belief reasonable?*

With regard to public interest, the Claimant's evidence was that he believed that if he failed to raise these concerns, he would be failing to safeguard the health and safety of his colleagues and the public, and to protect the reputation of Millicom.

489. There were concerns around health and safety of Millicom employees in Tanzania at the time. The Respondents' accepted this and agreed that the Claimant was right to raise these concerns. In light of the incident itself, steps were taken to ensure that the Claimant and Mr Barnes were safely out of the country, and they did not return for a considerable length of time thereafter. In light of these factors, we conclude that he did have such a belief and it was reasonable.

490. *Did he hold a reasonable belief that it tended to show one of the statutory factors:*

With regard to disclosure 2, in respect of reasonable belief the Claimant's evidence was that he believed (and still does believe) that there was collusion between certain MIC Tanzania employees and Tanzanian Government officials; that this collusion was intended to prevent the effective investigation of corruption and bribery and to intimidate and harass employees like himself and Mr Barnes, and that this collusion would lead to a miscarriage of justice and the commission of criminal offences (if it had not done so already).

491. There was no mention of corruption or bribery in the email albeit the investigations to which the Claimant was referring did relate to such matters. However, looking at the words specifically which are said to be the purported disclosures, the Claimant states that the actions of the immigration officials were targeted and designed to intimidate and harass. He explained that his belief was that the attempt to prevent him from doing his role was a miscarriage of justice.

492. Whilst we accept that the Claimant held this belief, we find it was not a reasonable belief for him to hold. Further to the incident, whilst he was unable to visit Tanzania, investigations still continued. An external law firm was brought in to assist with the investigations and in respect of matters that had already proceeded to court, he was able to provide evidence pertaining to the investigations remotely. With regard to offences of bribery and corruption the inspection had already taken place and the Claimant and Mr Barnes had left the country. With regard to others matters concerning bribery and corruption investigation these continued to be pursued.

493. With regard to breach of a legal obligation, the Claimant stated that his health and safety and that of Mr Barnes had been endangered and that was a breach of a legal obligation by the Respondents'. Whilst again we accept that the

Claimant held this belief, we conclude that it was not a reasonable belief for him to hold. As soon as the Respondents were made aware, enquiries were made to establish and ensure that the Claimant and Mr Barnes were safely out of the country. Steps were taken thereafter ensuring that the Claimant did not return to Tanzania for many months until it was considered safe to do so.

494. In summary with regard to protected disclosure 2, we conclude that this was not a qualifying disclosure. Whilst the Claimant was able to satisfy us that he disclosed information, he was unable to satisfy us that he held a reasonable belief that the information tended to show one or more of the statutory factors.

Protected Disclosure 3

495. The Claimant's pleaded case is that he made "a protected disclosure to agents of the company". However, we agree with the respondent that ***Part IVA Employment Rights Act 1996 "ERA"*** contains explicit provisions as to the categories of individuals to whom a protected disclosure may be made and this does not include agents of a company or employer. For this reason, we conclude that this disclosure of information does not qualify as a protected disclosure.

496. In any event, even if Sidley Austin were the Claimant's employer, to the extent that he is alleging that he repeated the exact information from PD1 and PD2 to Sidley Austin, we repeat our findings and conclusions in relation to those protected disclosures.

Protected Disclosure 4

497. *Did he disclose information?*
We find there was a disclosure of information.

498. Did he believe the disclosure of information was made in the public interest? Was that belief reasonable?

In relation to the refusal to hand-over devices the Claimant states in his written evidence that he believed it was in the public interest for him to disclose this information. Further in relation to the failings of the HR function he states he believed that the information he was providing to Ms Rogers and Ms Viglucci was in the public and in his colleagues' interest.

We conclude that he did have such a belief, and it was reasonable, particularly in relation to the refusal to hand over devices and concerns around the CDR data being provided in breach of policy.

499. *Did he hold a reasonable belief that it tended to show one of the statutory factors:*

With regard to disclosure 4, the Claimant submitted that he held a reasonable belief that the information he disclosed tended to show that criminal offences had been committed, various legal obligations had been breached, the health & safety of various individuals had been risked and matters had been or were being or were likely to be concealed or destroyed, leading to a miscarriage of justice.

500. We deal separately with the various disclosures set out under disclosure 4. Firstly, in relation to Mr Karikari's relationship with a supplier we repeat paragraph 116 to 118 and conclude, at the time of this disclosure, the Claimant could not have had any subjective belief at the time that there had been any relevant failure in circumstances where he had yet to even confirm whether there had been a failure to declare the relationship.

501. With regard to Mr Karikari and possible sexual relations with another employee and photos with a prostitute we repeat our findings and conclusions as set out in paragraphs 199 to 121 of our findings. On his own evidence, at the time of the alleged protected disclosure, the Claimant accepted he had not formed any view that the information tended to show a relevant failure. Further, the

Claimant accepted that when he spoke to Ms Viglucci, he referred to the "*possibility*" of Mr Karikari having a sexual relationship with one employee, and that Mr Black had said that a prostitute was in possession of a photograph showing that Mr Karikari and another member of staff were naked with her at a sex party. He further accepted that he had not investigated the matter beyond being simply told that a prostitute had told Mr Black something in a bar. In light of this we conclude there was no subjective or reasonable belief in a relevant failure.

502. With regard to Mr Albou's relationship with a PEP, we repeat paragraphs 76 and 77 of our findings and conclusions.

503. With regard to disclosures relating to CDR's we repeat paragraph 476 of our conclusions. The fact that CDRs were being sent without written authorisation was clearly a breach of policy. However, the Claimant's belief at the time was that it was only 'possible' that Mr Shija's advice, that written confirmation was not required was incorrect, he can only have thought it was possible rather than holding a reasonable belief that these other CDRs were being provided in breach of a legal obligation.

504. With regard to Ms Luvanda's allegation, we repeat paragraph 138 of our findings and conclude that the Claimant did not hold the requisite belief and if he did this was not reasonable.

505. With regard to managers failing to provide access to mobile phones, we repeat paragraph 149 of our findings and conclude that the Claimant did not hold the requisite belief and if he did this was not reasonable.

506. The content of the disclosures relating to HR failures is limited, primarily around failures in relation to sickness reporting and performance management failures. We conclude had the Claimant wanted to disclose information he believed showed a likely breach of a legal obligation, or criminal offence, or health and safety concern; he would have included specific detail around the issues relating to work permits and sickness reporting. There is no suggestion of

anyone actually working in breach of work permits. Ms Palsgraaf was not actually entering the country until 21 July 2018, which is three days after the Claimant had sent the email. We conclude, the Claimant could not have formed a subjective or reasonable belief that when he sent that email, Ms Palsgraaf had been working in breach of work permits, or that she was likely to do so.

507. In summary with regard to protected disclosure 4, we conclude that none of the disclosures were qualifying disclosures, whether on their own individual facts or overall on any cumulative basis.

Protected Disclosure 5

508. *Did he disclose information?*
We find there was a disclosure of information.

509. *Did he believe the disclosure of information was made in the public interest? Was that belief reasonable?*

The Claimant sets out in his witness statement that he believed that it was *"in the public interest for a global organisation such as Millicom to ensure that criminal acts such as the harassment of its staff are reported properly and that employees' health and safety is protected".*

510. We conclude he did hold a belief that the disclosure of this information was in the public interest. As per disclosure 2, there were concerns around health and safety of Millicom employees in Tanzania at the time and therefore we conclude his belief was reasonable.

511. *Did he hold a reasonable belief that it tended to show one of the statutory criteria:*

With regard to disclosure 5, the Claimant submitted that he held a reasonable belief that the information he disclosed tended to show that criminal offences

had been committed, various legal obligations had been breached, the health & safety of various individuals had been risked and matters had been or were being or were likely to be concealed or destroyed, leading to a miscarriage of justice.

512. We repeat our findings and conclusions set out in paragraphs 159 to 163, in that there could have been no subjective or reasonable belief that this information tended to show a relevant failure.

Protected Disclosure 6

513. *Did he disclose information?*

We find there was a disclosure of information.

514. With regard to disclosure 6, we repeat paragraphs 166 to 170 setting out that the information the Claimant discloses here is entirely about personal matters relating to his employment. As such we conclude this information was not made in the reasonable belief it in the public interest. Even if he did have a subjective belief of these things, we find in light of the actual information disclosed this belief was not reasonable.

515. *Did he hold a reasonable belief that it tended to show one of the statutory criteria:*

With regard to disclosure 6, the Claimant submitted that he held a reasonable belief that the information he disclosed tended to show that a person has failed, is failing or is likely to fail to comply with any legal obligation; that the health or safety of any individual has been, is being or is likely to be endangered, that matters had been or were being or were likely to be concealed or destroyed.

516. In terms of the information disclosed in the grievance documents and emails, the Claimant was unclear in his evidence as to which parts of the information disclosed tended to show relevant failures. Even if he did have a subjective belief of these things, we find in light of the actual information disclosed this

belief was not reasonable. We conclude these disclosures were not protected disclosures.

517. In summary we conclude that none of the disclosures were protected disclosures. However, even if we had found qualifying disclosures, we consider the detriment and automatic unfair dismissal claims would not have succeeded in any event. We consider it appropriate, for the sake of completeness to set out our reasons as follows in this judgment.

Detriment 1

518. We repeat paragraphs 181 and 188 to 190 of our findings and conclusions. We do not find the factual allegations in respect of this detriment proven.

519. Even if we had found that the Clamant had been subject to a detriment and that disclosure 3 was a qualifying disclosure, we conclude there is nothing at all to suggest that any discussion Ms Viglucci had with the Claimant on 13 April 2018 related to anything the Claimant said to Sidley Austin. Infact, on balance our findings in relation to the conversation on 13 April point to the contrary, in that the conversation was about the Ghana investigation and Ms Viglucci's concerns around confidentiality.

Detriment 2

520. We repeat paragraph 203 of our findings and conclusions. We found earlier that Ms Viglucci did not ignore requests for the Claimant to review the Sidley Austin report neither did she not communicate with him verbally between September and October 2018.

521. With regard to Ms Viglucci and Mr Rogers not completing the Mid-Year review, we found earlier that this was the responsibility of Ms Viglucci as the Claimant's line manager. She did not complete the Mid-year review for any of her line reports. We accept her evidence that the reason she did not complete the mid-year review was because she was not that familiar with the review process and

that she was busy with her day job. The fact that she equally had not completed this review for her other line reports would support this being the reason for non-completion. Therefore, whilst we accept that this was a detriment and later the Claimant was downgraded at his end of year review, there is simply no evidence that Ms Viglucci's failure to complete the mid-year review had anything at all to do with any alleged protected disclosures.

522. With regard to Ms Viglucci and Mr Rogers not responding to the 2 investigations reports, we conclude that these actions were not detriments. We do not find there was any requirement on Ms Viglucci and Mr Rogers to respond to the Claimant's investigation reports once submitted. His role in the matter had effectively come to an end and there was no reason for a response post submission. We conclude a reasonable worker is such circumstances would not view these actions as detriments.

523. Whilst the factual allegation is accepted in that Ms Viglucci and Mr Rogers did not respond to the Claimant's investigation report. This was standard practice applied to all investigators. There was no evidence provided of any reports where the Claimant sought specific responses to questions raised and Ms Viglucci and Mr Rogers failing to respond to this. We conclude there is simply no evidence that Ms Viglucci and Mr Rogers failed to respond to investigation reports because of any alleged protected disclosures. Infact to the contrary, they did not respond in line with standard policy about investigators not being involved in disciplinary outcomes and ultimately as there was no requirement for them to do so.

524. For the reasons highlighted above, detriment 2 fails.

Detriments 3 & 4 – Attempts to dismiss the Claimant in 2018/ Not offering the Claimant two roles in Miami

525. We deal with these 2 detriment claims together as they concern overlapping facts and there is commonality in our reasons as to why we would have dismissed these claims.

526. We will discuss the position in respect of redundancy when we consider detriments 9 and 11 in particular. However, in respect of the position in September 2018, we conclude there was a potential redundancy situation in respect of the Claimant for essentially the same reasons as his redundancy in November 2019. There is undeniable evidence that the Millicom Group were proceeding in line with it business plans since 2015 to expand in LATAM and to exit its operations in Africa.

527. In 2018, as the Claimant accepted there was a "*definite acceleration*" in the downsizing of Millicom's London and Africa operations in 2018. At the same time there was an increase in Millicom's LATAM operations, ultimately leading to an increase in investigations in LATAM. With this backdrop, we conclude that it is unsurprising that Ms Viglucci and Mr Rogers felt there was a need for an additional investigator in Miami. Ms Viglucci believed Spanish was necessary for a LATAM investigator and whilst there were some suggestions from the Claimant that he could have used tools such as google translate to assist with interpretation he also accepted that such tools were not entirely accurate, things like nuances in language which could be critical would not be picked in such circumstances. In the circumstances, we accept Ms Viglucci genuinely believed that a Spanish speaking investigator was required for LATAM investigations was required ad she had cogent and justifiable reasons for holding this belief.

528. Ultimately, the Claimant was not made redundant in 2018 as Mr Dabbour required an investigator for Africa. The Claimant subsequently agreed with Mr Dabbour to take on the Africa investigator role under his direction for as long as was considered necessary. Had he not agreed to take on this role it was likely that the Claimant would have been selected for redundancy in September 2018. Therefore, rather than being subjected to a detriment at that time, we agree with the Respondents' that the Claimant benefited from the situation.

529. With regard to the Claimant not being offered either of the 2 roles in Miami, we accept Ms Viglucci's evidence that he clearly was not suitable for either role. that said, the Claimant could have applied for the roles given he was made aware through Mr Ruiz, but he did not do so, instead he agreed to focus solely on Africa following his discussion with Mr Dabbour and Ms Rutkowska. We conclude he did not apply for the roles, more likely than not because he accepted, he did not have the requisite experience or qualifications.

530. We conclude the Claimant was clearly not suitable for either the Global Investigator role or the Employee relation role. The investigator role required a Spanish speaker, the Claimant did not speak Spanish. The Claimant accepted that Ms Viglucci genuinely believed that a LATAM investigator required Spanish. Her views on the Spanish speaking requirement in LATAM were clear at the point she joined Millicom in March 2017. This is reflected in her amending the job description from Mr Ruiz's role. This was all prior to any alleged protected disclosure being made by the Claimant, as such we conclude the alleged protected disclosures had nothing to do with Ms Viglucci's belief that fluency in Spanish was mandatory for a LATAM investigator.

531. With regard to the employee relations role, the Claimant also accepted he did not have the requisite HR qualifications, as such there is also justifiable reasons as to why this role was not considered suitable for him.

532. Ultimately, there is insufficient evidence to support a conclusion that the potential redundancy in September 2018 and the Claimant not being informed or offered the Miami based roles had anything at all do with the Claimant's alleged protected disclosures. For this reason, detriments 3 & 4 fail.

Detriment 5 – Changing the Claimant's Line Management, Navex Access and reducing his role

533. At the time the Claimant's line management changed to Mr Dabbour, he was working under the direction of Mr Dabbour on Africa investigations. Mr

Dabbour's position was clear in his emails to Ms Bobenreith and Ms Cunliera at the time that he needed a resource to assist with investigations in Africa, which he would cover from his Africa budget. We accept this was one of the reasons for the Claimant's line management being transferred to Mr Dabbour and that it was reasonable for the Respondents to reflect in its line management structure, what was happening on the ground.

534. The second reason for the transfer of line management was, as Ms Viglucci put in her email of 15 March 2019 to Ms Cunilera, was to allow the Claimant to continue doing investigative work in Africa under Mr Dabbour's direction. Mr Dabbour was not a lawyer and based on legal advice obtained previously, the Respondents' understood the position in respect of privilege over their investigations was protected, by such investigations being managed and directed by lawyers. This is reflected at paragraph 7.3 of the Millicom Group's Global Investigations Policy, which establishes that Global Investigations are privileged and are to be supervised by an attorney with an end toward providing the company legal counsel.

535. The Respondents' understood that if Mr Dabbour was directing investigations these would not be covered by privilege. Whether this was the correct interpretation of US law on privilege is irrelevant as we accept, this is what the Respondents reasonably understood the position to be and this is what they acted in accordance with.

536. The Claimant's work for global investigations clearly did reduce once he was transferred to Mr Dabbour's budget and started to be used as a resource by Mr Dabbour for Africa investigations. Ms Viglucci continued to allocate a small number of global cases to the Claimant, which to maintain privilege she directed, but in the main the Claimant's work was that allocated by Mr Dabbour. We conclude that the reduction in the global work reflected the reality on the ground in terms of the role the Claimant was doing under Mr Dabbour and the Respondent's position in respect of maintaining privilege over global investigations. We find there is insufficient evidence to support the conclusion

that these actions had anything at all to do with any alleged protected disclosures.

537. With regard to the Claimant's access to NAVEX, the Respondents accept that this this was restricted to Africa cases he was assigned. The Claimant continued to be given access to the cases he was assigned pursuant to Ms Viglucci's direction and supervision. He accepted in his oral evidence that having access to information on NAVEX about countries outside Africa might jeopardise the privilege of that information.

538. There is insufficient evidence to support the assertion that the Claimant's access to Navex was restricted because of any alleged protected disclosures. We find the Respondent had clear and justifiable reasons for restricting access, primarily to protect confidentiality and legal privilege, something which the Claimant accepted might be jeopardised if he had access to global level investigations in countries outside of Africa.

539. We repeat our conclusions in paragraphs 285 and 290 in respect of the Claimant being removed from 2 investigations and conclude there is insufficient evidence to support the conclusion that the Claimant's removal had anything at all to do with any alleged protected disclosures. Accordingly, detriment 5 fails.

Detriment 6 – Reduction in performance rating and bonus

540. We conclude the emails relied on by Ms Viglucci as supporting her concerns about the Claimant's performance reflected genuine and actual concerns she had. We found earlier at paragraph 305 that she had raised these concerns with the Claimant on a number of occasions. Our findings and conclusions in this regard are supported by the contemporaneous timeline of events. The emails relied upon as evidencing performance concerns were attached to an email to Ms Cunillera dated 15 March 2019 i.e. prior to the whistleblowing disclosure complaints.

541. Ms Viglucci was not alone in having these concerns; it is clear other people shared similar concerns, including Senior Managers like Ms Samren who had on occasion expressed concerns about the confidentiality and content of the Claimant's emails. Further, the performance rating itself was agreed at a calibration meeting, where HR were present. Ultimately, the Claimant's performance was compared and contrasted to other colleagues before being agreed by the calibration panel.

542. We find there is insufficient evidence to support the conclusion that the reduction in the Claimant's performance rating had anything at all to do with any alleged protected disclosures. Accordingly, this detriment complaint fails.

Detriment 7 - Exclusion from Hogan Lovell's review & accusing the Claimant of tracking data

543. We do not find the factual allegation proven in respect of the allegation that the Claimant was excluded from the Hogan Lovell's review. We found earlier at paragraph 313 that Mr Rogers did not make any comment about the Claimant being dangerous and whilst the focus of the review was initially on LATAM, in due course the Claimant did speak to Hogan Lovells as he confirmed in evidence. The Claimant confirmed he had a number of interviews with Hogan Lovells, one of those interviews lasting a number of hours. It therefore follows, that he was not excluded.

544. With regard to the allegation that Mr Rogers accused the Claimant of tracking data, we repeat paragraphs 127 to 129 of our findings. We conclude that Mr Rogers had genuine concerns regarding authorisation for the tracking of employee mobile phones and he conveyed those concerns to the Claimant. There is no evidence to suggest that this had anything at all to do with any alleged protected disclosures.

545. Accordingly, this detriment complaint fails.

Detriments 8-12 – Termination Detriments

546. We have adopted the order used in the Respondent's submissions for detriments 8-12 as we agree there is a substantial overlap between a number of the Termination Detriments and it makes sense to look at these primarily in a chronological order of events.

Detriment 9 – Placing the Claimant at risk of redundancy

547. With regard to the Claimant being placed at risk of redundancy, this falls to be considered in light of what was happening at that time regarding the Respondents' market in Africa. Since 2015 the business plan that was being implemented was the sale of Millicom's Africa operations and the acquisition of operations in LATAM. During 2019, Millicom had successfully sold its business in Chad, meaning that its only remaining market in Africa was Tanzania and a joint venture in Ghana.

548. The majority of employees, including the Claimant, were aware that the London Office was closing. 17 other employees were made redundant in the London Office in 2019. There was a skeleton crew of only 6 employees in the London Office by January 2020 and none of those staff were involved in investigations in Africa.

549. In or around mid-August 2019, Millicom took the decision that it expected to have such a diminished need for employees based in London to carry out work in relation to Africa that the role of Mr Dabbour, CEO of Africa was to be placed at risk of redundancy. Mr Dabbour was subsequently made redundant at the same time as the Claimant.

550. The Claimant's case in terms of the redundancy being a sham is based primarily on the argument that the Respondents did not produce any documentary evidence which supported that there was a reduction in the work undertaken by the Claimant in his role, such as to justify a finding that the reason for dismissal was redundancy. The Respondents submit the reason for redundancy was the

business' requirement for employees to do work was expected to diminish, it was not the fact that the work required by the Claimant had reduced.

551. We accept there was no evidence that the work being undertaken by the Claimant had diminished but whether it had done so is irrelevant as per ***Safeway Stores v Burrel***. We find that Millicom Group had made a business decision that the requirement for employees to the do the work that the Claimant was doing had diminished. Whilst there is no need for an employer to show an economic justification or business case for the decision to make redundancies as per ***Polyfor Ltd v Old,*** we find on the facts of this case the business case and economic justification is set out in the Millicom Groups sale of the Africa business and closure of its London Office.

552. The fact Mr Dabbour, the CEO of Africa and the Claimant's line manager was made redundant at the same time as the Claimant is entirely consistent with this phase of redundancies dealing with the only member of the investigations team based in London undertaking Africa investigations.

553. By 20 September 2019, the Claimant accepts that for more than six months he had been performing a role focused exclusively on Africa, reporting to Mr Dabbour and which was not part of the global investigation team. We found earlier that the Claimant was performing this role because Mr Dabbour wanted him to perform it as part of Mr Dabbour's Africa budget. We conclude, the natural consequence of Mr Dabbour's removal was that the Claimant's role would also go. The fact that the Claimant's role was subsequently removed and not replaced is further evidence that corroborates there was a genuine redundancy situation.

554. With regard to the decision maker in respect of the decision to place the Claimant at risk of redundancy, we concluded earlier that it was more than likely this person was Ms Bobenreith and we repeat paragraphs 324 to 328 in this regard. Ms Bobenreith clearly had knowledge of alleged disclosure 6, however, other than having such knowledge there is simply no evidence that her decision in respect of dismissal was by reason or principal reason of this disclosure.

555. We also found earlier at paragraphs 370 and 374 to 378 that neither Ms Viglucci or Mr Rogers were involved in either the redundancy decisions or the process relating it.

556. The redundancy process was conducted by Mr Frechette, including the sending of the termination letter. At the time of the claimant's redundancy, we have found that he had knowledge that the claimant had made disclosures at least in respect of protected disclosures 1 and 6, but not the details relating to those disclosures. On that basis, he did not have sufficient knowledge of the claimant's disclosures such that the dismissal could be by reason or principal reason of it. The same applies to Mr Gill and although he became aware of disclosure 6, he ultimately did not investigate or deal with the grievance so it is unlikely he would have had sufficient knowledge of this disclosure. Even if they did have sufficient knowledge there is simply no evidence that their decisions or actions in respect of dismissal were by reason or principal reason of any alleged disclosure.

557. We conclude that the Claimant was placed at risk of redundancy for all the reasons set out at paragraphs 547 to 554, none of which had anything at all to do with the Claimant's protected disclosures.

Detriment 8 – Short notice consultation.

558. The Claimant's complaint is that he was only given one working days' notice of the first redundancy meeting.

559. It is clear that the invite from Mr Frechette, was to a meeting to initiate the redundancy process rather a substantive meeting. Contrasting this with the First Respondent's previous practice of surprising employees on the day, we conclude that the Claimant suffered no detriment by being given a full working days' notice of the meeting. Further, we conclude there is no evidence that Mr Frechette did this because of any protected disclosures.

Detriment 10 – Refusal to postpone consultation

560. The Claimant's allegation in respect of this detriment is that Mr Frechette "*refused to postpone the consultation process and provided for consultation only by written representations notwithstanding the Claimant's certified sickness with serious eye injury".*

561. We conclude that the Claimant has not proven the factual allegations in respect of detriment 10. Mr Frechette did not "*refuse to postpone the consultation process and provide for written representations only notwithstanding the Claimant's certified sickness"*. A postponement request had not been made by the Claimant and as such there was no request for Mr Frechette to refuse.

562. The Claimant was invited to make written representations on the basis that he was not able to attend in person or via telephone, however, when the Claimant suggested a face to face meeting, Mr Frechette acceded to this, suggesting a date of 9 October. The Claimant was subsequently unable to attend this date due to a hospital appointment and suggested another date that week, following which Mr Frechette commenced without prejudice communications with the Claimant's solicitors. The Claimant did not at any point request Mr Frechette to postpone the redundancy consultation nor did he contact Mr Frechette again to rearrange the meeting of 9 October.

563. We do not find the factual allegations in respect of this detriment proven and accordingly this complaint fails. Even if we had found the factual allegations proven, there is insufficient evidence to suggest that detriment 10 had anything at all to do with any protected disclosures.

Detriments 11 – Dismissal

564. It was submitted on behalf of the Claimant that, there was no reasonable or meaningful attempt at consultation and that the decision to make the Claimant redundant had been made prior to any consultation taking place. Further, The Claimant was not provided with an accurate or sufficiently detailed explanation

of the reason why it was said that his role was at risk of redundancy at the material time.

565. We are satisfied there was a reasonable and meaningful attempt at consultation. The Claimant was given a warning that he had been provisionally selected for redundancy by Mr Dabbour in early September, this was followed up by an email from Mr Frechette on 20 September 2019 and a letter of 2 October 2019. He was not served with a termination notice until 21 November 2019.

566. What is abundantly clear is that both Mr Gill and Mr Frechette were firm in their minds that the decision to close the London Office and exit Africa would inevitably lead to potential redundancies of employees working on Africa operations. The Claimant was also accepting of that fact in his Appeal meeting with Mr Gill. It is unsurprising these views were held, in light of the fact the business decision relating to exiting Africa had been in the pipeline since 2015 and implementation had commenced in 2016. By the time the Claimant's redundancy situation came up in September 2019, the First Respondent was well on the way to winding down and ceasing operations. This was clearly evidenced by the fact there were only 7 employees remaining in the London office, none of whom were investigators other than the Claimant. Mr Dabbour, the CEO of Africa was also being made redundant.

567. Mr Frechette set out in sufficiently clear detail the basis for the Claimant's redundancy selection in his letter of 2 October. He informs the Claimant that the First Respondent was in the process of being wound down and ceasing all operations including the Africa desk operations. He went on to advise that the Claimant was at risk because *"the role he was carrying out would shortly cease as the First Respondent completed the winding down process".*

568. The Claimant was provided two opportunities to meet in person to discuss the redundancy situation, provide his view on current ways to avoid his redundancy and alternative vacancies. Following his eye injury and him commencing a period of sickness absence, he was also offered the chance to provide written

representations as an alternative. Additionally, the Claimant was provided with access to all vacant positions across the group and invited to provide any written representations in respect of them.

569. On or around 19 October, the Claimant's solicitors engaged in without prejudice discussions with Mr Frechette. There was no further engagement from the Claimant with Mr Frechette in relation to consultation. There was also no indication that this was because of any issues relating to his eye injury or any other reason.

570. Without prejudice discussions came to an end around 6 November, Mr Frechette waited a few more weeks before issuing the termination letter on 21 November. We conclude the consultation spanned a reasonable length of time. Reasonable Steps were taken to allow the Claimant to participate in writing if he wished, despite this not being specifically requested by the Claimant. The claimant was communicating by email at that time without any reported issues. We conclude the Claimant had a fair and reasonable opportunity to participate in consultation and make representations, but he chose not to do so.

571. Regarding the Claimant's dismissal and the provision of suitable alternative employment, we conclude these were matters that the Claimant was consulted about. Mr Frechette invited comment from the Claimant and provided details of other roles that were available in the Millicom Group encouraging the Claimant apply. The reality of the situation was that none of those roles were suitable, this view is supported by the fact that the Claimant did not seek to apply for any of those roles and neither did he seek to discuss alternative employment with the Respondents'.

572. Both Mr Frechette and Mr Gill consulted the Claimant about suitable alternative employment and whilst they may not necessarily have had the authority to offer roles they could have liaised with the right people and taken necessary steps to resolve this, had this been something that the Claimant wished to explore. The fact that they did not do so was not because they decided they could not, it was because the Claimant had shown no interest in exploring such options despite being provided details of vacancies.

573. At the time of the appeal hearing, the Claimant was legally represented, and he could have raised these matters with Mr Gill in his appeal, however, he did not do so. Infact, he accepted that there was a redundancy situation, and the London office was closing.

574. Mr Gill properly applied his mind to the dismissal appeal grounds relating to whether or not there was a genuine redundancy situation and whether a fair process had been followed. He set out in detail the reasons for his conclusion that there were valid business reasons for the Claimant's redundancy, which he stressed was part of a wider business closure exercise, that was not connected or targeted towards any specific individual, including the Claimant.

575. The Claimant had a full opportunity to address any consultation failings in his Appeal, which he failed to do despite being legally represented at this point. He did not make any meaningful suggestions in his Appeal letter or at the appeal hearing about ways in which his redundancy might be avoided.

576. In light of our conclusions at paragraphs 565 to 576, we conclude the First Respondent and Mr Frechette made genuine attempts to consult with the Claimant prior to the decision to terminate his employment.

577. There is insufficient evidence to suggest that the Claimant's dismissal had anything at all to do with any protected disclosures. Accordingly, detriment 11 fails.

Detriment 12 – Payment in lieu of notice/Continued access to private healthcare

578. We found earlier the Claimant's termination date was extended by 3 weeks to allow him to transition his health care and we repeat paragraphs 357 and 358 in this regard. We accept Mr Frechette's unchallenged evidence that everyone got paid in lieu of notice in the UK, the Claimant was treated no differently. Infact, he was treated more favourably compared to others as he had the benefit of 9 days of garden leave before the termination of his employment. In

the circumstances, we conclude a reasonable worker is such circumstances would not view these actions as detriments.

579. Even if we had found that this allegation was a detriment, we conclude there is no evidence that the First Respondent or Mr Frechette did this because of any protected disclosures.

Automatic Unfair Dismissal

580. Whilst we found earlier that none of the disclosures were 'qualifying disclosures' we considered the question of automatic unfair dismissal on the basis that we had found the Claimant had made protected disclosures.

581. For the reasons set out in paragraphs 546 to 554, we conclude the reason for the Claimant's dismissal was due to there being a genuine redundancy situation. There is no evidence at all to link any disclosures to the decision to make the Claimant's role redundant and we repeat paragraphs 555 to 557 in this regard.

582. We have also considered whether this could be a situation where someone who had the requisite level of knowledge of disclosures, might have influenced Mr Frechette, Mr Gill or Ms Bobenreith into dismissing the Claimant believing it was due to redundancy, when in fact the reason or principal reason was the Claimant's disclosures. In terms of Ms Viglucci and Mr Rogers, we repeat our findings and conclusions in paragraphs 370 and 374 to 378 and find they had no involvement in either the redundancy decision or the process leading up to dismissal. We find there is absolutely no evidence to support the contention that those involved in dismissing the Claimant were influenced by others in any way. The Claimant's dismissal was for genuine redundancy reasons, the evidence before the Tribunal overwhelmingly supports this conclusion.

583. The claimant's claim in this regard, therefore fails.

Unfair Dismissal

584. We find that the reason for the Claimant's dismissal was redundancy and we repeat paragraphs 548 to 554 of our conclusions in this regard. Ultimately, we find this was a genuine redundancy situation. The business decision was that the requirement for the Claimant to do his role had diminished. His role was made redundant and was not replaced by the business.

585. Whether dismissal was fair in all the circumstances, including whether a fair process was followed and whether dismissal was within the range of reasonable responses, are all questions with a neutral burden of proof.

586. We conclude a fair process was followed. Firstly, we find the Respondents adequately warned and consulted the claimant, we repeat our conclusions in paragraphs 560 and 565 to 574 in this regard.

587. We considered whether the consultation took place at a formative stage i.e. at a point where the Claimant could influence the outcome. On the facts of this case, the closing down of the London Office and the exit from Africa were not decisions that the Claimant could influence, it was an undeniable fact that this was going to happen. These were business decisions being implemented by the Millicom Group, since 2015 and by the time the Claimant's role was being considered for redundancy, there were only 7 employees left in the London Office.

588. However, with regard to meaningful consultation on redundancy as a whole, we find the Claimant was fairly consulted. The consultation commenced with the Claimant at the point when Mr Dabbour's role was being made redundant. Mr Frechette's letter detailing the reasons for the Claimant being placed at risk of redundancy invited representations on the redundancy situation, on ways to avoid redundancy, and views on alternative vacancies. We find the Respondent took reasonable steps in considering and highlighting suitable alternative employment and we repeat paragraphs 569 and 570 in this regard.

589. The fact that the Claimant did not engage with the consultation process does not in our opinion detract from the fact that the Respondents had fairly consulted the Claimant. We find the Respondent's actions in terms of consultation were within the range of reasonable responses open to a reasonable employer.

590. With regard to the Claimant's role being selected for redundancy, as per Mr Frechette's evidence, the Claimant's role was considered to be a unique role which was appropriately considered on its own in terms of potential redundancy. There were no other investigators either based in London or focused solely on investigations in Africa. On balance we find the selection decision effectively placing the Claimant in a pool of one was within the range of reasonable responses open to a reasonable employer.

591. It was submitted on the Claimant's behalf that a fair process may well have required Mr Clifford, Mr Ruiz and Ms Moreno to be 'pooled' and scored before determining which of the three was to be made redundant. Even if we had found that the selection pool of one was outside of the range of reasonable responses and a wider selection pool including Mr Moreno and Mr Ruiz should have been created, we conclude the Claimant would still have been selected for redundancy and dismissed. The reality was the Claimant was unique in his position, he was the only global investigator focused on Africa and based in London. Since late 2018, he had been under the line management of Mr Dabbour and part of the Africa budget rather than the global compliance budget. We found earlier, he did not speak Spanish and would not have been able to conduct investigations in LATAM.

592. In light of the above, we are satisfied on balance that a genuine redundancy situation existed and a fair process was followed. Even if we are wrong about that and a fair process had not been followed; had the process been run fairly, we find the Claimant would have been dismissed on the grounds of redundancy. Ultimately, the London office was closing, the Millicom Group was in the latter

stages of its exit from Africa and it was focusing its investment in its growing operations in LATAM. The Claimant was the only investigator based in the London office, his role was unique to the extent that it was focused on Africa and was based in London. There were no suitable alternative roles available at the time.

Disability

593. This is a claim brought against the First Respondent, Millicom UK only, albeit Mr Frechette's evidence is relevant to the matters to be determined.

594. The First Respondent accepts that the Claimant had a physical impartment (NAION) that is long-term in nature, however it disputes that the Claimant is a disabled person within the meaning of s.6 Equality Act 2010. The First Respondent submits that the Claimant has not discharged the burden of proving that (as at the relevant time) the condition had substantial effects on his ability to carry out normal day to day activities that were likely to last for 12 months.

595. The acts of alleged disability discrimination that the Claimant relies upon took place, between 23 September 2019 and 21 November 2019. This is the relevant period for our considerations.

596. We reminded ourselves that the question we must consider is whether between 23 September 2019 and 21 November 2019, the Claimant has adduced sufficient evidence to prove that his condition was likely to have a substantial adverse effect lasting for 12 months or more.

597. There is limited medical or other evidence available over the material time to assist us with us addressing the question of whether the Claimant's eye impairment was likely to have a substantial adverse effect lasting for 12 months or more. It is clear that during the material time the Claimant was undergoing various tests and examinations but did not receive a diagnosis of NAOIN until 5 November 2019 when Dr Bremner confirms this to his GP.

598. The Claimant has adduced very little objective evidence that the symptoms of his impairment demonstrated a substantial adverse impact on his day to day activities at the material time, albeit his impact statements and the information he provides to Dr McHugh does set out details of what he describes as the substantial adverse impact on his day to day activities.

599. Whilst the reports of Dr McHugh were obtained post the material time and we do not place reliance on them to determine the question of long term effects; they do provide a retrospective medical opinion on the question of substantial effect on day to day activities during the material time as well as the progressive nature of the Claimant's impairment.

600. Whist the objective medical evidence is scant during the material time we conclude that the progressive nature of the condition which could well lead to a further deterioration in the Claimant's vision does support a finding of the Claimant being a disabled person at the material time.

601. Dr McHugh contends that that there is a risk of NAION developing in the other eye and whilst the taking of aspirin medication reduces that risk, it still remains a risk of 15-20%. Dr McHugh also opines that there is a 20% risk of the Claimant developing total blindness in his lifetime. In light of this evidence, we conclude that the condition is likely, (i.e. it "could well happen"), to result in the Claimant having such an impairment.

602. Whilst we were conscious that the evidence of Dr McHugh is post the material time; it is supported by some extent with contemporaneous evidence around the material time. Specifically, in his email of 26 November 2019, to Mr Frechette, the Claimant comments that there is a 20% likelihood of the condition progressing to his right eye. Albeit this is not expressly conveyed, this appears to be based on medical opinion at the time. We conclude this comment is based on medical opinion at the time, as the Claimant makes this statement in an email where he attaches medical field test results in relation to both of his eyes.

He is discussing what the results of the eye tests mean and we find on balance that this is likely to relate to the medical examinations and reviews he was subject to around that time.

603. Further, we find Dr McHugh's prognosis does not suggest that the prognosis changed over time, rather it appears to be more a general opinion and prognosis in respect of anyone who develops NAION on one eye. As such, we take this prognosis as commencing from the date the Claimant's impairment arose in September 2019.

604. The evidence is scant again in respect of whether NAION in both eyes would have a substantial adverse effect on normal day to day activities, however, we accept at the relevant time the Claimant's impairment had 'some' adverse effect on his day to day activities. We accept in those early stages he would have been adjusting to the vision loss/reduction in one eye but there no doubt would have been adverse impact for example in respect of reading and walking as set out in the Claimant's impact statements. We did not go on to consider whether the impairment had a substantial adverse impact on normal day to activities at the material time nor did we deem it appropriate to consider the effect of modifications and treatment. This is primarily as the majority of this commentary in Dr McHugh's reports regarding such matters is post the material time. Equally the same issues arise with the Claimant's impact statements.

605. The adverse effects when the impairment is only in one eye are somewhat compensated by the other eye being normal. However, if the right eye also became impaired then on balance, we find it is likely that there would be a substantial adverse impact on day to activities. Clearly at this stage the wearing of an occluded lens would make no difference.

606. In all the circumstances, we conclude that the Claimant has a progressive condition as per Schedule 1, paragraph 8 of the Equality Act 2010.

Knowledge of disability

607. We conclude on the evidence that there was no actual or constructive knowledge on behalf of the First Respondent, at the material time.

608. It is clear from all of the contemporaneous evidence at the material time that the Claimant himself had a lack of clarity and was undertaking various tests and assessment at the material time. It is not surprising therefore that the information that he provided to the Respondents at that time was limited. Prior to 26 November, there was no mention of disability and at most the Respondents' and a number of its employees were told of vision difficulties with the Claimant's left eye.

609. There were limited complaints in contemporaneous medical documents of any impact on the Claimant's day to day life, which would or should have alerted the Respondent to the question of disability and prompted it to make further enquiries. Aside from the loss of sight in his left eye, the notes stated "*fit and well, with active lifestyle"*; "*normally fit and well"* ; "*he certainly felt well in himself and had no other constitutional symptoms at the time."* We conclude that is not sufficient to vest the First Respondent with knowledge of the Claimant's disability.

610. The Claimant was also in communication by email with Mr Frechette during the material time; at no time did he indicate that he had any difficulty in communicating in writing or that as a result of his condition he would be placed at a substantial disadvantage in respect of his reasonable adjustments claim. In fact, he communicated by email and later produced a written 6 page appeal document on or around 10 December 2019.

611. With regard to constructive knowledge, we considered what the First Respondent, might reasonably have been expected to know, if it had made further enquiries. At the material time, the cause and impact of the Claimant's condition was still under investigation. We conclude that had further enquires been made at the material time, they would not have revealed anything further

or at most enquiries would have found similar to what Dr McHugh found 10 months later, in that there would likely be a period of adaptation for three months or so, after which there should not be substantial adverse effects on the Claimant's ability to carry out normal day-to-day activities. As such, we conclude that even if further enquiries were made this would not have led to constructive knowledge of disability.

s.15 Discrimination arising from disability

612. For the reasons set out at paragraphs 604 to 608 above, the s.15 discrimination arising from disability and failure to make reasonable adjustments claims must fail as the Respondents did not have knowledge of the Claimant's disability nor of the substantial disadvantage in respect of the failure to make reasonable adjustments claim. However, even if there had been knowledge, we consider the claims would not have succeeded in any event. We consider it appropriate, for the sake of completeness to set out our reasons as follows in this judgment.

613. The Claimant's case is that (1) his inability to attend a meeting that had been arranged with Mr Frechette was something that arose in consequence of his disability; and (2) the decision to dismiss without a substantive consultation process was unfavourable treatment that arose in consequence of his inability to attend the meeting.

614. We conclude the documentary evidence shows that the Claimant being unable to attend the consultation meeting was not something that arose in consequence of his disability; rather it was because of a schedule conflict between the meeting and a medical appointment. The medical appointment did relate to the Claimant's eye condition, however, we conclude it was not the disability itself which led to the Claimant's inability to attend the meeting.

615. In any event, the Claimant was not dismissed without a consultation process because of his inability to attend a meeting that had been arranged with Mr Frechette. Following the inability to attend this meeting due to the Claimant's medical appointment, Mr Frechette was approached by the Claimant's solicitors

and he engaged in 'without prejudice' discussions with them. From this point onwards, Mr Frechette received no further communication from the Claimant in respect of either providing written submissions or re-arranging the consultation meeting. During this time, there was no indication from the Claimant he wanted to reschedule the consultation meeting and it is therefore understandable that Mr Frechette took the communication from the solicitors as the reason why the Claimant did not seek to reschedule the consultation meeting or provide written submissions.

616. Had we not concluded that the First Respondent did not have knowledge of disability at this time, we would have dismissed this claim for these reasons.

Failure to make reasonable adjustments

617. The Claimant's pleaded case is that there was a PCP of:

(i) Going ahead with the Claimant's dismissal rather than postponing the decision to allow for consultation process. The substantial disadvantage relied on is the opportunity to make representations and take part in the consultation.

(ii) Dismissing the Claimant with a PILON. The substantial disadvantage relied on is the benefit of continued private healthcare.

618. We agree with the Respondents' submissions that firstly, there was no Consultation PCP; this was a one-off decision in the particular circumstances of the Claimant's case, which does not amount to a PCP.

619. Secondly, as we found earlier the Claimant had a full and fair opportunity to take part in consultation, this included the opportunity to make representations in writing, but he chose not to do so. No reasonable adjustments were requested by the Claimant during the consultation period nor did he request the

consultation be postponed because he was unable to participate due to his eye impairment.

620. In respect of the PILON PCP, the Claimant accepted that he continued to receive care with the NHS and that he "*absolutely"* was getting good care with the NHS. We conclude there was therefore no substantial disadvantage in not having the benefit of continued private healthcare for his short notice period.

621. Had we not concluded that the First Respondent did not have knowledge of disability at this time, we would have dismissed this claim for these reasons.

Time Limits

622. Regarding time limits as we have not found any of the complaints proven, this issue in effect falls away and we did not go on to consider this.

Employment Judge Akhtar

Approved: 29 January 2025

Sent to the parties on:
30 January 2025
…….
For the Tribunal Office:

……..……..

Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

ANNEX TO JUDGMENT: AGREED LIST OF LIABILITY ISSUES -'AP1'

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

Case No 220191/2020

B E T W E E N:

MICHAEL CLIFFORD

Claimant

- and -

(1) MILLICOM SERVICES UK LIMITED
(2) MARTIN FRECHETTE
(3) CARA VIGLUCCI
(4) HL ROGERS

Respondents

AGREED LIST OF LIABILITY ISSUES

The Claimant was dismissed with effect from 30 November 2019. The claim gives rise to the following liability issues:

PROTECTED DISCLOSURES

1. Did the Claimant make disclosures of information which, in his reasonable belief were in the public interest and tended to show one or more of the matters set out in sub-paragraphs (a)-(f) of s 43B(1) ERA? The Claimant relies upon the alleged disclosures set out in the Claimant's Grounds of Claim and Replies to Respondents' Request for Further Information (the **Replies**), which in summary are:

	Date	To whom	Information alleged to have been disclosed	Sub-paragraph(s) of s 43B
i	September 2017	R3, R4	The Claimant disclosed the findings of his investigation into the involvement of MIC Tanzania and its staff, as well as employees of Huawei and Dimension Data, in the tracking of Mr Tundu Lissu's mobile telephones and the supply of that data to the Tanzanian government, including: • MIC Tanzania was involved in an attempted act of political assassination and act of terrorism which may have to be raised with the UN • MIC Tanzania had been supplying the government of Tanzania with mobile telephone call data and live tracking showing the location of Mr Lissu. • Information had been provided to the Tanzanian Government since 22 August 2017. From 29 August 2017, the intensity of the tracking increased and MIC Tanzania used its human and electronic resources to live track 24/7 the location of two of Mr Lissu's mobile phones. • The location data had been passed on to the Tanzanian government via WhatsApp. • There was no evidence of any formal legal documentation or request from the government, nor authorisation by the board of directors of Millicom International Cellular S.A., MIC Tanzania or Millicom International.	(a) , (b), (c), (d), (f)

			• The Tanzanian Government had asked MIC Tanzania to delete the data and WhatsApp messages that had been provided. • The CTIO was in a relationship with a lady whose father had been the ex-head of the Tanzanian secret service and was also the holder of a diplomatic position, and who was therefore a Politically Exposed Person (PEP), showing close connection between the senior management of MIC Tanzania and the government. • The four senior managers involved in MIC Tanzania had given inconsistent and untruthful accounts when interviewed by the Claimant as part of his investigation. • That other employees of MIC Tanzania had also raised their serious concerns regarding this matter.	
ii	On or around 16 March 2018	R3, R4	The Claimant provided information concerning a serious incident during which he had been verbally threatened by Sylvia Balwire at the Seacliff hotel and government officials then harassed him and his colleague.	(a), (b), (c), (d), (f)
iii	In or around early April 2018	Sidley Austin	The Claimant disclosed the same information that he had previously disclosed to R3 and R4 in September 2017 (see PD1) and March 2018 (see PD2).	See above
iv	Repeated communications on various dates from Sept 2017 onwards	R3, R4	The Claimant repeatedly raised with R3 his grave concerns about the lack of integrity and serious wrongdoing on the part of senior managers, and in the legal, regulatory and HR departments, of MIC Tanzania, and examples included: • The General Manager of MIC Tanzania was in an undisclosed	(a), (b), (c), (d), (f)

			relationship with a supplier and that he had been authorising the payment of invoices from the supplier's company, originally when he was CFO, and now in his role as General Manager of MIC Tanzania (disclosed to R3 and R4 September 2017). • The CTIO of MIC Tanzania was in an undeclared relationship with a PEP (disclosed to R3 and R4 September 2017). • Call data records (CDRs) belonging or relating to other customers (not only Mr Lissu) had been and were being provided to various government agencies in Tanzania, including the Tanzania Communications Regulatory Authority (TCRA), without any documented legal authority. That there was also an absence of proper security controls around the CDR data of MIC Tanzania, and that the result was that false reports of law enforcement and government access to the same were being provided to HQ. These false figures were then used for HQ company reports issued publicly (disclosed to R3 and R4 September 2017). • The General Manager of MIC Tanzania was involved in sexual misconduct that should be of concern to Millicom, including the matters set out at paragraphs 30a and 30b of the Replies (disclosed to R3 only November 2017). • The HR Deputy Director of MIC Tanzania had sent false allegations of sexual harassment about the Claimant and his colleague, Juan Ruiz (disclosed to R3 only 14 November 2017). • That when Sidley Austin interviewed members of senior management they had asked the	

			senior managers to provide access to their work communications and company paid mobile phones, but the senior managers refused (disclosed to R3 between 10 and 13 April 2018 and repeated at the end of April 2018 or beginning of May 2018). • Information regarding various failures on the part of the HR department at Tigo Tanzania, in respect of record keeping and proper management of sickness absence to avoid fraud risks as well as in respect of its duty to process right to work permits and comply with local immigration law (disclosed to R3 and R4 in or around July 2018).	
v	29 October 2018	Lynne Dorward, Simon Karikari, Mohamed Ali Dabbour, R4, Rachel Samren, R2, Eva Rutkowska, Anna Tesha	That he had concerns about security and safety arrangements in Tanzania and that Millicom had never written formally to the relevant authorities about the incident in March 2018 when he and his colleague Kerion Barnes had been harassed and threatened (as detailed at PD2).	(a), (b), (c), (d), (f)
vi	21 March 2019	Salvador Escalon, Executive Vice President and General Counsel of Millicom and later to Susy Bobenreith, Executive Vice President, Chief Human	That he had been subjected to detriments as a result of previous protected (whistleblowing) disclosures. The information included: • That the Claimant had challenged R3 regarding her performance as his supervisor, her conduct in his 2018 performance review in breach of internal policy, and failure to investigate to sufficient standard serious matters of compliance and personal security and the safety of people, as a result of which the Claimant was being retaliated against.	(b), (d), (f)

		Resources Officer	• That the Claimant was concerned that R3 and R4 had been exposing employees to safety and security risks by withholding, from the Claimant and others, feedback and key information that was vital to enable the Claimant and the wider Global Investigations team to properly investigate and complete the responsibilities of his and their roles. • R3 and R4 had failed to properly oversee or respond to investigations of a serious nature which the Claimant had carried out or been involved in and for which they were responsible. • There were attempts to remove the Claimant from his role and his employment rights and work environment had been undermined and damaged because he had made protected disclosures that were ignored. • The Claimant had been accused of a "lack of confidentiality" because he had made protected disclosures. • The Claimant believed that he had certain protections under the Public Interest Disclosure Act.	

Automatic Unfair Dismissal

2. If the Claimant made one or more of the alleged protected disclosures, was the reason or principal reason for his dismissal the fact that he had made the disclosure(s): s 103A ERA?

Ordinary Unfair Dismissal

3. If the reason for the Claimant's dismissal was not his protected disclosures, has R1 shown that the reason for dismissal was his redundancy: ss 98(1) and 98(2) ERA?

4. If the Claimant was dismissed for redundancy, did R1 act reasonably in treating redundancy as sufficient reason to dismiss him in all the circumstances (including the

size and administrative resources of R1) and in accordance with equity and the substantial merits of the case: s 98(4) ERA?

Whistleblowing Detriment

5. If the Claimant made one or more of the alleged protected disclosures, did the Claimant suffer the following detriment(s) on the ground that he made the disclosure(s), contrary to s 47B ERA. The Claimant relies upon the alleged detriments set out in the Claimant's Grounds of Claim and Replies to Respondents' Request for Further Information, which in summary are:

	Date	Description of Alleged Detriment	Claim against
i	13 April 2018	Being called into a meeting with R3. R3 was visibly annoyed and spoke to the Claimant in an accusatory tone. R3 told the Claimant that he "*needed to be careful*" who he spoke to and that R3 had concerns over his confidentiality.	R1, R3
ii	From mid-April 2018 to March 2019	R3 and R4 began to ostracise, marginalise and stone-wall the Claimant. This included R3 ignoring the Claimant's emails and failing to engage with him by email, telephone or face-to-face. Examples include: • R3 failing to carry out the Claimant's mid-year review, which should have taken place in August 2018. R4 did not ensure that the Claimant's review took place. • R3 ignoring multiple requests by the Claimant by email for the opportunity to review a copy, or relevant extracts, of the report produced by Sidley Austin after their investigation referred to at PD3. • R3 not communicating with the Claimant verbally at all for two months between September 2018 and November 2018.	R1, R3, R4

		• R3 and R4 failing to respond to or give any substantive or meaningful response or feedback on two investigation reports regarding serious alleged wrongdoing, in September 2018 (Zantel report regarding the Zantel Compliance manager) and November 2018 (Chad and London Bribery investigation report regarding two London employees who had recently been made redundant).	
iii	In or around September 2018	R3 seeking to engineer the Claimant's dismissal from employment, and his replacement by someone else, for the purported reason of redundancy, even though there was no redundancy situation. See further details at paragraph 25 of the Claimant's Grounds of Complaint. R4 was at least complicit in the actions of R3 above.	R1, R3, R4
iv	October 2018 and March 2019	In October 2018, Millicom advertising for a Global Investigation Manager role based in Miami. Global Investigation Manager was the Claimant's role and the advertisement used in essence the Claimant's job description, but with the addition of a requirement to be a Spanish speaker. The Claimant was not informed or consulted about the advertisement, given the opportunity to apply or offered the role. Further, in March 2019, the company recruited someone to do HR investigations, again based in Miami. That is another role that the Claimant would have been capable of doing, but he was not informed or consulted about it.	R1, R3, R4
v	March 2019	R3 and R4 moved the Claimant out of the team and line management of R3 and excluded him from the conduct of internal investigations that fell within his global investigations role and blocked the Claimant's access to resources by reducing the Claimant's permissions on the NAVEX ethics and	R1, R3, R4

		whistleblowing portal. For example, the Claimant was removed from an investigation relating to a letter sent to the Vice President of Tanzania involving corruption. The Claimant was left isolated and in a diminished role in which his independence and capacity as a global investigations manager were compromised.	
vi	March 2019	R3 downgraded the Claimant's annual appraisal from "meets" to "partially meets" without due process, proper consultation or justification, and out of time. This occurred at least with the agreement of R4. This was a detriment in and of itself, however it also resulted in a reduction in the Claimant's bonus, itself a detriment.	R1, R3, R4
vii	In or about April or May 2019	R4 sought to prevent the Claimant from being involved in the review of the compliance and investigations department by Hogan Lovells. The Claimant was told by Dan Stevens, VP Internal Audit, that he was considered by R4 to be 'dangerous', and that R4 did not want him to be involved in the Hogan Lovells review because he was disgruntled and would not be credible. R4 also accused the Claimant of illegally tracking the mobile telephone of an employee at interview with Niran de Silva.	R1, R4
viii	20 September 2019	At 17:52 on Friday 20 September 2020 R2 emailed the Claimant giving him just one working days' notice of a 'redundancy consultation' call scheduled on Tuesday at 09:30 and then refused to rearrange it as a face to face meeting at a later date, causing the Claimant substantial stress.	R1, R2
ix	September 2019	Placing the Claimant at risk of redundancy.	R1, R2, R3, R4
x	September/October 2019	In September and October 2019 the Claimant was signed off from work due to his serious eye injury which	R1, R2

		was under investigation by specialists. The Claimant therefore asked R2 to postpone the redundancy consultation process. R2 refused to postpone the consultation process and provided for consultation only by written representations notwithstanding the Claimant's certified sickness with serious eye injury.	
xi	21 November 2019	R2 sent a letter to the Claimant terminating the Claimant's employment. He thereby subjected the Claimant to the detriment of dismissal.	R1, R2, R3, R4
xii	21 November 2019	On 21 November 2019 R2 sent the Claimant notice that the termination of his employment would be effective from 30 November 2020 with a payment in lieu of notice, despite the fact that the company knew that the Claimant had suffered a serious eye condition and that he would benefit from continued access to private health insurance during his notice period.	R1, R2

6. The Respondents assert that the claims to whistleblowing detriment at 5i to 5vii above were brought out of time, as to which the following issues arise:

    i. were the detriments complained of acts extending over a period of time for the purposes of s 48(4)(a) ERA such that the 'date of the act' for the purpose of s 48(3) ERA was the last day of that period; or, alternatively

    ii. were the detriments complained of part of a series of similar acts or failures for the purposes of s 48(3)(a) ERA; and,

    iii. was the claim in respect of each detriment brought within three months of the last day of the period or the last similar act, respectively.

Disability

7. Was the Claimant disabled for the purposes of s 6 of the Equality Act 2010 ("**EqA**") at the relevant times? The Claimant relies upon an eye condition, the effects of which are

pleaded at paragraph 4 of the Claimant's Grounds of Complaint and referred to in his Disability Impact Statements dated 1 July 2020 and 11 April 2024.

Discrimination arising from disability – s 15 EqA

8. If the Claimant was disabled at the relevant time, did R1 discriminate against him by treating him unfavourably because of something arising in consequence of his disability, contrary to s.15 EqA? For the purposes of this particular claim, the Claimant relies on the following alleged matters:

    i. the Claimant's inability to attend a meeting that had been arranged with the Second Respondent as something that arose in consequence of his disability; and

    ii. the decision to dismiss the Claimant without a substantive consultation process as unfavourable treatment that arose in consequence of his inability to attend the meeting with the Second Respondent.

9. As to this particular claim, the following issues arise:

    i. Did R1 decide to dismiss the Claimant without a substantive consultation process?

    ii. If so, did R1 thereby treat the Claimant unfavourably?

    iii. If so, did R1 decide to dismiss the Claimant without a substantive consultation process *because of* the Claimant's inability to attend a meeting that had been arranged with the Second Respondent?

    iv. If so, was the Claimant's inability to attend that meeting something that arose in consequence of the Claimant's disability?

Failure to make reasonable adjustments – s 20 EqA

10. If the Claimant was disabled at the relevant time, did R1 have a provision, criterion or practice (**PCP**) that put the Claimant (as a disabled person) at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, and did R1 fail in any duty to make reasonable adjustments pursuant to s.20 EqA?

For the purposes of this particular claim, the Claimant alleges that:

i. R1 had a PCP of going ahead with the Claimant's dismissal rather than postponing the decision to allow for a consultation process, which put the Claimant at a substantial disadvantage by depriving him of the opportunity to make representations and take part in the consultation; and

ii. R1 had a PCP of dismissing the Claimant with a payment in lieu of notice, which put the Claimant at a substantial disadvantage by depriving him of the benefit of continued private healthcare,

and in each case R1 failed in its duty to make reasonable adjustments.

The following issues arise:

i. In each case, did R1 have any such PCP?

ii. If so, did that PCP put the Claimant at a substantial disadvantage in comparison with persons who are not disabled?

iii. If so, did R1 fail in any duty to make reasonable adjustments pursuant to s. 20 EqA?